



STATE MEDICAL BOARD OF OHIO

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

April 10, 1997

William A. Cox, M.D.
7384 McShu Lane
Hudson, OH 44236

Dear Doctor Cox:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Suzanne E. Kelly, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 9, 1997, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO

Thomas E. Gretter, M.D.
Secretary

TEG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. P 152 984 908
RETURN RECEIPT REQUESTED

cc: Ralph A. Cascarilla, Esq.
CERTIFIED MAIL RECEIPT NO. P 152 984 909
RETURN RECEIPT REQUESTED

Mailed 5/1/97

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Suzanne E. Kelly, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 9, 1997, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of William A. Cox, 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.



Thomas E. Gretter, M.D.
Secretary

(SEAL)

4/29/97

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

WILLIAM A. COX, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on April 9, 1997.

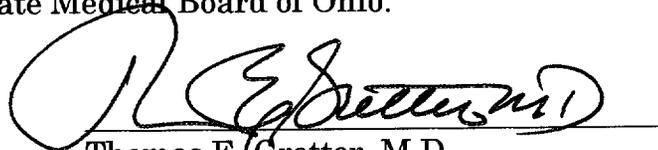
Upon the Report and Recommendation of Suzanne E. Kelly, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board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

It is hereby ORDERED that:

1. Respondent's Motion to Dismiss based on Double Jeopardy is DENIED.
2. William A. Cox, M.D., be and is hereby REPRIMANDED.

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

(SEAL)



Thomas E. Gretter, M.D.

Secretary

4/29/97

Date

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**REPORT AND RECOMMENDATION
IN THE MATTER OF WILLIAM A. COX, M.D.**

The Matter of William A. Cox, M.D., came on for hearing before Suzanne E. Kelly, Esq., Hearing Examiner for the State Medical Board of Ohio, on November 5 and 6, 1996.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated August 14, 1996 (State's Exhibit J), the State Medical Board of Ohio [Board] notified William A. Cox, M.D., that it intended to determine whether to discipline his certificate to practice medicine and surgery in the State of Ohio, for one or more of the following reasons:

On or about March 21, 1996, in the Summit County Court of Common Pleas, Dr. Cox pleaded guilty to two misdemeanor counts of Unlawful Interest in a Public Contract, in violation of Revised Code 2921.41(A)(4) (as modified in the Bill of Information on July 2, 1996); two misdemeanor counts of Soliciting or Accepting Improper Compensation, in violation of Revised Code 2921.43(A)(1); one misdemeanor count of Improper Use of Authority to Secure a Thing of Value, in violation of Revised Code 102.03(D); one misdemeanor count of Improper Soliciting and Receipt of a Thing of Value, in violation of Revised Code, 102.03(E); and three misdemeanor counts of Failure to Disclose Sources and Amounts of Income Required by Law, in violation of Revised Code 102.02(D).

The Board alleged that the guilty pleas of Dr. Cox, noted above, individually and/or collectively, constituted "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice,' as that clause is used in Section 4731.22(B)(11), Ohio Revised Code."

Additionally, the Board alleged that Dr. Cox's guilty pleas to three misdemeanor counts of Failure to Disclose Sources and Amounts of Income Required by Law, in violation of Section 102.02(D), Ohio Revised Code, constituted "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor involving moral turpitude,' as that clause is used in Section

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4731.22(B)(13), Ohio Revised Code,” and “publishing a false, fraudulent, deceptive, or misleading statement,’ as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.”

The Board informed Dr. Cox of his right to request a hearing in this Matter.

- B. On August 22, 1996, Vincent L. Cheverine, Esq., submitted a written hearing request to the Board on behalf of Dr. Cox. (Board Exhibit 16)

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Andrew Alatis, Assistant Attorney General.
- B. On behalf of the Respondent: Ralph E. Cascarilla, Esq., and Vincent L. Cheverine, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

- A. Presented by the State
 - David A. Freel
 - William A. Cox, M.D., as on cross-examination
- B. Presented by the Respondent
 - William A. Cox, M.D.
 - David A. Freel, as on cross-examination

II. Exhibits Examined

In addition to State's Exhibit J and Board Exhibit 16, noted above, the following exhibits were identified and admitted into evidence:

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A. Presented by the State

1. State's Exhibit A: February 4, 1994, Interoffice Memorandum from the Office of the Prosecuting Attorney, County of Summit, regarding Ohio Revised Code, Section 313.16, and Personal/Professional Agreements By And Between the Coroner and Other Counties. (3 pp.)
2. State's Exhibit B: Financial Disclosure Statement for Dr. Cox for the calendar year 1995. (13 pp.)
3. State's Exhibit C: Copy of Sections 313.02-313.03, Ohio Revised Code, relating to rules governing the office of coroner.
4. State's Exhibit C1: Copy of Sections 102.02-102.06, Ohio Revised Code, relating to the duties of the Ohio Ethics Commission. (7 pp.)
5. State's Exhibit C2: Copy of Section 2921.42, Ohio Revised Code, "Having an unlawful interest in a public contract." (2 pp.)
6. State's Exhibit C3: Copy of Section 2921.43, Ohio Revised Code, "Soliciting or receiving improper compensation." (2 pp.)
7. State's Exhibit D: Copy of Section 313.16, Ohio Revised Code, "Laboratory examinations by coroner of another county." (2 pp.)
8. State's Exhibit E: August 9, 1993, Memorandum to Dr. Cox from William Hartung regarding July 13, 1993, meeting. (irrelevant portions redacted by the Hearing Examiner). (2 pp.)
9. State's Exhibit F: August 9, 1993, Memorandum to Bob Davis from William Hartung.
10. State's Exhibit G: September 16, 1993, letter to Roger Marcial, M.D., from Dr. Cox.
11. State's Exhibit H: November 19, 1993, letter to Roger Marcial, M.D., from Dr. Cox.
12. State's Exhibit I: November 22, 1993, letter to Ted Soboslay, M.D., from Dr. Cox. (2 pp.)

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13. State's Exhibit K: Transcript of Proceedings commencing on July 2, 1996, in The Court Of Common Pleas, Summit County, Case No. 96-03-0702, *State of Ohio v. William A. Cox*. (30 pp.)

B. Presented by the Respondent

1. Respondent's Exhibit 2: Converted to Joint Exhibit 2.
2. Respondent's Exhibit 3: Certified Copy of a Journal Entry filed March 21, 1996, in *State of Ohio v. Cox*.
3. Respondent's Exhibit 4: Certified Copy of a Journal Entry filed March 28, 1996, in *State of Ohio v. Cox*. (5 pp.)
4. Respondent's Exhibit 5: Certified Copy of a Journal Entry filed April 23, 1996, in *State of Ohio v. Cox*. (2 pp.)
5. Respondent's Exhibit 6: Attachments to the Memorandum of the Defendant In Support of Motion To Vacate Guilty Plea, filed June 14, 1996, in *State of Ohio v. Cox*. (Portion of exhibit removed and held as proffer by Hearing Examiner) (17 pp.)
6. Respondent's Exhibit 7: Withdrawn by Respondent.
7. Respondent's Exhibit 8: Proffered.
8. Respondent's Exhibit 9: Converted to Joint Exhibit 9.
9. Respondent's Exhibit 10: Certified copy of July 17, 1996, Order filed in *State of Ohio v. Cox*.
10. Respondent's Exhibit 11: Docket of *State of Ohio v. Cox*. (8 pp.)
11. Respondent's Exhibits 12 & 13: Converted to Joint Exhibits 12 & 13.
12. Respondent's Exhibit 14: Curriculum vitae of William A. Cox, M.D. (18 pp.)
13. Respondent's Exhibit 16: Proffered.

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14. Respondent's Exhibit 17: August 24, 1993, letter to Patricia Cosgrove from Joseph Orlando, Chief Forensic Investigator, Office of Coroner, County of Summit.
15. Respondent's Exhibit 18: September 23, 1993, Opinion Letter No. 93-160 to Joseph M. Orlando from Lynn C. Slaby, Prosecuting Attorney, and William A. Schultz, Assistant Prosecuting Attorney, Summit County. (3 pp.)
16. Respondent's Exhibit 19: Converted to Joint Exhibit 19.
17. Respondent's Exhibit 20: May 31, 1994, Opinion Letter No. 93-160A to William A. Cox, M.D., from Lynn C. Slaby. (2 pp.)
18. Respondent's Exhibit 21: June 27, 1994, letter to Tim Davis, Summit County Executive, from Dr. Cox.
19. Respondent's Exhibit 22: October 10, 1994, letter to Dr. Cox from Timothy P. Ziga, Esq. Attached is a summary of cost to Summit County for performing out-of-county autopsies. (3 pp.)
20. Respondent's Exhibit 23: October 14, 1994, letter to Tim Davis from Timothy P. Ziga, Esq., regarding proposal to provide coroner services to other counties. (2 pp.)
21. Respondent's Exhibit 24: Summit County Council Amended Resolution No. 94-525, authorizing a study by David Griffith & Associates, adopted March 13, 1995.
22. Respondent's Exhibit 25: Summit County Council Amended Resolution No. 95-175, restricting the use of the Summit County Coroner's facilities, adopted March 13, 1995.
23. Respondent's Exhibit 26: March 14, 1995, Opinion Letter No. 95-039 to Cindy V. Peters, Chief Counsel, Office of the Executive, from Maureen O'Connor, Summit County Prosecuting Attorney. (3 pp.)
24. Respondent's Exhibit 27: March 20, 1995, letter to Maureen O'Connor from Paul J. Gallagher, Summit County Councilman-at-large regarding coroner use of county facilities and personnel. (4 pp.)

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25. Respondent's Exhibit 28: March 23, 1995, Opinion Letter No. 95-052 to Paul J. Gallagher from Maureen O'Connor. (3 pp.)
26. Respondent's Exhibit 29: April 20, 1995, letter to James M. Petro, State of Ohio Auditor, from Tim Davis, also signed by Dr. Cox.
27. Respondent's Exhibit 30: Summit County Council Resolution No. 95-387, establishing a fee charged for autopsies for out-of-county cases, adopted June 26, 1995.
28. Respondent's Exhibit 31: June 28, 1995, letter to Dr. Cox from Tim Davis ordering Dr. Cox to cease using county facilities or personnel for private practice.
29. Respondent's Exhibits 32-36: Proffered.
30. Respondent's Exhibit 37: Copy of October 26, 1995, Final Judgment in *Tim Davis v. Summit County Coroner*, filed in the Court of Common Pleas, Summit County, Case No. CV95-7-2450. (11 pp.)
31. Respondent's Exhibit 38: Proffered.
32. Respondent's Exhibit 39: Transcript of Proceedings commencing on March 21, 1996, in the Court of Common Pleas, Summit County, Ohio, Case No. 96-03-0702, *State of Ohio v. Cox*. (25 pp.)
33. Respondent's Exhibit 40: Transcript of Proceedings commencing on April 23, 1996, in the Court of Common Pleas, Summit County, Ohio, Case No. 96-03-0702, *State of Ohio v. Cox*. (41 pp.)
34. Respondent's Exhibit 41: May 7, 1996, letter to Dr. Cox from Attorney J. Michael Murray. Attached to this letter is a copy of Mutual Release and Covenant Not To Sue. (4 pp.)
35. Respondent's Exhibit 42: Withdrawn
36. Respondent's Exhibit 43: See procedural matters.
37. Respondent's Exhibit 44: Deposition of Cindy Peters. (58 pp.)
38. Respondent's Exhibit 45: Deposition of Maureen O'Connor. (94 pp.)

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39. Respondent's Exhibit 46: Deposition of Fred Zuch. (79 pp.)
40. Respondent's Exhibit 47: Deposition of William A. Schultz. (74 pp.)

C. Board Exhibits

1. Board Exhibit 1: October 21, 1996, Respondent's Motion to Offer Testimony by Deposition. (3 pp.)
2. Board Exhibit 2: October 23, 1996, Respondent's Motion to Dismiss Charges. (8 pp.)
3. Board Exhibit 3: October 24, 1996, Entry granting the Motion to Offer Testimony by Deposition.

D. Joint Exhibits

1. Joint Exhibit 1: Certified copy of the March 21, 1996, Bill of Information filed *State of Ohio v. Cox*. (4 pp.)
2. Joint Exhibit 2: Certified copy of the March 21, 1996, Plea of Guilty filed in *State of Ohio v. Cox*. (3 pp.)
3. Joint Exhibit 9: Certified Copy of the July 2, 1996, Journal Entry dated July 2, 1996, filed in *State of Ohio v. Cox*. (5 pp.)
4. Joint Exhibit 12: Ohio Ethics Commission Financial Disclosure Statement of William A. Cox, M.D., for calendar year 1993. (2 pp.)
5. Joint Exhibit 13: Ohio Ethics Commission Financial Disclosure Statement of William A. Cox, M.D., for calendar year 1994. (13 pp.)
6. Joint Exhibit 19: March 31, 1994, letter to Jennifer A. Hardin, Staff Attorney, Ohio Ethics Commission from Dr. Cox. (2 pp.)

III. Post Hearing Admissions to the Record

- A. The Attorney Hearing Examiner ordered the Respondent to submit the following exhibits. On January 24, 1997, Respondent filed these exhibits which were admitted to the record.

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1. Respondent's Exhibit 46A: July 1, 1996, transcript of testimony of Fred Zuch in *State of Ohio v. Cox*. (72 pp.)
 2. Respondent's Exhibit 47A: July 1, 1996, transcript of testimony of William A. Schultz in *State of Ohio v. Cox*. (28 pp.)
- B. Upon the Attorney Hearing Examiner's own motion, the following exhibits are admitted to the record.
1. Board Exhibit 4: November 8, 1996, State's Response to Respondent's Motion to Dismiss Charges by the State Medical Board. (6 pp.)
 2. Board Exhibit 5: November 5, 1996, Respondent's Motion for Leave to File Reply Brief in Support of Motion to Dismiss. (2 pp.)
 3. Board Exhibit 6: November 25, 1996, Board's Response to Respondent's Motion for Leave to File Reply Brief in Support of Motion to Dismiss. (2 pp.)
 4. Board Exhibit 7: November 25, 1996, Journal Entry Granting Respondent's Motion to File Reply Brief in Support of Its Motion to Dismiss.
 5. Board Exhibit 8: November 29, 1996, Respondent's Reply Brief in Support of His Motion to Dismiss All Charges. (5 pp.)
 6. Board Exhibit 9: November 19, 1996, Respondent's Motion for Five Additional Pages for Post-Hearing Brief. (2 pp.)
 7. Board Exhibit 10: November 19, 1996, Journal Entry denying Respondent's Motion for Five Additional Pages for Post-Hearing Brief.
 8. Board Exhibit 11: November 22, 1996, Respondent's Post-Hearing Brief. (38 pp.)
 9. Board Exhibit 12: December 17, 1996, Post-Hearing Brief of State Medical Board of Ohio. (15 pp.)
 10. Board Exhibit 13: December 27, 1996, Respondent's Post-Hearing Reply Brief. (10 pp.)

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11. Board Exhibit 14: January 8, 1997, State's Post-Hearing Reply Brief. (5 pp.)
12. Board Exhibit 15: December 27, 1996, Entry requiring that the Respondent file the complete transcript of the testimony of William Schultz and Fred Zuch, as taken in the Court of Common Pleas, Summit County, Ohio, on July 1, 1996.
13. Board Exhibit 17: August 21, 1996, Notice of Appearance of Counsel for Vincent Cheverine, Esq., and Ralph E. Cascarilla, Esq. (2 pp.)
14. Board Exhibit 18: August 23, 1996, letter to Attorney Cheverine from the Board advising that a hearing had been set for September 5, 1996, and further advising that the hearing had been postponed pursuant to Section 119.09, Ohio Revised Code.
15. Board Exhibit 19: August 23, 1996, Entry scheduling a hearing for October 7, 1996, through October 9, 1996.
16. Board Exhibit 20: September 10, 1996, Entry rescheduling the hearing for October 8, 1996, through October 10, 1996.
17. Board Exhibit 21: September 30, 1996, Joint Motion for Continuance. (2 pp.)
18. Board Exhibit 22: September 30, 1996, Entry denying Joint Motion for Continuance.
19. Board Exhibit 23: October 3, 1996, Respondent's Motion for Continuance. (2 pp.)
20. Board Exhibit 24: October 4, 1996, Entry granting Respondent's Motion for Continuance and rescheduling the hearing for November 5, 6, and 7, 1996.
21. Board Exhibit 25: Section 325.15, Ohio Revised Code.

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PROCEDURAL MATTERS

1. On April 17, 1996, the Board issued a Notice of Opportunity for Hearing based upon Dr. Cox's March 21, 1996, plea of guilty to two felonies and seven misdemeanors. During subsequent proceedings in the Summit County Court of Common Pleas, Dr. Cox altered his plea. On August 14, 1996, the Board issued an Amended Notice of Opportunity for Hearing. By agreement of the parties, the original cite letter is moot, and this matter proceeded solely on the August 14, 1996, Amended Notice of Opportunity for Hearing.
2. At hearing, the parties converted Respondent's Exhibits 1, 2, 9, 12, 13, and 19 to Joint Exhibits 1, 2, 9, 12, 13, and 19. The Attorney Hearing Examiner did not admit the following exhibits to the record, and Respondent did not request that they be proffered: Respondent's Exhibit 15 and 35.
3. The Attorney Hearing Examiner established a post-hearing briefing schedule to address legal issues. Respondent raised several legal issues in his post-hearing briefs. The State opposed each of these arguments. These issues will be addressed in the sections below entitled Legal Issues and Proposed Order.
4. By prehearing motion, the Respondent requested that the Attorney Hearing Examiner dismiss the Board's allegations, because the Board's allegations violate the double jeopardy clause of the fifth amendment of the United States Constitution. (Board Exhibit 2) Pursuant to Rule 4731-13-03(E)(1), the Attorney Hearing Examiner does not have authority to grant a motion to dismiss. Therefore, the discussion and proposed ruling on the Motion to Dismiss are set forth below, in the sections entitled Legal Issues and Proposed Order.
5. At hearing, the Attorney Hearing Examiner ruled that ten exhibits submitted by the Respondent were inadmissible. The Attorney Hearing Examiner determined that Respondent's Exhibits 6, 8, 16, 34-36, and 38 involved other proceedings irrelevant to the issues raised in the citation letter. Additionally, the Attorney Hearing Examiner determined that Respondent's Exhibits 32 and 33 were cumulative of testimony offered during the hearing. Respondent's Exhibit 40 is the redacted statement of Father Costello at Dr. Cox's July 2, 1997, guilty plea hearing. The Attorney Hearing Examiner ruled Father Costello's statement inadmissible because the witness was not sworn or cross-examined. The remainder of the Respondent's Exhibit 40 was admitted. Respondent requested that these items be proffered.

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6. At hearing, the Attorney Hearing Examiner reserved her ruling on Respondent's Exhibit 43. After reviewing the transcript and exhibits, the Attorney Hearing Examiner has admitted Respondent's Exhibit 43: a Summit County Job Classification Specification for Medical Transcriptionist. The special prosecutor referred to the exhibit in his explanation at the July 2, 1997, guilty plea hearing. Therefore it is relevant to the proceedings.

SUMMARY OF THE EVIDENCE

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

1. In 1963, William A. Cox, M.D., graduated from Juanita College in Huntingdon, Pennsylvania, with a Bachelor of Science Degree. Dr. Cox then earned his medical degree from Temple University Medical School in 1967. After a one year medical internship, Dr. Cox completed a four year pathology residency at Temple University Hospital. At the end of his residency in 1972, Dr. Cox entered the Air Force. He pursued advanced training in the areas of forensic pathology and neuropathology. He eventually earned his Board Certification in anatomic pathology, clinical pathology, forensic pathology and neuropathology from the College of American Pathologists. (Respondent's Exhibit [Res. Ex. 14]; State Medical Board Hearing Transcript [Tr.] 104-108)

In 1978, Dr. Cox became the Chief of Neuropathology at the Cleveland Clinic. In 1981, he joined St. Thomas Medical Center as the Chief of Pathology. While maintaining this position, in 1983, Dr. Cox was appointed Summit County Coroner. Subsequently, Dr. Cox won election to this position which he held until February 1996, when he resigned. Throughout his career, Dr. Cox has served intermittently as a consultant, as a member of an investigative team for the Smithsonian Institute, and as a forensic neuropathologist for other county coroners and prosecutors. (Res. Ex. 14; Tr. 105-107, 188-189)

2. Summit County, Ohio, operates its county government under the charter form of government. Summit County is the only county in Ohio with this type of government. The charter government provides for a chief executive officer, a legislative council, and department heads. Additionally, there are elected officials. (Res. Ex. 44 at 6-7; Res. Ex. 45 at 10-17; Res. Ex. 46, Deposition Exhibit [Depo. Ex.] 1 at 19)

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During his tenure as County Coroner of Summit County, Ohio, Dr. Cox had a staff of twenty-three. Tim Davis, the Summit County Executive, supervised the coroner's office in administrative matters. Dr. Cox received his legal advice from the Summit County Prosecutor's office. (Res. Ex. 44 at 5-7; Res. Ex. 45 at 6-8, 10-17; Res. Ex. 46 at 5-9; Res. Ex. 47, Depo. Ex. 1 at 32; Tr. 191-192)

3. All Ohio county coroners must comply with statutory requirements. Section 313.16, Ohio Revised Code, "Laboratory examinations by coroner of another county," provides in pertinent part:

...the coroner may request a coroner of [another] county...to perform necessary laboratory examinations, the cost of which shall be no greater than the actual value of the services of technicians and the materials used in performing such examination. Money derived from the fees paid for these examinations shall be kept in a special fund, for the use of the coroner's laboratory from which fund replacements can be made. Such funds shall be used to purchase necessary supplies and equipment for the laboratory.

Section 313.16.1, Ohio Revised Code, "Cost of autopsy, injury occurring in another county," provides in pertinent part:

Whenever an autopsy is performed, and the injury causing death occurred within the boundaries of a county other than the one in which the autopsy was performed, such other county shall pay the cost of the autopsy. The cost of such autopsy shall be no greater than the actual value of the services of the technicians and materials used. Money derived from the fees paid for such autopsies shall be credited to the coroner's laboratory fund...

(State's Exhibit [St. Ex.] D)

Section 325.15, Ohio Revised Code, provides a scale for compensation of county coroners based upon whether the coroner elects to be a full-time, or part-time with the ability to maintain a private practice. (Board Exhibit [Bd. Ex.]25)

4. In the spring of 1993, Dr. Cox left his position at St. Thomas Hospital. As a result, Dr. Cox considered leaving the Summit County area. However, a Dr. Lobritz approached Dr. Cox and asked him if he would be interested in developing a regional forensic science center. While Dr. Cox expressed

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interest, he testified that he informed Dr. Lobritz that he required compensation for his performance of out-of-county autopsies to compensate for his loss of income from St. Thomas Hospital. Previously, Dr. Cox had performed these autopsies without charge to surrounding counties. (Res. Ex. 40 at 9-10; Tr. 196-198)

5. In July 1993, Dr. Cox had a meeting with William Hartung, from the Summit County Executive's office. Dr. Cox inquired whether he could contract with other counties to provide forensic pathology services while he continued to serve as Summit County's Coroner. Dr. Cox testified that Fred Zuch, an Assistant Summit County Prosecutor, was in attendance at the meeting. Dr. Cox testified that at this meeting he was advised that "yes, you can providing you remain as a part-time coroner...and also that appropriate remuneration for the utilization of the facilities is accomplished. So really the central issue became cost, how much did it cost Summit County to do these autopsies for everybody." (Tr. 198-199, 201-202)

Mr. Hartung, a non-attorney, wrote a letter to Dr. Cox summarizing his impression of the July 1993 meeting. The letter reminded Dr. Cox that he should seek an opinion from the Summit County Prosecutor or the Ohio Attorney General. Mr. Hartung cautioned, "Until a written...opinion is issued clearly stating that such a practice is legal, I would strongly recommend that the facility, staff and/or equipment not be used for any non-Summit County government purpose." (St. Exs. E & F; Tr. 198-199, 201-202)

6. On August 24, 1993, at the direction of Dr. Cox, Joseph Orlando, Chief Investigator for the Summit County Coroner's office, wrote a letter requesting an opinion from the Summit County Prosecutor's office. Mr. Orlando inquired whether Dr. Cox could enter into a "personal/professional agreement" with other counties for his forensic pathology services in light of Section 313.16, Ohio Revised Code. (Res. Ex. 17; Res. Ex. 47A at 3-4)
7. On September 16, 1993, Dr. Cox sent a letter using Summit County Coroner office stationary to Roger Marcial, M.D., Coroner of Portage County, Ohio. Dr. Cox asked that they develop a contract for Dr. Cox to provide his services as a Forensic Pathologist for Portage County. (St. Ex. G) Dr. Cox testified that Dr. Marcial sought to negotiate a lower rate for Dr. Cox's service than Trumbull and Columbiana Counties had already agreed to pay. Accordingly, Dr. Cox sent a letter to Dr. Marcial informing him that Dr. Cox would no longer accept cases from Portage County. (St. Ex. H)

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8. On September 23, 1993, the Summit County Prosecutor issued Opinion Letter No. 93-160. Dr. Cox interpreted this Opinion as stating, that he "...could proceed to perform these autopsies and receive a compensation for them." Opinion Letter No. 93-160 actually stated that Dr. Cox could elect to retain a private practice pursuant to Section 325.15, Revised Code. However, it cautioned that where public facilities or personnel may be involved, some consensual agreement should be reached with the county. Opinion Letter No. 93-160 noted that the prosecutor was not clear as to the nature of the private practice anticipated, how the agreement would be made or the extent of involvement of county personnel and facilities. Without these details, the prosecutor could not give a comprehensive opinion. (Res. Ex. 18; Res. Ex. 47A at 4-11; Bd. Ex. 23)

9. On November 22, 1993, Dr. Cox wrote a letter using Summit County Coroner office stationary to Theodore Soboslay, M.D., Trumbull County Coroner. Dr. Cox discussed his conversations with Dennis Watkins, Trumbull County Prosecuting Attorney, regarding an appropriate fee for Dr. Cox's forensic pathology services. Dr. Cox addressed the issue of a fee for the Summit County facilities. After considering Mr. Watkins' reluctance to pay the proposed fee of \$450.00, Dr. Cox decided that the laboratory fee could be reduced to \$150.00. Dr. Cox's fee would be \$1,000.00 for alleged trauma cases and \$650.00 for natural deaths, suicides, or accidental deaths. (St. Ex. I)

10. On February 4, 1994, in response to a request from the Coroner's office, William Schultz, a Summit County Assistant Prosecuting Attorney, issued a memorandum outlining some of the problems that he anticipated would be created by the private practice of the county coroner. First, Mr. Schultz stated his concern that there could be a conflict if another county requested Dr. Cox to perform an examination under Section 313.16, Revised Code. If Dr. Cox refused to honor such a request, and then performed the work and charged a fee for his private practice, there would be a conflict. Additionally, the State Auditor could raise a question regarding the use of the county's equipment, facilities, and personnel for the performance of private work. Mr. Schultz determined that obtaining permission from the County for the use of these facilities was essential. Finally, Mr. Schultz raised his concern that the extent of the private practice could interfere with the Coroner's ability to perform his statutory functions. Mr. Schultz explained in his memorandum that he still was unclear as to the parameters of Dr. Cox's proposed private practice. Mr. Schultz reiterated that he needed a specific proposal from Dr. Cox to resolve any conflicts. (Res. Ex. 47, Depo. Ex. 1 at 17-23; Res. Ex. 47, Depo. Ex. 3; Res. Ex. 47 at 31-32, 38-43)

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11. On March 31, 1994, Dr. Cox requested an advisory opinion from the Ohio Ethics Commission [OEC]. Dr. Cox explained his situation as follows:

Since [July 1, 1993], there has been a lot of interest created in developing the Summit County Coroner's Office as a Regional Center. Part of that concept is that a number of surrounding counties have sought to develop a contract with myself, so that I would personally do their more difficult autopsies at the Summit County Coroner's Office, in light of my expertise and experience.... Dennis Watkins has discussed this matter with the State Attorney General's Office, and he has been assured that as long as I am a part-time Coroner, then a contract between myself and other counties would be feasible, providing that the utilization of the County's facilities is compensated.

(Joint Exhibit [Jt. Ex.] 19) The OEC did not respond to this letter. David Freel, Executive Director of the OEC, testified that the OEC only provided prospective advice, and Dr. Cox's letter sought an opinion sanctioning behavior that was ongoing. (Tr. 63-68, 77-78) The letter did not raise any questions regarding disclosure of income from the other counties to Dr. Cox. (Jt. Ex. 19; Tr. 78)

12. In May of 1994, Dr. Cox had a meeting with Mr. Zuch and Mr. Watkins regarding payment for out-of-county autopsies conducted by Dr. Cox for Trumbull County. At issue was whether Trumbull County could issue payment to Dr. Cox for the services he had already rendered. Mr. Watkins did not want to issue payment to Dr. Cox unless there was a contract in place between Dr. Cox and Summit County. Mr. Zuch agreed and recommended that payment be withheld until a contract between Dr. Cox and Summit County could be reached. Mr. Schultz, who was consulted separately, agreed that no payment should be made without a contract in place. (Res. Ex. 20; Res. Ex. 46, Depo. Ex. 1 at 21-22; Res. Ex. 47, Depo. Ex. 1 at 26-27)
13. Mr. Watkins requested that Mr. Zuch push Dr. Cox to obtain a contract. Mr. Zuch did not talk to Dr. Cox about aggressively pursuing the contract. (Res. Ex. 46, Depo. Ex. 1 at 21-22) On June 27, 1994, Dr. Cox did request that Summit County contract with a firm to perform a cost study to insure a fair and impartial determination of the cost to the county for the use of the Coroner's facility. (Res. Ex. 21)

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On September 12, 1994, Mr. Davis introduced a resolution to the County Council asking for funds to pay for an indirect cost study. The County Council did not adopt this resolution until March 17, 1995. (Res. Ex. 24)

14. In the interim, Dr. Cox obtained private counsel, Timothy Ziga. Mr. Ziga sent letters of inquiry to the Franklin and Cuyahoga County Coroners' offices to determine whether they provided coroner services to surrounding counties on a service contract basis. The submitted exhibits did not contain a response. (Res. Ex. 6 at 7-10) In a October 19, 1994, letter to Mr. Davis, Dr. Cox proposed to charge a private fee for forensic pathology services to other counties requesting autopsy support in alleged trauma cases. He planned to provide the services at the Summit County Coroner's facility with the direct support of the Coroner's staff. (Res. Ex. 22 & 23)

Dr. Cox proposed that the fee to be charged for the use of the County Coroner's facility and staff should be \$450.00 per case. These payments would be deposited into the Coroner's budget as directed by Section 313.16, Revised Code. Dr. Cox's professional fee would be \$1,000.00 for alleged trauma and child abuse cases and \$650.00 for natural deaths, accidental deaths and suicides. Mr. Ziga and Dr. Cox attached breakdowns of autopsy costs and estimates of time required by various county coroner staff members to handle out-of-county cases. (Res. Ex. 23)

15. On November 7, 1994, Mr. Davis responded to Dr. Cox's proposal. Mr. Davis raised three issues regarding the proposal. First, Mr. Davis pointed out that the legislative branch of Summit County government, the County Council, would be responsible for establishing fees and authorizing programs. Second, Mr. Davis gave his opinion that the proposed program could not proceed until the County Council gave approval for an analysis of the proper reimbursement rate for the County facilities and staff. Finally, Mr. Davis expressed concern that the County General Fund could be affected by Dr. Cox's proposal. Mr. Davis proposed that Dr. Cox talk to the County Council in conjunction with the request for approval of funds for the cost study. (Res. Ex. 6)
16. In November 1994, Mr. Watkins contacted Mr. Zuch again and informed him that Trumbull County would lose the money it had appropriated to pay Summit County and Dr. Cox unless the bills were paid. Mr. Zuch stated that Trumbull County could pay Dr. Cox. At that point in time, Mr. Zuch did not consider that Dr. Cox would face criminal repercussions from accepting the payments. Mr. Watkins informed Dr. Soboslay that he could authorize payment in accordance with the agreement reached between Dr. Soboslay and Dr. Cox. Mr. Watkins stated his understanding that "any legal question which

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- would arise over the amount of money Summit County received for each autopsy would be for Dr. Cox and Summit County to resolve. (Res. Ex. 6 at 14-15; Res. Ex. 29; Res. Ex. 46, Depo. Ex. 1 at 23-24)
17. Shortly after Trumbull County issued the payments, Mr. Davis contacted Mr. Zuch. Mr. Davis questioned the receipt of several checks from Trumbull County in the amount of \$150.00. The checks were made payable to the Summit County Coroner's office. Mr. Zuch told Mr. Davis that it was not a criminal problem to accept the payments, as long as the payments to Summit County were not diverted to an individual. (Res. Ex. 46, Depo. Ex. 1 at 25-26)
 18. At a January 17, 1995, meeting, Mr. Davis, Mr. Zuch and Dr. Cox decided that a contract between Dr. Cox and the County must be arranged. The problem in reaching a contract between Summit County and Dr. Cox at that time was a dispute over who should pay for the cost study to determine the actual cost of doing out-of-county autopsies. Mr. Davis planned to ask the county to pay for the cost study. Mr. Zuch stressed to Dr. Cox that he could be required to reimburse the county if the \$150.00 fee currently charged was too low. Dr. Cox acknowledged that possibility. Mr. Zuch further warned Dr. Cox that reaching a contract agreement was important for everyone's protection. However, Mr. Zuch did not anticipate any criminal charges arising from the situation at that time. (Res. Ex. 46, Depo. Ex. 1 at 26-29, 31, 40-41; Res. Ex. 46, Depo Ex. 11)
 19. On March 13, 1995, the Summit County Council enacted a Resolution that prohibited the use of the Summit County Coroner's office for the private practice of medicine. (Res. Ex. 25) Nevertheless, Dr. Cox did not stop using the Summit County Facility after the resolution. (Res. Ex. 40 at 30-31) Dr. Cox did cease using the facility when ordered by the County Executive. (Res. Ex. 37)
 20. On March 14, 1995, the Summit County Prosecutor's office issued Opinion Letter No. 95-039, to Cindy Peters, Chief Counsel for the County Executive. The letter reiterated the concerns listed in the February 1994 memorandum issued by Mr. Schultz. (Res. Ex. 26; Res. Ex. 44; Res. Ex. 47, Depo Ex. 3) On March 20, 1995, Paul J. Gallagher, Councilman-at-large, for the Summit County Council, wrote to Maureen O'Connor, the Prosecuting Attorney of Summit County. Council Member Gallagher raised concerns regarding the Ohio Ethics Law and Section 2921.42, Ohio Revised Code. (Res. Ex. 27) On March 23, 1995, Ms. O'Connor responded in Opinion Letter No. 95-052, that the ethics opinions cited by Mr. Gallagher were inapplicable to the situation involving Dr. Cox. Further, Ms. O'Connor stated that Section 2921, Ohio

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Revised Code did not address the specific situation. Finally, Ms. O'Connor indicated that Dr. Cox needed to provide additional information before she could determine the effect, if any, of Section 102.03, Ohio Revised Code. (Res. Ex. 28)

21. On April 20, 1995, following intense media attention to the issue of the use of Summit County facilities for Dr. Cox's private practice, Mr. Davis and Dr. Cox requested that the Auditor of State conduct an audit of all non-public uses of the Summit County Coroner's office. (Res. Ex. 29)
22. On July 13, 1995, the Summit County Prosecutor's office filed an action for Declaratory judgment in the Summit County Court of Common Pleas. (Res. Ex. 37) The Summit County Prosecutor sought to determine who had the authority to set fees for county to county services, and whether the Coroner could perform private pay services using County facilities, equipment and personnel. On October 26, 1995, the Court held that the County Council has the authority to set fees. Further the Court held that the County Coroner could not perform private pay services using County facilities, equipment or personnel without first being lawfully authorized by the County Council. (Res. Ex. 37)
23. On October 12, 1995, the State Auditor of Ohio issued a Notice of Proposed Finding for Recovery against Dr. Cox for his use of the Summit County Coroner's facilities for his private practice. (Res. Ex. 6 at 16) The Auditor found that Dr. Cox had completed 203 autopsies for other counties during the period of July 1, 1993, through April 30, 1995. (Res. Ex. 6 at 16) The Auditor did not determine the exact amount that Dr. Cox owed to Summit County. (Res. Ex. 6 at 17)
24. On November 22, 1995, Robert Horowitz, Esq., and Paul Nick, Esq., were appointed Special Prosecutors to investigate Dr. Cox. (Res. Ex. 39) Mr. Nick works for the OEC. The OEC is an independent commission that governs and advises provision of Ohio's ethics laws. The OEC governs issues of conflict of interest, records financial disclosure forms, provides advice regarding the ethics provisions, and investigates allegations of misconduct for referral for prosecution. (Tr. 30-31)

Mr. Freel testified that Section 102.02, Revised Code, requires that elected officeholders of the city, county and state level as well as others, must file an annual disclosure statement that discloses sources of income, among other information. (St. Ex. C2; Tr. 39-41) Mr. Freel testified that prior to 1994, county elected officials had to disclose all sources of income over \$500.00. (St.

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Ex. C2; Tr. 40-42) Beginning in 1994, not only did the law require the public official to disclose the source of any income received after April 15, 1994, but in two specific situations, the amounts of that income had to be disclosed. First, the amount of income received from a legislative agent must be disclosed. Second, the amount of income received from a party that is doing business or seeking to do business with the filer's government agency must be disclosed. Either of these situations pose potential conflicts. (St. Ex. C2; Tr. 41-42)

The purpose of disclosing sources of income is to allow self-identification by the public official of potential conflicts of interest. Further, the disclosure forms allow the public to be aware that the public official is receiving sources of income that may create conflict. (Tr. 49-50)

25. Dr. Cox filed his calendar year 1993 financial disclosure form in 1994. (Jt. Ex. 12) However, he did not disclose that he received payments from other counties that totaled over \$500.00. In 1995, Dr. Cox filed his calendar year 1994 financial disclosure form. He again omitted the sources of income from other counties who paid him for performing autopsies. (Jt. Ex. 13; Tr. 53-54, 82, 95) Further, because of the 1994 change in the law, Dr. Cox should have included the amount he received from these counties because they were also doing business with Summit County. Dr. Cox did not include the amount he received. (Jt. Ex. 13; Tr. 53-54, 70, 72-74, 95) Dr. Cox did disclose the income from the other counties on his tax returns filed with the Internal Revenue Service. (Res. Ex. 40 at 19)
26. Dr. Cox testified that he did not include the sources and amounts of payments from the other counties because he believed those sources were included under his listing of Summit County. However, Dr. Cox admitted that he billed the other counties from his home for his personal services. Fees for the county facilities were billed from the county coroner's office. Further, he received the payments from the counties directly, not through Summit County. (Tr. 257) Although, in March 1994, Dr. Cox had inquired of the OEC regarding the feasibility of charging other counties for his services, he did not inquire regarding what income he should disclose on his financial disclosure forms. (Jt. Ex. 19; Tr. 77)
27. On March 21, 1996, Dr. Cox entered his plea of guilty to a nine count Bill of Information. (Res. Ex. 39; Jt. Ex. 2) The Bill of Information charged Dr. Cox with two felony counts of unlawful interest in a public contract, in violation of Section 2921.42(A)(1), Ohio Revised Code; two misdemeanor counts of soliciting or accepting improper compensation, in violation of Section 2921.43(A)(1), Ohio Revised Code; one misdemeanor count of use of authority

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to secure a thing of value which is contrary to a law of the State of Ohio, in violation of Section 102.03(D), Ohio Revised Code; one misdemeanor count of improper solicitation and receipt of a thing of value, in violation of Section 102.03(E), Ohio Revised Code; and three misdemeanor counts of failure to disclose sources and amounts of income required by law, in violation of Section 102.02(D), Ohio Revised Code. (St. Exs. C-D; Res. Ex. 39 at 5-6, 21-23; Jt. Ex. 1)

Included in the plea agreement is the following statement:

It is further agreed and stipulated between me and the State of Ohio that the conduct described herein and contained in the Bill of Information and Plea Agreement related to my conduct as an elected public official, i.e. Summit County Coroner. The offenses do not related (sic) in any way to my professional practice as a physician, nor were they committed in the course of my professional practice as a physician.

(Jt. Ex. 2 at 3) In its Journal Entry of Sentence, the Court adopted the language of the plea agreement regarding this issue. (Res. Ex. 39 at 15; Jt. Ex. 1; Jt. Ex. 4)

28. Dr. Cox agreed to make restitution of \$138,000.00 to Summit County. This amount is the difference between the \$150.00 per autopsy Dr. Cox charged other counties for use of the Summit County facilities and the actual cost to Summit County of \$725.00 per autopsy determined by a cost analysis. (Res. Ex. 39 at 17-18; Res. Ex. 40 at 17-18; Jt. Ex. 2 at 3; Jt. Ex. 4)
29. On April 23, 1996, the judge sentenced Dr. Cox to six months incarceration on each of the two felony convictions. For each of the remaining seven misdemeanor convictions, the judge sentenced Dr. Cox to three months and a fine of \$250.00, on each count. The judge ordered the sentences to run concurrently. In addition, the judge informed Dr. Cox that his convictions would disqualify him from holding any public office, employment, or position of trust in the State of Ohio for a period of seven years from the date of conviction. Further, the judge ordered Dr. Cox to pay the costs of the prosecution. (Res. Ex. 5; Res. Ex. 40 at 34-36)
30. On April 26, 1996, Dr. Cox filed motions to modify the sentence previously imposed and to permit him to withdraw his guilty pleas. (Res. Ex. 11) After four days of hearing, held in June and July of 1996, the Court allowed the special prosecuting attorney to amend Counts One and Two of the Bill of

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Information. The amendments charged Dr. Cox with violations of Section 2921.42(A)(4), Revised Code, which is unlawful interest in a public contract, but is a misdemeanor of the first degree. (St. Ex. K; Res. Ex. 10) The special prosecutor amended the Bill of Information because the new section more accurately reflected Dr. Cox's culpable behavior. (St. Ex. K at 3-7)

31. Dr. Cox pleaded guilty to the amended Bill of Information, and withdrew his motions. The judge sentenced Dr. Cox to three months of jail time and a fine of \$250.00 on both Counts 1 and 2. The sentences are to run concurrently with the sentences for Counts 3-9. The judge reaffirmed its decision on Counts 3-9. Dr. Cox's agreement regarding restitution and payment of prosecution costs remained intact. The judge suspended the jail sentences and placed Dr. Cox on probation for two years. The judge sentenced Dr. Cox to serve thirty days in Oriana House, a community based detention center, and to provide two hundred hours of community service within two years. (St. Ex. K at 27-28)
32. Dr. Cox served his time at the half-way house and has completed his community service. An agreed upon payment schedule is in place for the restitution ordered. Dr. Cox has continued to assist the Summit County Prosecutor's office, and others, after his prosecution and conviction by testifying in on-going cases, and acting as the pathologist on difficult homicides. (Res. Ex. 46, Depo. Ex. 1 at 34-36; 270-273)
33. Dr. Cox established a successful career as a forensic pathologist. (Tr. 265-268) He currently serves as a consultant to Trumbull County, the Ohio State Highway Patrol, prosecutors and civil attorneys in evaluation of deaths and injuries. (Tr. 267-268)

FINDINGS OF FACT

1. On July 2, 1996, in the Summit County Court of Common Pleas, Dr. Cox pleaded guilty to two misdemeanor counts of Unlawful Interest in a Public Contract, in violation of Section 2921.41(A)(4), Ohio Revised Code.
2. On March 21, 1996, in the Summit County Court of Common Pleas, Dr. Cox pleaded guilty to two misdemeanor counts of Soliciting or Accepting Improper Compensation, in violation of Section 2921.43(A)(1), Ohio Revised Code; one misdemeanor count of Improper Use of Authority to Secure a Thing of Value, in violation of Section 102.03(D), Ohio Revised Code; and one misdemeanor count of Improper Soliciting and Receipt of a Thing of Value, in violation of Section 102.03(E), Ohio Revised Code.

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3. On March 21, 1996, in the Summit County Court of Common Pleas, Dr. Cox pleaded guilty to three misdemeanor counts of Failure to Disclose Sources and Amounts of Income Required by Law, in violation of Section 102.02(D), Ohio Revised Code.

LEGAL ISSUES

1. In his Motion to Dismiss, Respondent argued that any imposition of sanctions by the Board would violate the Double Jeopardy Clause, because Board sanctions would constitute a second punishment based on offenses for which Dr. Cox has already been punished by the Summit County Court of Common Pleas.

The Double Jeopardy Clause provides that no person may "be subject for the same offense to be twice put in jeopardy of life or limb." (United States Constitution, Fifth Amendment). It is applicable to the States through the Fourteenth Amendment. *Benton v. Maryland* (1969), 395 U.S. 784. The Ohio courts have held that the Double Jeopardy Clauses in the United States and Ohio Constitutions are coextensive. *State v. Moss* (1982), 69 Ohio St.2d 515.

In support of his position, the Respondent cited the Ohio Supreme Court's decision in *State of Ohio v. Gustafson* (1996), 76 Ohio St.3d 425. Respondent argued that the Ohio Supreme Court concluded that the multiple punishment prong of the Double Jeopardy clauses applied to administrative drivers' license suspensions based on drunk driving charges. *Gustafson*, 76 Ohio St.3d at 443. However, what the Ohio Supreme Court actually stated, is as follows:

Because an administrative license suspension loses its remedial character upon judicial adjudication and sentencing for violation of R.C. 4511.19, the Double Jeopardy Clauses of the United States and Ohio Constitutions preclude continued recognition of an administrative license suspension following judicial imposition of criminal penalties for driving while under the influence of intoxicating drugs, including alcohol.

Gustafson, 76 Ohio St.3d at 425, syllabus 4. Application of the *Gustafson* analysis does not prohibit the Board from disciplining Dr. Cox's medical license based on his criminal conviction.

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"[A] civil...sanction constitutes punishment when the sanction as applied in the individual case serves the goals of punishment." *United States v. Halper* (1989), 490 U.S. 435, 448 The Ohio courts have held that sanctions imposed by the medical board are remedial rather than punitive. The evident purpose behind the suspension or revocation of the license of a physician is the protection of public health and welfare - "a purpose of the State Medical Board long recognized as a constitutionally valid exercise of the state's police power." *Donald R. Bernat, M.D. v. State Medical Bd. of Ohio* (July 25, 1996), Franklin C.P. No. 95CVF10-7522, unrept'd. at 3-4 (citing *United States v. Halper* (1989), 490 U.S. at 448; *Williams v. Scudder* (1921), 102 Ohio St. 305). To hold that the Board cannot bring a disciplinary action against a physician for a criminal act committed in the course of practice would leave the Board with no means to protect the public from future acts of that physician. Accordingly, the action of the Board in imposing discipline upon a medical license does not trigger Double Jeopardy protections, and the Respondent's motion to dismiss this action for a violation of the Double Jeopardy Clause should be denied.

2. The Respondent also argues, in his motion to dismiss, that *res judicata* bars further action by the state against Dr. Cox. (Bd. Exs. 2, 8) Respondent asserts that the plea agreement reached in the criminal court was a "valid, final judgment rendered upon the merits" which determined and resolved all matters between Dr. Cox and the State of Ohio. Respondent states that the State of Ohio includes the Medical Board. Thus, the plea agreement is *res judicata* and precludes the State, through the Board, from relitigating the issue of the sanction to be imposed on Dr. Cox.

Respondent's argument ignores the fact that *res judicata* bars further actions involving an identical cause of action and the same parties or their privies. *Whitehead v. General Telephone Co.* (1969), 20 Ohio St.2d 108; *Rogers v. Whitehall* (1986), 25 Ohio St.3d 67. Respondent tries to find this parity by giving a tortured reading to the plea agreement. Respondent argues that because the State of Ohio, through the special prosecutors, agreed to forego further *criminal* prosecutions, and because Dr. Cox agreed to forego any *civil* matters, that the plea agreement included all civil matters, including the status of his medical license. This argument is without merit.

The Court of Common Pleas does not have jurisdiction to initiate discipline against a physician's medical license. Only the State Medical Board of Ohio holds that power. See Sections 4731.20 and 4731.22, Ohio Revised Code. Accordingly, the plea agreement did not resolve any issues regarding Dr. Cox's medical license.

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3. Respondent and the State submitted Post Hearing Briefs to address legal issues raised by the Respondent. Respondent argued that the State of Ohio failed to prove that any of the misdemeanors to which Dr. Cox plead guilty were committed in the course of the practice of medicine as required by Section 4731.22(B)(11), Ohio Revised Code. Respondent bases this argument primarily on the fact that the underlying criminal offenses do not include as one of their elements that the crime be committed in the course of a medical practice. Under Section 4731.22(B)(11), Ohio Revised Code, it is not necessary that the definition of the criminal conduct include the element of occurring "in the course of practice." 4731.22(B)(11) requires only that the criminal conduct occurred "in the course of practice."

In Dr. Cox's case, the criminal conduct involved the location of his private practice, the means he used to secure contracts to perform private autopsies, and the sources of his compensation for his private medical practice. The State presented not only the guilty pleas, but also the testimony of Dr. Cox and supporting documents. Dr. Cox testified as to his duties as a coroner. He examined bodies as a forensic pathologist and identified the cause of death or injury. Dr. Cox agreed that only a physician could perform an autopsy. Dr. Cox received compensation for these autopsies he performed as a private physician or as a public official, a coroner. (Tr. 107-110) Dr. Cox contracted with other counties as a private physician to perform autopsies in the Summit County facilities, using Summit County employees. He issued bills for his services to the other counties. The receipt of compensation for his medical opinion by the mailing of invoices does not differ from the submission of invoices for compensation from insurance companies or government health programs. *Roy v. Ohio State Med. Bd.* (1992) 80 Ohio App.3d 675, 676.

Accordingly, the criminal conduct underlying the guilty pleas as described in Findings of Fact 1 and 2 occurred in the course of practice. However, the three misdemeanor charges of Failure to Disclose Sources and Amounts of Income Required by Law, in violation of Section 102.02(D), Ohio Revised Code, did not occur in the course of his practice. This charge alleged that Dr. Cox failed to disclose the sources and amounts of income he received. This disclosure prevents potential conflicts of interest. The only connection between the required disclosure and Dr. Cox's practice is that the source of income to be disclosed was his income from his private medical practice. Like income taxes, the financial disclosure forms were not a part of Dr. Cox's practice.

4. Respondent argues that the crimes committed by Dr. Cox can only be committed by a public official, therefore, a private physician could not be guilty of these crimes and have his license disciplined. This constituted a

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violation of his due process rights to notice and equal protection. This argument is without merit. Dr. Cox chose to practice medicine in the spheres of both public and private practice. Any physician convicted of a misdemeanor in the course of practice is subject to discipline. Misdemeanor convictions for obtaining compensation for medical services illegally, whether through private or public means, fall within the definition of course of practice. Dr. Cox has no claim for due process violations.

5. Respondent argues that the misdemeanors of failing to disclose the source and amount of income to the Ohio Ethics Commission do not constitute moral turpitude. Acts of moral turpitude, although not subject to exact definition, are characterized by "baseness, vileness, or the depravity in private and social duties which man owes to his fellow man, or to society in general..." *State v. Adkins* (1973), 40 Ohio App.2d 473, 475; *Cincinnati Bar Assn. v. Shott* (1967), 10 Ohio St.2d 117, 130. Such acts must be measured against the accepted standards of morality, honesty and justice prevailing upon the community's collective conscience.

Respondent argues that the guilty pleas alone do not support a finding of moral turpitude. Respondent cites *Disciplinary Counsel v. Burkhart* (1996), 75 Ohio St.3d 188 in support of his argument. "Proof of a criminal conviction is generally not conclusive of the issue of moral turpitude, which requires consideration of all the circumstances surrounding the illegal conduct." In *Burkhart*, the Court found that the respondent's crimes of taking items she believed she was owed, "were not motivated by an unmitigated interest in personal financial gain at the expense of public or client coffers, which has been the hall mark (sic) of most theft related DR1-102(A)(3) violations in the past." *Burkhart* 75 Ohio St.3d at 90-191. While Respondent correctly states the law, this argument is inapplicable in Dr. Cox's case. Both the Respondent and the State generated a great deal of testimony regarding the circumstances surrounding the filing of the financial disclosure forms and the omission in two successive filings of the sources of income in 1993 and 1994, and amount of income in 1994, by Dr. Cox. There is ample evidence to consider all the circumstances surrounding Dr. Cox's crimes.

Respondent also argues that, like the attorney's failure to register as the agent of a foreign principal in *In re Burch* (1943), 73 Ohio App. 97, Dr. Cox's failure to disclose his sources and amounts of income constituted acts that are political in character and regulatory in purpose. This is contrary to the testimony of Mr. Freel, the Executive Director of the Ohio Ethics Commission, who explained that the purpose behind the financial disclosure form was to

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alert the public and the public official to conflicts of interest. This information is crucial to the exercise of open government.

Consideration of the circumstances surrounding Dr. Cox's crime reveals that he acted intentionally in not revealing the source and amount of income on his financial disclosure form. Dr. Cox had no valid excuse for failing to disclose this information. Dr. Cox failed to give information that was in his possession. He issued bills to the counties from his home and received payment directly from the other counties. Further, none of the confusion about whether Dr. Cox could use public facilities for his private practice should have affected his responsibility to accurately disclose his income.

Mr. Freel testified to the value of financial disclosure by public officials. This information is crucial to not only avoiding the appearance of impropriety, but also to avoid actual conflict of interest. Dr. Cox's criminal behavior affronts the accepted moral standards of the community. Accordingly, Dr. Cox committed misdemeanors that involved moral turpitude.

6. Finally, Respondent argues that Section 4731.22(B)(5), Ohio Revised Code, "must be interpreted to require an 'in the course of practice' element because the Board's jurisdiction is otherwise improperly extended to conduct not delegated to it by the legislature." Further, Respondent argues that without adding the element of "in the course of practice," Section 4731.22(B)(5) would violate Dr. Cox's due process and equal protection rights. This argument is without merit.

It is a cardinal rule that a court must first look to the language of the statute itself to determine legislative intent. *Shover v. Cordis Corp.* (1991), 61 Ohio St.3d 213, 218. If the language of the statute is plain and unambiguous and conveys a clear and definite meaning, there is no need to apply rules of statutory interpretation. *Cline v. Ohio Bur of Motor Vehicles* (1991), 61 Ohio St.3d 93, 96, citing *Meeks v. Papdopoulos* (1980), 62 Ohio St.2d 187, 190, citing *Sears v. Weimer* (1944), 143 Ohio St. 312, para. 5 of the syllabus. Where a statute is found to be subject to various interpretations, however, a court may invoke rules of statutory construction in order to arrive at legislative intent.

Section 4731.22(B)(5) prohibits physicians from: "****publishing a false, fraudulent, deceptive, or misleading statement." This section defines a false, fraudulent, deceptive, or misleading statement as:

****[A] statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose

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material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.”

This statute is clear and definite. Therefore, there is no need invoke the rules of statutory construction to determine legislative intent. If, as Respondent argues, the legislature intended to limit the application of Section 4731.22(B)(5), Ohio Revised Code, to statements made “in the course of practice,” then the legislature would have stated that limitation as they did in Section 4731.22(B)(11), Ohio Revised Code. Respondent’s reading of the statutes violates the basic rules of statutory interpretation. “In determining legislative intent, it is the duty of the court to give effect to the words used, not to delete or *insert words*.” *Cline* at 97 (emphasis added). Respondent’s argument is without merit.

CONCLUSIONS OF LAW

1. The guilty pleas of Dr. Cox, as described in Findings of Fact 1 and 2, individually and/or collectively, constitute “(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice,” as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.
2. The guilty pleas of Dr. Cox, as described in Finding of Fact 3, individually and/or collectively, do not constitute “(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice,” as that clause is used in Section 4731.22(B)(11), Ohio Revised Code
3. Dr. Cox’s guilty pleas to three misdemeanor counts of Failure to Disclose Sources and Amounts of Income Required by Law, in violation of Revised Code 102.02(D), as described in Finding of Fact 3, constitute “(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor involving moral turpitude,” as that clause is used in Section 4731.22(B)(13), Ohio Revised Code.
4. Dr. Cox’s guilty pleas to three misdemeanor counts of Failure to Disclose Sources and Amounts of Income Required by Law, in violation of Revised Code 102.02(D), as described in Finding of Fact 3, constitute “publishing a false, fraudulent, deceptive, or misleading statement,” as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

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Dr. Cox is a talented forensic pathologist. He participated in the acts underlying his guilty pleas with the full knowledge of Summit County officials. Although the documentation does not support Dr. Cox's belief that he had full permission to proceed with his private practice in the public facility, it does illustrate the source of confusion.

However, Dr. Cox has provided no reasonable explanation for his failure to disclose the income he received from other counties to the Ohio Ethics Commission as required under Section 102, Ohio Revised Code. This failure, repeated in two successive years, had nothing to do with the barrage of opinions and letters exchanged between Summit County officials. This failure was solely the responsibility of Dr. Cox.

To perform their professional duties effectively, physicians must maintain the trust and confidence of the public. Dr. Cox, by his actions, eroded the public's trust in him as a physician.

PROPOSED ORDER

It is hereby ORDERED that:

1. Respondent's Motion to Dismiss based on Double Jeopardy is DENIED.
2. The certificate of William A. Cox, M.D., to practice medicine and surgery in the State of Ohio shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least one year.
 - A. Dr. Cox shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio, and all terms of probation imposed by the Summit County Court of Common Pleas in Criminal Case No. 96-03-0702.
 - B. Dr. Cox shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution stating whether there has been compliance with all the provisions of probation. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which the probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's

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offices on the first day of the fourth month following the month in which probation becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

- C. Within thirty (30) days of the effective date of this Order, Dr. Cox shall provide a copy of this Order to all employers or entities with which he is under contract to provide physician services or is receiving training, and the Chief of Staff at each hospital where Dr. Cox has privileges or appointments. Further, Dr. Cox shall provide a copy of this Order to all employers or entities with which he contracts to provide physician services, or applies for or receives training, and the Chief of Staff at each hospital where Dr. Cox applies for or obtains privileges or appointments.
- D. Dr. Cox shall appear in person for quarterly interviews before the full Board or its designated representative, or as otherwise directed by the Board.
- E. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. Although the Board will normally give him written notification of scheduled appearances, it is Dr. Cox's responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Cox shall immediately submit to the Board a written request to be notified of his next scheduled appearance.
- F. In the event that Dr. Cox should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Cox must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
- G. If Dr. Cox violates probation in any respect, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.
- H. If Dr. Cox violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever

STATE MEDICAL BOARD
OF OHIO

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disciplinary action it deems appropriate, up to and including the permanent revocation of Dr. Cox's certificate.

- I. Upon successful completion of probation, Dr. Cox's certificate will be fully restored.

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



Suzanne E. Kelly
Attorney Hearing Examiner



STATE MEDICAL BOARD OF OHIO

27 South High Street, 17th Floor, Columbus, Ohio 43261-1200, (614) 467-1200

EXCERPT FROM THE DRAFT MINUTES OF APRIL 9, 1997

REPORTS AND RECOMMENDATIONS

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

Dr. Buchan asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Christopher E. Bryniarski, D.P.M.; Frank J. Swiger, D.P.M.; William A. Cox, M.D.; William Patrick Maher, D.O.; and David L. Groden, M.D.

A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Heidt	- aye
	Dr. Gretter	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Dr. Agresta	- aye
	Dr. Stienecker	- aye
	Dr. Steinbergh	- aye
	Dr. Buchan	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Heidt	- aye
	Dr. Gretter	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Dr. Agresta	- aye
	Dr. Stienecker	- aye
	Dr. Steinbergh	- aye
	Dr. Buchan	- aye

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

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

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

.....
REPORT AND RECOMMENDATION IN THE MATTER OF WILLIAM A. COX, M.D.

Dr. Buchan directed the Board's attention to the matter of William A. Cox, M.D. He advised that objections were filed to Hearing Examiner Kelly's Report and Recommendation, and were previously distributed to Board members.

Dr. Buchan continued that a request to address the Board was timely filed on behalf of Dr. Cox. It was noted, however, that Dr. Cox was not present.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. KELLY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF WILLIAM A. COX, M.D. DR. AGRESTA SECONDED THE MOTION.

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

Dr. Heidt stated that this matter related to Dr. Cox' charges for performing autopsies, presumably as a private physician rather than a county employee. It seems to him that this situation existed because a financial understanding was not reached. There is nothing in the record to indicate that there was a deficiency in the way Dr. Cox performed the autopsies. Dr. Cox repaid the \$138,000 he was found to have received illegally. Dr. Heidt stated that this seems to have evened the score.

DR. HEIDT MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF WILLIAM A. COX, M.D., BY SUBSTITUTING THE FOLLOWING:

It is hereby ORDERED that William A. Cox, M.D., be and is hereby REPRIMANDED.

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

MR. SINNOTT SECONDED THE MOTION.

Dr. Stienecker spoke in support of the motion to amend, stating that it appeared to him that Dr. Cox attempted to obtain advice concerning his position from a number of sources, none of whom gave him the correct answers. Dr. Cox twice failed to disclose funds received to the Ohio Ethics Commission (OEC). Dr. Stienecker stated that this case warrants nothing harsher than a reprimand.

Dr. Steinbergh stated that she doesn't totally disagree with the reprimand, but, when Dr. Cox was advised to stop what he was doing until an answer could be found, he did make the decision to continue. There was never a question of patient care involved in this case. Obviously, Dr. Cox is an appropriate pathologist. But he did fail to disclose his income to the OEC and he made the decision to continue with his practice, even though he'd been advised to stop. Dr. Steinbergh stated that, for those reasons, she was in favor of adopting the Hearing Examiner's Proposed Order.

Dr. Garg spoke in support of the proposed amendment, stating that there are a lot of factors that support a reprimand.

Dr. Egner spoke in support of the Hearing Examiner's Proposed Order. She stated that she believes that in the beginning Dr. Cox did try to find an answer as to whether or not he could do what he did. It appears that he very clearly got an answer in March 1995, when he was advised to stop doing what he was doing, yet he continued. As an elected public official, he should have been well aware of his requirement to complete the OEC form truthfully and he did not. Dr. Egner stated that she will not dispute the fact that Dr. Cox is probably an excellent forensic pathologist, but he violated the rules. She spoke against the proposed amendment.

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

ROLL CALL:	Mr. Albert	- abstain
	Dr. Heidt	- aye
	Dr. Gretter	- abstain
	Dr. Egner	- nay
	Mr. Sinnott	- aye
	Dr. Agresta	- aye
	Dr. Stienecker	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- nay

The motion carried.

DR. GARG MOVED TO APPROVE AND CONFIRM MS. KELLY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF WILLIAM A. COX, M.D. DR. HEIDT SECONDED THE MOTION.

Dr. Stienecker asked for clarification of the amendment. Does the reprimand eliminate the probation?

Dr. Heidt stated that the only penalty being imposed is the reprimand. There will be no probation. His motion was to substitute his proposal for the Hearing Examiner's Proposed Order.

A vote was taken:

ROLL CALL:

Mr. Albert	- abstain
Dr. Heidt	- aye
Dr. Gretter	- abstain
Dr. Egner	- nay
Mr. Sinnott	- aye
Dr. Agresta	- aye
Dr. Stienecker	- aye
Dr. Garg	- aye
Dr. Steinbergh	- nay
Dr. Buchan	- aye

The motion carried.

Amended Notice of Opportunity for Hearing

Charles D. Stienecker, M.D.
President
Wapakoneta, Ohio

Nora M. Noble
Vice-President
Newark, Ohio

Thomas E. Gretter, M.D.
Secretary
Cleveland, Ohio

Raymond J. Albert
Supervising Member
Amanda, Ohio

Ronald C. Agresta, M.D.
Board Member
Steubenville, Ohio

Anant R. Bhati, M.D.
Board Member
Cincinnati, Ohio

David S. Buchan, D.P.M.
Board Member
Westerville, Ohio

Carol L. Egnor, M.D.
Board Member
Cincinnati, Ohio

Anand G. Garg, M.D., Ph.D.
Board Member
Boardman, Ohio

Robert S. Heidt, Sr., M.D.
Board Member
Cincinnati, Ohio

Bradley K. Sinnott, Esq.
Board Member
Columbus, Ohio

Anita M. Steinbergh, D.O.
Board Member
Westerville, Ohio

August 14, 1996

William A. Cox, M.D.
Summit County Coroner's Office
85 N. Summit Street
Akron, OH 44308

Dear Doctor Cox:

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

- 1) On or about March 21, 1996, in the Summit County Court of Common Pleas, you pleaded guilty to two misdemeanor counts of Unlawful Interest in a Public Contract, in violation of Revised Code 2921.42(A)(4) (as modified in the Bill of Information on July 2, 1996); two misdemeanor counts of Soliciting or Accepting Improper Compensation, in violation of Revised Code 2921.43(A)(1); one misdemeanor count of Improper Use of Authority to Secure a Thing of Value, in violation of Revised Code 102.03(D); one misdemeanor count of Improper Soliciting and Receipt of a Thing of Value, in violation of Revised Code 102.03(E); and three misdemeanor counts of Failure to Disclose Sources and Amounts of Income Required by Law, in violation of Revised Code 102.02(D).

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

Further, your guilty pleas to three misdemeanor counts of Failure to Disclose Sources and Amounts of Income Required by law, in violation of Revised Code 102.02(D), as alleged in paragraph (1) above, individually and/or collectively, constitute "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor involving moral turpitude," as that clause is used in Section 4731.22(B)(13), Ohio Revised Code.

Mailed 8/15/96

August 14, 1996

Further, your guilty pleas to three misdemeanor counts of Failure to Disclose Sources and Amounts of Income Required by law, in violation of Revised Code 102.02(D), as alleged in paragraph (1) above, individually and/or collectively, constitute "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

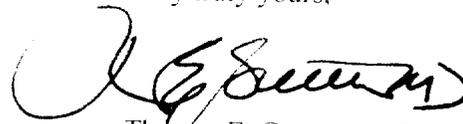
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Thomas E. Gretter, M.D.
Secretary

TEG/bjm
Enclosures

CERTIFIED MAIL # 152 983 845
RETURN RECEIPT REQUESTED

Duplicate mailing to: William A. Cox, M.D.
7384 McShu Lane
Hudson, OH 44236-1848

CERTIFIED MAIL # 152 983 846
RETURN RECEIPT REQUESTED

cc: Michael J. Connick, Esq.
CERTIFIED MAIL # 152 983 859
RETURN RECEIPT REQUESTED



STATE MEDICAL BOARD OF OHIO

17 South High Street, 11th Floor • Columbus, Ohio 43266-0315 • (614) 460-2914

April 17, 1996

William A. Cox, M.D.
Summit County Coroner's Office
85 N. Summit Street
Akron, OH 44308

Dear Doctor Cox:

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

- 1) On or about March 21, 1996, in the Summit County Court of Common Pleas, you pleaded guilty to two felony counts of Unlawful Interest in a Public Contract, in violation of Revised Code 2921.42(A)(1).

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

- 2) On or about March 21, 1996, in the Summit County Court of Common Pleas, you pleaded guilty to two misdemeanor counts of Soliciting or Accepting Improper Compensation, in violation of Revised Code 2921.43(A)(1); one misdemeanor count of Improper Use of Authority to Secure a Thing of Value, in violation of Revised Code 102.03(D); one misdemeanor count of Improper Soliciting and Receipt of a Thing of Value, in violation of Revised Code 102.03(E); and three misdemeanor counts of Failure to Disclose Sources and Amounts of Income Required by Law, in violation of Revised Code 102.02(D).

Your guilty plea as alleged in paragraph (2) above, individually and/or collectively, constitutes "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

Further, your guilty plea as alleged in paragraph (2) above, individually and/or collectively, constitute "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor involving moral turpitude," as that clause is used in Section 4731.22(B)(13), Ohio Revised Code.

Further, your guilty pleas to three misdemeanor counts of Failure to Disclose Sources and Amounts of Income Required by law, in violation of Revised Code 102.02(D), as alleged

Mailed 4/18/96

April 17, 1996

in paragraph (2) above, individually and/or collectively constitutes "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

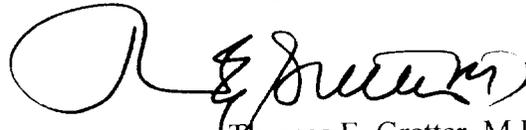
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Thomas E. Gretter, M.D.
Secretary

TEG/bjm
Enclosures

CERTIFIED MAIL # 152 983 393
RETURN RECEIPT REQUESTED

Duplicate mailing to: William A. Cox, M.D.
7384 McShu Lane
Hudson, OH 44236-1848

CERTIFIED MAIL # 152 983 407
RETURN RECEIPT REQUESTED