IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

WARRICK L. BARRETT, M.D.,	]	
	]	CASE NO. 01CVF-08-8376
Appellant,	]	
vs.	]	JUDGE CRAWFORD
	]	
	]	
OHIO STATE MEDICAL BOARD	]	
	]	
	]	
Appellee		

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2002 MAY 23 PM 12:45
CLERK OF COURTS-CV

DECISION AFFIRMING THE DECISION OF THE OHIO STATE MEDICAL BOARD

Rendered this 23rd day of May, 2002

CRAWFORD, JUDGE

This is an appeal pursuant to R.C. 119.12 of a decision of the Ohio State Medical Board ("the Board") revoking the medical license of Appellant Warrick L. Barrett, M.D. The basis for the Board's decision was that Dr. Barrett, while acting as a consultant for a company known as Virtual Medical Group, prescribed drugs such as Viagra, Propecia, Xenical, and Valtrex over the internet to patients he had never personally examined.

I. HISTORY OF THIS MATTER

By letter dated February 14, 2001, the Board notified Dr. Barrett that it proposed to take disciplinary action against his medical license for alleged violations of Ohio Adm. Code 4731-11-09 (B) and (C) and R.C. 4731.22 (B)(10).

Ohio Adm. Code 4731-11-09 (B) provides as follows:

> Except in institutional settings, on call situations, cross coverage situations, situations involving new patients, protocol situations, and situations involving nurses practicing in accordance with standard care arrangements, as described in paragraphs (D) and (E) of this rule, a

physician shall not prescribe, dispense or otherwise provide, or cause to be provided, any dangerous drug which is not a controlled substance to a person who the physician has never personally physically examined and diagnosed, except in accordance with the following requirements.

(1) The physician is providing care in consultation with another physician who has an ongoing professional relationship with the patient, and who has agreed to supervise the patient's use of the drug or drugs to be provided; and

(2) The physician's care of the patient meets all applicable standards of care and all applicable statutory and regulatory requirements.

Ohio Adm. Code 4731-11-09 (C) provides: "A physician shall not advertise or offer, or permit the physician's name or certificate to be used in an advertisement or offer, to provide any dangerous drug in a manner that would violate paragraph (A) or paragraph (B) of this rule."

The alleged violation of R.C. 4731.22(B)(10), "[c]ommission of an act that constitutes a felony in this state" involved alleged sale of dangerous drugs in violation of R.C. 4729.51 (C).

An administrative hearing was held on these charges on April 17, 2001.

II. FINDINGS OF THE BOARD

Following the administrative hearing, the Hearing Examiner issued a Report and Recommendation. The Report concluded that Dr. Barrett had committed the violations charged, and recommended permanent revocation of his medical license.

The Board considered this matter at its August 8, 2001 meeting. The deliberations at that meeting show that the Board believed that Dr. Barrett's prescribing drugs to patients he had not examined violated Ohio Adm. Code 4731-11-09 (B) and fell below minimal standards of care. Dr. Steinbergh stated that this is a minimal standards case where Dr. Barrett should not have been prescribing these medications without

having an appropriate physician/patient relationship. (August 8, 2001 Board meeting minutes). She stated that Dr. Barrett took a minimal history and did no physical examinations. Dr. Agresta stated that there was evidence of "minimal standards of care that was pretty egregious". Mr. Browning stated that "from a consumer point of view, this is exactly why the Board did what it did with the law and the rule. The Board wanted to stop this sort of thing because consumers aren't aware of the dangers they get themselves into when they follow this kind of path." (*Id.*)

At the conclusion of the discussion, the Board voted to confirm the Report and Recommendation and revoke Dr. Barrett's medical license.

III. FACTS

At the administrative hearing, Dr. Barrett testified that he signed a contract to serve as a medical consultant for Virtual Medical Group. (Tr. at 10-11). Virtual Medical Group operated a website which offered medications for conditions such as erectile dysfunction, herpes, obesity, hair loss, and others. (Tr. at 16-22). Persons logging onto the website could select one of the conditions, in which event the patient was presented with a list of questions. The questions were related to the use of or indications for a particular medication used to treat that condition, *e.g.*, Viagra, Propecia, Xenical and Valtrex. After answering the questions, the patient could request the specific medication. The patient then provided personal and credit information. Patients were informed that the information would be submitted to a physician licensed in the patient's state of residence for authorization of the prescription. (*Id.*)

As a medical consultant, Dr. Barrett logged on to the website, reviewed patient questionnaires, and determined whether to prescribe the medications requested by the

patients. (Tr. at 11). Dr. Barrett then communicated with the patients via the website, informing them of whether the requested medications had been authorized. Patients generally received six-month supplies of the medications. Once the initial prescriptions were authorized, refills were generally authorized. (*Id.* at 34). Dr. Barrett earned $20 per new consultation and $10 per renewal consultation. (*Id.* at 37.).

Dr. Barrett was a consultant for Virtual Medical Group for the State of Ohio from January to May, 2000. (Tr. at 152). He made a total of 239 dispensations to Ohio patients. (*Id.* at 136).

Dr. Barrett admitted that he did not physically examine the patients he treated via the website. (Tr. at 14). He did not order blood work or other medical tests for patients to whom he prescribed drugs. (*Id.* at 90). He did not advise patients of any potential side effects of the prescribed medications. (*Id.* at 22-25).

Dr. Barrett testified that he relied upon patient responses to the questionnaires. (*Id.* at 11). He did not have a way to verify information provided by the patients or review prior medical records or test results. (*Id.* at 26). Patients could not consult him personally or by telephone. (*Id.* at 23).

Dr. Barrett admitted that if the internet patients had come to his office practice, he generally would have done physical examinations of them. (Tr. at 36.) He admitted that depending on the condition, he would have done additional physical tests. For example, a contraindication of Viagra is high blood pressure. Dr. Barrett stated that before prescribing Viagra to patients in his office practice, he would have taken their blood pressure. (*Id.*). He stated that he would not have prescribed Propecia to office patients without looking into possible underlying medical conditions that could be responsible for

hair loss. (*Id.* at 40). Dr. Barrett stated that he would have provided an additional level of care to patients seen in his office practice. He said that "in an internet practice you can't be quite as thorough since you're not in a position to provide a hands-on physical." (*Id.* at 41)

Evidence was also presented regarding a number of specific patients. Dr. Barrett prescribed Viagra for patient 42, who had not had a physical exam with blood tests in the last two years. (Tr. at 53).

Dr. Barrett prescribed Viagra for patient 60, who had stated that he had high blood pressure, without ascertaining the patient's blood pressure. (Tr. at 54-55).

Dr. Barrett prescribed Valtrex for herpes patients without advising them regarding when to restrict their sexual contact. (Tr. at 68).

He prescribed Xenical for a weight-loss patient who had a lower body mass index than he looked for. (Tr. 56-57).

With respect to several of the specific patients identified, Dr. Barrett testified that he suggested to them that they see their primary care physician. (Tr. at 40, 44, 48, 54).

Dr. Barrett testified that he is confident he provided good care to the patients identified by the Board. (Tr. at 161). He believes that even if he had seen the patients in person, the medical outcome would not have been any different. (*Id.* at 162).

Dr. Barrett testified that he relied upon advice from Tania Malik, a lawyer and legal and regulatory vice-president of Virtual Medical Group, that his activities as a consultant for Virtual Medical Group were in compliance with the law. (Tr. at p. 154). He said that he immediately stopped doing consultations for Ohio patients in May, 2000, when Ms. Malik called and told him that there were potential legal problems with Virtual

Medical Group's operations in Ohio. (Tr. at 153). Dr. Barrett did not learn of the administrative rule prohibiting prescriptions to patients without physical examinations until after the Board initiated these proceedings. (*Id.*).

IV. LAW

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

The Ohio Supreme Court has recognized that the General Assembly granted the medical board a broad measure of discretion. *Arlen v. State* (1980), 61 Ohio St. 2d 168, 174. In *Farrand v. State Med. Bd.* (1949), 151 Ohio St. 222, 224, the court stated:

> ... The purpose of the General Assembly in providing for administrative hearings in particular fields was to facilitate such matters by placing the decision on facts with boards or commissions composed of men equipped with the necessary knowledge and experience pertaining to a particular field. ...

"Accordingly, when courts review a medical board order, they are obligated to accord due deference to the board's interpretation of the technical and ethical requirements of the medical profession." *Landefeld, supra*, at pg. 9.

V. THE COURT'S FINDINGS AND CONCLUSIONS

Dr. Barrett raises three issues in this appeal. First, he argues that the State failed to show that he permitted his name or certificate to be used in an advertisement or offer for dangerous drugs in violation of Ohio Adm. Code 4731-11-09 (C). Second, he argues that the Board erred in finding that he violated R.C. 4731.22 (B)(10) by engaging in the

sale of dangerous drugs. Third, he argues that this Court, not the Board, should determine the appropriate sanction if it finds that part of the order should be reversed.

Dr. Barrett did not appeal the Board's finding that he violated Ohio Adm. Code 4731-11-09 (B), which prohibits, with certain exceptions, prescribing dangerous drugs to persons whom the physician has never personally physically examined. It is noted that this violation alone can be grounds for license revocation. Ohio Adm. Code 4731-11-09 (H) provides that "a violation of any provision of this rule, as determined by the board, shall constitute 'failure to maintain minimal standards applicable to the selection or administration of drugs' as that clause is used in division (B)(2) of section 4731.22 of the Revised Code". One of the penalties available under R.C. 4731.22 is license revocation.

A. **The Alleged Violation of Ohio Admin. Code 4731-11-09 (C)**

Ohio Adm. Code 4731-11-09 (C) provides: "A physician shall not advertise or offer, or permit the physician's name or certificate to be used in an advertisement or offer, to provide any dangerous drug in a manner that would violate paragraph (A) or paragraph (B) of this rule."

Dr. Barrett argues that the Board failed to present evidence that his name or license was in fact used in an advertisement or offer or that he permitted his name or certificate to be used in such a manner.

Dr. Barrett testified that he signed a contract to be a medical consultant for Virtual Medical Group. Virtual Medical Group operated a website on which patients could order drugs such as Viagra, Propecia, etc. Detailed evidence was presented regarding how drugs could be ordered through the website, in particular by witness David Gallagher, a compliance agent who ordered and obtained Viagra on the website. Patients were

informed that their request would be submitted to a physician licensed in the patient's state of residence for authorization of the prescription.

As Virtual Medical Group's medical consultant, Dr. Barrett logged on to the website, reviewed patient questionnaires, and determined whether to prescribe the requested medication. During the period at issue, Dr. Barrett was the only physician authorizing prescriptions for Ohio. Dr. Barrett communicated with the patients via the website, informing them of whether the medication had been authorized, and, in some cases, providing additional medical advice and information. Patients received e-mails from "doc@virtualmedicalgroup.com" signed by Dr. Barrett as the physician for Virtual Medical Group. (State's Ex. 2B).

The Court concludes that there is reliable, probative and substantial evidence that the Virtual Medical Group website was an offer to provide dangerous drugs such as Viagra and Propecia. There is also reliable, probative and substantial evidence to support the conclusion that by agreeing to be, and performing the services of, medical consultant on the website for Virtual Medical Group, authorizing prescriptions via the website, and communicating with patients in his name on behalf of Virtual Medical Group, Dr. Barrett permitted his name and/or certificate to be used in an offer to provide dangerous drugs in violation of Ohio Adm. Code 4731-11-09 (B).

For these reasons, the Court concludes that the Board's finding that Dr. Barrett violated Ohio Adm. Code 4731-11-09 (C) is supported by reliable, probative and substantial evidence and is in accordance with law.

B. **The Alleged Violation of R.C. 4731.22 (B)(10)**

R.C. 4731.22(B)(10) provides that the Board may impose discipline for "[c]ommission of an act that constitutes a felony in this state". The Board alleged that Dr. Barrett engaged in the sale of dangerous drugs in violation of R.C. 4729.51 (C).

R.C. 4729.51 (C) provides that "no person shall sell, at retail, dangerous drugs." According to R.C. 4729.01 (J), "sale" or "sell" means "the delivery, transfer, barter, exchange, or gift, or offer thereof, and each such transaction made by any person, whether as principal proprietor, agent, or employee".

Dr. Barrett argues that by merely prescribing medication via the internet, he did not "sell" dangerous drugs. It is argued that Virtual Medical Group, not Dr. Barrett, offered the medications for sale.

The statutory definitions here are nearly indistinguishable from those addressed in *State v. Sway* (1984), 15 Ohio St. 3d 112. In *Sway*, the Ohio Supreme Court held:

> A physician cannot insulate himself from criminal liability by arguing that he sold an unlawful prescription, instead of a narcotic drug. The General Assembly did not intend such a distinction. Whether a doctor sells a prescription for the drug or sells the drug itself, the result is the same: the unlawful commerce of a controlled substance. ... **Therefore, we hold that a physician who unlawfully issues a prescription for a controlled substance not in the course of the bona fide treatment of a patient is guilty of selling a controlled substance in violation of R.C. 2925.03.**

(emphasis added) *Id.* at 115.

As set forth by the Ohio Supreme Court, the issue to be determined is whether Dr. Barrett issued prescriptions in the course of "bona fide treatment" of patients. "Bona fide" is defined as "in or with good faith; honestly, openly, and sincerely; without deceit or fraud." *Black's Law Dictionary.*

In *State v. McCarthy*, (1992), 65 Ohio St. 3d 589, the Court rejected the State's argument that a determination of whether the conduct of a physician constitutes bona fide medical treatment must be based on whether the conduct was in accordance with minimum standards of medical practice. The Court stated that "The statutory scheme does not and cannot make mere negligence in the prescribing of drugs a crime. Criminal intent must be shown in order to support a conviction thereunder." *Id.* at 594. The Court added: "Our holding herein parallels those decisions from other jurisdictions which have held that a physician-practitioner's subjective state of mind must be shown, where the prosecution attempts to prove that the prescription of controlled substances goes beyond the realm of legitimate medical treatment into the area of criminal conduct." *Id.*

The Court concludes that there is not reliable, probative and substantial evidence showing that Dr. Barrett had criminal intent in prescribing the drugs at issue. The evidence and the Board's comments focus on whether Dr. Barrett was in compliance with minimum standards of medical practice. While Dr. Barrett may have failed to meet the Board's minimum standards by prescribing to patients without personally examining them, there has been no showing that Dr. Barrett was engaging in something other than an honest, good faith, *i.e.*, "bona fide" attempt to treat patients. As held in *McCarthy*, *supra*, mere negligence is not sufficient, and criminal intent must be shown to establish a criminal sale of dangerous drugs.

For the foregoing reasons, the Court concludes that the Board's finding that Dr. Barrett engaged in the sale of dangerous drugs in violation of R.C. 4729.51 (C) is not supported by reliable, probative and substantial evidence or in accordance with law.

C. **Determination of the Sanction**

Dr. Barrett argues that this Court, not the Board, should determine the appropriate sanction if part of the Board's order is reversed.

In *Landefeld*, *supra*, the Board revoked a physician's license after finding that he had engaged in misconduct in his treatment of patients and in fee splitting and fraudulent billing. The trial court in that case affirmed the findings of violations as to treatment of patients, but reversed the Board's findings relating to fee splitting and fraudulent billing. The trial court nevertheless affirmed the Board's order of revocation, reasoning that the focal point of the Board's concern went to the issue of treatment of the patients and not the charges relating to fee splitting and billing.

Affirming the trial court's decision in *Landefeld*, the Tenth District Court of Appeals stated as follows:

> Under R.C. 119.12, the duty of a common pleas court in reviewing the order of an administrative agency is to determine whether such order is supported by reliable, probative, and substantial evidence, and is in accordance with law. Pursuant to R.C. 4731.22(B), the board may revoke an individual's certificate to practice for '*one* or more' of the enumerated reasons, and thus, in a given case, the trial court would only need to find substantial, reliable, and probative evidence supporting one ground for revocation in order to uphold the board's order. We note that this court has previously affirmed the trial court's finding that the board's order permanently revoking the license of a physician was supported by reliable, probative, and substantial evidence, despite the fact that the trial court found insufficient evidence as to some of the charges. [citation omitted]

Id., pg. 18-19. The Court of Appeals noted that a review of the Board's meeting minutes showed that the Board's comments were directed toward treatment of patients, and there was no mention of the charges relating to fee splitting and fraudulent billing. *Id.*, pg. 12. The Court concluded: "we agree with the trial court that a remand for the board to reconsider its order would have no effect on the board's previously exercised discretion

where the board gave little or no weight to the billing and fee splitting issues." *Id.* at pg. 20.

Here, Dr. Barrett did not appeal the Board's finding that he violated Ohio Adm. Code 4731-11-09 (B), which prohibits, with certain exceptions, prescribing dangerous drugs to persons whom the physician has never personally physically examined. It is noted that this violation alone can be grounds for license revocation.

The finding of the Board that has been reversed relates to the separate issue of whether Dr. Barrett's prescribing drugs also constitutes the felony of sale of dangerous drugs.

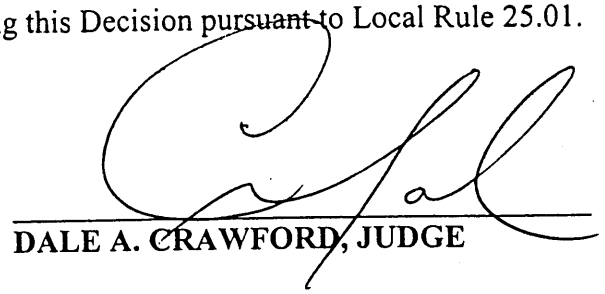
A review of the Board's meeting minutes shows that the focal point of the Board's concern was that Dr. Barrett prescribed drugs without having seen the patients as necessary to establish appropriate physician/patient relationships. Dr. Steinbergh stated that this is a minimal standards case where Dr. Barrett should not have been prescribing these medications without having an appropriate physician/patient relationship. (August 8, 2001 Board meeting minutes). She stated that Dr. Barrett "took a minimal history and did no physical examinations. He could not properly assess the patient, and therefore should not have been prescribing medication to them." Dr. Agresta stated that there was evidence of "minimal standards of care that was pretty egregious".

There was no mention during the Board discussion of whether Dr. Barrett's conduct was also criminal and no mention of the separate charge of commission of an act that constitutes a felony, sale of dangerous drugs, in violation of R.C. 4731.22 (B)(10).

The Board's Order was thus based on the conduct of Dr. Barrett in prescribing to patients without having personally examined them, and not on whether that conduct was

criminal. As in *Landefeld*, the Court concludes that a remand to the Board would have no effect on the Board's previously exercised discretion because the Board gave no weight to the allegation of criminal sales of dangerous drugs.

For the foregoing reasons, the Court concludes that the Board's Order in this matter is supported by reliable, probative and substantial evidence and is in accordance with law. The Board's Order is **AFFIRMED**. Counsel for Appellee shall submit an appropriate Judgment Entry reflecting this Decision pursuant to Local Rule 25.01.



DALE A. CRAWFORD, JUDGE

Appearances:

Gregory D. Russell
Thea L. Allendorf
Vorys Sater, Seymour and Pease
Attorneys for Appellant,
Warrick L. Barrett, M.D.

Rebecca J. Albers,
Assistant Attorney General
Betty D. Montgomery, Attorney General
Attorney for Appellee,
State Medical Board of Ohio

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

88032E07

Warrick L. Barrett, M.D.,	:	Case No. 01CVF-08-8376
Appellant,	:	Judge D. Crawford
vs.	:	Appeal from Division of the Ohio State Medical Board
Ohio State Medical Board,	:	
Appellee.	:	

TERMINATION NO. 10
BY

JUDGMENT ENTRY AFFIRMING STATE MEDICAL BOARD'S AUGUST 8, 2001 ORDER

This case is before the Court on an appeal of the August 8, 2001, order of the State Medical Board of Ohio, which permanently revoked the medical license of Appellant, Warrick L. Barrett, M.D. For the reasons stated in the decision of this Court dated and filed May 23, 2002, which decision is incorporated by reference as if fully rewritten herein, it is hereby:

ORDERED, ADJUDGED AND DECREED that judgment is hereby entered in favor of Appellee, State Medical Board of Ohio, and that the August 8, 2001, order of the State Medical Board is hereby AFFIRMED. Costs as provided by statute shall be borne by the respective parties (dc)

IT IS SO ORDERED.

5/29/02
Date

Judge D. Crawford

COMMON PLEAS COURT FRANKLIN OHIO
2002 MAY 30 PM 1:24
CLERK OF COURTS
ON COMPUTER

SEP 13 2001 CRAWFORD

BEFORE THE STATE MEDICAL BOARD OF OHIO

WARRICK L. BARRETT, M.D. 9313 Castle Knoll Blvd. Indianapolis, IN 46250-3485, Appellant, v. OHIO STATE MEDICAL BOARD 77 South High Street, 17th Floor Columbus, Ohio 43266-0315, Appellee.	:	01 CVF 08 8376 Judge _____ Case No. _____ **O.R.C. § 119.12 NOTICE OF APPEAL**

FILED
FRANKLIN COUNTY
COMMON PLEAS COURT
2001 AUG 28 AM 11:10
CLERK OF COURTS

Pursuant to Section 119.12 of the Ohio Revised Code, Warrick L. Barrett, M.D., through undersigned counsel, hereby gives notice of his appeal of the Ohio State Medical Board's Order issued August 8, 2001, and mailed to Dr. Barrett on August 13, 2001 (a true and accurate copy of which is attached hereto as Exhibit A). Dr. Barrett appeals that Order on the following grounds:

1. It is not supported by reliable, probative and substantial evidence; and,

2. It is not in accord with law.

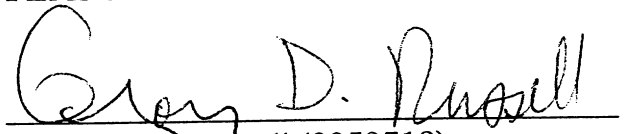
For these reasons, and for every error raised by Dr. Barrett in the disciplinary proceeding below, the Medical Board's Order must be reversed and vacated.

STATE MEDICAL BOARD
OF OHIO
2001 AUG 28 A 11:10

SEP 13 2001

Respectfully submitted,

VORYS, SATER, SEYMOUR AND
PEASE LLP

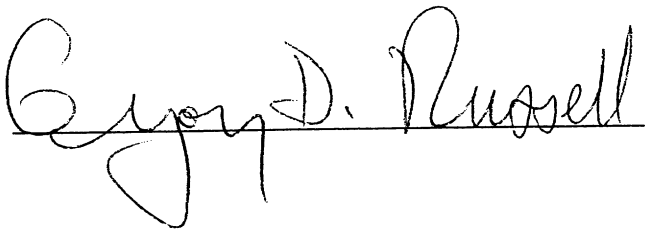


Gregory D. Russell (0059718)
Thea L. Allendorf (0071463)
52 East Gay Street
Columbus, Ohio 43216-1008
(614) 464-6400

Counsel for Appellant,
Warrick L. Barrett, M.D.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Notice of Appeal was filed with the Court of Common Pleas of Franklin County, Ohio, and served by regular U.S. mail upon Rebecca J. Albers, Assistant Attorney General, Health and Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3428, counsel for the Ohio State Medical Board, this 28th day of August, 2001.



ver/aj

State Medical Board of Ohio

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

August 8, 2001

Warrick Lee Barrett, M.D.
9313 Castle Knoll Blvd.
Indianapolis, IN 46250

Dear Doctor Barrett:

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 August 8, 2001, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO

Anand G. Garg, M.D.

Anand G. Garg, M.D.
Secretary

AGG: jam
Enclosures

CERTIFIED MAIL RECEIPT NO. 7099 3220 0009 3045 9417
RETURN RECEIPT REQUESTED

Cc: Kevin P. Byers, Esq.
CERTIFIED MAIL RECEIPT NO. 7099 3220 0009 3045 9424
RETURN RECEIPT REQUESTED

Mailed 8-13-01

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 August 8, 2001, 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 Warrick Lee Barrett, 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.

Anand G. Garg, M.D. /TAD

Anand G. Garg, M.D.
Secretary

(SEAL)

AUGUST 8, 2001
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

WARRICK LEE BARRETT, M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on August 8, 2001.

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

It is hereby ORDERED that:

> The certificate of Warrick Lee Barrett, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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

Anand G. Garg, M.D.

Anand G. Garg, M.D.
Secretary

(SEAL)

AUGUST 8, 2001
Date

STATE MEDICAL BOARD
OF OHIO

2001 JUL -3 A 10: 24

BEFORE THE STATE MEDICAL BOARD OF OHIO

ERRATA SHEET
FOR THE REPORT AND RECOMMENDATION
IN THE MATTER OF WARRICK LEE BARRETT, M.D.

The Report and Recommendation in the Matter of Warrick Lee Barrett, M.D., was filed on June 28, 2001. Subsequently, the Hearing Examiner became aware that State's Exhibits 9A and 9B were inadvertently excluded from the Evidence Examined section of the Report and Recommendation. State's Exhibits 9A and 9B are documents which were included in the package mailed by 1stOnlinePharmacy.com to Mr. Gallagher with his order of Viagra.

Sharon W. Murphy
Attorney Hearing Examiner

STATE MEDICAL BOARD
OF OHIO

2001 JUN 20 P 5:01

REPORT AND RECOMMENDATION
IN THE MATTER OF WARRICK LEE BARRETT, M.D.

The Matter of Warrick Lee Barrett, M.D., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio, on April 17, 2001.

INTRODUCTION

I. Basis for Hearing

A. By letter dated February 14, 2001, the State Medical Board of Ohio [Board] notified Warrick Lee Barrett, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in this state. The Board based its proposed action on allegations pertaining to Dr. Barrett's prescribing medications over the Internet to one hundred sixty-eight patients. The Board further alleged that Dr. Barrett's conduct constituted the following:

- "'violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,' as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: 4731-11-09(B), Ohio Administrative Code. Pursuant to Rule 4731-11-09(H), Ohio Administrative Code, violation of Rule 4731-11-09, Ohio Administrative Code, also violates Sections 4731.22(B)(2), (3) and (6), Ohio Revised Code."

- "'violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,' as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: 4731-11-09(C), Ohio Administrative Code. Pursuant to Rule 4731-11-09(H), Ohio Administrative Code, violation of Rule 4731-11-09, Ohio Administrative Code, also violates Sections 4731.22(B)(2), (3) and (6), Ohio Revised Code."

- "'[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,' as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 4729.51(C), Ohio Revised Code, Sale of dangerous drugs."

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

B. On March 16, 2001, Kevin P. Byers, Esq., submitted a written hearing request on behalf of Dr. Barrett. (State's Exhibit 1B).

II. Appearances

A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Rebecca J. Albers, Assistant Attorney General.

B. On behalf of the Respondent: Kevin P. Byers, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State

1. Warrick Lee Barrett, M.D.
2. Robert L. Cole
3. David Gallagher

B. Presented by the Respondent

1. Warrick Lee Barrett, M.D.
2. Tania Malik

II. Exhibits Examined

A. Presented by the State

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

* 2. State's Exhibit 2A: Confidential Patient Key.

* 3. State's Exhibit 2B: Copies of Dr. Barrett's patient records for Patients 1 through 168.

* 4. State's Exhibit 2C: Patient Record Verification with attached patient key.

5. State's Exhibit 3: Copies of written statements made by Dr. Barrett, which were obtained by the Ohio State Board of Pharmacy.

* 6. State's Exhibit 4: Pharmacy profile of Dr. Barrett's prescribing to Patients 1 through 168. [Note: The Code Numbers for the patients identified on the pharmacy profile do not consistently coincide with the patient numbers identified in State's Exhibit 2A or State's Exhibit 2B).

7. State's Exhibits 5-8: Printed copies of web pages from 1st Online Pharmacy. (Note: With the agreement of the parties, personal information regarding an investigator from the Ohio State Board of Pharmacy was deleted post-hearing by the Hearing Examiner. See Hearing Transcript at 114.)

8. State's Exhibit 9: Copy of VirtualMedicalGroup.com Informational Manual.

9. State's Exhibit 10: State's Closing Argument.

B. Presented by the Respondent

1. Respondent's Exhibit A: Curriculum vitae of Dr. Barrett.

2. Respondent's Exhibits B through E: Copies of letters written on behalf of Dr. Barrett.

3. Respondent's Exhibit G: Excerpt from the Winter 2000 edition of *Your Report*, a newsletter published by the Board.

4. Respondent's Exhibits H through L: Copies of letters and memoranda issued by Virtual Medical Group.

5. Respondent's Exhibit M: Respondent's Summation.

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

PROCEDURAL MATTERS

At the close of the hearing, the parties agreed to submit written closing arguments. Pursuant to a schedule set forth by the Hearing Examiner, the parties filed the arguments, and the hearing record closed on June 8, 2001. (See Hearing Transcript [Tr.] at 217-218).

SUMMARY OF THE EVIDENCE

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

1. Warrick Lee Barrett, M.D., obtained his medical degree from Cornell University Medical College in New York City in 1975. Dr. Barrett completed a rotating medical internship at Montefiore University Hospital at the University of Pittsburgh Medical Center in Pittsburgh, Pennsylvania in 1976. Thereafter, Dr. Barrett served in the United States Air Force. He completed the second and third year of residency training in family practice at the United States Air Force Medical Center at Wright-Patterson Air Force Base in Fairborn, Ohio. Dr. Barrett remained on active duty practicing as a family physician until 1981. (Hearing Transcript [Tr.] at 147-148; Respondent's Exhibit [Resp. Ex.] A).

   Dr. Barrett is certified by the American Board of Family Practice and the American Board of Preventative Medicine (Occupational Medicine). Currently, Dr. Barrett serves as the Occupational Medical Director of Subaru-Isuzu Automotive Inc., in Lafayette, Indiana. He has worked for that company for the past eight years. Dr. Barrett is licensed to practice medicine and surgery in the States of Ohio and Indiana. (Tr. at 9-10, 149; Resp. Ex. A).

2. Dr. Barrett testified that, toward the end of 1999, he had seen an advertisement in the Journal of the American Medical Association. The advertisement presented the following:

   > PHYSICIANS NEEDED: Physicians needed to join a national network of leaders to do ethical Internet patient consultations. Qualifications include Board Certification, at least 3 years post residency experience, US Medical License, and basic computer skills. For more information, contact Tania Malik at 800-930-7483 Ext 105; or tmalik@virtualmedicalgroup.com or visit www.virtualmedicalgroup.com.

   (Tr. at 150-151; St. Ex. 9 at 41). Dr. Barrett testified that he had found the advertisement interesting because he believed it presented a means of "offering a service" while supplementing his income. (Tr. at 151).

   Dr. Barrett contacted Tania Malik and signed a contract to serve as a medical consultant for Virtual Medical Group. Virtual Medical Group and its related organizations, MedicalWeb LLC, 1stOnlinePharmacy.com, and VirtualMedicalGroup.com., are located in North Carolina and provide "internet medical consultation and selected prescription services." (Tr. at 10-11, 151; State's Exhibit [St. Ex.] 3 at 1-3; St. Ex. 9 at 25-34).

Dr. Barrett served as a medical consultant for Virtual Medical Group in the State of Ohio from January 2000 through early May 2000. Dr. Barrett also served as a medical consultant for Virtual Medical Group in the State of Indiana from January 2000 through early 2001. (Tr. at 152-153). Dr. Barrett testified that his role as a medical consultant was to provide patient care via the Internet. (Tr. at 12-13).

3. Dr. Barrett testified that, when serving as Medical Consultant for Virtual Medical Group, he had been required to log on to the Virtual Medical Group website at least once per day. If there was a prospective patient from Ohio awaiting consultation, Dr. Barrett would complete the consultation. Dr. Barrett was the only physician licensed in Ohio who was under contract to provide services for Virtual Medical Group at that time. (Tr. at 30).

   Dr. Barrett explained that a prospective patient would contact the Virtual Medical Group via the Internet. The Virtual Medical Group website provided a list of conditions for which the patient might receive a "medical consultation." These conditions included erectile dysfunction, herpes, hair loss, obesity, and others. The patient identified the condition for which he or she was requesting treatment. At that point, the patient was presented with a list of questions or a "screening algorithm" for the particular condition identified by the patient. The questions were related to the use of, and indications and contraindications for, a particular medication related to that condition. Dr. Barrett testified that the questions were designed by the Virtual Medical Group's medical board and were directed toward a specific problem. (Tr. at 16-22).

   When Dr. Barrett prescribed for a patient, the Virtual Medical Group staff reviewed the results of the online consultation and provided the medication to the patient. All prescriptions were prepared according to the Virtual Medical Group protocol. Dr. Barrett testified that he had received twenty dollars for each new consultation, and ten dollars for each renewal consultation. Dr. Barrett explained that a renewal consultation would apply to a patient who had already received a prescription through the Virtual Medical Group and who was requesting a new prescription. (Tr. at 11, 20-23, 37; St. Ex. 3 at 5).

   Patient records were maintained on the Virtual Medical Group website. Dr. Barrett did not have access to the patient charts. (Tr. at 163; St. Ex. 3 at 4).

4. Dr. Barrett stated that he had reviewed patient responses to Virtual Medical Group questionnaires to determine if a particular medication could be appropriately prescribed. Dr. Barrett testified that, in making this decision, he had no contact with the patient other than through the Internet. Dr. Barrett testified that he had not physically examined any of these patients. Moreover, he did not order labwork or other medical tests. In addition, Dr. Barrett stated that the patients were asked to

provide their own blood pressure and vital signs. When asked how a patient would know his or her own blood pressure, Dr. Barrett stated that the patient would need to see a physician or another person trained to obtain vital signs. (Tr. at 11, 13-15, 20-23; St. Ex. 3 at 5).

Dr. Barrett acknowledged that a physician prescribing over the Internet has no means to determine if a patient is providing false information. Moreover, Dr. Barrett admitted that he had prescribed dangerous drugs to patients over the Internet despite the fact that the patients had not had a complete physical examination or laboratory studies performed by any physician. (St. Ex. 3 at 8, 11).

Dr. Barrett testified that he generally prescribed a six month course of medications when be prescribed through Virtual Medical Group. Dr. Barrett testified that, according to Virtual Medical Group protocol, if a prescribing physician did not prescribe a six-month course of medication refills, the physician was required to notify the pharmacy of such and schedule additional consultations with the patient. Dr. Barrett explained that he had been required to do this, despite the fact that he had been exercising his own independent medical judgment, because prescribing a medication without also prescribing six months of refills was "a deviation from the general standards * * * offered within the Virtual Medical Group." (Tr. at 34-35).

Dr. Barrett also testified that he had not advised patients of the potential side effects of the medications he prescribed. He noted, however, that the patients routinely received the package insert containing FDA labeling with each prescription. Dr. Barrett further testified that he had not warned the patients of the potential side effects because "[t]he patient does have that responsibility to identify if they're not feeling well in the course of taking the medication." When it was pointed out that the patient would not be aware of the potential side effects associated with a particular medication, Dr. Barrett responded that he had alluded to the fact that there might be side effects in his "informational note" to the patient. (Tr. at 23-25).

Dr. Barrett testified that he had believed that the treatment he provided to patients through the Virtual Medical Group website had been "within the generally accepted standards of medical care in rendering evaluation, consultation, and treatment" to patients. Dr. Barrett further testified that that he had been advised as such by Tania Malik, the vice president for legal and regulatory matters for Virtual Medical Group. (Tr. at 32).

5. The medical records for Patients 1 through 168 maintained by Virtual Medical Group indicate the following:

- Dr. Barrett prescribed Viagra to Patients 1, 5, 7, 8, 10-12, 16-21, 23, 24, 30, 31, 33-35, 38, 39, 41, 42, 44-46, 49, 51, 52, 54, 57, 58, 60-62, 65, 69, 71, 72, 74, 75, 77, 78, 80, 82, 83, 85, 86, 89, 90, 92-94, 97, 99, 100, 103, 104, 106-108, 112, 113,

115, 117-119, 123, 126, 128, 130, 132, 134-137, 140-142, 144, 146, 151, 153, 156-163 and 166-168.

- Dr. Barrett prescribed Xenical to Patients 2, 3, 6, 9, 14, 15, 22, 26, 28, 47, 48, 50, 53, 55, 59, 64, 66, 70, 76, 81, 84, 91, 95, 96, 98, 101, 102, 105, 109-111, 114, 116, 120, 122, 124, 127, 133, 145, 147-150, 155, 164 and 165.

- Dr. Barrett prescribed Propecia to Patients 4, 25, 27, 29, 32, 36, 37, 43, 56, 63, 67, 68, 73, 87, 88, 94, 121, 125, 129, 131, 138, 139, 143, 152, and 154.

- Dr. Barrett prescribed Valtrex to Patients 40 and 79.

(St. Ex. 2B).

6. The medical records maintained by the Virtual Medical Group for Patient 1 contain five pages. (St. Ex. 2B at 1-5). The first page of Patient 1's medical records is entitled "Patient Information." On that page, the following information is recorded:

Name	[Name of Patient 1]
Date of Birth	12-20-57
Age	43
Sex	M
Height	5'11"
Weight	180
Known Drug Allergies	
Current Medications	
Medical Conditions	None
Physician Name	Dr. Warrick Barrett

CURRENT HISTORY
Viagra for Sexual Dysfunction – Approved

(St. Ex. 2B at 2).

The second page of Patient 1's medical records is entitled "Vitals." The following is recorded:

Date of Birth	12-20-57
Height	5'11"
Weight	180
Family History	
Medical problems	None
Other diseases	
General Medical History and Conditions	
Do you have any of the following Medical Problems? [1]	None
Please list relevant surgical history. Include description of surgery and date of surgery.	
Are you being treated for any medical conditions at this time? Please specify.	
Known Drug allergies	
Current Medications: Please list all prescription medications you are currently taking (even if occasionally) and the length of time you have been taking them. Include over-the-counter medications) i.e. vitamins, aspirin, herbal remedies).	

[1] The Virtual Medical Group's medical records for Patients 1 through 168 do not document the list of medical conditions that each patient reviewed in order to choose their current medical conditions. Nevertheless, the Virtual Medical Group Information Manual [State's Exhibit 9] contains a memorandum from Tania Malik to Dr. Barrett which advises that the list of conditions viewed by the patients is as follows: None, Coronary Artery Disease, Congestive Heart Failure, Valvular Heart Disease, Peyroine's Disease, Obesity, Hypertension, Diabetes, Prostate Cancer, Enlarged Prostate, Low Testosterone, Thyroid Disease, Arteriosclerosis, Liver Disease, Kidney Disease, Stroke, Depression, Chest Pain, STDS, Spinal Cord Injury, and Endocrine Disorders. (See St. Ex. 9 at 21.

Have you had a complete physical exam with blood tests within the past 2 years?	Y
Do you consume more than 3 servings of alcohol daily?	N
Do you smoke?	N
Medical conditions – Approved orders only.	
Sexual Dysfunction	

(St. Ex. 2B at 2).

The third page of Patient 1's medical records is entitled "Specific Sexual Dysfunction Questions." The following information is recorded:

Do you have a problem achieving and/or maintaining an erection sufficient sexual intercourse [sic]?	Y
When did your erection problems begin?	This year
Do you have a normal sex drive?	N
Have you ever been treated for erectile dysfunction?	N
Do you consider anything else in you sexual history to be relevant? Please explain:	
Do you take any medication classified as a nitrate of any form?	N
Are you taking any medication classified as an anti-depressant?	N
Have you ever been diagnosed with retinitis pigmentosa?	N
Have you ever experienced spinal cord damage?	N
Has a physician ever told you that you should not engage in sexual activity due to heart problems?	N

(St. Ex. 2B at 3).

The fourth page of Patient 1's medical records is entitled "Communications for [Patient 1]. The page provides as follows:

> **MD Pharmacist Patient**
>
> Message posted by Physician to Patient on 24-Jan-00 at 01:25
>
> > It appears that you can safely use Viagra. Please discontinue the use of the medication and consult your personal physician if it appears that you are experiencing any adverse side effects.

(St. Ex. 2B at 4).

The fifth and final page in Patient 1's medical records is entitled "Notes for [Patient 1] (For viewing by MD and RPh only)." That page provides as follows:

> **MD You**
>
> Message posted by Physician to Patient on 1/24/2000 at 1:23:38
>
> No contraindications to Viagra use noted.

(St. Ex. 2B at 5).

7. Regarding his prescribing to Patient 1, Dr. Barrett testified as follows:

- Dr. Barrett acknowledged that the only communication from him to Patient 1 was the on-line message: "It appears that you can safely use Viagra. Please discontinue the use of the medication and consult your personal physician if it appears that you are experiencing any adverse side effects." (Tr. at 22-23; St. Ex. 3 at 7).

- When asked if it was not the prescribing physician's responsibility to monitor and treat Patient 1's adverse reactions to the medication prescribed, Dr. Barrett answered that Patient 1 could have consulted him over the Internet. Dr. Barrett admitted that Patient 1 had not had any other means to contact Dr. Barrett. (Tr. at 23).

- Dr. Barrett acknowledged that Patient 1 had indicated that he had had a physical examination with blood work during the past two years. Dr. Barrett further acknowledged, however, that he could not have known the results of the examination or the blood tests without specifically asking. Dr. Barrett admitted that he had not done so. (Tr. at 26).

- Dr. Barrett testified that the contraindications for Viagra are cardiovascular disease particularly coronary artery disease, hypertension, hypotension, and concurrent treatment with antibiotic, anti-fungal, and antiviral agents. Dr. Barrett testified that all of those areas are covered by the questions designed by the Virtual Medical Group to assess for the appropriateness of prescribing Viagra. (Tr. at 26-27).

- Dr. Barrett testified that physical conditions that can cause a patient to have erectile dysfunction include diabetes and organic conditions. Dr. Barrett admitted that, without examining Patient 1, Dr. Barrett could not have assessed for these conditions. Dr. Barrett testified that he had nonetheless felt comfortable prescribing Viagra for Patient 1 because "[t]he questionnaire addresses the majority of issues that would pertain to the propriety or impropriety of that patient taking that medication. And I felt comfortable in providing it in that setting." (Tr. at 27-28).

- Dr. Barrett testified that, if a patient had come to his office requesting Viagra, he would have monitored the patient's blood pressure. Moreover, Dr. Barrett would have performed a "limited examination," including, at least, an examination of the penis and an assessment for the presence of cardiovascular disease. (Tr. at 36).

8. The medical records maintained by the Virtual Medical Group for Patient 4 consist of five pages. (St. Ex. 2B at 17-21). The first page contains a prescription profile which indicates that, on May 4, 2000, Patient 4 received a new prescription for Propecia, 1.0 mg., ninety tablets, to be taken once daily, with six months of refills. (St. Ex. 2B at 17).

   The second page of Patient 4's medical records is entitled "Vitals," and the following is recorded:

Date of Birth	6/24/1950
Height	71
Weight	210
Family History	
Medical problems	Heart disease
Other diseases	
General Medical History and Conditions	
Do you have any of the following Medical Problems?	None

Please list relevant surgical history. Include description of surgery and date of surgery.

Are you being treated for any medical conditions at this time? Please specify.

Known Drug allergies

Current Medications: Please list all prescription medications you are currently taking (even if occasionally) and the length of time you have been taking them. Include all over-the-counter medications (i.e. vitamins, aspirin, herbal remedies).

Have you had a complete physical exam with blood tests within the past 2 years?	N
Do you consume more than 3 servings of alcohol daily?	N
Do you smoke?	N

Medical conditions – Approved orders only.
Hair Loss

(St. Ex. 2B at 18).

The third page of Patient 4's medical records is entitled "Specific Hair Loss Questions." The following information is recorded:

Do you suffer from Male Pattern Hair Loss?	Y
How old were you when you started losing your hair?	35
Was your hair loss sudden or gradual? Please explain.	Gradual
Does male pattern baldness run in your family?	N
Check treatments that you have undergone.	None
I am aware that I need to inform my doctor that I am taking Propecia if I have a PSA blood test.	Y

Have you ever been diagnosed with liver disease? N

(St. Ex. 2B at 19).

The fourth page of Patient 4's medical records is entitled "Communications for [Patient 4]. The page provides as follows:

MD Pharmacist Patient

Message posted by Physician to patient on 04-May-00 at 12:54.

> It appears that you can safely take the medication Propecia. I hope that you are able to enjoy a good result. Please discontinue the medication and seek medication [sic] if you appear to be experiencing a significant adverse medication side effect. Since it has been over two years since your last medical evaluation, please permit me to encourage you to obtain a more current evaluation to ascertain that there are no underlying medical ailments that could be responsible for your present symptoms.

(St. Ex. 2B at 20).

The fifth and final page in Patient 4's medical records is entitled "Notes for [Patient 4] (For viewing by MD and RPh only)." That page provides as follows:

MD You

Message posted by Physician on 5/4/2000 at 12:53:25

> No contraindications to Propecia use noted. Patient encouraged to have a more current medical evaluation.

(St. Ex. 2B at 21).

9. When asked if the use of Propecia is contraindicated in patients with heart disease, Dr. Barrett responded that he was not familiar with the contraindications for the use of Propecia. Dr. Barrett further stated that the medical records for Patient 4 did not provide any information regarding the type or extent of heart disease suffered by Patient 4. (Tr. at 38-39).

Dr. Barrett acknowledged that he had advised Patient 4 to obtain a more current evaluation to determine if there was an underlying condition that was responsible for Patient 4's hair loss. Dr. Barrett further acknowledged that one cause of hair loss is hypothyroidism, and that Dr. Barrett had no information regarding the state of Patient 4's

thyroid. Nevertheless, Dr. Barrett testified that he had felt comfortable prescribing Propecia to Patient 4, despite the fact that Patient 4 had not had a physical examination in more than two years, because Dr. Barrett had encouraged Patient 4 to see a physician. Dr. Barrett added, however, that, if he had seen Patient 4 in his office, Dr. Barrett "most certainly" would have evaluated Patient 4 more thoroughly. (Tr. at 40).

Dr. Barrett acknowledged that the care he provided to Patient 4 might have been "inferior" because "there were some deficits in the medical information [he] had for this particular patient." Dr. Barrett distinguished the obligation of a physician treating a patient over the Internet from that of a physician treating a patient in the physician's office. Dr. Barrett testified that a physician cannot be "quite as thorough" when treating a patient via the Internet because the physician is unable to perform a physician examination. Dr. Barrett testified that that is the reason he encouraged his Internet patients to obtain a medical evaluation by another physician. (Tr. at 40-42).

10. The medical records maintained by the Virtual Medical Group for Patient 5 consist of five pages. (St. Ex. 2B at 22-26). The first page contains a prescription profile for Patient 5 which indicates that, on May 12, 2000, Patient 5 had received a new prescription for Viagra, 100 mg., ten tablets, with six months of refills. (St. Ex. 2B at 22).

The second page of Patient 5's medical records is entitled "Vitals," and the following is recorded:

Date of Birth	07/09/51
Height	71
Weight	168
Family History	
Medical problems	High Blood Pressure
Other diseases	
General Medical History and Conditions	
Do you have any of the following Medical Problems?	Hypertension
Please list relevant surgical history. Include description of surgery and date of surgery.	None
Are you being treated for any medical conditions at this time?	

Please specify.	Hypertension
Known Drug allergies	nka
Current Medications: Please list all prescription medications you are currently taking (even if occasionally) and length of time you have been taking them. Include all over-the-counter medications (i.e. vitamins, aspirin, herbal remedies).	Prinzide
Have you had a complete physical exam with blood tests within the past 2 years?	Y
Do you consume more than 3 servings of alcohol daily?	N
Do you smoke?	N
Medical conditions – Approved orders only. <u>Sexual Dysfunction</u>	

(St. Ex. 2B at 23).

The third page of Patient 5's medical records is entitled "Specific Sexual Dysfunction Questions." The following information is recorded:

Do you have a problem achieving and/or maintaining an erection sufficient sexual intercourse [sic]?	Y
When did your erection problems begin?	Several years ago
Do you have a normal sex drive?	Y
Have you ever been treated for erectile dysfunction?	N
Do you consider anything else in you sexual history to be relevant? Please explain:	
Do you take any medication classified as a nitrate of any form?	N
Are you taking any medication classified as an anti-depressant?	N
Have you ever been diagnosed with retinitis pigmentosa?	N

Have you ever experienced spinal cord damage? N

Has a physician ever told you that you should not engage in sexual activity due to heart problems? N

(St. Ex. 2B at 24).

The fourth page of Patient 5's medical records is entitled "Communications for [Patient 5]." Communication between Patient 5 and Dr. Barrett is recorded as follows:

Message posted by Physician to patient on 12-May-00 at 07:52 A.M.

> [Patient 5's first name]: Viagra must be taken with caution in the presence of hypertension. Prior to approving your present request, I must ascertain from you that your blood pressure is 160/110 or less. Please advise.

(St. Ex. 2B at 25).

Message posted by [Patient 5] to Physician on 12-May-00 at 10:28 A.M.

> The last BP measurement was taken 4/25/00 and was 110/70. I have been well controlled since beginning Prinzide in October. I have taken Viagra (25-50 mg) with no difficulties since January. Thanks, [Patient 5].

(St. Ex. 2B at 25).

Message posted by Physician to patient on 12-May-00 at 02:09 P.M.

> [Patient 5's first name]: Thanks for the additional information. It appears, therefore, that you can safely take the medication Viagra. I hope that you are able to enjoy a significant benefit. Please discontinue the medication and seek medical attention if you appear to be experiencing a significant adverse medication side effect.

(St. Ex. 2B at 25).

The fifth and final page in Patient 5's medical records is entitled "Notes for [Patient 5] (For viewing by MD and RPh only)." Communication is as follows:

Message posted by Physician on 5/12/2000 at 7:51:25

> Patient is currently being treated for hypertension. Must ascertain that condition is sufficiently controlled prior to authorizing Rx for Viagra.

(St. Ex. 2B at 26).

Message posted by Physician on 5/12/2000 at 14:8:19

> With additional information from patient, no contraindications are noted.

(St. Ex. 2B at 26).

11. When reviewing Patient 5's medical record, Dr. Barrett acknowledged that, if Patient 5 had intended to obtain Viagra despite the medical risk, Patient 5 could have lied about his blood pressure reading after reading Dr. Barrett's note advising that his blood pressure must be within certain limits. (Tr. at 43-44).

    Dr. Barrett also explained that, when he advised Patient 5 to seek medical attention if Patient 5 experienced side effects from the medication, Dr. Barrett had not intended that Patient 5 contact him. Dr. Barrett stated that he would not have been "in a position as his online consultant to provide the specific medical evaluation." (Tr. at 44).

12. Dr. Barrett testified that he had provided Xenical to Patient 6 who was also being prescribed a thyroid hormone substitute by another physician. Dr. Barrett acknowledged that Xenical is contraindicated for an overweight person whose has hypothyroidism which is not being treated. Dr. Barrett further acknowledged that he did not know whether the other physician was adequately treating Patient 6's thyroid disease. (Tr. at 44-46; St. Ex. 2B at 27-29).

    Dr. Barrett stated that he had advised Patient 6 to consult her pharmacist about the use of an appropriate supplement of fat-soluble vitamins to be used while taking Xenical. Dr. Barrett explained that a deficiency of fat-soluble vitamins may be a side effect of taking Xenical. Dr. Barrett acknowledged, however, that he had not advised Patient 6 of the symptoms of fat-soluble vitamin deficiency. (Tr. at 46-48; St. Ex. 2B at 32).

13. The Virtual Medical Group's medical records for Patient 10 indicate that, on April 10, 2000, Patient 10 received twenty tablets of Viagra with refills for six months. The prescription profile lists the exchange as a new prescription. In the communication with Patient 10, however, both Patient 10 and the Virtual Medical Group pharmacist

treat the exchange as a refill. Nevertheless, there is no documentation of any previous consultation or provision of drugs to Patient 10. (St. Ex. 2B at 56-59).

14. The Virtual Medical Group's medical records for Patient 23 indicate that Patient 23 requested a prescription for Viagra on February 9, 2000. In the on-line consultation, Patient 23 reported that he had received a previous prescription for Viagra from another on-line pharmacy. Patient 23 further reported that he had not had a physical examination with blood tests performed in the previous two years. Nevertheless, Dr. Barrett prescribed thirty tablets of Viagra with refills for six months. Dr. Barrett advised as follows:

> Since you have taken it before, it appears that you can safely take the medication Viagra. I encourage you to have a more current medical evaluation to determine if there are any underlying medical ailments that could be responsible for your condition. Please also allow me to encourage you to consider freeing yourself from cigarette use. The benefits for your heart and lungs, as well as decreasing your risks of developing cancerous diseases, would be well worth it.

(St. Ex. 2B at 119-124).

15. The Virtual Medical Group's medical records for Patient 31 indicate that Patient 31 requested a prescription for Viagra on March 14, 2000. In the on-line consultation, Patient 31 reported that he had a history of kidney disease. He also stated that he had had kidney stones removed on January 25, 2000. Dr. Barrett prescribed thirty tablets of Viagra with refills for six months. Dr. Barrett advised as follows:

> It appears that you can safely take the medication Viagra. I hope that you may enjoy a significant benefit. Please continue to keep in contact with your regular physician to help prevent, if possible, any recurrences of kidney stones. Please discontinue the Viagra and seek medication [sic] attention if you appear to be experiencing any significant adverse medication side effect.

(St. Ex. 2B at 163-166).

In a note to the Virtual Medical Group pharmacist, Dr. Barrett further advised:

> No contraindications to Viagra are noted. History of 'kidney stones' does not suggest any specific renal dysfunction.

(St. Ex. 2B at 163-167).

Despite the fact that Viagra should be used with caution in patients with kidney disease, and the fact that Patient 31 had reported a history of kidney disease, Dr. Barrett asked no questions regarding the type or extent of Patient 31's kidney disease. (St. Ex. 2B at 163-166; St. Ex. 9 at 11-12).

16. The Virtual Medical Group's medical records for Patient 40 contain six pages. (St. Ex. 2B at 208-213). The first page of Patient 40's medical records contains a prescription profile for Patient 40 which indicates that, on February 8, 2000, Patient 40 received a new prescription for Valtrex, 1000 mg., sixty tablets, with six months of refills. On June 6, 2000, Patient 40 received a refill of an additional sixty tablets. (St. Ex. 2B at 208).

The second page of Patient 40's medical records is entitled "Vitals," and the following is recorded on the second and third pages:

Date of Birth	2/11/67
Height	71
Weight	185
Family History	
Medical problems	Diabetes
Other diseases	
General Medical History and Conditions	
Do you have any of the following Medical Problems?	None
Please list relevant surgical history. Include description of surgery and date of surgery.	
Are you being treated for any medical conditions at this time? Please specify.	
Known Drug allergies	
Current Medications: Please list all prescription medications you are currently taking (even if occasionally) and the length time you have been taking them. Include all over-the-counter medications (i.e. vitamins, aspirin herbal remedies).	Centrum multi-4 yr

Have you had a complete physical exam with blood tests within the past 2 years?	Y
Do you consume more than 3 servings of alcohol daily?	N
Do you smoke?	N
Medical conditions – Approved orders only. <u>Herpes</u>	

(St. Ex. 2B at 209-210).

The fourth page of Patient 40's medical records is entitled "Specific Herpes Questions." The following information is recorded:

How long have you had or thought you had herpes?	3 yrs 0 mos.
When was your first episode?	1997
Have you ever been diagnosed with herpes genitalis?	Yes
Have you ever had a positive herpes culture?	No
Have you ever been treated for herpes?	Yes, don't recall
What other treatments have you tried?	Herbals
How many attacks of herpes do you get in a year?	Ten or more per year
Are you interested in treatment for a current outbreak?	Yes
Are you interested in suppressive treatment?	Yes

(St. Ex. 2B at 211).

The fifth page of Patient 40's medical records is entitled "Communications for [Patient 40]. Communication between Patient 40 and Dr. Barrett is recorded as follows:

Message posted by Physician to patient on 08-Feb-00 at 09:34 A.M.

> It appears that you can safely take the medication Valtrex for both treatment of an acute infection and for suppressive therapy. Please

> consult your personal physician if the therapy does not appear to be beneficial or if you appear to be experiencing any adverse side-effects to the medication.

(St. Ex. 2B at 212).

The sixth and final page in Patient 40's medical records is entitled "Notes for [Patient 40] (For viewing by MD and RPh only)." Communication is as follows:

> Message posted by Physician on 2/8/2000 at 9:35:51
>
> No contraindications to Valtrex use noted.

(St. Ex. 2B at 213).

> Message posted by You on 6/6/2000 at 10:17:47
>
> Pt. Called for refill on 6/6/2000. Spoke to him about refill. Said he is taking ½ tablet daily (500 mg). MD prescribed 1000 mg. Asked about recurrences. Stated less than 9 per year, and that he wasn't even sure this is what it is. Recommended visit to primary MD for diagnosis. Loreen Coyle, RPh.

(St. Ex. 2B at 213) (Emphasis added).

17. Dr. Barrett acknowledged that the pharmacist had recommended that Patient 40 consult his family physician in order to determine a diagnosis for the lesions. Nevertheless, a refill of the prescription was issued pursuant to a refill of Dr. Barrett's original prescription. (Tr. at 67).

    Dr. Barrett was also asked to review the dosage and administration he had ordered. Dr. Barrett testified that he did not know the prescription rate of Valtrex by memory. Dr. Barrett was referred to the medical record. Dr. Barrett acknowledged that he had ordered Valtrex to be taken "one tablet by mouth each day or twice a day for five days as needed for acute infection." (Tr. at 67-68) (Emphasis added). The medical record contains no indication that Dr. Barrett explained to Patient 41 when he should take the medication once daily and when he should take the medication twice daily.

    Finally, Dr. Barrett stated that, if he had been seeing this patient in an office-based practice, he would have advised Patient 40 as to the restrictions on sexual contact during an outbreak of herpes. Dr. Barrett acknowledged that he had not done so with Patient 40. (Tr. at 68-69).

18. The Virtual Medical Group's medical record for Patient 42 consists of five pages. (St. Ex. 2B at 219-223). The first page contains a prescription profile for Patient 42 which indicates that, on March 6, 2000, Patient 42 received a new prescription for Viagra, 100 mg., three tablets, with six months of refills. (St. Ex. 2B at 22). Dr. Barrett testified that he had authorized the prescription of Viagra despite the fact that Patient 42 had not had a physical examination with blood tests during the past two years. Dr. Barrett justified this by stating that he had encouraged Patient 42 to have a medical evaluation to determine whether there were any underlying medical conditions. (Tr. at 54).

    Moreover, the original prescription for Viagra was issued for three tablets. Nevertheless, pursuant to the refill ordered by Dr. Barrett, Patient 42 received a refill of ten tablets on May 2, 2000. (St. Ex. 2B at 22).

19. The Virtual Medical Group's medical records for Patient 60 indicate that Patient 60 requested a prescription for Viagra on January 26, 2000. Dr. Barrett prescribed ten tablets of Viagra with refills for six months. (St. Ex. 2B at 316-320). Dr. Barrett acknowledged that he had authorized the prescription of Viagra despite the fact that Patient 60 had a history of high blood pressure and Dr. Barrett had not ascertained Patient 60's current blood pressure. (Tr. at 54-55).

20. The Virtual Medical Group's medical records for Patient 66 consist of six pages. (St. Ex. 2B at 347-352). The first page contains a prescription profile for Patient 66 which indicates that, on April 13, 2000, Patient 66 received a new prescription for Xenical, 120 mg., ninety tablets, with six months of refills. On July 17, 2000, pursuant to the six months of refills ordered by Dr. Barrett, Patient 66 received two refills, a total of 180 tablets. (St. Ex. 2B at 347).

    The second page of Patient 66's medical records is entitled "Vitals," and the following is recorded:

Date of Birth	12/30/49
Height	5'2"
Weight	145
Family History	
Medical problems	Cancer
Other diseases	
General Medical History and Conditions	

Do you have any of the following Medical Problems?	
Please list relevant surgical history. Include description of surgery and date of surgery.	
Are you being treated for any medical conditions at this time? Please specify.	Some arthritis-wrist
Known Drug allergies	None
Current Medications: Please list all prescription medications you are currently taking (even if occasionally) and the length of time you have been taking them. Include all over-the-counter medications (i.e. vitamins, aspirin, herbal remedies).	Prempro 8 yrs Naprosyn prn 2 yrs
Have you had a complete physical exam with blood tests within the past 2 years?	Y
Do you consume more than 3 servings of alcohol daily?	N
Do you smoke?	N
Medical conditions – Approved orders only. <u>Fat blocker</u>	

(St. Ex. 2B at 348).

The third page of Patient 66's medical records is entitled "Specific Weightloss Questions." The following information is recorded:

Do your exercise regularly or participate in any sports?	Yes. Walk 3 times a week, 30 minutes
Are you taking any dietary supplements, herbal supplements or any types of steroids?	No
Are you taking any weight loss medication?	No
Do you suffer shortness of breath?	No
Do you suffer from depression?	No

Do you have irritable bowel syndrome or any other bowel disorder?	No
Do you have problems absorbing food?	No
Do you have gall bladder problems?	No
Are you breastfeeding or are you pregnant?	No
Are you planning to become pregnant?	No
Are you Anorexic or Bulimic?	No
Are you taking cyclosporine?	No
Has any physician ever refused to prescribe this medication for you?	No
OBESITY HISTORY	
At what age did you begin to gain weight:	28-30
How long has your weight been a problem?	Past ten years
Were you an obese child?	No
Were you an obese adolescent?	No
DIET HISTORY	
How many times have you tried to lose weight in the past year?	1-3 times
Chose the diets you have tried	Weight Watchers
Other diet program:	
If you have had any prescribed medical weight loss Treatments in the last 12 months, please give diagnosis, treatment dates, type of treatment results (successful or not, etc.)	

(St. Ex. 2B at 349).

The fourth page of Patient 66's medical records contains no relevant information. The fifth page is entitled "Communications for [Patient 66]." Communication between Patient 66 and Dr. Barrett is recorded as follows:

> Message posted by Physician to patient on 12-Apr-00 at 06:15 P.M.
>
> > Based on your current height and weight, your current Body Mass Index (BMI) is 27. This is considered the minimum BMI for which Xenical is indicated. It appears, therefore, that you may continue taking this medication. I hope that you are able to enjoy a significant benefit. An exercise program is helpful in this regard. Walking, use of a "mini-trampoline," and aerobic exercise in water are among my favorite activities to recommend. If you have not done so already, please consult a pharmacist about the use of an appropriate supplement to prevent a possible deficiency of fat-soluble vitamins (A, D, E, K) and betacarotene while taking Xenical. It is also important to use care to prevent overdose of the fat-soluble vitamins.

(St. Ex. 2B at 351).

The sixth and final page in Patient 66's medical records is entitled "Notes for [Patient 66] (For viewing by MD and RPh only)." Communication is as follows:

> Message posted by Physician on 4/12/2000 at 18:10:27
>
> > BMI 27, within acceptable parameters. No contraindications to Xenical use noted. Patient indicates that she has used this medication before.

(St. Ex. 2B at 352).

21. Dr. Barrett acknowledged that the medical record contains no indication of the type of cancer that Patient 66 had been diagnosed as having. Moreover, Dr. Barrett testified that he generally expects a patient have a BMI of 31 before he would consider prescribing Xenical. Nevertheless, he prescribed Xenical for Patient 66 although her BMI was only 27. When asked why he had prescribed Xenical to this patient despite her BMI of only 27, Dr. Barrett testified that he could think of no reason other than his "desire to help out." (Tr. at 55-56).

22. The Virtual Medical Group's medical records for Patient 67 indicate that Patient 67 requested a prescription for Propecia on April 19, 2000. In the on-line consultation, Patient 67 reported that he had no medical problems and had not had a physical examination with blood tests in the past two years. Nevertheless, Patient 67 also

reported that he was taking an antibiotic. Without requesting any clarification of the inconsistency, Dr. Barrett approved a prescription for Propecia. (St. Ex. 2B at 353-357).

23. The Virtual Medical Group's medical records for Patient 70 indicate that Dr. Barrett prescribed Xenical for Patient 70 despite a BMI of 28, the fact that he generally expects a patient have a BMI of 31 before he would consider prescribing Xenical, and the absence of any complicating conditions. (Tr. at 55-56; St. Ex. 2B at 368-373).

24. The Virtual Medical Group's medical records for Patient 71 indicate that Patient 71 requested a prescription for Viagra on April 26, 2000. In the on-line consultation, Patient 71 reported a history of hypertension, but denied taking any medications. When Dr. Barrett warned that he could not prescribe Viagra unless Patient 71's blood pressure was no greater than 170/110, Patient 71 reported back that he was taking medication to control his blood pressure. Patient 71 then reported that his blood pressure was 130/85. Dr. Barrett approved the prescription for Viagra without discussing the discrepancies in Patient 71's responses. (St. Ex. 2B at 374-378).

25. The Virtual Medical Group's medical records for Patient 83 indicate that Patient 83 requested a prescription for Viagra on March 15, 2000. In the on-line consultation, Patient 83 reported that he had had a triple coronary artery bypass surgery one year ago. He further stated that he jogged three miles daily and was in "outstanding health." Without requesting any additional information, Dr. Barrett approved a prescription for Viagra. (St. Ex. 2B at 434-438).

26. The Virtual Medical Group's medical records for Patient 85 indicate that Patient 85 requested a prescription for Viagra on March 21, 2000. In the on-line consultation, Patient 85 reported that he had a history of hypertension. Patient 85 also reported that he was not taking any medications. Dr. Barrett approved a prescription for Viagra without requesting a blood pressure reading or any other additional information. In his note to Patient 85, however, he advised:

> It appears that you can safely continue taking the medication Viagra. I hope that you are able to enjoy a significant benefit. Please discontinue the medication and seek medical attention if you appear to be experiencing a significant adverse medication side-effect. If you are not already doing so, please continue to have your blood pressure monitored regularly, to determine if any additional medical interventions are needed for your hypertension.

(St. Ex. 2B at 353-357). (Note: the medical record does not indicate that Patient 85 had previously taken Viagra.)

27. The Virtual Medical Group's medical records for Patient 117 indicate that Patient 117 requested a prescription for Viagra on April 21, 2000. In the on-line consultation,

Patient 117 reported that he was then being treated for SVT [supraventricular tachycardia] with Toprol XL. Without requesting any additional information, Dr. Barrett approved a prescription for Viagra. (St. Ex. 2B at 625-628).

28. Dr. Barrett testified that he had prescribed Xenical for Patient 145. In the on-line consultation, Patient 145 advised that she had previously been prescribed Fen-Phen, Redux, and Meridia for weight loss, but that these medications had been unsuccessful. Moreover, Patient 145 reported that she had not seen a physician for physical examination or blood tests during the past two years. Nevertheless, Dr. Barrett prescribed Xenical. When asked if it concerned him that Patient 145 had not asked her personal physician for a prescription for Xenical, Dr. Barrett testified that "there's obviously some reason she chose to do an online consultation." (Tr. at 58-59; St. Ex. 2B at 785-787).

    Dr. Barrett testified that, when performing an online consultation, he is acting as an online consultant rather than as a personal physician. Dr. Barrett distinguished the two by stating that an "online relationship doesn't allow the physician to provide hands-on evaluation and care." He admitted, however, that an online relationship does allow the physician to be compensated financially for his "efforts." (Tr. at 60-61).

    When asked to explain the symbols in the prescription profile in the medical records for Patient 145, Dr. Barrett stated that he was unable to ascertain what some of the symbols meant, despite the fact that he was the physician who ordered the prescription. (Tr. at 61-62).

    Dr. Barrett further testified that, when he communicated a prescription to the Virtual Medical Group pharmacist by e-mail, he did not select the dosage and administration of the medication prescribed, because those decisions were made by the Virtual Medical Group computer. Dr. Barrett explained that he had exercised medical judgment in the sense that he had determined whether it was appropriate for the patient to receive the medication in the first place. (Tr. at 62-63).

29. Robert L. Cole testified at hearing on behalf of the State. Mr. Cole testified that he is a Compliance Supervisor with the Ohio Board of Pharmacy [Pharmacy Board]. Mr. Cole explained that he investigates violations of the Ohio Pharmacy Practice Act and other violations of drug laws in Ohio. (Tr. at 70-72).

    Mr. Cole testified that he became familiar with Dr. Barrett during the Pharmacy Board's investigation of Virtual Medical Group. Mr. Cole stated that Dr. Barrett's name surfaced when another agent from the Pharmacy Board obtained drugs from the Virtual Medical Group through 1stOnlinePharmacy.com. Thereafter, the Pharmacy Board started an investigation of Dr. Barrett. (Tr. at 72-74).

Mr. Cole testified that, during the course of the investigation, he had interviewed Dr. Barrett at his home in Indiana. At the same time, another group of investigators performed an inspection of 1st Online Pharmacy in North Carolina. (Tr. at 73-74).

Mr. Cole stated that he had gone to Indiana with an investigator from the Medical Board. Mr. Cole and the Board investigator contacted Dr. Barrett at his residence. Dr. Barrett allowed the two investigators into his home. Dr. Barrett provided them with information regarding Virtual Medical Group, including a Virtual Medical Group manual, Dr. Barrett's contract with Virtual Medical Group, and other miscellaneous memoranda. (Tr. at 74-75; St. Ex. 9). Mr. Cole testified that Dr. Barrett was a "very polite, generous, a nice person." Mr. Cole further stated that Dr. Barrett had been "very open and candid." (Tr. at 94, 96).

Mr. Cole testified that Dr. Barrett had advised him that, as a medical consultant for Virtual Medical Group, Dr. Barrett had been responsible to access the Virtual Medical Group website at least daily and to search the database for prospective patients who resided either in Ohio or in Indiana. When he found a prospective patient, Dr. Barrett reviewed the patient information, and sent a request for the drugs to be issued to the patient. Dr. Barrett had been given certain criteria and restrictions issued by Virtual Medical Group to be used when evaluating a patient. (Tr. at 76).

30. Mr. Cole referred to the Virtual Medical Group manual Dr. Barrett had provided to the investigators during the interview in Indiana. (Tr. at 76-77; St. Ex. 9). In a section entitled "The Prescription and Refill Process," the manual provides "if at all possible, please choose the patient's request[ed drug] or one of the alternatives. To prescribe differently will require communication with the pharmacist * * *." (Tr. at 77-78; St. Ex. 9 at 5).

The manual further provides that, if the physician does not prescribe automatic refills for a medication, the physician must order "continuing care." With the continuing care option, the patient was required to contact the physician via the Internet site and the physician would order a new prescription. Nevertheless, according to the manual, the physician was not compensated for these continuing contacts. (Tr. at 77-78; St. Ex. 9 at 5).

Mr. Cole further noted that the manual includes an April 10, 2000, letter addressed to Virtual Medical Group physicians from Rowena Sobczyk, M.D., the Chief Medical Officer for Quality Assurance at Virtual Medical Group. The letter advised that the Virtual Medical Group Internet site promised patients that they can automatically receive up to a six-month supply of refills. The letter further advised that, if a physician did not want the automatic six-month supply of refills on a particular prescription, the physician must contact the pharmacist specifically. Finally, the letter advised that the computer screen the physician used to order medications for patients does not inform the physician of the number of refills the physician is ordering. (Tr. at 79-80; St. Ex. 9 at 9).

Mr. Cole also referred to a letter in the manual from Loreen Coyne, a pharmacist employed by 1stOnlinePharmacy.com, addressed to physicians employed by Virtual Medical Group. The letter noted that Virtual Medical Group would allow physicians to call prescriptions to pharmacies other than 1stOnlinePharmacy.com, although Virtual Medical Group was considering deleting that option. Nevertheless, in order to maintain "consistency," the pharmacist's letter advised physicians, in part, as follows:

> Here are recommended standard quantities to call in, however, we understand you may change this on occasion based on your professional judgment. As a rule, we want to give them refills for a total of six months.
>
> Propecia 1 mg #30 with 5 refills
> Viagra 100 mg #20 with 3 refills (most patients are going to cut these in ½ to make a 50 mg. dose. Directions should read: Take ½ to 1 tablet as needed not to exceed 1 per day in most cases.)
> Xenical 120 mg #90 with 5 refills
> Zyban 150 mg #30 with 2 refills

(Tr. at 83-84; St. Ex. 9 at 22).

31. Mr. Cole testified that the relationship between the physician and the pharmacist at Virtual Medical Group was unusual. Mr. Cole stated that, in general practice, a physician prescribes medication based on the physician's knowledge and experience. The physician does not consult the pharmacist first. (Tr. at 79-83).

32. David Gallagher testified at hearing on behalf of the State. Mr. Gallagher testified that he is a Compliance Agent with the Pharmacy Board, and that he became familiar with Dr. Barrett during the course of an investigation. (Tr. at 99-101).

Mr. Gallagher testified that, during the course of an investigation, he found the website of 1stOnlinePharmacy.com, and made a purchase of Viagra. He stated that, when making the purchase, Mr. Gallagher received an e-mail message from Dr. Barrett. (Tr. at 101).

Mr. Gallagher identified a packet of documents which contains a printed copy of each page of the website Mr. Gallagher accessed to order Viagra from 1stOnlinePharmacy.com. (Tr. at 101-121; St. Ex. 5). The first page states, "Welcome to 1st Online Pharmacy," and provides information about the organization. The page also includes a listing of the current "specials." For example, the page proclaims:

> Viagra Trial Package. Try for only $129. You get five 100 mg. Viagra pills, physician consultation, pill cutter, free 2nd day shipping.

(St. Ex. 5 at 1).

The Viagra page includes other offers for Viagra in various amounts, and provides that the patient must pay a $75.00 fee for the online medical consultation. Mr. Gallagher noted that, once the patient enters an order, the patient is directed to identify the country and state of residence. Next, the patient must review a security statement, and provide personal and credit information. (Tr. at 105-114; St. Ex. 5 at 1-15).

Thereafter, the patient must agree to terms and conditions determined by Virtual Medical Group. Among the terms to which a patient must agree are the following:

- I am under the care of a primary care physician and am not relying on the Consulting Physician to be my primary care physician unless I visit him/her in person.

- I will not make a claim that the Consulting Physician acted unprofessionally or below the standard of care solely because the physician did not perform a physical examination on me.

- In seeking a consultation or before taking any medication prescribed as requested, I will ensure that I have undergone a comprehensive physical examination by my primary care physician, that I have a copy of the written report of such examination, and that I have identified in my responses to the medical history questionnaire any findings from my physical examination that are not within normal range.

- Virtual Medical Group does not direct, control or influence the treatment decisions made by the Consulting Physician with respect to my care * * *.

- I am aware of potential side effects associated with this medication, am assuming all the risk in taking this prescription and will not seek any indemnification, any damages of any kind, or any other liability from Virtual Medical Group * * *.

- I will notify my primary care physician that I am taking the medication that I am requesting so that he/she may advise to continue or discontinue its use.

(St. Ex. 5 at 16-18).

The documents further indicate that, on May 8, 2000, Mr. Gallagher paid Virtual Medical Group $75.00 for a consultation fee, in addition to $54.00 for a Viagra Combo Trial

Pack, which included five 100 mg. tablets of Viagra and one free pill cutter. (Tr. at 105; St. Ex. 5 at 19, 30-33).

On May 9, 2000, Dr. Barrett posted a message for Mr. Gallagher on the 1stOnlinePharmacy.com website. The message provided as follows:

> It appears that you can safely use the medication Viagra. I hope that you are able to enjoy a significant benefit. Please discontinue the medication and seek medical attention if you appear to be experiencing any significant adverse medication side effects.

(St. Ex. 5 at 37).

Mr. Gallagher testified that he received information with the Viagra, which included instructions on getting refills, information on Viagra including side effects and other considerations, and a list of drugs included in the category of nitrates. (Tr. at 121; St. Exs. 9A and 9B).

Mr. Gallagher further testified that, on May 30, 2000, he received an e-mail message from 1stOnlinePharmacy.com providing a web address at which he could check to see if he had been authorized to obtain refills of the Viagra prescription. Mr. Gallagher did so, and discovered that he could obtain an additional five tablets of Viagra for $79.00. Mr. Gallagher testified that he had not known before receiving that message that the original prescription had authorized refills. Mr. Gallagher submitted a request for additional Viagra on June 9, 2000. He received the medication on June 12, 2000. Mr. Gallagher had no communication with Dr. Barrett during these transactions. (Tr. at 122-128; St. Ex. 6).

Mr. Gallagher received another e-mail message on June 28, 2000, advising him to check for refills. Mr. Gallagher did so, and discovered that he could again obtain an additional five tablets of Viagra for $79.00. Mr. Gallagher submitted a request on July 5 and he received the medication on July 6, 2000. Again, Mr. Gallagher had no communication with Dr. Barrett during these transactions. (Tr. at 122, 128-129; St. Ex. 7).

33. Mr. Gallagher testified that he had participated in the inspection of 1st Online Pharmacy in North Carolina on August 1, 2000. During the course of the inspection, Mr. Gallagher was provided a pharmacy profile of the medications prescribed by Dr. Barrett through 1stOnlinePharmacy.com. (Tr. at 132-136; St. Ex. 4). [Note: The Code Numbers for the patients identified on the pharmacy profile do not consistently coincide with the patient numbers identified in State's Exhibit 2A or State's Exhibit 2B).

34. Mr. Gallagher testified that, in his position as a compliance agent for the Pharmacy Board, he is familiar with the laws and rules governing the dispensing of dangerous drugs

in Ohio. Mr. Gallagher provided the following testimony in relation to Section 4731.51, Ohio Revised Code:

> [A] dangerous drug can only be prescribed pursuant to a legitimate set of circumstances. And in this case, my office and my investigation surrounded the fact that a prescription without any physician-patient relationship whatsoever was not a legitimate prescription and opened that door to that being the illegal sale of a dangerous drug, as well as each one of those individual prescriptions being an illegal processing of a drug document because there is no legitimate foundation for the prescription.

(Tr. at 136-137).

35. Tania Malik testified at hearing on behalf of Dr. Barrett. Ms. Malik stated that she is the Chief Executive Officer of Virtual Medical Group and of Medical Web, Inc. Ms. Malik explained that Medical Web, Inc., is the parent company and fully owns 1stOnlinePharmacy.com and VirtualMedicalGroup.com. She further explained that VirtualMedicalGroup.com "is a national physician network that treats patients online in a secure and confidential environment. 1st Online Pharmacy is a pharmacy licensed throughout the United States, 48 of the states, and dispenses prescriptions like a mail order pharmacy." (Tr. at 169-171, 185).

    Ms. Malik testified that a medical consultant for Virtual Medical Group diagnoses a patient by looking at the medical history and communicating with the patient. Ms. Malik further reported that the Virtual Medical Group quality assurance committee had advised her that "the medical history has been so comprehensive that [the physicians] don't have to communicate beforehand in certain circumstances based on the medical history." (Tr. at 189-193).

36. Ms. Malik testified that a physician working through Virtual Medical Group is able to prescribe any medication that is appropriate for the patient's reported condition so long as the medication is not a controlled substance. (Tr. at 205). Moreover, when the physician writes a prescription, the physician selects from a menu or "prescription pad" created by Virtual Medical Group. Ms. Malik testified that the prescription pad was designed "so that doctors would not prescribe more medication than the QA committee thought was appropriate over the Internet. Like, we only prescribe 120 doses of Viagra every six months. Didn't want the doctor to be able to go over that. So the prescription pad is set up so he can't do that." (Tr. at 210-211).

37. In discussing the fact that the Virtual Medical Group manual states that a physician will not be compensated for consulting with a patient on a monthly basis, thereby

encouraging the physician to order refills for six months without reevaluating the patient, Ms. Malik replied as follows:

> Well, until this month we had paid the physicians for any continuing care. It's not - - it was inadvertent at the same time to tell the physicians that you're not going to get paid for putting continuing care. From the business side, every patient would have been in continuing care. From the business side, we made that decision, but we also incorporated the feature for good patient care. And we actually were paying for continuing care.

(Tr. at 213-214).

38. Ms. Malik testified that Virtual Medical Group had ceased practicing in Ohio after Ms. Malik learned of a speech given by William Winsley, the Executive Director of the Pharmacy Board, at a speaking conference in May 2000. Ms. Malik testified that, from the content of Mr. Winsley's speech, she had become concerned that the activities of Virtual Medical Group may have been illegal in Ohio. Therefore, she terminated the operations of Virtual Medical Group in Ohio. (Tr. at 174-175, 200-201).

    Nevertheless, the Virtual Medical Group's medical records for Patients 1 through 168 indicate that Virtual Medical Group continued to operate in Ohio through, at least, October 2000. Virtual Medical Group continued to refill prescriptions that were originally ordered by Dr. Barrett, despite the fact that Dr. Barrett was no longer seeing patients in Ohio for Virtual Medical Group. (See St. Ex. 2B at 27, 88, 119, 188, 203, 300, 331, 347, 353, 384, 481, 634, 734, 739, 791, 819, 835). Moreover, Virtual Medical Group filled a new prescription for Patient 88, apparently written by a physician other than Dr. Barrett, on October 3, 2000. (St. Ex. 2B at 460-470).

39. Ms. Malik testified that she hopes Ohio chooses to accept Internet medicine at some point in the near future. She further stated that:

> Internet medicine really is going to happen. I mean, First Health, a large insurance company, has just started paying their physicians for Internet visits just like this. They get paid for that now. The day after tomorrow I go to a Fortune 50 company because they want this in their – to treat their own employees.
>
> Johnson & Johnson has been treating depression online for years, and we're moving there. We are starting to treat depression now. But we haven't done it before now because we haven't found someone we thought could write a template to the point where a primary care doctor could diagnose it appropriately. We have an option called continuing care where depression - - that it will be used in depression without fail

> where they'll have to come in and talk to a physician every four to six weeks.
>
> So, Internet medicine is going to happen, and it is the wave of the future. And anytime you open a magazine or a health care magazine now you hear 90 percent of patients are willing to switch doctors so they can e-mail them. That represents about 33.4 billion purchasing power, I think. It's not - - it's going to happen. And you would want someone to be in your state who is willing to be accountable and would listen if you just said - - you know, if you only did this, then we think you could operate. * * *
>
> So, we're here because it's going to happen, and we would like to work with you to make it happen. * * *

(Tr. at 198-199).

40. Dr. Barrett testified that he had discontinued functioning as a consultant for Virtual Medical Group in May 2000, when he learned of Rule 4731-11-09 of the Administrative Code. Dr. Barrett testified that he had not been aware of a rule in Ohio which prohibited a physician from treating a patient without first examining the patient, until Ms. Malik had contacted him and advised of such. Dr. Barrett testified that he had trusted Ms. Malik to provide him legal and regulatory advice. (Tr. at 32-33, 154).

41. Dr. Barrett submitted a copy of the Winter 2000 "Your Report" issued by the Board. In that issue, which Dr. Barrett testified he received in February 2001, there is a discussion of Rule 4731-11-09. The discussion provides as follows:

> Ohio Administrative Code Rule 4731-11-09 prohibits prescribing for new conditions to patients who have not been seen previously by a physician. This rule includes specific exceptions. The rule became effective on October 1, 1999. The rule was a response in part to the Board's concerns about physicians prescribing drugs over the internet without the benefit of first physically examining the patient. The Board views such prescribing as inappropriate and failing to meet the minimal standard of care.

(Resp. Ex. G at 2).

42. Dr. Barrett submitted letters from friends and co-workers written in support of Dr. Barrett. In general, the letters state that Dr. Barrett is a gentle and honest man who would never intentionally hurt anyone or break any laws. (Resp. Exs. B through E).

Dr. Barrett also submitted additional letters and memoranda issued by Virtual Medical Group. (Resp. Ex. H through L).

43. Dr. Barrett testified that he believes he provided good medical care to Patients 1 through 168. (Tr. at 161, 167-168).

FINDINGS OF FACT

1. Warrick Lee Barrett, M.D., prescribed Viagra to Patients 1, 5, 7, 8, 10-12, 16-21, 23, 24, 30, 31, 33-35, 38, 39, 41, 42, 44-46, 49, 51, 52, 54, 57, 58, 60-62, 65, 69, 71, 72, 74, 75, 77, 78, 80, 82, 83, 85, 86, 89, 90, 92-94, 97, 99, 100, 103, 104, 106-108, 112, 113, 115, 117-119, 123, 126, 128, 130, 132, 134-137, 140-142, 144, 146, 151, 153, 156-163 and 166-168, even though Dr. Barrett had never personally examined these patients prior to prescribing the medication.

2. Dr. Barrett prescribed Xenical to Patients 2, 3, 6, 9, 14, 15, 22, 26, 28, 47, 48, 50, 53, 55, 59, 64, 66, 70, 76, 81, 84, 91, 95, 96, 98, 101, 102, 105, 109-111, 114, 116, 120, 122, 124, 127, 133, 145, 147-150, 155, 164 and 165, even though Dr. Barrett had never personally examined these patients prior to prescribing the medication.

3. The State alleged that Dr. Barrett had prescribed Xenical to Patient 13 even though Dr. Barrett had never personally examined Patient 13. Nevertheless, the medical records for Patient 13 are duplicates of the medical records for Patient 6. Moreover, the names of Patient 6 and Patient 13 are identical but for the transposition of two letters in the last name. Accordingly, the State failed to present evidence supporting the allegation regarding Patient 13.

4. Dr. Barrett prescribed Propecia to Patients 4, 25, 27, 29, 32, 36, 37, 43, 56, 63, 67, 68, 73, 87, 88, 94, 121, 125, 129, 131, 138, 139, 143, 152 and 154, even though Dr. Barrett had never personally examined these patients prior to prescribing the medication.

5. Dr. Barrett prescribed Valtrex to Patients 40 and 79, even though Dr. Barrett had never personally examined these patients prior to prescribing the medication.

6. Dr. Barrett permitted Virtual Medical Group, through its website, 1stOnlinePharmacy.com, to use Dr. Barrett's Ohio certificate in an offer to provide dangerous drugs in a manner that violated Rule 4731-11-09(B) of the Ohio Administrative Code.

CONCLUSIONS OF LAW

1. The conduct of Warrick Lee Barrett, M.D., as alleged in Findings of Fact 1, 2, 4 and 5, constitutes "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: 4731-11-09(B), Ohio Administrative Code.

   Rule 4731-11-09(B), Ohio Administrative Code, provides:

   > (B) Except in institutional settings, on call situations, cross coverage situations, situations involving new patients, protocol situations, and situations involving nurses practicing in accordance with standard care arrangements, as described in paragraphs (D) and (E) of this rule, a physician shall not prescribe, dispense, or otherwise provide, or cause to be provided, any dangerous drug which is not a controlled substance to a person who the physician has never personally physically examined and diagnosed, except in accordance with the following requirements:
   >
   > (1) The physician is providing care in consultation with another physician who has an ongoing professional relationship with the patient, and who has agreed to supervise the patient's use of the drug or drugs to be provided; and
   >
   > (2) The physician's care of the patient meets all applicable standards of care and all applicable statutory and regulatory requirements.

2. Dr. Barrett's conduct as alleged in Findings of Fact 6, and in view of the conclusion in Conclusions of Law 1, constitutes "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: 4731-11-09(C), Ohio Administrative Code.

   Rule 4731-11-09(C), Ohio Administrative Code, provides:

   > A physician shall not advertise or offer, or permit the physician's name or certificate to be used in an advertisement or offer, to provide any dangerous drug in a manner that would violate paragraph (A) or paragraph (B) of this rule.

3. Pursuant to Rule 4731-11-09(H), Ohio Administrative Code, the violations of 4731-11-09(B) and 4731-11-09(C), Ohio Administrative Code, also constitute:

> '[F]ailure to maintain minimal standards applicable to the selection or administration of drugs,' as that clause is used in division (B)(2) of section 4731.22 of the Revised Code; 'selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes,' as that clause is used in division (B)(3) of section 4731.22 of the Revised Code; and 'a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established,' as that clause is used in division (B)(6) of section 4731.22 of the Revised Code.

4. Dr. Barrett's conduct as alleged in Findings of Fact 1, 2, 4, and 5, constitutes "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 4729.51(C), Ohio Revised Code, Sale of dangerous drugs.

   Section 4729.51(C), Ohio Revised Code provides, in pertinent part:

   > (1) Except as provided in division (C)(4) of this section, no person shall sell, at retail, dangerous drugs.
   >
   > * * *
   >
   > (4) Divisions (C)(1), (2), and (3) of this section do not apply to a registered wholesale distributor of dangerous drugs, a licensed terminal distributor of dangerous drugs, or a person who possesses, or possesses for sale or sells, at retail, a dangerous drug in accordance with Chapters 3719., 4715., 4723., 4725., 4729., 4731., and 4741. of the Revised Code.

   As testified by David Gallagher of the Ohio State Pharmacy Board, a dangerous drug can only be prescribed pursuant to a legitimate set of circumstances. In this case, where no legitimate physician-patient relationship existed between Dr. Barrett and Patients 1 through 168, Dr. Barrett's conduct constitutes the illegal sale of a dangerous drugs.

* * * * *

Dr. Barrett testified that, when performing an online consultation, the physician is acting as an online consultant rather than as a personal physician. Dr. Barrett testified that an online consultant cannot be "quite as thorough" as a personal physician because the online

consultant is unable to perform a physical examination of the patient. In fact, Dr. Barrett repeatedly stated that the care he provided over the Internet was not the same care he would have provided to a patient in his office. Examples of the deficient care provided by Dr. Barrett in his capacity as an "online consultant" include the following:

- Dr. Barrett prescribed dangerous drugs to Patients 1 through 168 without physically examining any of the patients. Moreover, he prescribed these drugs without first ordering any labwork or other medical tests.

- Dr. Barrett prescribed Viagra, which is to be used with caution in patients suffering from hypertension, to patients who suffered from hypertension without first ascertaining the patients' current blood pressure or whether the patients' hypertension was controlled.

- Dr. Barrett acknowledged that diabetes and organic conditions can cause a patient to have erectile dysfunction. Nevertheless, Dr. Barrett prescribed Viagra to patients without examining them for these conditions.

- Dr. Barrett testified that, if a patient had come to his office requesting Viagra, he would have assessed for the presence of cardiovascular disease. Nevertheless, Dr. Barrett prescribed Viagra to patients over the Internet without performing such an assessment.

- Dr. Barrett prescribed Viagra to Patient 31, despite the facts that Patient 31 had reported a history of kidney disease, Viagra should be used with caution in patients with kidney disease, and Dr. Barrett had asked no questions regarding the type or extent of Patient 31's kidney disease.

- Dr. Barrett prescribed Viagra for Patient 117 without requesting any additional information, despite the fact that Patient 117 reported that he was then being treated for supraventricular tachycardia with Toprol XL.

- Dr. Barrett prescribed Propecia to Patient 4 despite the fact that hypothyroidism is one cause of hair loss, and Dr. Barrett had no information regarding the state of Patient 4's thyroid. Dr. Barrett acknowledged that, if he had seen Patient 4 in his office, he would have evaluated Patient 4 more thoroughly.

- Dr. Barrett prescribed Xenical to Patient 6 who was also being prescribed a thyroid hormone substitute by another physician. Dr. Barrett acknowledged that Xenical is contraindicated for an overweight person who has hypothyroidism that is not being adequately treated. Dr. Barrett further acknowledged that he did not know whether the other physician had adequately treated Patient 6's thyroid disease.

- Dr. Barrett prescribed Valtrex to Patient 40 for treatment of herpes, a sexually transmitted disease. Dr. Barrett did not advise Patient 40 to avoid sexual contact during an outbreak. Dr. Barrett admitted, however, that if he had seen Patient 40 in an office based setting, he would have advised Patient 40 as to the restrictions on sexual contact during an outbreak of the disease.

- Dr. Barrett testified that, when he advised Patient 5 to seek medical attention if Patient 5 experienced side effects from the medication Dr. Barrett prescribed, Dr. Barrett had not intended that Patient 5 contact him. Dr. Barrett stated that he would not have been in a position as an on-line consultant to provide the necessary care.

- A Virtual Medical Group pharmacist refilled a prescription written by Dr. Barrett for Patient 40, despite the fact that the pharmacist advised Patient 40 to see a physician to determine if Patient 40 truly had the condition for which the medication was being prescribed.

- Dr. Barrett admitted that he had not warned these patients of the potential side effects of the medications he prescribed, and stated that it's the patient's responsibility "to identify if they're not feeling well in the course of taking the medication."

- Dr. Barrett testified that he did not select the dosage and administration of the medications he prescribed, but allowed those decisions to be made by the Virtual Medical Group computer.

Despite of these clear violations of the minimal standards of care, Dr. Barrett believes he provided good medical care to Patients 1 through 168. In sum, Dr. Barrett argues that he met the minimal standards of Internet care. Unfortunately for Dr. Barrett, however, the Board does not recognize the minimal standards of Internet care. Dr. Barrett will be held to the same standards as any other physician treating patients in the State of Ohio.

In his closing argument, Dr. Barrett tried to justify the deficiencies in care provided by a physician practicing over the Internet by the fact that Internet prescribing allows patients to obtain "embarrassment" medications without having to face their personal physician. Nevertheless, if these medications could safely be prescribed without physical examination and monitoring by the physician, they would have been approved for sale "over the counter." Simply because a condition is embarrassing to discuss does not make the appropriate pharmaceutical treatment any safer for the patient.

Dr. Barrett further justified the practice of Internet prescribing by stating that the patients who obtained drugs from Virtual Medical Group signed various disclosure statements and waivers of liability. Nevertheless, no matter what waivers the patient has signed, it is the physician who is responsible to comply with the minimal standards of care. The fact that a

patient agrees not to sue a physician for providing sub-standard care does not, in any way, relieve the physician of his responsibility to provide quality care. Accordingly, Dr. Barrett's arguments are wholly without merit.

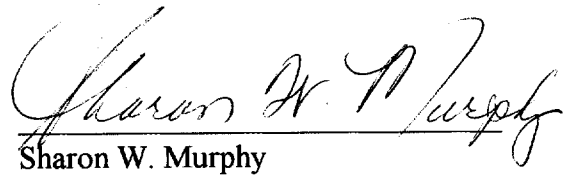
Conversely, Dr. Barrett did present some mitigating factors for consideration by the Board. Dr. Barrett was cooperative during the course of the investigation. Moreover, Dr. Barrett ceased treating patients over the Internet when advised by Ms. Malik that such conduct may be illegal in Ohio. Nevertheless, the severity of Dr. Barrett's practice deficiencies, and the fact that he still believes that the care he provided to Patients 1 through 168 was appropriate, suggest that allowing Dr. Barrett to continue practicing medicine and surgery in Ohio presents too great a risk of public harm.

PROPOSED ORDER

It is hereby ORDERED that:

> The certificate of Warrick Lee Barrett, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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



Sharon W. Murphy
Attorney Hearing Examiner

State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF AUGUST 8, 2001

REPORTS AND RECOMMENDATIONS

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

Dr. Bhati asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matter of Warrick Lee Barrett, M.D.; Christopher Chen, M.D.; Brian W. Davies, M.D.; Daniel X. Garcia, M.D.; Alan P. Skora, D.O.; Rezso Spruch, M.D.; Tom Reutti Starr, M.D.; Joseph A. Tore, M.D.; Quirino B. Valeros, M.D. and Dirk Gregory Wood, M.D. A roll call was taken:

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

Dr. Bhati 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. Talmage	- aye
	Dr. Somani	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye
	Dr. Bhati	- aye

Dr. Bhati 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. Bhati 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.

.....

WARRICK LEE BARRETT, M.D.

.....

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF WARRICK LEE BARRETT, M.D. DR. SOMANI SECONDED THE MOTION.

.....

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

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

The motion carried.

State Medical Board of Ohio

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February 14, 2001

Warrick Lee Barrett, M.D.
5500 State Rd 38 East
P.O. Box 5689
Lafayette, IN 47903

Dear Doctor Barrett:

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

(1) You prescribed Viagra to Patients 1, 5, 7, 8, 10-12, 16-21, 23, 24, 30, 31, 33-35, 38, 39, 41, 42, 44-46, 49, 51, 52, 54, 57, 58, 60-62, 65, 69, 71, 72, 74, 75, 77, 78, 80, 82, 83, 85, 86, 89, 90, 92-94, 97, 99, 100, 103, 104, 106-108, 112, 113, 115, 117-119, 123, 126, 128, 130, 132, 134-137, 140-142, 144, 146, 151, 153, 156-163 and 166-168, even though you had never personally examined these patients prior to prescribing the medication.

(2) You prescribed Xenical to Patients 2, 3, 6, 9, 13-15, 22, 26, 28, 47, 48, 50, 53, 55, 59, 64, 66, 70, 76, 81, 84, 91, 95, 96, 98, 101, 102, 105, 109-111, 114, 116, 120, 122, 124, 127, 133, 145, 147-150, 155, 164 and 165, even though you had never personally examined these patients prior to prescribing the medication.

(3) You prescribed Propecia to Patients 4, 25, 27, 29, 32, 36, 37, 43, 56, 63, 67, 68, 73, 87, 88, 94, 121, 125, 129, 131, 138, 139, 143, 152 and 154, even though you had never personally examined these patients prior to prescribing the medication.

(4) You prescribed Valtrex to Patients 40 and 79, even though you had never personally examined these patients prior to prescribing the medication.

(5) You permitted Virtual Medical Group, through its website, 1stonlinepharmacy.com/, to use your Ohio certificate in an offer to provide dangerous drugs in a manner that violated Rule 4731-11-09(B) of the Ohio Administrative Code.

Mailed 2-15-01

Your acts, conduct, and/or omissions as alleged in paragraphs (1) through (4) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: 4731-11-09(B), Ohio Administrative Code. Pursuant to Rule 4731-11-09(H), Ohio Administrative Code, violation of Rule 4731-11-09, Ohio Administrative Code, also violates Sections 4731.22(B)(2), (3) and (6), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (5) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: 4731-11-09(C), Ohio Administrative Code. Pursuant to Rule 4731-11-09(H), Ohio Administrative Code, violation of Rule 4731-11-09, Ohio Administrative Code, also violates Sections 4731.22(B)(2), (3) and (6), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) through (4) above, individually and/or collectively, constitute "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 4729.51(C), Ohio Revised Code, Sale of dangerous drugs.

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

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

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

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, effective March 9, 1999, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Anand G. Garg, M.D. /TAD

Anand G. Garg, M.D.
Secretary

AGG/krt

Enclosures

CERTIFIED MAIL # 7000 0600 0024 5140 4270
RETURN RECEIPT REQUESTED

Duplicate mailing to: 9313 Castle Knoll Blvd
Indianapolis, IN 46250

CERTIFIED MAIL # 7000 0600 0024 5140 4287
RETURN RECEIPT REQUESTED