State Medical Board of Ohio

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

November 12, 2003

Michael Soliman Mikhail, M.D.
167 Windbrook Court
Elyria, OH 44035

Dear Doctor Mikhail:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 12, 2003, 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 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

Lance A. Talmage MD

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 7000 0600 0024 5150 9609
RETURN RECEIPT REQUESTED

Cc: John R. Irwin, M.D., J.D.
CERTIFIED MAIL NO. 7000 0600 0024 5150 9593
RETURN RECEIPT REQUESTED

Mailed 12-01-03

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 12, 2003, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and Michael Soliman Mikhail, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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

Lance A. Talmage MD

Lance A. Talmage, M.D.
Secretary

(SEAL)

November 12, 2003
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

MICHAEL SOLIMAN MIKHAIL, M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on November 12, 2003.

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 modification, approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

A. **SUSPENSION OF CERTIFICATE:** The certificate of Michael Soliman Mikhail, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for period of thirty days.

B. **PROBATIONARY CONDITONS:** Upon reinstatement, Dr. Mikhail's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:

1. **Obey the Law**: Dr. Mikhail shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.

2. **Declarations of Compliance**: Dr. Mikhail shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order

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

3. **Personal Appearances**: Dr. Mikhail shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

4. **Controlled Substances Prescribing Course**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Mikhail shall provide acceptable documentation of successful completion of a course dealing with the prescribing of controlled substances. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.

5. **Medical Records Course**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Mikhail shall complete a course on maintaining adequate and appropriate medical records, such course to be approved in advance by the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.

6. **Tolling of Probationary Period While Out of State**: In the event that Dr. Mikhail should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Mikhail must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.

7. **Noncompliance Will Not Reduce Probationary Period**: In the event Dr. Mikhail is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.

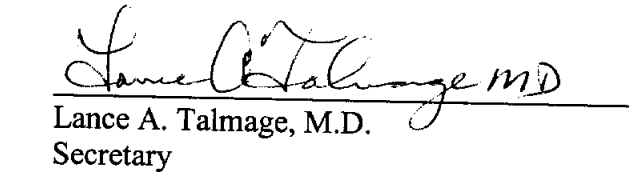
8. **Violation of Terms of Probation**: If Dr. Mikhail violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

B. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Mikhail's certificate will be fully restored.

C. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS**: Within thirty days of the effective date of this Order, Dr. Mikhail shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Mikhail shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

D. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES**: Within thirty days of the effective date of this Order, Dr. Mikhail shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Mikhail shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Mikhail shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

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



Lance A. Talmage, M.D.
Secretary

(SEAL)

November 12, 2003
Date

STATE MEDICAL BOARD
OF OHIO
2003 SEP 29 P 12: 33

REPORT AND RECOMMENDATION
IN THE MATTER OF MICHAEL SOLIMAN MIKHAIL, M.D.

The Matter of Michael Soliman Mikhail, M.D., was heard by Sharon W. Murphy, Hearing Examiner for the State Medical Board of Ohio, on August 19, 20, and 21, 2003.

INTRODUCTION

I. Basis for Hearing

A. By letter dated April 2, 2003, the State Medical Board of Ohio [Board] notified Michael Soliman Mikhail, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board's action was based on allegations pertaining to Dr. Mikhail's prescribing Schedule II, III and IV controlled substances to Patient 1, a family member. The Board further alleged that Dr. Mikhail's conduct 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: 4731-11-02(D), Ohio Administrative Code, as in effect from November 17, 1986, through August 31, 2000, and since September 1, 2000." In addition, the Board alleged that, "[p]ursuant to Rule 4731-11-02(F), Ohio Administrative Code, violation of Rule 4731-11-02(D), Ohio Administrative Code, also violates Sections 4731.22(B)(2) and (6), Ohio Revised Code." Finally the Board alleged that Dr. Mikhail's conduct 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: Rule 4731-11-08, Ohio Administrative Code, as in effect from November 11, 1998, through March 14, 2001, and since March 15, 2001." (State's Exhibit 1A).

B. On April 17, 2003, John R. Irwin, M.D., Esq., submitted a written hearing request on behalf of Dr. Mikhail. (State's Exhibit 1B).

II. Appearances

A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Rebecca J. Albers, Assistant Attorney General.

B. On behalf of the Respondent: John R. Irwin, M.D., Esq.

EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State

1. Michael Soliman Mikhail, M.D., as upon cross-examination
2. Kathleen Howard
3. Greg Mehling
4. Michael Giar

B. Presented by the Respondent

1. Nagy Mekhail, M.D.
2. Patient 1
3. Michael Soliman Mikhail, M.D.
4. Kevin Martin

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A-1T: Procedural exhibits.

2. State's Exhibit 2: Confidential Patient Key. (Note: Exhibit sealed to protect patient confidentiality.)

* 3. State's Exhibit 3: Certified copies of prescriptions for scheduled drugs written by Dr. Mikhail for Patient 1 as maintained by the Lorain County Sheriff's Office.

* 4. State's Exhibit 5: A Patient Profile Report of prescriptions written by Dr. Mikhail for Patient 1 maintained by Hess & Hess Pharmacy in Elyria, Ohio.

* 5. State's Exhibit 6: Copy of a February 27, 2003, letter to the Board from Dr. Mikhail.

* 6. State's Exhibit 7: Copy of a March 6, 2003, letter to the Board from John S. Haynes, Esq.

* 7. State's Exhibits 8, 10, 14, and 15: Copies of prescriptions written by Dr. Mikhail for Patient 1.

* 8. State's Exhibit 11A, 11B, 11C: February 27, 2003, letter to the Board from Detective Gregg Mehling of the Lorain County Sheriff's Office certifying a

taped recording of a conversation between Dr. Mikhail and Detective Mehling, a copy of the taped recording, and a transcript of the taped recording, respectively.

* 9. State's Exhibit 12: Copy of a portion of the transcript of a criminal trial involving Patient 1.

* 10. State's Exhibit 13: Certified copy of a Journal Entry filed in the Lorain County Court of Common Pleas in State of Ohio v [Patient 1].

B. Presented by the Respondent

* 1. Respondent's Exhibit A: Photograph from an August 4, 2003, arthroscopy of Patient 1's left knee.

* 2. Respondent's Exhibit B: An August 18, 2003, letter to the Board from Delos M. Cosgrove, M.D., regarding Dr. Mikhail, with attached curriculum vitae of Dr. Cosgrove.

3. Respondent's Exhibit C: Curriculum vitae of Nagy Mekhail, M.D.

* Note: In exhibits marked with an asterisk, the name of Patient 1 was redacted to protect patient confidentiality.

PROCEDURAL MATTERS

The hearing record in this matter was held open until September 4, 2003, to give the Respondent an opportunity to submit additional evidence. These documents were timely submitted and entered into the record as Respondent's Exhibit C. (See Hearing Transcript Volume III at 19-20).

SUMMARY OF THE EVIDENCE

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

General Background

1. Michael Soliman Mikhail, M.D., testified that, from 1964 through 1967, he had attended a medical school in Egypt. Thereafter, Dr. Mikhail completed some residency training at St. Mary Hospital in London and at the American University Hospital in Beirut. In 1972,

Dr. Mikhail relocated to the United States and started training in general surgery at the University of New Jersey. Dr. Mikhail testified that, in his final year of training, he was the chief administrative resident of 120 residents. Subsequently, he completed two years of training in adult thoracic and cardiovascular surgery at St. Vincent Hospital in Cleveland, Ohio. Finally, Dr. Mikhail completed training in pediatric cardiac surgery at the University of Chicago. (Hearing Transcript Volume I [Tr. I] at 13; State's Exhibit [St. Ex.] 12 at 91-92).

Dr. Mikhail testified that, after completing his training, he had joined a private practice performing thoracic and cardiovascular surgery in Cleveland and Elyria, Ohio. In 1994, Dr. Mikhail joined The Cleveland Clinic Foundation [Cleveland Clinic] as a full-time employee. In that capacity, Dr. Mikhail works mostly at Elyria Memorial Hospital, performing open heart surgery, vascular surgery and thoracic surgery. Dr. Mikhail is board certified in general surgery and in thoracic and cardiovascular surgery. (Tr. I at 13-14; St. Ex. 12 at 94).

Dr. Mikhail's Prescribing for Patient 1

2. Patient 1 is Dr. Mikhail's wife. (Tr. I at 17; St. Ex. 2). From November 8, 1995, through April 10, 1998, Dr. Mikhail prescribed controlled substances to Patient 1, as follows:

Date	Quantity	Refills	Drug	Schedule
11/08/95	49		Fioricet w/ Codeine	III
05/21/96	23		Fioricet w/ Codeine	III
06/09/96	40		Tylenol w/ Codeine # 4	III
09/08/96	26		Tylenol w/ Codeine # 4	III
09/21/96	40		Tylenol w/ Codeine # 4	III
10/05/96	30		Percocet	II
12/14/96	40		Tylenol w/ Codeine # 4	III
02/22/97	40		Percocet	II
05/21/97	30		Fioricet w/ Codeine	III
05/25/97	40		Tylenol w/ Codeine # 4	III
06/21/97	30		Tylenol w/ Codeine # 4	III
06/26/97	60	4	Fioricet w/ Codeine	III
11/22/97	60		Fioricet w/ Codeine	III
12/06/97	30		Tylenol w/ Codeine # 4	III
02/21/98	30		Tylenol w/ Codeine # 4	III
03/28/98	30		Tylenol w/ Codeine # 4	III
04/10/98	30		Percocet	II

(St. Exs. 5, 10). Moreover, during that period, Dr. Mikhail prescribed for Patient 1 a variety of non-controlled medications, including Paxil, Fioricet, Phenergan, Atarax,

Robaxin, Naprosyn, Estrace, Pyridium, Histussin-HC, V-Cillin-K, Dura-Vent, Lasix, and Hydrodiuril. (St. Exs. 5, 8).

3. From March 8, 1999, through October 27, 2000, and on August 14, 2001, Dr. Mikhail prescribed controlled substances to Patient 1, as follows:

Date	Quantity	Refills	Drug	Schedule
03/08/99	10		Fioricet w/ Codeine	III
03/10/99	30		Fioricet w/ Codeine	III
05/01/99	30		Tylenol w/ Codeine # 4	III
07/18/99	30		Percocet	II
12/23/99	30		Ambien	IV
12/23/99	40		Darvocet	IV
02/13/00	30		Percocet	II
03/20/00	30		Ambien	IV
03/20/00	40		Tylenol w/ Codeine # 4	III
04/08/00	40		Tylenol w/ Codeine # 4	III
04/16/00	40		Percocet	II
04/25/00	60	4	Tylenol w/ Codeine # 4	III
05/20/00	30		Percocet	II
06/17/00	30		Percocet	II
07/28/00	30		Percocet	II
08/18/00	30		Percocet	II
08/27/00	10		OxyContin 20 mg.	II
08/27/00	10		OxyContin 10 mg.	II
09/05/00	30		Vicodin	III
10/14/00	30		Vicodin	III
10/14/00	30		Ambien	IV
10/27/00	40		Vicodin	III
08/14/01	30		Ambien	IV

(St. Ex. 10). Moreover, during that period, Dr. Mikhail prescribed for Patient 1 a variety of non-controlled medications, including Celexa, Imitrex, Fioricet, Robaxin, Estrace, Histussin-HC, Bactroban, Pyridium, Prednisone eye drops, Medrol Dospak, Lasix, Hydrochlorothiazide, Hydrodiuril, and Slow K. (St. Ex. 8).

Among the prescriptions written for Patient 1 by Dr. Mikhail is an April 25, 2000, prescription for Tylenol with Codeine #4. Dr. Mikhail prescribed sixty tablets with four refills, a total of 300 tablets. Dr. Mikhail ordered that the medication be taken "as directed." (St. Ex. 10 at 6).

4. From November 19, 2000, through January 25, 2001, and from October 8, 2001 through November 24, 2001, Dr. Mikhail prescribed controlled substances to Patient 1, as follows:

Date	Quantity	Refills	Drug	Schedule
11/19/00	40		Vicodin	III
12/16/00	40		Vicodin	III
12/30/00	40		Vicodin	III
01/20/01	40		Vicodin	III
01/25/01	20		OxyContin	II
10/08/01	60	2	Fiorinal	III
11/24/01	60		Vicodin	III

(St. Exs. 3, 5, 14). Moreover, during that period, Dr. Mikhail prescribed for Patient 1 a variety of non-controlled medications, including Fioricet, Imitrex, Mobic, Tigan, Pyridium Plus, Lasix, Slow K and Donnatal Tabs. (St. Exs. 8, 15).

Among the prescriptions written for Patient 1 by Dr. Mikhail is an October 8, 2001, prescription for Fiorinal. Dr. Mikhail prescribed sixty tablets with two refills, a total of 180 tablets. Dr. Mikhail ordered that the medication be taken at a frequency of one tablet every six hours, as needed. At that rate, the amount of medication Dr. Mikhail prescribed would last forty-five days. (St. Ex. 3 at 8). Similarly, on November 24, 2001, Dr. Mikhail wrote a prescription for Vicodin, sixty tablets with no refills. He ordered a frequency of one tablet three times a day, as needed. At the ordered frequency, the Vicodin would last almost three weeks. (St. Ex. 3 at 9).

Testimony of Detective Greg Mehling

5. Detective Greg Mehling testified at hearing on behalf of the State. Detective Mehling testified that he is a Detective for the Lorain County Sheriff's Department Drug Task Force in Elyria. (Tr. I at 66). Detective Mehling testified that, in late fall 2001, the Lorain County Sheriff's Department Drug Task Force had received information that Patient 1 may have been seeing multiple doctors to obtain narcotics. Detective Mehling further testified that, during the course of that investigation, he had discovered that a number of the prescriptions for Patient 1 had been written by Dr. Mikhail. (Tr. I at 67).

   Detective Mehling testified that, during the investigation of Patient 1, Detective Mehling had checked all pharmacies in the area for prescriptions written for narcotics for Patient 1. Detective Mehling testified that he had obtained a number of prescriptions written by Dr. Mikhail from Hess & Hess Pharmacy in Elyria. (St. Ex. 3; Tr. I at 72, 74-75).

6. Detective Mehling testified that, on January 8th, 2002, a grand jury subpoena had been issued to Dr. Mikhail. Detective Mehling testified that Dr. Mikhail had been asked to

produce medical records to show that the prescriptions bearing his signature had actually been written by him, rather than having been forged by Patient 1. Detective Mehling explained that there had been "some suspicion" that some of the prescriptions had not been written by Dr. Mikhail. (Tr. I at 68-69).

Detective Mehling testified that Dr. Mikhail had called Detective Mehling later that day. Dr. Mikhail told Detective Mehling that he was "in some distress." Dr. Mikhail told Detective Mehling that he would be unable to provide medical records for Patient 1 because no medical records for Patient 1 existed. Dr. Mikhail had further stated that he had had an opportunity to review all of the prescriptions at issue and verified that he had written them all and that none had been forged by Patient 1. (Tr. I at 68-69) (See State's Exhibits 11B and 11C for a recording of that conversation and a transcript of the recording, respectively.)

Detective Mehling testified that, after speaking with Dr. Mikhail, he had referred the case to the Lorain County prosecutor for consideration. Detective Mehling stated that the Lorain County Grand Jury had returned an indictment against Patient 1 for one count of deception to obtain dangerous drugs, a fifth degree felony. Nevertheless, the prosecutor had deferred a criminal prosecution against Dr. Mikhail and advised Detective Mehling to contact the Board. (Tr. I at 73).

7. Detective Mehling testified that, during his investigation of this matter, he had interviewed Patient 1's treating physicians. Detective Mehling testified that one of the physicians, Dr. Mahajan, had stated that he had not been aware that Dr. Mikhail was prescribing narcotics for Patient 1. Another physician, Dr. Sertich, advised that he had been aware that some other doctors were prescribing narcotics for Patient 1, but that he had not been aware of them all. Finally, a third physician, Dr. Stanfield, reported that he had not been aware that any other physician had been prescribing narcotics for Patient 1. (Tr. I at 78-79).

8. Detective Mehling testified that Dr. Mikhail had been cooperative and forthcoming during the investigation. (Tr. I at 80-81). When asked if ever it had appeared that Dr. Mikhail was being deceptive, Detective Mehling responded as follows:

> At some point, frankly, we just couldn't believe that he would do what we saw he was doing. We had some serious belief that these were forgeries that had been perpetrated by Patient No. 1. And I mean, I actually found it hard to believe that he would do what he's done with absolutely no documentation * * * [b]ecause of the extreme risk that he was taking with his license.

(Tr. I at 80).

Detective Mehling later added that,

> I did not know that [Dr. Mikhail] existed until the start of this investigation, but we found that he was -- the man was held in high regard in the medical

> community, especially at the Elyria Hospital, and such a high risk action, the number of, quote, emergencies and the number of tablets that were dispensed each time, I would have thought an emergency would constitute a 72-hour period at most. We have five hospitals in the county that have emergency room staff 24 hours a day. I just -- My first thought was I can't believe this guy's doing this.

(Tr. I at 83-84).

Testimony of Investigator Michael Giar

9. Investigator Michael Giar testified at hearing on behalf of the State. Investigator Giar testified that he has been an Investigator for the Board for the past eighteen years. (Tr. I at 87).

   Investigator Giar testified that he had been contacted by Detective Mehling regarding the investigation of Patient 1 and the prescriptions written by Dr. Mikhail. On February 27, 2003, Investigator Giar delivered to Dr. Mikhail a subpoena for patient records. Investigator Giar testified that Dr. Mikhail had contacted him and explained that he didn't have a patient record for Patient 1. Investigator Giar advised Dr. Mikhail that he would have to respond to the subpoena, either by supplying the patient records or by writing a letter advising that he did not have any patient records for Patient 1. Investigator Giar testified that, the following day, Dr. Mikhail had submitted a letter indicating he did not have a patient record for Patient 1. (Tr. I at 87-90; St. Ex. 6).

   During his conversation with Investigator Giar, Dr. Mikhail stated that Patient 1 had a history of pain problems, including neck surgery, knee surgeries, and chronic migraine headaches. Dr. Mikhail explained that he had written prescriptions for Patient 1 mainly on weekends so that he did not have to disturb Patient 1's treating physicians. (Tr. I at 90-91).

10. Investigator Giar testified that he is not involved in educating physicians regarding changes in the law. Investigator Giar stated that it is his understanding that the Board issues a quarterly report to all physicians advising them of any changes in the law related to the practice of medicine. (Tr. I at 92-93).

11. Mr. Giar testified that, of the cases he has investigated involving physicians prescribing to family members, the physicians are not of any particular age, but are generally younger to middle-aged. (Tr. I at 92).

Testimony of Kathleen Howard

12. Kathleen Howard testified at hearing on behalf of the State. Ms. Howard testified that she is a pharmacist at Hess & Hess Pharmacy. Ms. Howard testified that Hess & Hess Pharmacy is contiguous to Elyria Memorial Hospital. (Tr. I at 50, 56).

Ms. Howard has worked for Hess & Hess Pharmacy since 1969. Her duties include filling prescriptions, monitoring the record keeping of all prescriptions and other pertinent information, counseling patients, dealing with physicians, and taking prescriptions over the phone. Ms. Howard testified that she has had frequent contact with Dr. Mikhail over the years because he uses Hess & Hess Pharmacy for his patients and his family. (Tr. I at 50-51).

Ms. Howard testified that when Dr. Mikhail ordered medications for Patient 1, his usual practice was to go to the pharmacy and speak to the pharmacist on duty. Dr. Mikhail would request a medication for Patient 1, and the pharmacist would convert it to a written prescription. (Tr. I at 53-54).

13. Ms. Howard identified a Patient Profile printout which lists all the prescriptions filled by Hess & Hess Pharmacy for Patient 1. The printout includes prescriptions prescribed by all of Patient 1's physicians. (Tr. I at 52; St. Ex. 5).

    Ms. Howard further testified that, pursuant to a subpoena, she had compiled for the Board all of the original prescriptions for controlled substances issued by Dr. Mikhail for Patient 1 and maintained at Hess & Hess Pharmacy. (Tr. I at 52-55; St. Ex. 8; St. Ex. 10).

14. When asked if she had ever had a concern over the prescriptions Dr. Mikhail had been writing for Patient 1, Ms. Howard testified that, several years ago, there had been some discussion among the pharmacists about Dr. Mikhail prescribing controlled substances for his wife. She stated that the pharmacists had not been sure if it was appropriate for a physician to prescribe controlled substances for a family member. Ms. Howard testified that, in early 2000, she had contacted the Pharmacy Board to discuss the matter. She was told "not to be concerned" because "the physician can write in emergency situations for a family member." Ms. Howard testified that, other than her call to the Pharmacy Board, she had not approached anyone else with her concerns. (Tr. I at 57-60).

15. Ms. Howard testified that, within the last several years, practice has changed in that physicians do not write prescriptions for family members as they had in the past. Moreover, she stated that it is the older physicians who write prescriptions for family members; younger physicians do not do so. (Tr. I at 60-61).

16. Ms. Howard testified that she is not aware of any educational programs provided by hospitals or pharmacies which educate physicians regarding changes in the law related to prescribing. (Tr. I at 61-62).

17. Ms. Howard testified that Dr. Mikhail has a very good reputation and is very well-respected in the community. She further testified that she has never known Dr. Mikhail to be dishonest or deceptive or to display a selfish motive. (Tr. I at 57, 62).

Patient 1's Criminal Conviction

18. On July 25, 2003, the criminal case against Patient 1 was tried in the Lorain County Court of Common Pleas. (St. Ex. 12). On August 1, 2003, Patient 1 was convicted of Deception to Obtain Dangerous Drugs, a fourth degree felony, in violation of Section 2925.22(A), Ohio Revised Code. The court referred Patient 1 to the probation department for a pre-sentencing investigation. (St. Ex. 13).

Testimony of William B. Stanfield, M.D., at Patient 1's Criminal Trial

19. In his testimony during the criminal proceedings against Patient 1, William B. Stanfield, M.D., testified that he is an orthopedic surgeon practicing in Elyria. During the criminal proceedings, Dr. Stanfield testified that he had first seen Patient 1 in October 1998 for an injury to her knee. At that time, Patient 1 completed a form which asked her to list the medications she was then using. Patient 1 listed only Claritin-D and Paxil. Dr. Stanfield testified that, in March 2001, he had asked Patient 1 to update his records regarding the medications she was currently taking. At that time, Patient 1 listed Imitrex, Vioxx, Zoloft, Pepcid, and Estrace. (St. Ex. 12 at 2-4, 7, 9).

    Dr. Stanfield testified that it is important to him to know whether a patient is being medicated with narcotics because it affects his prescribing decisions regarding that patient. Dr. Stanfield explained that "the decision for what to prescribe is based on what the patient is currently taking, what they've tried and has or has not worked in the past, and that makes it important to what current medications the patient is on." (St. Ex. 12 at 10-11).

    Dr. Stanfield testified that he had not known that Patient 1 had been obtaining narcotic medications from other doctors. Dr. Stanfield further testified that he had been aware only that Dr. Mikhail had prescribed Oxycontin for Patient 1 on one occasion. (St. Ex. 12 at 13, 27-32, 41, 88; Tr. I at 34-35).

Testimony of Dr. Mikhail: Why He Prescribed for Patient 1

20. Dr. Mikhail testified that Patient 1 had been in severe pain for many years and had been treated by numerous physicians. Dr. Mikhail testified that, over a period of several years, she had been treated by twenty-eight physicians. (Tr. I at 22).

    Dr. Mikhail testified that the physicians caring for Patient 1 had not prescribed sufficient medications to control her pain. Dr. Mikhail stated that Dr. Stanfield had prescribed for Patient 1 310 tablets of Vicodin over a period of 376 days, an average of 0.8 tablets per day. Dr. Mikhail stated that, with the severe pathology of Patient 1's knees, Dr. Stanfield could not have believed that that amount of medication would be sufficient to treat her pain. (Tr. I at 35).

21. Dr. Mikhail testified that most of the occasions that he had prescribed medications for Patient 1 had been in the evening or on weekends when her treating physicians' offices had been closed. Dr. Mikhail testified that, as a physician, it had been difficult for him to disturb another physician after office hours. Dr. Mikhail acknowledged that most physicians arrange to have someone take call when the office is closed. Dr. Mikhail testified that, in his practice, he is the only physician on call and that he is on call every day. Dr. Mikhail testified that, because he knows how demanding being on call can be, he had not wanted to inconvenience colleagues when he had been able to handle the matter himself. (Tr. I at 22, 41-42).

22. Dr. Mikhail acknowledged that, during the time that Dr. Stanfield had been treating Patient 1, Dr. Mikhail had prescribed Vicodin, Oxycontin, and Fiorinal for Patient 1. Dr. Mikhail testified that he and his wife had contacted Dr. Stanfield during that time to request additional medication for Patient 1, but that Dr. Stanfield had refused to prescribe any more medication. (Tr. I at 35-37; St. Ex. 14).

23. Dr. Mikhail testified that he had considered his prescribing for his wife to be "an emergency." Dr. Mikhail explained as follows:

> This emergency, I mean it is not life and death emergency, it's not like the one I have ruptured aneurysm or somebody dying of cardiogenic shock. I mean, maybe my definition of emergency was a little bit different from your definition of emergency.
>
> * * *
>
> Patient 1 has a lot of medical problems, and when I saw her in severe pain and throwing up and could not move her arm and so on, I just supplemented her with some medication. I mean, she was not in shock or -- I mean, for me as a physician and husband, and I love my wife, and I thought that's an emergency for us as a family.

(Tr. I at 21).

24. Dr. Mikhail testified that he had believed that prescribing for Patient 1 was appropriate because he had prescribed only the medications that Dr. Stanfield had already prescribed. Moreover, because Patient 1's treating physicians had not prescribed enough medication, Dr. Mikhail had merely supplemented what they physicians had prescribed. (Tr. I at 37-39).

Dr. Mikhail testified that, other than one prescription for Oxycontin, he had not been the first physician to prescribe any of the drugs he had prescribed for Patient 1. Moreover, he had not overlapped prescriptions. Dr. Mikhail testified that, but for one occasion when they were going on vacation, he had only prescribed for Patient 1 when Patient 1 had used all of the drugs prescribed by her treating physicians. (Tr. I at 44-46, 49).

Dr. Mikhail added that, at the time he was writing prescriptions for his wife, he had been fully aware of the medications she was receiving from other physicians. Dr. Mikhail testified that

he generally retrieved her medications from the pharmacy himself. Furthermore, he could monitor the frequency of her use by observing the medications as they disappeared from the medicine cabinet. Dr. Mikhail testified that he had never had any indication that Patient 1 was taking excessive amounts of medication. Moreover, he never saw Patient 1 take the medications for recreational purposes or to obtain euphoria or a high. (Tr. II at 78-79).

Dr. Mikhail acknowledged that there are issues of tolerance and drug dependence that arise when one is taking controlled substances over a long period of time. He denied that Patient 1 had developed tolerance or become dependent or addicted to her medications. He explained that Patient 1 had not needed increased amounts of medication over time. He testified that, in the winter months, she had used between 2.8 and 4 tablets per day. In the summer, she had used only 1.2 tablets per day. Dr. Mikhail testified that her pattern of use did not support one of drug tolerance or addiction. (Tr. I at 31, 43-45).

25. Dr. Mikhail testified that, prior to Patient 1's criminal proceedings, he had been unaware of the Board rules about writing prescriptions without keeping records and about writing prescriptions for a family member. Dr. Mikhail testified that he had had no idea that he would be breaking the law by writing a prescription for a family member. (Tr. II 83-84, 86).

26. Dr. Mikhail testified that he had not prescribed medication of any type, controlled or otherwise, for Patient 1 in the past twenty-one months. Dr. Mikhail testified that the reasons he had ceased prescribing for Patient 1 are as follows:

> I learned my lesson. It's out of my ignorance. I didn't know the rules either, because my training was in the old days and they train you to do valve surgery or do coronary bypass surgery, but unfortunately they don't teach you about the law.
>
> Just busy; maybe I did not keep on top of the legal aspect of practicing medicine. I'm sorry. And that's why we are going through this very difficult time in my life. And I didn't know that there is a law preventing you from treating your family, even with some diuretics or antibiotics, which I don't do that and I will never do that again.

Dr. Mikhail further testified that, now that he is aware of the Board's rules, he understands that there are good reasons for them. Dr. Mikhail testified that,

> First of all there is no physician will be familiar with everything unless they spend a lot of time and research and reading, which I have done, actually, went to so many meetings about migraine headaches and so on. But it's still the whole idea to treat a family member unless it is emergency or you treat it for a short period of time will take the emotion out of it and let somebody else deal with it and take the responsibility.

(Tr. II at 92-94).

Dr. Mikhail acknowledged that writing prescriptions for a family member could result in serious problems such as encouraging drug addiction or dependence. Moreover, he stated that the emotional impact of dealing with your family member may alter the intellectual component of the care being given. Nevertheless, he stated that such had not been the case with Patient 1. Dr. Mikhail testified that he had been fully aware of Patient 1's condition and the care she received. Dr. Mikhail testified that he had taken Patient 1 to the most prominent physicians in the Cleveland area. He added that he had accompanied her to her appointments and discussed her case with those physicians. (Tr. II at 94-95).

27. Dr. Mikhail repeatedly apologized for his behavior and accepted full responsibility for his actions. (Tr. I at 20-22, 26; Tr. II at 94; St. Exs. 11B, 11C).

Testimony of Dr. Mikhail: The Amount of Medications Taken by Patient 1

28. Dr. Mikhail testified that, in conjunction with the criminal prosecution of Patient 1, he had obtained information about all of the controlled substances prescribed by all physicians for Patient 1 between November 2000 and November 2001. Dr. Mikhail testified that he had used that information to calculate the total amount of Oxycontin and Vicodin that Patient 1 had received during that period. Dr. Mikhail testified that, over a 375 day period, Patient 1 had received 910 Vicodin 5 mg. tablets and 140 Oxycontin 20 mg. tablets, for a total of 1050 tablets. (Tr. II at 76-77).

    Dr. Mikhail testified that, of the 1050 tablets, he had prescribed 270 tablets, approximately one-quarter of the total amount prescribed. (Tr. II at 76-78).

29. Dr. Mikhail reiterated that, in the indictment period of November 2000 through November 2001, Patient 1 had received a total of 910 Vicodin 5 mg. tablets. Dr. Mikhail testified that this had averaged 2.7 tablets per day. He further testified that the recommended dose of Vicodin is one to two tablets every four to six hours. (Tr. I at 43-44).

Testimony of Dr. Mikhail: Communications with Patient 1's Treating Physicians

30. Dr. Mikhail testified that Patient 1's treating physicians had been aware that Dr. Mikhail was supplementing the medications the treating physicians prescribed. Dr. Mikhail testified that he was aware of this because he had spoken personally with the treating physicians. Nevertheless, Dr. Mikhail admitted that he had not specifically told them that, when Patient 1 had run out of medications, Dr. Mikhail had written prescriptions to obtain more. Dr. Mikhail merely told them something to the effect of, "I give her the Tylenol with Codeine recommended." (Tr. I at 27-28).

31. Dr. Mikhail acknowledged that Dr. Stanfield had claimed that he had not been aware that other physicians were also prescribing narcotics for Patient 1. Dr. Mikhail testified that he was baffled by Dr. Stanfield's claim that he had not been aware that Dr. Mikhail had been

prescribing additional medications for Patient 1. Dr. Mikhail explained his bafflement by stating that he had personally told Dr. Stanfield that Dr. Mikhail had prescribed OxyContin for Patient 1 on one occasion. (Tr. I at 32-33).

32. Dr. Mikhail acknowledged that Patient 1's treating physicians had been prescribing to Patient 1 a certain number of pills to last a period of time and that Dr. Mikhail had prescribed additional pills during that period of time. Dr. Mikhail further acknowledged that there are limits to the amount of controlled substances that should be taken and that Patient 1's treating physicians may have been purposely prescribing only small amounts. Dr. Mikhail added, however, that he also had only prescribed small amounts. Moreover, he stated that she had never exceeded the "amounts" of the medications recommended by the treating physicians. (Tr. I at 28-31).

    Dr. Mikhail acknowledged that the reason there are restrictions on controlled substances is that there is a potential for addiction or abuse. Dr. Mikhail denied, however, that it would have been important to Patient 1's treating physicians to know that the amount of medication they were prescribing for Patient 1 was not sufficient to control her pain. Dr. Mikhail again reasoned that Patient 1 had not taken more medication than that which the treating physicians had prescribed. (Tr. I at 29-30).

Testimony of Dr. Mikhail: Dr. Mikhail's Failure to Keep Medical Records

33. Dr. Mikhail testified that he had not maintained medical records for the controlled substances he prescribed to Patient 1. Therefore, he had no record of the indications for the controlled substances. (Tr. I at 18-19, 25-26).

    Dr. Mikhail testified that, at the time he prescribed controlled substances for Patient 1, he had not been aware of the Board's rule mandating that a physician keep medical records when prescribing controlled substances. He testified that he had later learned of the rule from his attorney. Dr. Mikhail repeatedly apologized for his failure to keep abreast of the Board's rules and accepted responsibility for this failure. (Tr. I at 20-22, 26, 40).

Testimony of Dr. Mikhail: Dr. Mikhail's Medical Practice

34. Dr. Mikhail testified that part of a patient's history is the medication the patient takes. Dr. Mikhail testified that, in his practice, it is important to know if the patient is taking certain medications, such as blood thinners or psychiatric medications which may interfere with anesthesia. Dr. Mikhail added, however, that he is not concerned with whether a patient is taking controlled substances because that does not interfere with his work. Dr. Mikhail acknowledged that he prescribes controlled substances for post-operative pain relief. Nevertheless, he stated that is not important for him to know if a patient is taking any other controlled substances because he prescribes such a small amount of the medication and only for a short period of time. (Tr. I at 14-17, 39-40).

35. Dr. Mikhail testified that, in the past, he had not documented his prescription of controlled substances in his patients' medical records. He added that his office practice has recently changed whereby prescriptions for controlled substances are copied before being given to the patient. Dr. Mikhail testified that, in medical school, he had not been taught to record every prescription in the medical record. (Tr. II 84-85).

Testimony of Patient 1

36. Patient 1 testified at hearing on behalf of Dr. Mikhail. Patient 1 testified that she had obtained a diploma in nursing in 1977, and later obtained a Bachelor's of Science in Nursing from Akron University in Akron, Ohio. Patient 1 practiced nursing from 1977 until 1988. She married Dr. Mikhail in 1980, and ceased nursing after the birth of her children. (Tr. II at 34).

    From 1993 through 2000, Patient 1 worked as an office manager for Dr. Mikhail. Her duties included overseeing office procedures, coding for insurances, and posting payments and checks from insurance companies. She did not perform clinical nursing duties. (Tr. II at 35).

37. Patient 1 testified that she has two teenage daughters, and that she is very involved in her children's lives. She testified that she is on the board of directors for the parents association at one daughter's school and has organized major fund raisers for schools. (Tr. II at 35-36).

    Patient 1 testified that she is also involved in the community. She testified that she is on the planning committee of Lorain County Alcohol and Drug Rehabilitation and is involved in church activities. Moreover, Patient 1 is responsible for the household, including everyday cleaning and laundering. (Tr. II at 37-39).

38. Patient 1 testified that she has never been diagnosed with drug abuse or alcoholism. (Tr. II at 38).

39. Patient 1 testified that she first started having migraine headaches in 1977 or 1978. Over the years, the headaches had become more frequent. The headaches were accompanied by nausea; vomiting; photophobia; difficulties with smells; and intense, pulsating pain. Patient 1 stated that the headaches occur at least three times a week. (Tr. II at 39-40).

    Patient 1 testified that she has received treatment for her headaches from several headache specialists at the Cleveland Clinic and from neurologists. She stated that her family physician is currently prescribing Fioricet and Zomig, a migraine specific medication, which provide some relief. Patient 1 testified that she knows she will live with migraine headaches for the rest of her life. (Tr. II at 40-41, 44).

40. Patient 1 testified that she also has problems with her neck. She stated that her neck problems had begun in the early 1970s. Initially, she had been unable to turn her head, and radiologic studies revealed bone spurs. The pain continued to worsen and, after the birth of a child, it became unbearable. Patient 1 testified that she had seen a neurosurgeon who

diagnosed a herniated disk in the cervical spine and recommended conservative treatment for several years. Patient 1 testified that the problem with her neck is a degenerative process that will continue to worsen. She added that she currently has a cervical disk that is herniated and pressing on the spinal cord. (Tr. II at 41-42, 44).

Patient 1 testified that, in September 2000, Dr. Sertich had performed surgery on Patient 1's neck due to increasing paresthesia. Patient 1 stated that she had been experiencing neck pain radiating down her arms to her hands until she had become effectively paralyzed. Patient 1 testified that the surgery had relieved the problems with her hands, but only temporarily relieved the neck pain. (Tr. II at 42).

Thereafter, Dr. Sertich recommended nerve blocks. (Tr. II at 42-43). Patient 1 testified that Dr. Nagy Mekhail has been performing nerve blocks which have been "a God send." She stated that the spinal blocks have decreased her neck pain to a point at which it is bearable. (Tr. II at 50).

41. Patient 1 testified that she has also had problems with her knees. She stated that, in late 1998, she had heard "a loud pop" in her right knee, followed by excruciating pain. Patient 1 testified that she had completely ruptured the meniscus on the inside portion of her right knee, and had had arthroscopic surgery and meniscectomy. In 2001, Patient 1 developed similar problems with her left knee. In August 2003, she had had the same procedure performed on the left knee. Patient 1 testified that the prognosis on her knees is bleak, and that she will require knee replacements at some point in the future. (Tr. II at 43-44, 82-83; Respondent's Exhibit [Resp. Ex.] A).

42. Regarding her pain in general, Patient 1 testified that she has pain every day with varying intensity. Some days her pain is unbearable and causes her to be unable to carry out her daily functions. She stated that she continues to need pain medications. (Tr. II at 45).

    Patient 1 testified that, over the years, she has taken every nonsteroidal medication on the market. She stated that they were either ineffective or she was allergic to them. She has also tried physical therapy, portable heat packs, acupuncture, and chiropractics. (Tr. II at 50-51). In addition, Patient 1 has tried various narcotics, including Tylenol with Codeine, Darvocet, Percocet, Vicodin and Oxycontin. (Tr. II at 45, 50-51).

    Patient 1 testified that she does not take pain medication unless she needs it. Nevertheless, although she was asked several times, Patient 1 avoided directly stating how long she can last without taking pain medication. Eventually, Patient 1 answered that, since her neck surgery, she has been unable to go three or four days without taking pain medication. She stated, however, that the amount of pain medication she takes each day varies depending on the amount of pain she has. (Tr. II at 45-46).

43. Patient 1 testified that she never took more medication than was prescribed for her. She added that she generally took less than what was prescribed and that, when the pain was

severe, she would take the full amount prescribed. Patient 1 further testified that she never took controlled substances at a greater frequency than that prescribed by her physician. Finally, Patient 1 testified that she has never obtained duplicating or overlapping prescriptions for controlled substances from two different physicians. (Tr. II at 49, 52).

Patient 1 also testified that, over the past ten years, she has never been told by a physician that she was using too many drugs, that she was abusing drugs, or that she was engaging in drug seeking behavior. (Tr. II at 56-57).

44. Patient 1 testified that she had recently been convicted in Lorain County Common Pleas Court of a felony offense of the fifth degree, theft of drugs by deception. Nevertheless, Patient 1 testified that she had never knowingly deceived any of her physicians in order to obtain drugs. Moreover, she testified that she had never withheld any information in order to obtain drugs. (Tr. II at 56). Nevertheless, Patient 1 provided wavering and inconsistent testimony regarding what had told and had not told her physicians. (Tr. II at 68-71).

Patient 1 testified regarding the forms she completed for Dr. Stanfield regarding the medications she had been taking at those times. Patient 1 testified that she had omitted narcotic medications from those forms because Dr. Stanfield had been prescribing narcotics for her at that time. She had not thought it necessary to include medications that Dr. Stanfield was prescribing. (Tr. at 62).

Patient 1 testified that, as part of her conviction, she has been referred to the probation department for an evaluation by a drug addiction specialist. She stated that she has been in contact with Gregory Collins, M.D., at the Cleveland Clinic. (Tr. II 57-58).

Testimony of Nagy Mekhail, M.D.

45. Nagy Mekhail, M.D., testified at hearing on behalf of the Respondent. Dr. Mekhail testified that he is the Chairman of the Department of Pain Management at the Cleveland Clinic. Dr. Mekhail further testified that he had graduated from medical school in 1975 and obtained a Master's Degree in 1978 and a Ph.D. in 1985. Dr. Mekhail testified that his doctoral studies were focused on synthetic augmentation of the heart. Dr. Mikhail completed a residency and fellowship in pain management at the Cleveland Clinic, and joined the staff there in 1991. He has been the Chairman of the Department of Pain Management since 2001. (Tr. II at 5-8; Resp. Ex. B).

Dr. Mekhail is board certified in anesthesiology and in pain management. Dr. Mekhail testified that pain management is a relatively new specialty in medicine. He added that the field of pain medicine began as a subspecialty of anesthesia. Dr. Mekhail explained that anesthesia is a natural home for pain medicine because anesthesiologists deal with narcotics and are trained to perform invasive procedures on the spine or the peripheral nerves. Dr. Mekhail testified that, over the past decade, pain medicine as a specialty has grown exponentially. (Tr. II at 7-8, 18).

46. Dr. Mekhail testified that he has been treating Patient 1 since February 2002, after Dr. Mikhail had contacted him for a consultation. Dr. Mekhail stated that Patient 1 had had multiple chronic pain problems, including osteoarthritis of the knees, degenerative disk disease of the cervical spine, spondylosis of the cervical spine with surgical fusion, and chronic low-back pain. Dr. Mekhail stated that Dr. Mikhail had asked Dr. Mekhail to concentrate on Patient 1's neck pain because, at that time, neck pain had been the most prominent problem. (Tr. II at 9).

    Dr. Mekhail testified that, upon examination of Patient 1, he had found some radiculopathy from the spondylosis. He added that Patient 1's range of motion had been very limited due to the pain. Dr. Mekhail administered a simple epidural that had helped with the arm pain, but the neck pain had persisted. Dr. Mekhail then administered several facet nerve blocks, which provided relief. (Tr. II at 9-10).

    Dr. Mekhail testified that he had been able to wean Patient 1 from her "dependency" on narcotics. He stated that she had been taking six Tylenol No. 3 daily, and now she takes from none to two per day. Moreover, he stated that Patient 1's functionality has improved tremendously. The range of movement of the neck is better, and she can drive a car. (Tr. II at 10).

47. Dr. Mekhail testified that Patient 1 also needs knee replacements but, in consideration of her age, it is really not wise to do a knee replacement now because the procedure will need to be repeated in five or ten years. Therefore, he is administering injections to postpone the surgery as long as possible. (Tr. II at 10-11).

48. Dr. Mekhail testified that he is familiar with Patient 1's use of narcotics and other pain control medications in the past. He added that, in his treatment of Patient 1, he has not discovered any evidence that she had abused her medications. (Tr. II at 11-12).

    Dr. Mekhail testified that, although he had used the word dependency in referring to Patient 1, he does not like the word. He stated that, more accurately stated, Patient 1 requires narcotic analgesia. He added that,

    Dr. Mekhail: Dependency is alluding to addiction. No, and there's a huge difference. Once you have pain, the question of addiction is out of the window. We are treating pain and these drugs are very effective in treating pain. When I use them in a suboptimal dose, we get into problems.

    Ms. Albers: You're not telling the Board, are you, that once somebody has a diagnosis of chronic pain, that they can never become an addict?

Dr. Mekhail: Yes, once you are treating the pain we don't worry about the addiction, because we have a problem to take care of. But if I take the same dose while I don't have any pain, yes, I can be an addict. The cancer patients never get addicted, although we give them narcotics. I have cancer patients on intraspinal opiates in large doses, but they don't get addicted.

Ms. Albers: I'm not talking about a cancer pain in this case, though. This is chronic pain, not a cancer pain.

Dr. Mekhail: Surprisingly we feel sympathy to cancer pain, but some patients with chronic benign pain is worse because they are young and healthy otherwise, other than the pain, and they cannot function. So really we need to look at it from a different perspective. We feel as medical community and society, we sympathize this guy has cancer, I can give him whatever he wants or whatever he needs, but this guy has back pain, no, I shouldn't give it, why?

(Tr. II at 18-19).

49. Dr. Mekhail testified that, in treating chronic pain, he administers controlled substances in a systemic and monitored way. Each patient signs an agreement which states that Dr. Mekhail is the only physician who can prescribe these medications and that the patient is not permitted to change the dose without first consulting Dr. Mekhail. Dr. Mekhail is permitted to take blood or urine samples at random to assess whether the patient has been taking the prescribed medication and whether the patient has been taking any recreational drugs. If the patient violates the agreement, the agreement is terminated and the patient is discharged from the service. (Tr. II at 12).

    Dr. Mekhail testified that Patient 1 has been very compliant with her agreement since February 2002. Dr. Mekhail testified that he is aware that, prior to seeing him, Patient 1 had been receiving controlled substances from a number of physicians over a period of several years. Nevertheless, Dr. Mekhail testified that Patient 1 had been undertreated in that she had not been given enough medication to control her pain. Moreover, Dr. Mekhail testified that all of Patient 1's previous medications had been short-acting narcotics which, when used without long-acting narcotics, are not effective in pain management. (Tr. II at 12-14).

50. Regarding Patient 1's prognosis, Dr. Mekhail testified that her chronic pain condition will not go away. Therefore, she will likely need narcotics and controlled substances to improve the quality of her life. Dr. Mekhail stated that it will not eliminate her pain, but will allow her to function as a wife, as a mother, and as an individual living in society. (Tr. II at 15-16).

51. Dr. Mekhail testified that he did not testify regarding Patient 1's migraine headaches because it is outside his area of expertise. He stated that Patient 1 has told him that she is being prescribed Fiorinal by another physician for her migraine headaches. (Tr. II at 17). Dr. Mekhail stated that he has not contacted the other physician to confirm the dose or schedule of Fiorinal. He acknowledged that Patient 1 has a conviction for deception to obtain drugs. (Tr. II at 31-32).

    Dr. Mekhail testified that, when completing a history and physical, he asks the patient what medications the patient is taking at the time, and what the patient has taken in the past. He also asks which medications were effective and which were not. He added that he does not always ask who is prescribing the medication to the patient. Moreover, he does not contact the other physician to verify what the patient has told him. Dr. Mekhail testified that he relies on the information provided by the patient. Dr. Mekhail testified that a patient has a responsibility to be truthful and candid with a physician about the treatments that he or she may be receiving. (Tr. II at 16, 19-21)

    He added that he does not investigate the information provided by the patient unless there are "red flags." Dr. Mekhail provided examples of red flags, including messages from pharmacists stating that another physician is prescribing for that patient, or a patient complaining of running out of medication too soon. Dr. Mekhail acknowledged that, if there are no red flags, when a patient is not being honest he would have no way of knowing. (Tr. II at 19-21).

52. Dr. Mekhail testified that, if a patient had signed an agreement with him, he would expect that the patient would not accept medications prescribed by her physician-husband unless it was an emergency. He further testified that he would expect the patient to tell him of the medications prescribed by the physician-husband during an emergency. Dr. Mekhail added that it is important to know what the patient is taking because "it's a safety measure"; if the patient takes medications from more than one physician they may have side effects and serious complications. (Tr. II at 21-22).

53. Dr. Mekhail testified that it is not appropriate to prescribe pain medication for a chronic pain patient when you know that there are many other physicians prescribing narcotic pain medications for that patient, when you do not know how many pills the patient is taking per day, when you do not have an agreement with the patient, when you do not keep medical records for that patient, when you do not review the medical records for the other physicians who are prescribing for that patient, when you do not test to see what medications the patient is or is not taking, and when you are using no additional procedures other than narcotics to treat the patient's pain. (Tr. II at 29).

Testimony of Kevin C. Martin

54. Kevin C. Martin testified at hearing on behalf of Dr. Mikhail. Mr. Martin testified that he is the President and CEO of EMH Regional Health Care System [Elyria Memorial Hospital] in

Elyria. Mr. Martin testified that Elyria Memorial Hospital is the hospital where Dr. Mikhail practices, and that he has known Dr. Mikhail for fourteen years (Tr. III at 5).

Mr. Martin testified that Elyria Memorial Hospital is a full-service hospital and is rated one of the top 100 hospitals in the United States. Moreover, it is the top rated hospital in Ohio for cardiac services and interventional cardiology. (Tr. III at 6-7).

55. Mr. Martin testified that Dr. Mikhail has been the Chair of the Department of Surgery at Elyria Memorial Hospital several times over the years. He added that Dr. Mikhail has been a long-standing heart surgeon with a very distinguished reputation and outstanding patient outcomes. Mr. Martin further testified that Dr. Mikhail is also a distinguished vascular surgeon, the only vascular surgeon in the community. Moreover, Dr. Mikhail's reputation for integrity, honesty, and respect among peers and patients is outstanding. (Tr. II at 8-11).

Mr. Martin testified that Elyria Memorial Hospital has never had a problem with Dr. Mikhail's record keeping. In fact, Mr. Martin testified that Dr. Mikhail has been "an outstanding example for his colleagues and peers in terms of records completion, legibilities and documentation excellence." Moreover, Elyria Memorial Hospital has never had any issues arise with regard to Dr. Mikhail's clinical privileges. (Tr. II at 11-12).

Letter of Support for Dr. Mikhail from Delos M. Cosgrove, M.D.

56. By letter dated August 18, 2003, Delos M. Cosgrove, M.D., Chairman of the Department of Thoracic and Cardiovascular Surgery at the Cleveland Clinic, wrote to the Board in support of Dr. Mikhail. Dr. Cosgrove wrote that,

> [Dr. Mikhail] is a conscientious, responsible and well respected surgeon with excellent professional abilities. He is well-liked by both his patients and colleagues. He has served a number of leadership positions at Elyria Memorial Hospital and has always fulfilled his duties in an exemplary fashion.
>
> I have read the charges regarding Dr. Mikhail's prescriptions to [Patient 1] and from my long-standing personal acquaintance with Dr. Mikhail, I am certain that his infractions regarding record-keeping and the prescription of controlled substances to a family member represent a singular error on his part. At no time, to my knowledge, has Dr. Mikhail failed to otherwise maintain proper medical records on his patients or to adhere to proper professional practices regarding the utilization of controlled substances. Certainly there has never been any evidence of abuse of such controlled substances by Dr. Mikhail, [Patient 1] or any other patient for whom he has rendered care.

(Resp. Ex. C). Dr. Cosgrove continued that he believes that Dr. Mikhail fully understands the errors that he made and that Dr. Mikhail is genuinely repentant and remorseful. Finally, Dr. Cosgrove asked the Board to consider the well-being of the patients of Elyria Memorial

Hospital and the community when determining appropriate discipline for Dr. Mikhail. (Resp. Ex. C).

FINDINGS OF FACT

1. From November 8, 1995, through April 10, 1998, Michael Soliman Mikhail, M.D., prescribed controlled substances to Patient 1, a family member, as follows:

Date	Quantity	Refills	Drug	Schedule
11/08/95	49		Fioricet w/ Codeine	III
05/21/96	23		Fioricet w/ Codeine	III
06/09/96	40		Tylenol w/ Codeine # 4	III
09/08/96	26		Tylenol w/ Codeine # 4	III
09/21/96	40		Tylenol w/ Codeine # 4	III
10/05/96	30		Percocet	II
12/14/96	40		Tylenol w/ Codeine # 4	III
02/22/97	40		Percocet	II
05/21/97	30		Fioricet w/ Codeine	III
05/25/97	40		Tylenol w/ Codeine # 4	III
06/21/97	30		Tylenol w/ Codeine # 4	III
06/26/97	60	4	Fioricet w/ Codeine	III
11/22/97	60		Fioricet w/ Codeine	III
12/06/97	30		Tylenol w/ Codeine # 4	III
02/21/98	30		Tylenol w/ Codeine # 4	III
03/28/98	30		Tylenol w/ Codeine # 4	III
04/10/98	30		Percocet	II

Moreover, Dr. Mikhail failed to complete and maintain any medical records reflecting any examination, evaluation, the utilization of controlled substances and/or treatment of Patient 1 as well as any diagnosis and purpose for which the controlled substances were utilized, and any additional information upon which any diagnosis was based.

2. From March 8, 1999, through October 27, 2000, and on August 14, 2001, Dr. Mikhail prescribed controlled substances to Patient 1, as follows:

Date	Quantity	Refills	Drug	Schedule
03/08/99	10		Fioricet w/ Codeine	III
03/10/99	30		Fioricet w/ Codeine	III
05/01/99	30		Tylenol w/ Codeine # 4	III
07/18/99	30		Percocet	II

12/23/99	30		Ambien	IV
12/23/99	40		Darvocet	IV
02/13/00	30		Percocet	II
03/20/00	30		Ambien	IV
03/20/00	40		Tylenol w/ Codeine # 4	III
04/08/00	40		Tylenol w/ Codeine # 4	III
04/16/00	40		Percocet	II
04/25/00	60	4	Tylenol w/ Codeine # 4	III
05/20/00	30		Percocet	II
06/17/00	30		Percocet	II
07/28/00	30		Percocet	II
08/18/00	30		Percocet	II
08/27/00	10		OxyContin 20 mg.	II
08/27/00	10		OxyContin 10 mg.	II
09/05/00	30		Vicodin	III
10/14/00	30		Vicodin	III
10/14/00	30		Ambien	IV
10/27/00	40		Vicodin	III
08/14/01	30		Ambien	IV

In addition, Dr. Mikhail failed to complete and maintain any medical records reflecting any examination, evaluation, the utilization of controlled substances and/or treatment of Patient 1 as well as any diagnosis and purpose for which the controlled substances were utilized, and any additional information upon which any diagnosis was based. Further, Dr. Mikhail failed to document any justification for prescribing controlled substances to Patient 1 that would constitute an emergency.

3. From November 19, 2000, through January 25, 2001, and from October 8, 2001 through November 24, 2001, Dr. Mikhail prescribed controlled substances to Patient 1, as follows:

Date	Quantity	Refills	Drug	Schedule
11/19/00	40		Vicodin	III
12/16/00	40		Vicodin	III
12/30/00	40		Vicodin	III
01/20/01	40		Vicodin	III
01/25/01	20		OxyContin	II
10/08/01	60	2	Fiorinal	III
11/24/01	60		Vicodin	III

Furthermore, Dr. Mikhail failed to complete and maintain accurate medical records reflecting any examination, evaluation, and/or treatment of Patient 1 as well as any diagnosis and purpose for which the controlled substances were utilized, and any additional information upon which any diagnosis was based. Further, Dr. Mikhail failed to document

any justification for prescribing controlled substances to Patient 1 that would constitute an emergency.

CONCLUSIONS OF LAW

1. The conduct of Michael Soliman Mikhail, M.D., as set forth in Findings of Fact 1 through 3, 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: 4731-11-02(D), Ohio Administrative Code, as in effect from November 17, 1986, through August 31, 2000, and since September 1, 2000.

2. Pursuant to Rule 4731-11-02(F), Ohio Administrative Code, Dr. Mikhail's violation of Rule 4731-11-02(D), Ohio Administrative Code, also violates Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code.

3. The conduct of Dr. Mikhail, as set forth in Findings of Fact 2 and 3, 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: 4731-11-08, Ohio Administrative Code, as in effect from November 11, 1998, through March 14, 2001, and since March 15, 2001.

* * * * *

The evidence presented at hearing overwhelmingly supported the State's allegations that Dr. Mikhail's conduct violated essential statutes and rules governing the practice of medicine and surgery in Ohio. In fact, Dr. Mikhail's own testimony and the testimony of Dr. Mekhail acknowledged the importance of the Board's rules prohibiting the prescribing of controlled substances to family members in situations other than emergencies. Dr. Mikhail attempted, unconvincingly, to explain his conduct by stating that he had only prescribed during what he considered to be emergencies and at times when physician's offices were closed. Rather than disturb his colleagues on evenings and weekends, Dr. Mikhail wrote prescriptions for Patient 1.

Nevertheless, the prescriptions Dr. Mikhail wrote do not support his version of events. Dr. Mikhail wrote prescriptions for amounts of drugs that were to last long after Patient 1's treating physicians were again available in their offices. For example, on April 25, 2000, Dr. Mikhail wrote a prescription for 300 tablets of Tylenol #4, to be used "as directed." On October 8, 2001, Dr. Mikhail wrote a prescription for 180 tablets of Fiorinal, a supply that would last forty-five days even if no other physicians were prescribing Fiorinal for Patient 1. Furthermore, on November 24, 2002, Dr. Mikhail wrote a prescription for 60 tablets of Vicodin, a three week supply. Finally, of the 1050 narcotic pills prescribed for Patient 1 over a one year

period, Dr. Mikhail prescribed one-quarter of them. These are not "supplemental" or "emergency" supplies of medication.

On the other hand, the evidence reveals that Dr. Mikhail's conduct was induced by the painful conditions suffered by a loved one. There is no evidence that Dr. Mikhail was motivated by greed or self-interest when he engaged in this inappropriate conduct. Moreover, Dr. Mikhail ceased prescribing for Patient 1 as soon as he learned that his conduct was inappropriate. Furthermore, Dr. Mikhail was cooperative and forthright during the investigation, and appeared to be genuinely remorseful at hearing. Finally, and most significantly, there is little chance that Dr. Mikhail will repeat his transgressions at any time in the future.

PROPOSED ORDER

It is hereby ORDERED that:

A. **SUSPENSION, STAYED:** The certificate of Michael Soliman Mikhail, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than ninety days. Such suspension is STAYED, subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years.

1. **Obey the Law**: Dr. Mikhail shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.

2. **Declarations of Compliance**: Dr. Mikhail shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. **Personal Appearances**: Dr. Mikhail shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

4. **Controlled Substances Prescribing Course**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Mikhail shall provide acceptable documentation of successful completion of a course dealing with the prescribing of controlled substances. The exact number of hours and the specific

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

5. **Medical Records Course**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Mikhail shall complete a course on maintaining adequate and appropriate medical records, such course to be approved in advance by the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.

6. **Tolling of Probationary Period While Out of State**: In the event that Dr. Mikhail should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Mikhail must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.

7. **Noncompliance Will Not Reduce Probationary Period**: In the event Dr. Mikhail is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.

8. **Violation of Terms of Probation**: If Dr. Mikhail violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

B. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Mikhail's certificate will be fully restored.

C. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS**: Within thirty days of the effective date of this Order, Dr. Mikhail shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Mikhail shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

D. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES**: Within thirty days of the effective date of this Order, Dr. Mikhail shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Mikhail shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Mikhail shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

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

Sharon W. Murphy
Hearing Examiner

State Medical Board of Ohio

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

EXCERPT FROM THE DRAFT MINUTES OF NOVEMBER 12, 2003

REPORTS AND RECOMMENDATIONS

Mr. Browning announced that the Board would now consider the findings and orders appearing on the Board's agenda. He 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: Anne McRae Botti, M.D.; Lyon L. Gleich, M.D.; James Charles Helphenstine, D.O.; George H. Ilodi, D.P.M.; and Michael Soliman Mikhail, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Mr. Browning	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye

Dr. Robbins	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye
Mr. Browning	- aye

Mr. Browning 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.

Mr. Browning 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.

.....

MICHAEL SOLIMAN MIKHAIL, M.D.

Mr. Browning directed the Board's attention to the matter of Michael Soliman Mikhail, M.D. He advised that no objections were filed to Hearing Examiner Murphy's Report and Recommendation.

Mr. Browning continued that a request to address the Board has been timely filed on behalf of Dr. Mikhail, but were not filed in a timely manner. He asked whether the Board wished to grant Dr. Mikhail's request to address.

DR. BHATI MOVED TO GRANT DR. MIKHAIL'S REQUEST TO ADDRESS THE BOARD. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.

Mr. Browning advised that Dr. Mikhail will be permitted to address the Board. Five minutes would be allowed for that address.

Dr. Mikhail was accompanied to the meeting by his counsel, John R. Irwin, M.D., Esq. Dr. Irwin explained that he was at fault for the late request to address the Board. He also introduced Dr. Mikhail to the Board.

Dr. Mikhail thanked the Board for the opportunity to address it. He expressed his apology for what happened. Through the entire proceeding he was very grateful that everyone showed him the most professional courtesy and respect.

Dr. Mikhail stated that he is at fault for prescribing medication for his wife, who suffers from multiple medical problems. She has been seen by more then 30 physicians and has undergone several surgical procedures. Dr. Mikhail stated that he did prescribe medications for her, but he failed to keep up with the rules and regulations of the Board. Dr. Mikhail at this time acknowledged that he also failed to keep strict medical records for the prescriptions he wrote. He asked for the Board's forgiveness, and stated that he is very sorry. He stated that he has learned a lot. Since this matter came to his attention two years ago, he hasn't written any prescriptions for his wife, and he applies very strict rules in his practice. Dr. Mikhail stated that he's learned a lot from the Board's rules and regulations, and he understands why the Board has imposed them.

Dr. Mikhail stated that he has been in Ohio for 28 years, and he carries a very active license. He feels that having his license is an honor and a privilege. He never had an experience like this in his life. Since then, he's acting as an active voice. He's senior member of staff and a member of many committees. He talks to his friends and colleagues and advises them not to prescribe for family members, because he doesn't feel anybody should face the experience he's faced. He's arranged for his attorney, Dr. Irwin, to address the medical staff and update them with the rules and regulations. It's very hard to keep up with everything.

Dr. Mikhail stated that he believes this experience will make him a better doctor, caring for his patients and community, and caring for his wife, whom he loves very much.

Mr. Browning asked whether the Assistant Attorney General wished to respond.

Ms. Albers stated that the Report and Recommendation does a great job of setting out the evidence in this case: the number of prescriptions that were issued, and the length of time that the prescribing went on.

Ms. Albers stated that she was very concerned about several issues in this case. The first was the doctor's admission that he had no idea that the Board had rules on prescribing controlled substances and that he was not aware of the rules about prescribing controlled substances to family. She was very concerned by the fact that a physician practicing for 25 years was that ignorant of the law and rules governing the practice of

medicine. She was also very concerned about his explanation for why he prescribed – in emergencies or when physicians' offices were closed. When you look at the scripts in the record, you will see that many of them were written during weekdays and a lot of them had many, many refills on them. Ms. Albers stated that she was also concerned by the fact that Dr. Mikhail kept no records on prescriptions for his wife at all. Ms. Albers asked that the Board take those factors into consideration when determining whether or not it wants to adopt an order that does not contain any suspension time.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF MICHAEL SOLIMAN MIKHAIL, M.D. DR. KUMAR SECONDED THE MOTION.

Mr. Browning stated that he would now entertain discussion in the above matter.

Dr. Egner stated that she finds this to be a very light recommendation, outside the guidelines on every count. Dr. Egner stated that she doesn't know how a physician cannot be aware of this rule. She's a little surprised that the pharmacist would write out a prescription for his signature when he indicated that he wanted the medication for his wife. She questioned the fact that no one ever told Dr. Mikhail that he couldn't do that, and suggested that they might have. Dr. Egner stated that it's hard for her to believe that no one ever told Dr. Mikhail that he shouldn't be doing that.

Dr. Egner continued that when the detective informed Dr. Mikhail that he was in violation of the law, Dr. Mikhail responded that it is a poor law. Dr. Egner stated that it's not a poor law; it's an important law. Not only did Dr. Mikhail break the law, but his prescribing to his wife was outlandish. It wasn't prescribing in an appropriate manner. Dr. Mikhail doesn't seem to be aware of tolerance and dependence and abuse of these medications. Dr. Egner stated that she's glad that Dr. Mikhail's wife is getting appropriate care, but these are problems. Dr. Mikhail is in a specialty where he is prescribing narcotics to patients on a fairly regular basis. Every post-op patient needs narcotics. If Dr. Mikhail's knowledge of this is demonstrated by what the Board sees today, she's concerned about how he takes care of his own patients. She noted that Dr. Mikhail admitted in his testimony that he did very little recordkeeping for his own patients when he wrote them prescriptions for narcotics.

Dr. Egner stated that she would like to see a suspension in this case, as well as a longer probation. She believes that a six-month suspension and a three to four year probation would be appropriate.

DR. EGNER MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER TO ORDER A SIX-MONTH SUSPENSION AND A THREE-YEAR PROBATIONARY PERIOD. DR. STEINBERGH SECONDED THE MOTION.

Dr. Steinbergh stated that she agrees with Dr. Egner and her assessment, which is very similar to hers. The Proposed Order does require a controlled substance prescribing course and a medical records course, which is appropriate. Dr. Steinbergh stated that Dr. Mikhail's address to the Board meant something to her. He now realizes that he's been inappropriate in his prescribing. Dr. Steinbergh commented that the fact that

Dr. Mikhail is willing to educate other physicians on staff, and so forth, is appropriate. It's too bad he had to go through this in order to educate others, but this was a rather egregious case of prescribing to his wife. Dr. Steinbergh stated that she believes Dr. Mikhail has been very contrite and appropriate in his response to the Board. She doesn't think it will happen again, but there is a price to pay for his having done this. She does agree with Dr. Egner's proposal for a six-month suspension and three-year probation.

Dr. Buchan stated that to say that Dr. Mikhail's prescriptive practices were reckless would be the understatement of the year. He stated that he doesn't think you need a rule to understand that you don't write prescriptions, one day after another, for 40 to 60 Fioricet with codeine, two days apart, some times one day apart. There doesn't need to be a rule that you don't go 120 miles per hour down the highway.

Dr. Buchan stated that Dr. Mikhail does understand the rules and what is appropriate now. He believes that the probability of Dr. Mikhail's re-offending is low. It was reckless initially, but Dr. Mikhail now understands very well what is proper in prescriptive practice. Dr. Buchan stated that the Proposed Order, as initially written, is appropriate.

Dr. Kumar stated that what Dr. Mikhail did was out of compassion for his wife and his feelings that she was not getting appropriate care. Dr. Kumar stated that he believes that in the process of writing all of those prescriptions, Dr. Mikhail did more harm than actual helping her in many aspects. Dr. Kumar stated that it appears that Dr. Mikhail won't repeat this particular kind of offense again. He stated that he doesn't believe a suspension would serve any purpose; although a longer probation period might be of some benefit.

Dr. Kumar suggested that the Order contain a prohibition from Dr. Mikhail's ever writing prescriptions for his family. He stated that this is implied in the Report and Recommendation, but isn't stated anywhere. He stated that he would be in support of keeping the suspension as Ms. Murphy proposed, keeping probationary terms, and adding a prohibition from his prescribing for family.

Dr. Robbins agreed with Dr. Buchan and Dr. Kumar. He stated that it's impossible for Dr. Mikhail to justify his actions, but he believes that Dr. Mikhail made an excellent statement. Dr. Robbins stated that he's having difficulty seeing the benefits of a significant suspension. He would have no problem with imposing a longer probationary period, but he believes the Proposed Order, as initially written, would be more appropriate.

Dr. Steinbergh stated that a stayed suspension in this case is clearly outside the Board's disciplinary guidelines, and that's why she believes some suspension is appropriate. She stated that she does believe that Dr. Mikhail will not repeat what he's done, but he has done it. His prescribing was horrific and he deserves some suspension. The probationary period, of course, is to monitor his practice and to make certain that he doesn't do this again.

Dr. Steinbergh added that she agrees with Dr. Kumar about adding language that Dr. Mikhail may not prescribe for family members. She stated that the Board has done that in other cases, and she feels that

such a restriction is appropriate. Dr. Steinbergh stated that she does believe that Dr. Mikhail needs some suspension because of his inappropriate prescribing.

Dr. Davidson agreed that what Dr. Mikhail did was out of compassion, and she's very sympathetic to the dilemmas of pain patients and their families. The Report and Recommendation described Dr. Mikhail's case very well, and she trusts that he and his wife are on a different path now. She doubts strongly that Dr. Mikhail will repeat this; therefore, she doesn't believe that a long probation serves much purpose. A six-month suspension is too long but staying the suspension seems too short. She would be in favor of the 90-day suspension to be served.

Dr. Bhati stated that things did happen. Dr. Mikhail did the wrong thing, whether done for compassionate reasons or whatever. The good thing is that Dr. Mikhail admits he did the wrong thing, he realizes it, and is now trying to teach others. Dr. Bhati stated that he believes that the chances of Dr. Mikhail having a recurrence of this problem are close to zero. He asked what the Board will gain by a 90-day or half-year suspension. He doesn't believe a longer suspension period will benefit the Board. He does think that a longer probationary period is necessary. He would be willing to vote for the Report and Recommendation, as it was originally written.

Dr. Egner stated that she would be willing to reduce the proposed suspension to 90 days, just dropping the proposed stay. Dr. Egner stated that she does want to make one point, and that is that the majority of physicians, by the time they appear before the Board, do realize what they did wrong. They've been through the court process, the hearing process and then they appear before the full Board. They have had plenty of time, in most cases, to realize what they did wrong, and they've had a lot of time to reflect on it. Most physicians are not repeat offenders, especially if you take out impairment cases. Dr. Egner stated that, to say that he probably won't do this again, the Board could say that about many cases for which the Board still suspends licenses. She added that there is a role in suspending licenses. She is in favor of suspension, not because she thinks that Dr. Mikhail is going to do this again, but he broke a law that he should have known about. Dr. Egner stated that she knows that there are many rules and parts of the Medical Practices Act that perhaps not every physician knows about, but this is one the Board has written about in its newsletter on multiple occasions. It is talked about in medical staffs. The pharmacists know about this, and they keep physicians abreast of this.

DR. EGNER ASKED TO CHANGE HER AMENDMENT TO REMOVE THE STAY IN THE ORIGINAL ORDER, AND TO KEEP THE 3-YEAR PROBATION. DR. STEINBERGH, AS SECOND, AGREED TO THE CHANGE.

Dr. Bhati stated that Dr. Egner's motion is reasonable. Dr. Mikhail did do something wrong, and he must understand that.

Dr. Kumar stated that he would support eliminating the stay on the suspension, and adding a requirement that he not prescribe to family members.

Dr. Egner stated that there is an exception under emergency situations. Is the Board saying that Dr. Mikhail cannot prescribe to family members under any circumstances?

Mr. Dilling stated that the Board has a rule that prescribing to family members can be done only in an emergency situation. The Board does have the power to limit a person's license beyond the rule; however, in these types of cases, there is already a rule on the books. What the Board has seen in the past has been physicians whose licenses are limited, based on a law that is in place, has that limitation permanently on his record for his lifetime and can't shake that. What the Board would be doing is to reiterate a point that is already made in the law. He suggested that it is not needed in this particular instance.

Dr. Davidson stated that the suggestion is to permanently prohibit Dr. Mikhail from prescribing anything to his family.

Dr. Steinbergh stated that that would permanently restrict Dr. Mikhail's license in a way that could cause him difficulties with managed care and a variety of things. There is a rule in place. Dr. Mikhail committed an offense against that rule and he is being disciplined for that. There is no evidence that this occurred with other patients.

Dr. Kumar stated that he was implying that the restriction should be placed on Dr. Mikhail's license during the probationary period.

Dr. Steinbergh and Dr. Bhati spoke against the proposal to prohibit Dr. Mikhail from prescribing to family.

Dr. Buchan stated that he feels that the Order, as amended, is heavy handed and he feels that it is unnecessary. This was one patient, the physician's wife, and he can't move to support a suspension.

Dr. Robbins agreed with Dr. Buchan. He stated that he has a lot of difficulty seeing what a suspension in this situation is going to do. There is certainly no evidence, as the Hearing Examiner said, that Dr. Mikhail was motivated by greed or self-interest. He ceased his prescribing for his wife. There's no question that he should have known that he shouldn't have done it, and there's no question about the facts. Dr. Robbins stated that he has a very hard time seeing what a suspension accomplishes here.

Dr. Davidson stated that she has mixed feelings about calling this "making an example" of someone, because she thinks that he is doing a very positive thing in addressing his own medical staff and educating them in ways that he felt that he was not educated; however, if Dr. Mikhail goes back to his medical staff and says he got nothing, the message may very well be that he did nothing wrong. If he goes back and addresses the staff during the suspension, it will be obvious that this was doing something very wrong.

Dr. Buchan suggested that anyone who sits at that end of the table has been through quite a bit. The point has been well made, and for Dr. Mikhail to be an ambassador for the Board's rules shows that he understands.

Dr. Bhati asked whether Dr. Egner would be willing to give Dr. Mikhail credit for his presentations to staff and lessen the 90-day suspension.

Dr. Talmage returned to the meeting at this time.

Dr. Egner stated that she'd rather vote on her motion.

Ms. Sloan stated that, in looking at this case, she does have mixed emotions about it. She doesn't have mixed emotions about the fact that the Board has guidelines in place. Not having a suspension would be going against those guidelines. Ms. Sloan stated that she has to agree with Dr. Egner's motion about the 90-day suspension.

Dr. Bhati stated that he thinks that everyone agrees on the necessity of a suspension period, he is only suggesting a shorter period based on Dr. Mikhail's playing an ambassadorial role. He stated that there are a lot of physicians who don't get the fact that they shouldn't be writing prescriptions for their families.

Dr. Steinbergh commented that Dr. Mikhail's prescribing was egregious.

Dr. Bhati agreed. He suggested a 60-day suspension.

Dr. Egner asked for a vote on her motion.

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- nay
	Dr. Buchan	- nay
	Dr. Kumar	- abstain
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- nay
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye
	Mr. Browning	- nay

The motion failed for lack of a majority.

DR. BHATI MOVED TO REDUCE THE SUSPENSION PERIOD TO 30 DAYS, TO ELIMINATE THE STAY, AND TO HAVE A THREE-YEAR PROBATIONARY PERIOD. DR. ROBBINS SECONDED THE MOTION. A vote was taken:

Vote:		
	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- nay
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- nay
	Dr. Robbins	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.

DR. BHATI MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF MICHAEL SOLIMAN MIKHAIL, M.D. DR. KUMAR SECONDED THE MOTION. A vote was taken:

Vote:		
	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.

State Medical Board of Ohio

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

April 2, 2003

Michael Soliman Mikhail, M.D.
Cleveland Clinic Elyria
125 East Broad Street.
Elyria, OH 44035

Dear Doctor Mikhail:

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 Schedule II, III and IV controlled substances to Patient 1, a family member (as identified on the attached Patient Key- Key confidential to be withheld from public disclosure) as follows.

a. During the period on or about November 8, 1995, through April 10, 1998, you prescribed controlled substances to Patient 1 as follows:

Date	Quantity	Refills	Drug	Schedule
11/08/95	49		Fioricet w/ Codeine	III
05/21/96	23		Fioricet w/ Codeine	III
06/09/96	40		Tylenol w/ Codeine # 4	III
09/08/96	26		Tylenol w/ Codeine # 4	III
09/21/96	40		Tylenol w/ Codeine # 4	III
10/05/96	30		Percocet	II
12/14/96	40		Tylenol w/ Codeine # 4	III
02/22/97	40		Percocet	II
05/21/97	30		Fioricet w/ Codeine	III
05/25/97	40		Tylenol w/ Codeine # 4	III
06/21/97	30		Tylenol w/ Codeine # 4	III
06/26/97	60	4	Fioricet w/ Codeine	III
11/22/97	60		Fioricet w/ Codeine	III
12/06/97	30		Tylenol w/ Codeine # 4	III
02/21/98	30		Tylenol w/ Codeine # 4	III
03/28/98	30		Tylenol w/ Codeine # 4	III
04/10/98	30		Percocet	II

Mailed 4/3/03

You failed to complete and maintain any medical records reflecting any examination, evaluation, the utilization of controlled substances and/or treatment of Patient 1 as well as any diagnosis and purpose for which the controlled substances reflected in the above prescriptions were utilized, and any additional information upon which any diagnosis was based.

b. During the period on or about March 8, 1999, through October 27, 2000, and on or about August 14, 2001, you prescribed controlled substances to Patient 1 as follows:

Date	Quantity	Refills	Drug	Schedule
03/08/99	10		Fioricet w/ Codeine	III
03/10/99	30		Fioricet w/ Codeine	III
05/01/99	30		Tylenol w/ Codeine # 4	III
07/18/99	30		Percocet	II
12/23/99	30		Ambien	IV
12/23/99	40		Darvocet	IV
02/13/00	30		Percocet	II
03/20/00	30		Ambien	IV
03/20/00	40		Tylenol w/ Codeine # 4	III
04/08/00	40		Tylenol w/ Codeine # 4	III
04/16/00	40		Percocet	II
04/26/00	40	4	Tylenol w/ Codeine # 4	III
05/20/00	30		Percocet	II
06/17/00	30		Percocet	II
07/28/00	30		Percocet	II
08/18/00	30		Percocet	II
08/27/00	10		Oxycontin 20 mg.	II
08/27/00	10		Oxycontin 10 mg.	II
09/06/00	30		Vicodin	III
10/14/00	30		Vicodin	III
10/14/00	30		Ambien	IV
10/27/00	40		Vicodin	III
08/14/01	30		Ambien	IV

You failed to complete and maintain any medical records reflecting any examination, evaluation, the utilization of controlled substances and/or treatment of Patient 1 as well as any diagnosis and purpose for which the controlled substances reflected in the above prescriptions were utilized, and any additional information upon which any diagnosis was based. Further, you failed to document any justification for prescribing controlled substances to Patient 1 that would constitute an emergency.

c. During the period on or about November 19, 2000, through January 25, 2001, and October 8, 2001 through November 24, 2001, you prescribed controlled substances to Patient 1 as follows:

Date	Quantity	Refills	Drug	Schedule
11/19/00	40		Vicodin	III
12/16/00	40		Vicodin	III
12/30/00	40		Vicodin	III
01/20/01	40		Vicodin	III
01/25/01	20		Oxycontin	II
10/08/01	60	2	Fiorinal	III
11/24/01	60		Vicodin	III

You failed to complete and maintain accurate medical records reflecting any examination, evaluation, and/or treatment of Patient 1 as well as any diagnosis and purpose for which the controlled substances reflected in the above prescriptions were utilized, and any additional information upon which any diagnosis was based. Further, you failed to document any justification for prescribing controlled substances to Patient 1 that would constitute an emergency.

Your acts, conduct, and/or omissions as alleged in paragraph (1) 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: 4731-11-02(D), Ohio Administrative Code, as in effect from November 17, 1986, through August 31, 2000, and since September 1, 2000. Pursuant to Rule 4731-11-02(F), Ohio Administrative Code, violation of Rule 4731-11-02(D), Ohio Administrative Code, also violates Sections 4731.22(B)(2) and (6), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1)(b) and (c) 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: 4731-11-08, Ohio Administrative Code, as in effect from November 11, 1998, through March 14, 2001, and since March 15, 2001.

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

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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Anand G. Garg, M.D.
Secretary

AGG/blt
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5148 0724
RETURN RECEIPT REQUESTED

cc: John S. Haynes, Esq.
134 Middle Avenue
Elyria, OH 44035

CERTIFIED MAIL # 7000 0600 0024 5148 1745
RETURN RECEIPT REQUESTED