

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :
:
HARRY P. NGUYEN, M.D. :

ENTRY NUNC PRO TUNC

By Order of the State Medical Board of Ohio on April 14, 1999, the certificate of Harry P. Nguyen, M.D., to practice medicine and surgery was permanently revoked. Such revocation was stayed by the Board, subject to the indefinite suspension of Dr. Nguyen's certificate for not less than one year.

In order to allow Dr. Nguyen to complete the retraining required by paragraph 2b of the April 14, 1999 Board Order, the following is hereby substituted for that Order in its entirety:

It is hereby ORDERED that:

1. The certificate of Harry Nguyen, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Nguyen's certificate is SUSPENDED for an indefinite period of time.
2. The Board shall not consider reinstatement of Dr. Nguyen's certificate to practice unless all of the following minimum requirements have been met:
 - a. Dr. Nguyen shall submit an application for reinstatement, accompanied by appropriate fees.
 - b. Dr. Nguyen shall take and pass an examination to be administered by the Board or its designee related to the content of the *DEA Physician's Manual*, which manual may be obtained from the offices of the Board. In the event that Dr. Nguyen fails this examination, he must wait at least three months between re-examinations. Dr. Nguyen must pass this examination before submitting his application for reinstatement.

- c. Upon submission of his application for reinstatement, Dr. Nguyen 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 [CME] requirements for relicensure for the CME acquisition period(s) in which they are completed.
 - d. Upon submission of his application for reinstatement, Dr. Nguyen shall provide acceptable documentation of satisfactory completion of 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 CME requirements for relicensure for the CME acquisition period(s) in which they are completed.
 - e. In the event that Dr. Nguyen has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.
3. Upon reinstatement, Dr. Nguyen's certificate shall be LIMITED to participation in a post-graduate training program in the area of internal medicine of at least six-months duration. Such program shall be approved in advance by the Board. Dr. Nguyen shall provide the Board with acceptable documentation verifying successful completion of such program.
4. Upon his satisfactory completion of the requirements set forth in paragraph 3, the limitation set forth in paragraph 3, above, shall be terminated, on the condition that Dr. Nguyen complies with the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
- a. Dr. Nguyen shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.
 - b. Dr. Nguyen shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 - c. Dr. Nguyen shall appear in person for interviews before the full Board or its designated representative within three months of the date in which probation becomes effective, at three month intervals thereafter, and upon his request for termination of the probationary period, or as otherwise requested by the Board.

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

- d. Dr. Nguyen shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of probation. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
- e. Prior to the termination of the limitation set forth in paragraph 3, above, Dr. Nguyen shall submit to the Board and receive its approval for a plan of practice in Ohio which, until otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Nguyen's activities will be directly supervised and overseen by a monitoring physician approved in advance by the Board. The monitoring physician shall monitor Dr. Nguyen and his patient charts. The chart review may be done on a random basis, with the number of charts reviewed to be determined by the Board. The monitoring physician shall provide the Board with reports on Dr. Nguyen's progress and status and on the status of his patient charts on a quarterly basis, or as otherwise directed by the Board. All monitoring physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Nguyen's quarterly declaration. It is Dr. Nguyen's responsibility to ensure that the reports are timely submitted.

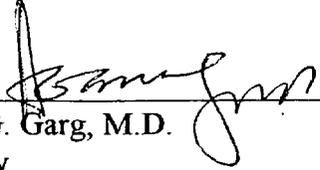
Dr. Nguyen shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

In the event that the approved monitoring physician becomes unable or unwilling to serve, Dr. Nguyen shall immediately notify the Board in writing and shall make arrangements for another monitoring physician as soon as practicable. Dr. Nguyen shall refrain from practicing until such supervision is in place, unless otherwise determined by the Board. Dr. Nguyen shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

- f. Dr. Nguyen shall keep a log of all controlled substances purchased, prescribed, dispensed, or administered. Such log shall be submitted in the format approved by the Board thirty (30) days prior to Dr. Nguyen's personal appearances before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Nguyen shall make his patient records with regard to such prescribing available for review by an agent of the Board upon request. Dr. Nguyen shall not seek the Board's approval for a change in this provision for a minimum of one year from the reinstatement of his certificate.
 - g. When working in an emergency department, Dr. Nguyen shall have all orders and/or prescriptions for controlled substances as defined by State or Federal law, countersigned within twenty-four (24) hours by a physician who is fully authorized under state and federal law to prescribe, dispense and administer controlled substances and who is employed and/or has privileges in the hospital or institution in which Dr. Nguyen is employed and/or has privileges. Dr. Nguyen shall not seek the Board's approval for a change in this provision for a minimum of one year from the reinstatement of his certificate.
 - h. Within thirty days of reinstatement of his certificate, Dr. Nguyen shall provide a copy of this Order to all employers or entities with which he is under contract to provide physician services or is receiving training, and the Chief of Staff at each hospital where Dr. Nguyen has privileges or appointments. Further, Dr. Nguyen shall provide a copy of this Order to all employers or entities with which he contracts to provide physician services, or applies for or receives training, and the Chief of Staff at each hospital where Dr. Nguyen applies for or obtains privileges or appointments.
 - i. If Dr. Nguyen violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may set aside the stay order and impose the permanent revocation of Dr. Nguyen's certificate.
4. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Nguyen's certificate will be fully restored.

The above Order shall be retroactive to May 27, 1999.

So ORDERED this 6th day of April, 2000.


Anand G. Garg, M.D.
Secretary



State Medical Board of Ohio

750 High Street, Columbus, Ohio 43260-1212 • Phone: (614) 467-8888 • Telefax: (614) 467-8889 • Website: www.smb.ohio.gov

April 14, 1999

Harry P. Nguyen, M.D.
2639 Edington Road
Upper Arlington, OH 43221

Dear Doctor Nguyen:

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 April 14, 1999, including motions approving and confirming the Findings of Fact, modifying the Conclusions of the Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO

Handwritten signature of Anand G. Garg in black ink.

Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. Z 233 839 185
RETURN RECEIPT REQUESTED

cc: Gloria Washington, Esq.
CERTIFIED MAIL RECEIPT NO. Z 233 839 184
RETURN RECEIPT REQUESTED

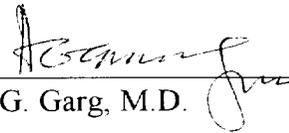
William M. Todd, Esq.
CERTIFIED MAIL RECEIPT NO. Z 233 839 209
RETURN RECEIPT REQUESTED

Mailed 4/26/99

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 April 14, 1999, including motions approving and confirming the Findings of Fact, modifying the Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Harry P. Nguyen, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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



Anand G. Garg, M.D.
Secretary

(SEAL)

April 14, 1999
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

HARRY P. NGUYEN, M.D.

*

ENTRY OF ORDER

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

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:

1. The certificate of Harry Nguyen, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Nguyen's certificate is SUSPENDED for an indefinite period of time, but not less than one year.
2. The Board shall not consider reinstatement of Dr. Nguyen's certificate to practice unless all of the following minimum requirements have been met:
 - a. Dr. Nguyen shall submit an application for reinstatement, accompanied by appropriate fees.
 - b. Dr. Nguyen shall take and successfully complete at least six months of training in a post-graduate training program, approved in advance by the Board, in the area of internal medicine. Dr. Nguyen shall provide the Board with acceptable documentation verifying successful completion of such program.

- c. Dr. Nguyen shall take and pass an examination to be administered by the Board or its designee related to the content of the *DEA Physician's Manual*, which manual may be obtained from the offices of the Board. In the event that Dr. Nguyen fails this examination, he must wait at least three months between re-examinations. Dr. Nguyen must pass this examination before submitting his application for reinstatement.
 - d. Upon submission of his application for reinstatement, Dr. Nguyen 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 [CME] requirements for relicensure for the CME acquisition period(s) in which they are completed.
 - e. Upon submission of his application for reinstatement, Dr. Nguyen shall provide acceptable documentation of satisfactory completion of 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 CME requirements for relicensure for the CME acquisition period(s) in which they are completed.
 - f. Upon submission of his application for reinstatement, Dr. Nguyen shall submit to the Board and receive its approval for a plan of practice in Ohio which, until otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Nguyen's activities will be directly supervised and overseen by a monitoring physician approved in advance by the Board. The monitoring physician shall monitor Dr. Nguyen and his patient charts. The monitoring physician shall provide the Board with reports on Dr. Nguyen's progress and status and on the status of his patient charts on a quarterly basis or as otherwise directed by the Board.
 - g. In the event that Dr. Nguyen has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.
3. Upon reinstatement, Dr. Nguyen's certificate shall be subject to the following **PROBATIONARY** terms, conditions, and limitations for a period of at least five years:

- a. Dr. Nguyen shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.
- b. Dr. Nguyen shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
- c. Dr. Nguyen shall appear in person for interviews before the full Board or its designated representative within three months of the date in which probation becomes effective, at three month intervals thereafter, and upon his request for termination of the probationary period, or as otherwise requested by the Board.

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

- d. Dr. Nguyen shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of probation. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
- e. Dr. Nguyen's practice shall be limited to a supervised structured environment in which Dr. Nguyen's activities will be directly supervised and overseen by the monitoring physician approved in advance by the Board. The monitoring physician shall monitor Dr. Nguyen and his patient charts. The chart review may be done on a random basis, with the number of charts reviewed to be determined by the Board. The monitoring physician shall provide the Board with reports on Dr. Nguyen's progress and status and on the status of his patient charts on a quarterly basis. All monitoring physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Nguyen's quarterly declaration. It is Dr. Nguyen's responsibility to ensure that the reports are timely submitted.

Dr. Nguyen shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

In the event that the approved monitoring physician becomes unable or unwilling to serve, Dr. Nguyen shall immediately notify the Board in writing and shall make arrangements for another monitoring physician as soon as practicable. Dr. Nguyen shall refrain from practicing until such supervision is in place, unless otherwise determined by the Board. Dr. Nguyen shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

- f. Dr. Nguyen shall keep a log of all controlled substances purchased, prescribed, dispensed, or administered. Such log shall be submitted in the format approved by the Board thirty (30) days prior to Dr. Nguyen's personal appearances before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Nguyen shall make his patient records with regard to such prescribing available for review by an agent of the Board upon request. Dr. Nguyen shall not seek the Board's approval for a change in this provision for a minimum of one year from the reinstatement of his certificate.
 - g. When working in an emergency department, Dr. Nguyen shall have all orders and/or prescriptions for controlled substances as defined by State or Federal law, countersigned within twenty-four (24) hours by a physician who is fully authorized under state and federal law to prescribe, dispense and administer controlled substances and who is employed and/or has privileges in the hospital or institution in which Dr. Nguyen is employed and/or has privileges. Dr. Nguyen shall not seek the Board's approval for a change in this provision for a minimum of one year from the reinstatement of his certificate.
 - h. Within thirty days of reinstatement of his certificate, Dr. Nguyen shall provide a copy of this Order to all employers or entities with which he is under contract to provide physician services or is receiving training, and the Chief of Staff at each hospital where Dr. Nguyen has privileges or appointments. Further, Dr. Nguyen shall provide a copy of this Order to all employers or entities with which he contracts to provide physician services, or applies for or receives training, and the Chief of Staff at each hospital where Dr. Nguyen applies for or obtains privileges or appointments.
 - i. If Dr. Nguyen violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may set aside the stay order and impose the permanent revocation of Dr. Nguyen's certificate.
4. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Nguyen's certificate will be fully restored.

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

(SEAL)



Anand G. Garg, M.D.
Secretary

April 14, 1999
Date

STATE MEDICAL BOARD
OF OHIO

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**REPORT AND RECOMMENDATION
IN THE MATTER OF HARRY P. NGUYEN, M.D.**

The Matter of Harry P. Nguyen, M.D., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio, on November 23 and 24, and December 21, 1998; and January 15, 1999.

INTRODUCTION

I. Basis for Hearing

A. By letter dated August 12, 1998, the State Medical Board of Ohio [Board] notified Harry P. Nguyen, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action on Dr. Nguyen's care and treatment of four specified patients. (See State's Exhibit 5T). The Board alleged that Dr. Nguyen's conduct in treating these patients constitutes violations of the following statutory provisions:

1. "[f]ailure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease,' as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code";
2. "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established,' as that clause is used in Section 4731.22(B)(6), Ohio Revised Code"; and
3. "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."

The Board further alleged that, pursuant to Rule 4731-11-02(F), Ohio Administrative Code, a violation of Rule 4731-11-02(D), Ohio Administrative Code, is also a violation of Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code. Accordingly, the Board advised Dr. Nguyen of his right to request a hearing in this matter. (State's Exhibit 5A).

B. On August 25, 1998, Gloria Washington, Esq., submitted a written hearing request on behalf of Dr. Nguyen. (State's Exhibit 5B).

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II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Rebecca J. Albers and Anne B. Strait, Assistant Attorneys General.
- B. On behalf of the Respondent: Gloria Washington and William M. Todd, Esqs.

EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State

- 1. Harry P. Nguyen, M.D., as if on cross-examination
- 2. George E. Kikano, M.D.

B. Presented by the Respondent

- 1. Harry P. Nguyen, M.D.
- 2. Steve McKee, M.D.
- 3. Nino DiIullo, M.D.
- 4. William David Leak, M.D.
- 5. James H. Nelson III, M.D.
- 6. Michael L. Brown

II. Exhibits Examined

A. Presented by the State

- 1. State's Exhibit 1: Medical records for Patient 1 as maintained by Dr. Nguyen.
- * 2. State's Exhibit 2A: Medical records for Patient 2 as maintained by Dr. Nguyen.
- * 3. State's Exhibit 2B: Medical records for Patient 2 as maintained by the Columbus Community Hospital [CCH].
- * 4. State's Exhibit 3A: Medical records for Patient 3 as maintained by Dr. Nguyen.
- * 5. State's Exhibit 3B: Medical records for Patient 3 as maintained by CCH.
- * 6. State's Exhibit 4A: Medical records for Patient 4 as maintained by Dr. Nguyen.

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- * 7. State's Exhibit 4B: Medical records for Patient 4 as maintained by CCH.
8. State's Exhibits 5A-5Z: Procedural exhibits. (Note: State's Exhibit 5T is a patient key which will remain sealed to protect patient confidentiality.)
9. State's Exhibit 6: Curriculum vitae of George E. Kikano, M.D.

B. Presented by the Respondent

1. Respondent's Exhibit L: Deposition of James H. Nelson III, M.D.
 - * a. Exhibit G-I: Excerpts from the medical records of Patient 2 as maintained by Dr. Nguyen.
 - * b. Exhibit J: Copies of letters to Dr. Nguyen from Dr. Nelson regarding Patient 2.
 - * c. Exhibit K: Copy of September 23, 1998, letter to the Board from Dr. Nelson regarding Patient 2.
2. Respondent's Exhibit Y: Curriculum vitae of William David Leak, M.D.
3. Respondent's Exhibit Z: Diagram of vertebrae drawn by Dr. Leak.

C. Post Hearing Admissions to the Record

1. Board Exhibit B: Procedural Exhibit.
2. State's Exhibit 7: The State's Closing Argument filed February 11, 1999.
3. Respondent's Exhibit AA: Respondent's Closing Argument filed March 2, 1999.
4. State's Exhibit 8: The State's Rebuttal to Respondent's Closing Argument filed March 9, 1999.

III. Proffered Evidence

- * Respondent's Exhibits A, B, F, M, N, W, X; Board Exhibit A: Expert reports. (Note: These exhibits are proffered for the sole purpose of addressing a procedural issue regarding expert reports on appeal, if necessary. See Hearing Transcript at 162).

Note: All exhibits marked with an asterisk [*] have been sealed to protect patient confidentiality.

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PROCEDURAL MATTERS

1. During the course of the hearing, there was some confusion regarding copies of exhibits. In order to clarify the transcript on this issue, it should be noted that the parties reviewed the exhibits and agreed that all copies of the chart had been appropriately made. Moreover, any confusion had been the result of honest mistakes. (See Hearing Transcript, Volume 1, at 48-55, 161).
2. At the close of the hearing, the parties agreed to submit written closing arguments. Pursuant to a schedule set forth by the Attorney Hearing Examiner, the final written argument was filed March 9, 1999. The hearing record closed at that time.
3. In Respondent's Closing Argument, the Respondent's counsel made reference to an Entry dated December 11, 1998. In that Entry, the Attorney Hearing Examiner ordered that the Respondent's expert, Dr. Nelson, would be permitted to testify regarding Patient 2, but that the testimony would be limited to Vicodin prescriptions and the diagnosis of orchiditis. Because it appears that there may have been some confusion regarding that Order, it is hereby noted that the Order resulted from a problem between the parties regarding expert reports, and was written pursuant to a telephone conference held to resolve those issues. Moreover, the Order resulted from an agreement between the parties.

SUMMARY OF THE EVIDENCE

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

Harry P. Nguyen, M.D.

Harry P. Nguyen, M.D., testified that that he had attended the University of Saigon, South Vietnam, from 1967 through 1974. Dr. Nguyen explained that in Vietnam, the internship and residency programs are incorporated into the medical education. Thereafter, Dr. Nguyen served as a medical officer in the South Vietnam Armed Forces. In 1975, Dr. Nguyen left South Vietnam as a refugee and came to the United States. In 1979, Dr. Nguyen completed a two year general medicine residency program at Barberton General Hospital in Barberton, Ohio. (Hearing Transcript, Volume 1, [Tr. Vol. 1] at 12-13; Hearing Transcript, Volume 2, [Tr. Vol. 2] at 384-387).

Dr. Nguyen worked in emergency medicine in Pennsylvania for one year. Thereafter, he served as the medical director of the emergency department at Guernsey Memorial Hospital in Cambridge, Ohio. In 1983, he opened a private office at 703 Bryden Road in Columbus,

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Ohio. Dr. Nguyen also served as a physician at a city clinic, the Hilltop House Center. He became the medical director of that facility in 1987. During that time period, Dr. Nguyen also worked in various emergency departments in the central Ohio area, including Columbus Community Hospital, [then Mercy Hospital]; Park Medical Center, [then St. Anthony Hospital]; Adena Medical Center, [then Chillicothe Medical Center]; Galion Hospital; Guernsey Hospital; and Shelby Hospital. More recently, Dr. Nguyen had maintained a private office on South High Street in Columbus. Dr. Nguyen testified that he has been board certified in Emergency Medicine since 1990. (Tr.Vol. 1 at 13-16; Tr.Vol. 2 at 243-244, 248-249, 387-388).

Dr. Nguyen further testified that, since 1993, he has served as the Director of the Chemical Dependency Unit at Columbus Community Hospital [CCH]. Dr. Nguyen belongs to the American Society of Addiction Medicine. He stated that he has completed the educational requirements to be eligible for certification by that society. Moreover, he took the certification examination on November 21, 1998. Dr. Nguyen explained that the American Society of Addiction Medicine [ASAM] is not approved by the American Board of Medical Specialties. (Tr.Vol. 1 at 15; Tr.Vol. 2 at 244-246, 348).

[Note: At the time of hearing, Dr. Nguyen was awaiting the results of the ASAM certification examination. In Respondent's Closing Argument, counsel for Dr. Nguyen advised that Dr. Nguyen has passed the ASAM certification examination. Nevertheless, no evidence of the test results has been admitted to the hearing record. See Respondent's Exhibit [Resp. Ex.] AA at 12.]

Regarding addiction medicine, Dr. Nguyen testified that as follows:

Addiction disease is the same as any other disease. They have failure. Probably more than 50 percent of these people will not be cured, no matter what we do for them. But I think in the Society of Addiction Medicine, it also stated that the patient comfort is the first responsibility for the physician.

* * *

Over 50 percent of those people not going to be cured no matter what you do. And you have to take into consideration whether you want to treat the patient to minimize the risk of them going out and using the illicit drug or buy drugs from the street, and don't know how much they use or take or the dose was adulterated and might die from that.

(Tr.Vol. 2 at 247-248) (See also Tr.Vol. 2 at 343-345).

Dr. Nguyen testified that he has recently closed his private practice. Nevertheless, Dr. Nguyen described his practice, prior to closing his private office, as follows:

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- Dr. Nguyen saw 14 to 18 patients per day in his private office. He saw patients two hours a day, four days a week. He stated that it took him another eight to ten hours to complete the resulting paperwork.
- Dr. Nguyen was also employed 36 to 48 hours per week as an emergency department physician. He worked weekends and nights so that it would not interfere with his office practice.
- In addition, Dr. Nguyen was the director of the medical clinic at the Twin Valley Psychiatric System [formerly the Central Ohio Psychiatric Hospital]. That position required him to work 16 to 17 hours per week.
- Moreover, from 1993 through early 1998, Dr. Nguyen served as the medical director of the Chemical Dependency Unit at CCH, which required him to work approximately 12 to 20 hours per week.
- Finally, Dr. Nguyen worked a few shifts per month at an urgent care center.

(Tr.Vol. 1 at 16-17). Dr. Nguyen explained that he had closed his private office one week prior to the start of this hearing, when he realized that he did not have enough time to see patients and keep proper records. (Tr.Vol. 1 at 15-16; Tr.Vol. 2 at 249-250).

Expert Witnesses

1. George Kikano, M.D., testified on behalf of the State. Dr. Kikano received a medical degree from the American University of Beirut in 1986. In 1991, Dr. Kikano completed a three year residency at the Department of Family Medicine, University Hospitals, in Cleveland, Ohio. In 1998, he completed a one year research fellowship in neurology at Case Western Reserve University. Dr. Kikano is certified by the American Board of Family Medicine and the American Board of Medical Management. Currently, he practices family medicine at the Department of Family Medicine, Case Western Reserve University. (Tr.Vol. 1 at 96-98; State's Exhibit [St. Ex.] 6).
2. Steve McKee, M.D., testified on behalf of Dr. Nguyen. Dr. McKee received a medical degree from the Ohio State University School of Medicine in 1988. Thereafter, Dr. McKee completed a residency in family medicine at Grant Medical Center in Columbus, Ohio. He is certified by the American Board of Family Practice. Currently, Dr. McKee is the Medical Director at CCH, and the Medical Director of the Emergency Department at the Industrial Medicine Systems and Employee Health at Park Medical Center. Dr. McKee also provides emergency physician services through Premier Health Care. (Tr.Vol. 2 at 208-209).

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3. Nino DiIullo, M.D., testified on behalf of Dr. Nguyen. Dr. DiIullo graduated from the Ohio State University School of Medicine in 1972. He completed a one year rotating internship at Riverside Methodist Hospital in Columbus, Ohio. Thereafter, Dr. DiIullo accepted a position in an emergency room. He has been an emergency and family practice physician since that time. Dr. DiIullo is board certified in family practice and emergency medicine. (Hearing Transcript Volume 4 [Tr. Vol. 4] at 5-8).
4. William David Leak, M.D., testified on behalf of Dr. Nguyen. Dr. Leak graduated from the Gray School of Medicine at Wake Forest University. Dr. Leak completed a one year rotating internship at the Ohio State University in Columbus, Ohio. In 1984, Dr. Leak completed a residency and fellowship in anesthesia at the University of Pennsylvania. Dr. Leak testified that the fellowship consisted of both cardiovascular and pain medication. Dr. Leak testified that he is board certified in anesthesia and in pain medicine. (Tr. Vol. 4 at 61-63, 123-124; Resp. Ex. Y).

Dr. Leak testified that his current practice is limited to the diagnosis and treatment of painful disease. He stated that patients with musculoskeletal problems make up the largest percentage of his practice. (Tr. Vol. 4 at 63-65). Dr. Leak further testified that, in 1994, he had established a corporation which focuses on education and training in the area of pain management. Dr. Leak stated that his company has served as the co-chair for examination for the American Academy of Pain Medicine and has been accredited by the Accreditation Council on Continuing Medical Education. (Tr. Vol. 4 at 70-71, 123).

5. James H. Nelson III, M.D., testified by deposition on behalf of Dr. Nguyen. In 1971, Dr. Nelson graduated from the New York College of Medicine in Brooklyn, New York. Thereafter, Dr. Nelson completed a rotating internship at Ohio State University. Dr. Nelson completed two years of a general surgery residency at the Medicinal University of South Carolina in Charleston. Then, he returned to Columbus, and completed a urology residency in 1977. Dr. Nelson was board certified in urology in 1979. (Resp. Ex. L at 5-6).

Patient 1

1. Patient 1 first saw Dr. Nguyen on May 18, 1993. Patient 1 was 33 years old at that time. Patient 1 complained of being "out of meds - crushed right leg, low back pain." As the reason for his first visit to Dr. Nguyen, Patient 1 advised that he needed to change physicians due to the illness of his previous physician [Dr. Berzins]. (St. Ex. 1 at 4, 6).

In his patient record for that visit, Dr. Nguyen noted that Patient 1 had been injured in a front loader accident fifteen years earlier. Dr. Nguyen also noted that Patient 1 had had "multiple surgeries" as a result of his injury. Dr. Nguyen drew a sketch of a scar on Patient 1's right thigh. Dr. Nguyen also noted a physical examination, and listed his

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impressions as chronic lumbosacral sprain and strain and osteoporosis of the right knee. Dr. Nguyen prescribed 50 Darvon 65 with one refill, and 60 Valium 10 mg. Dr. Nguyen requested that Patient 1 return with his medical records from Dr. Berzins. (St. Ex. 1 at 4, 6).

Dr. Nguyen testified that Patient 1 did not obtain his medical records from Dr. Berzins. Dr. Nguyen justified Patient 1's failure to provide the records by the fact that Dr. Nguyen believed that Dr. Berzins had closed his practice. Dr. Nguyen concluded that no one knew where Dr. Berzins had gone and no one could find Dr. Berzins' patient records. (Tr. Vol. 2 at 349-351).

Dr. Nguyen stated that he had believed that Patient 1 had had a serious pain problem since the accident fifteen years earlier. Dr. Nguyen explained that he had believed this because:

[Patient 1] have a very big scar I can see. And not something that somebody complained 'I have pain,' but nothing to prove. This one have proof of the injury I can see and feel * * * I believe that very truth of the complaint of the pain, the look and feel of the scar tissue on his leg.

(Tr. Vol. 2 at 254). When asked if Patient 1 had also suffered back pain related to the accident, Dr. Nguyen answered:

I think that was related to it, but I couldn't see anything much about it. I know there is a low-back pain, but the main problem is the leg is hurting. So, at the time, if I treat pain from one area, should take care of the pain on the other area. That's why I wrote down the note to remind me of what was the problem.

(Tr. Vol. 2 at 254-255). Dr. Nguyen stated that he had drawn the sketch of the scar on Patient 1's leg, rather than describe it verbally, because "a picture is worth more than a thousand word[s]." (Tr. Vol. 2 at 252).

Dr. Nguyen testified that he had prescribed Darvon and Valium to Patient 1 because Patient 1 had been out of medication and Dr. Berzins was ill. (Tr. Vol. 1 at 19-20). Dr. Nguyen testified that he had continued to prescribe these medications, rather than switching to newer, shorter acting medications, because Patient 1 had been on the medications for so long and had tolerated them well. Moreover, Dr. Nguyen testified that he had limited the number of pills he prescribed so that Patient 1 could not take more than three Valium and four Darvon 65 per day. Dr. Nguyen concluded that prescribing at this dosage, he had probably under-prescribed to manage Patient 1's pain, because Patient 1 had been using pain medication for a long time. (Tr. Vol. 2 at 255-260).

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Dr. Nguyen testified that he had not tried other treatment modalities to treat Patient 1's pain because Patient 1 had had chronic pain for approximately 15 years. Dr. Nguyen stated that his concern had been to maintain Patient 1 on the lowest dose of medication possible, for the remainder of Patient 1's life. (Tr. Vol. 2 at 262).

Dr. Nguyen further testified that he believed that Patient 1 had already exhausted all alternative modalities of pain treatment because Patient 1 had been disabled since 1978. Dr. Nguyen reasoned that all treatment modalities had been tried because "the Bureau of Worker's Compensation [BWC] is not going to grant a person total disabled unless they really exhaust every avenue of treatment before they say he's totally disabled, especially on a young man like this." (Tr. Vol. 2 at 251-253). Dr. Nguyen admitted, however, that he had never contacted the BWC to inquire regarding treatment modalities available to Patient 1. (Tr. Vol. 2 at 346-350).

Moreover, Dr. Nguyen admitted that he had believed that Dr. Berzins had prescribed these medications to Patient 1 "for a long time" only because Patient 1 had told him so. Dr. Nguyen never saw records of Patient 1's prior treatment from any physician or from the BWC. (Tr. Vol. 1 at 29-30).

Patient 1 returned to Dr. Nguyen's office on June 17, 1993. The physical examination detailed on this date is exactly the same as the physical examination recorded one month earlier, with the exception of an additional impression, periungual abscess right thumb. (St. Ex. 1 at 7). Dr. Nguyen explained that he had recorded the same physical examination: "because this is the reproduction of the same, not much change on the patient, so I reproduce that to remind myself what's going on with this patient." (Tr. Vol. 1 at 21). A few moments later, however, Dr. Nguyen stated that:

[T]he record was kept almost the same because the patient is the same person. He has the same complaint, the same pain, almost everything the same. Therefore, the record should look almost the same.

(Tr. Vol. 1 at 21). Nevertheless, Dr. Nguyen had added an additional impression of periungual abscess. Nothing in the physical examination explained the additional impression. When asked why he had failed to record any information regarding the periungual abscess, Dr. Nguyen stated that the periungual abscess "speaks for itself." (Tr. Vol. 1 at 22; St. Ex. 1 at 7).

Similarly, on July 20, 1993, Dr. Nguyen listed an impression of folliculitis. Nevertheless, the physical examination does not mention findings related to folliculitis. Again, Dr. Nguyen stated that folliculitis, infection of a hair follicle, "speaks for itself." (Tr. Vol. 1 at 23; St. Ex. 1 at 8).

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Dr. Nguyen continued to prescribe Darvon, sometimes "four times a day," and sometimes "four times a day, as needed." Dr. Nguyen testified that he had always prescribed Darvon on an as needed basis. Therefore, his failure to record the prescription in the appropriate manner had been a typographical error on his part. (Tr.Vol. 1 at 24; St. Ex. 1 at 8-11).

Dr. Nguyen testified that his prescribing of Darvon and Valium over a thirteen month period had been justified because he had never prescribed the maximum dose allowable according to the Physician's Desk Reference [PDR]. (Tr.Vol. 2 at 257-261).

When asked if he had ever assessed Patient 1 to see how he was responding to the controlled medications, Dr. Nguyen testified that "no new findings" had meant that Patient 1 was responding well to the medications. (Tr.Vol. 1 at 24-26; St. Ex. 1 at 8). Dr. Nguyen later testified that he had continued to prescribe Valium and Darvon 65 without recording an assessment of the patient's response, evaluation for side effects, or consideration of alternative treatment, because:

This patient has a Workers' Comp injury that has a chronic, severe, painful condition for the last 15 years. He's already on these two medication for quite some time before he came to see me. I couldn't get the record from Dr. Berzins' office because he packed up and run away. No record from anybody.

He's been on this medication for a long time and looked like he's not taking more than prescribed, and looked like he could carry out his limited day to day functions with the medication, and sometimes in the record I say "No change." Sometimes, I say "a little better." That all referred to how he feel, and how [he] react to the pain medication.

(Tr.Vol. 1 at 28).

When asked if he had ever considered that Patient 1 might be addicted to the medications, Dr. Nguyen answered as follows:

I did at one time almost at the end of the record that I suggest maybe he should go to the hospital for detoxification because only time I saw him that he appeared to be smelling of alcohol on his breath in the doctor's office. The only time. The rest of the time he seemed to be very fine.

(Tr.Vol. 1 at 28-29). Dr. Nguyen's medical record for Patient 1 contains a consultation sheet from CCH dated June 17, 1994. In the consultation sheet, Dr. Nguyen wrote "Last week he want to go to detox but delay until today when he is too intoxicated and poisoning with Tylenol - Will admit to care unit/chemical rehab unit when discharged from here."

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(Tr.Vol. 1 at 29; St. Ex. 1 at 23). Dr. Nguyen testified that Patient 1 had overdosed with alcohol and Tylenol. (Tr.Vol. 2 at 262).

There are no subsequent records in the exhibit. Dr. Nguyen testified that Patient 1 eventually overdosed with Darvon and died. (Tr.Vol. 2 at 352).

2. Dr. Kikano testified on behalf of the State regarding Patient 1. Dr. Kikano testified that it may have been appropriate for Dr. Nguyen to prescribe Valium and Darvon 65 at Patient 1's initial visit, providing that Patient 1 had been taking those medications for a long period of time. Dr. Kikano explained that it may be appropriate for a physician to renew medications on a patient's first visit because the physician would not be familiar with the patient's condition, and would be waiting to receive previous treatment records. (Tr.Vol. 1 at 100-102).

Dr. Kikano further testified that, however, that, at the following visit, the physician would have an opportunity to evaluate the patient's underlying problems, response to treatment, other possible treatment modalities, and signs of addiction. Applying this rationale to Dr. Nguyen's records for Patient 1, Dr. Kikano concluded that it had been inappropriate for Dr. Nguyen to renew Patient 1's controlled substances on June 17, 1993, the second visit, without first evaluating Patient 1's underlying problems and response to treatment. (Tr.Vol. 1 at 100-102).

Additionally, Dr. Kikano testified that Dr. Nguyen had continued to refill controlled substances "without attention to [Patient 1's] response to treatment, any change in the physical condition, any drug dependency, any other cognitive effects from this scheduled medicine, or considering other evaluations or treatment options which you may have for chronic pain conditions." Dr. Kikano added that Patient 1 had been too young to rely on controlled substances for the rest of his life. (Tr.Vol. 1 at 102-103).

Dr. Kikano concluded that Dr. Nguyen's prescribing in the care of Patient 1 had fallen below the minimal standard of care. (Tr.Vol. 1 at 103-104). Dr. Kikano stated that Dr. Nguyen had prescribed medications without attention to possible side effects from, or tolerance to, the medications. Dr. Nguyen had made no attempt to wean Patient 1 from controlled substances and failed to employ other treatment modalities. Moreover, Dr. Nguyen had failed to provide any documentation to support his use of controlled substances over a long period of time. (Tr.Vol. 1 at 107).

Dr. Kikano further concluded that Dr. Nguyen's record-keeping in the care of Patient 1 had fallen below the minimal standard of care. Dr. Kikano referred to Patient 1's visit on July 20, 1993. Dr. Kikano noted that Dr. Nguyen had listed the same impressions and same medications as the previous visit, with the addition of Keflex, an antibiotic. Nonetheless, Dr. Nguyen had recorded no physical examination and listed no new problem to warrant the prescribing of an antibiotic. (Tr.Vol. 1 at 102; St. Ex. 1 at 8).

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Dr. Kikano testified that a medical record should provide a brief history of the patient's conditions. For chronic conditions, the record should contain an assessment of the progression of the disease process, any change or response to treatment, and an evaluation of possible side effects from the medications prescribed. Dr. Kikano stated that the history should be focused on the conditions of which the patient complains. Dr. Kikano testified that he did not find this type of record keeping in the majority of Dr. Nguyen's medical records. Dr. Kikano concluded that, in most cases, Dr. Nguyen had failed to document histories or physical examinations. Moreover, in some cases, Dr. Nguyen had recorded diagnoses and treatment which were not supported by history or physical findings. (Tr.Vol. 1 at 103-107).

When asked if medical records are maintained solely for the benefit of the treating physician, Dr. Kikano replied "absolutely not." He further testified as follows:

Medical records serve multiple purposes. One of them is to keep detailed records of the patient's conditions, findings for future reference. Medical records are a way of communication between doctors and other consultants or specialists in the field. Medical records also have legal and administrative tasks. Documenting what you bill for, what you refer to in case you get sued, so you need administrative communication and record keeping for what you do.

* * *

[Medical records are also used to] communicate with other doctors, to communicate with hospital personnel, government, third-party payors, and some patients change doctors over the years. Doctors with practices that move around. Communicate between doctor and doctor for the patient's sake.

(Tr.Vol. 1 at 106).

3. Dr. Leak testified on behalf of Dr. Nguyen regarding Patient 1. Dr. Leak testified that Dr. Nguyen's prescribing of controlled substances to Patient 1 had been within the standard of care. Dr. Leak testified that when Dr. Nguyen first saw Patient 1, Dr. Nguyen had decided to maintain the "symptomatic medications," Valium and Darvon. Dr. Leak further noted that Dr. Nguyen had added ibuprofen to the medications. (Tr.Vol. 4 at 74-81, 84, 125).

When asked if there had been any alternative to treating Patient 1 with narcotic medications, Dr. Leak testified as follows:

In the subspecialty environment, there might have been. In looking at this gentleman, the profile of what he was getting and the amount of

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medicine that he was using, when we actually look at what standard doses and utilization are, he did not exceed what was really allowable.

So you make a judgment * * * is it more effective to maintain a patient on something of low risk such as this combination of Darvon, Valium, or to subject him to higher order surgical engagement that may result in increased pain or other risks. It simply becomes a matter of judgment, and also what the patient wants to do, because you cannot force people to have things done.

But this gentleman didn't, in the record that I reviewed, did not exceed what are the lowest level of drugs in the PDR. He did not even reach what he would have been allowed to take classification.

(Tr. Vol. 4 at 81-82). Dr. Leak concluded that Dr. Nguyen "did not give dangerous doses as would be defined in the PDR or go anywhere close to what would be a lethal dosage."
(Tr. Vol. 4 at 84).

Dr. Leak admitted that Dr. Nguyen had not documented Patient 1's response to controlled substances. Nevertheless, Dr. Leak explained that there was "an inferred success * * * because the gentleman's consumption did not escalate." (Tr. Vol. 4 at 127).

Dr. Leak further testified that, in 1993, there had been no established standard of care for prescribing controlled substances. (Tr. Vol. 4 at 129). Dr. Leak explained as follows:

The standard for evaluating a patient and determining that they needed an opioid for their pain is for the physician to evaluate the patient and get enough of a history from the patient * * * for them to feel comfortable that they needed the medication. If there was objective evidence such as scarring -- Well, if somebody says, you know, 'I had my knee operated on but there is no scar,' then you don't go for that one. But if they have a scar or something on their knee, or a huge scar on the back from a surgery, you believe them until proven otherwise.

(Tr. Vol. 4 at 130). Dr. Leak testified that "a physician has an obligation not to let the patient suffer." Therefore, Dr. Leak testified, it was significant that the BWC had determined that Patient 1 was disabled. Dr. Leak explained that patients often wait years for treatment authorization from the BWC. He concluded that, under these circumstances, it would not have been unusual for a physician to maintain a patient on Valium and Darvon. (Tr. Vol. 4 at 74-81, 125).

On cross-examination, Dr. Leak testified that he had made the determination that Patient 1 had been disabled because Patient 1 had been 33 years old and had a card issued by the

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Health and Human Services, Social Security, which indicated a disability. Dr. Leak admitted, however, that the medical record did not reveal the reason for Patient 1's disability, which could have been psychological as well as physical. (Tr. Vol. 4 at 125-126). Nevertheless, when asked if it would be important for a physician to know the reasons for a patient's disability, Dr. Leak answered as follows:

It would depend on how germane the complaint was and what other actions were going on. I think the gentleman presented and had his complaints of what hurt. The evaluation of what was going on with him was done. If it came up for a matter of doing another disability evaluation or impairment rating, then it becomes important.

(Tr. Vol. 4 at 126). Dr. Leak concluded that a physician "rarely know[s] what the disability allowance is for." (Tr. Vol. 4 at 126).

Patient 2

1. Patient 2 first saw Dr. Nguyen on April 12, 1989. Patient 2 was 62 years old at that time. Patient 2 requested a "check up." Patient 2 also reported that he needed medication for hypertension and that he had been taking Inderide 80/25. Dr. Nguyen wrote "Doing fine, chest clear, NHS [normal heart sounds], BP good [130/70]". Dr. Nguyen prescribed Inderide 80/25 twice daily [b.i.d.] (Tr. Vol. 1 at 33-34; Tr. Vol. 2 at 267; St. Ex. 2A at 3, 4).

Dr. Nguyen testified that Patient 2 had come to Dr. Nguyen's office with Patient 2's wife [Patient 4]. After Dr. Nguyen treated Patient 4, Patient 2 asked if Dr. Nguyen would also see him. Dr. Nguyen agreed to see him as an "add-on." Patient 2 advised Dr. Nguyen that he had run out of his blood pressure medication. Dr. Nguyen performed only a cursory evaluation [as note above]. Dr. Nguyen stated that he had seen Patient 2 "very quick[ly]," but had intended to gradually "reconstruct" the medical record. Dr. Nguyen explained that if it had been a scheduled visit, Patient 2 would have received a more thorough evaluation. (Tr. Vol. 1 at 33-34; Tr. Vol. 2 at 264-265).

When asked if a patient with a scheduled visit was entitled to a higher standard of care than a patient who was not scheduled, Dr. Nguyen answered in the negative. Moreover, Dr. Nguyen explained that Patient 2 had already been taking the blood pressure medication and had simply "run out." Dr. Nguyen stated that he could not have let Patient 2 leave the office without his blood pressure medication. When asked why Dr. Nguyen had not sent Patient 2 back to his treating physician, Dr. Nguyen answered "he must have like me." Finally, Dr. Nguyen stated that he had not required Patient 2 to schedule an appointment before prescribing medications to him, because Dr. Nguyen had not wanted to be "so mean to the guy." (Tr. Vol. 2 at 354-356).

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On cross-examination, the State asked Dr. Nguyen why he had not scheduled Patient 2 for a regular visit, and given Patient 2 a small number of pills to last until the scheduled visit. Dr. Nguyen responded that he did not know how many pills he had given Patient 2 that day. Dr. Nguyen explained that he had not recorded, and did not remember, the number of refills he had prescribed for Patient 2's blood pressure medication. (Tr. Vol. 2 at 356-357). Nevertheless, Dr. Nguyen testified that he had routinely prescribed blood pressure medications with enough refills to last six months. (Tr. Vol. 1 at 89-90).

Patient 2 did not return to Dr. Nguyen's office during the next nine months. When he did, in January 1990, Patient 2 complained of headaches and indigestion. He also complained of pain on the left side of the neck, radiating to the scalp and shoulder, with "point tenderness and increased pain laying down and relief pain with getting up." His blood pressure was 160/90, which Dr. Nguyen characterized as "mildly elevated for a known high blood pressure patient." Dr. Nguyen stated that he had considered cardiac problems, but had believed that Patient 2's pain had been caused by joint and neck problems. Dr. Nguyen stated that he had not recorded a cardiac evaluation because the record "speak[s] by itself." Dr. Nguyen diagnosed reflux esophagitis. (Tr. Vol. 1 at 35-36; Tr. Vol. 2 at 268; St. Ex. 2A at 6).

On October 23, 1990, Patient 2's blood pressure was 210/100; on recheck, the blood pressure had decreased to 162/90. Dr. Nguyen testified that Patient 2 had also complained of difficulty urinating. Dr. Nguyen ordered a urology consult with Dr. Nelson. Dr. Nguyen stated that he had also performed a physical examination, which included a rectal examination, an EKG, an occult stool, a chemistry profile and a complete blood count. (Tr. Vol. 1 at 36, 39-40; Tr. Vol. 2 at 269-271; St. Ex. 2A at 7, 38-40).

Dr. Nguyen interpreted the EKG to reveal "left ventricular hypertrophy and strained pattern." Dr. Nguyen stated that the "strained pattern" was reflected by an elevated QRS and an unchanged ST segment. Dr. Nguyen explained that a "strained pattern" results when the ventricle is dilated, and the heart "is pushing against the high blood pressure." (Tr. Vol. 1 at 40-41; St. Ex. 2A at 38).

Dr. Nguyen also ordered potassium replacement while waiting for the results of the chemistry profile. The following day, the chemistry profile results indicated that Patient 2's potassium was 4.6, with a normal range of 3.6 - 5.2. Nevertheless, Dr. Nguyen did not see Patient 2 for during following six months. (Tr. Vol. 1 at 41-42; St. Ex. 2A at 7, 39-40).

Dr. Nguyen also testified that he had not followed-up on the abnormal EKG because Patient 2 had not returned during the following six months. (Tr. Vol. 1 at 42).

On April 19, 1991, Patient 2 presented with complaints of "swollen tender [right] foot" followed by words that appear to state "have to work." Dr. Nguyen testified that the words state "hard to walk." With no physical examination noted, Dr. Nguyen diagnosed acute gout

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and acute arthritis. He prescribed Inderide, Zylprim, and Lortabs. Dr. Nguyen testified that he had prescribed Zylprim to treat the inflammatory condition, and the narcotic analgesic for the acute pain. (Tr.Vol. 2 at 272-276; St. Ex. 2A at 7).

Three months later, Patient 2 appeared for a check-up. Dr. Nguyen did not document any patient complaints, physical examination, or findings. He diagnosed arthritis and prescribed Inderide, Zylprim, and Voltaren. Seven months later, without seeing Patient 2 that day or in the interim, Dr. Nguyen gave Patient 2 a prescription for Allopurinol. (St. Ex. 2A at 8).

On April 6, 1992, Patient 2 presented with complaints of retrosternal chest pain, off and on. Dr. Nguyen testified that he had been concerned with Patient 2's chest pain and, therefore, Dr. Nguyen did not perform a physical examination or monitor Patient 2's vital signs. Instead, Dr. Nguyen called the emergency room which is located across the street, 70 yards from his office. Dr. Nguyen admitted that he had not recorded the emergency department referral in the medical record, but explained that he had chosen not to do so because he had not performed an examination of Patient 2. Dr. Nguyen also stated that he had been so concerned about Patient 2's chest pain that he had not taken the time to write anything in the notes. (Tr.Vol. 1 at 42-43; Tr.Vol. 2 at 279-280; St. Ex. 2A at 9).

Dr. Nguyen initially testified that Patient 2 had *run* across the street to the emergency department. Dr. Nguyen clarified that statement, and explained that Dr. Nguyen had taken Patient 2 out to the parking lot, and watched as Patient 2 climbed into his van and drove across the street to the emergency department. From the emergency room, Patient 2 had been admitted to the intensive care unit to the care of a cardiologist. (Tr.Vol. 2 at 280-282).

Dr. Nguyen testified that did not know if the cardiologist had continued to see Patient 2 because the cardiologist had not sent a report back to Dr. Nguyen's office. (Tr.Vol. 2 at 282).

On April 20, 1992, Dr. Nguyen issued a prescription for Voltaren. The note contains only the date and the prescription. Dr. Nguyen testified that he believes the medication was for arthritis. (Tr.Vol. 1 at 43-44; St. Ex. 2A at 9). Dr. Nguyen also issued prescriptions for Ativan in February and March 1993 without an office visit by Patient 2. (Tr.Vol. 2 at 283-284).

On May 7, 1993, Patient 2 complained of epigastric pain and burning. Dr. Nguyen stated that he did not perform a cardiac evaluation because Patient 2 had already been evaluated by a cardiologist and was found to have "very minimal coronary artery disease." Dr. Nguyen diagnosed reflux esophagitis which, Dr. Nguyen stated, had been confirmed by a gastroenterologist. Moreover, Dr. Nguyen testified that Patient 2's complaints of burning, epigastric pain, pain radiating to the left chest, and pain increasing when reclining, are all indications of reflux gastroesophagitis. Dr. Nguyen stated that he had had no

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concerns that the symptoms had been cardiac in origin. (Tr. Vol. 1 at 47; Tr. Vol. 2 at 286-287; St. Ex. 2A at 11, 43).

On November 19, 1993, Dr. Nguyen noted that Patient 2 had complained of acute swelling, tenderness, and drainage from his left scrotum. Dr. Nguyen testified that he had performed a physician examination and found Patient 2's genitals to be indurated. Dr. Nguyen ordered Rocephin I.M. and Keflex P.O. (Tr. Vol. 2 at 287-289; St. Ex. 2A at 13). On November 23, 1993, Dr. Nguyen wrote "knotty testes" and diagnosed orchiditis and rule-out tumor. Dr. Nguyen testified that he had been concerned about tumors because of Patient 2's age. Dr. Nguyen referred Patient 2 to Dr. Nelson, the urologist. (St. Ex. 2A at 14, 25).

On numerous occasions, Dr. Nguyen wrote prescriptions for Ativan, Vicodin and/or other medications without recording anything but the date and the prescription in the medical record. Dr. Nguyen explained that he had given the prescriptions to Patient 2 without requiring Patient 2 to come into the office. Dr. Nguyen explained that he had been comfortable that Patient 2 would not abuse his controlled medications. Dr. Nguyen further stated that Patient 2 was "very, very frugal," and had had very little money. Dr. Nguyen had tried to help by providing prescriptions without billing for office visits. Dr. Nguyen further explained that if he had recorded an office visit, his office manager would have billed for the visit. Dr. Nguyen denied that writing "No charge" would have changed his office manager's practice. Dr. Nguyen asserted that he had had no "say" in his office billing policies. (Tr. Vol. 1 at 45-46, 48; Tr. Vol. 2 at 291-292; St. Ex. 2A at 10, 11, 15, 17-23).

Throughout the record, Dr. Nguyen prescribed various controlled substances, such as Ativan, Lortab, and Vicodin. When asked where he had recorded his assessments of Patient 2's response to the controlled substances, Dr. Nguyen admitted that he had not made such notations. (Tr. Vol. 1 at 49-52).

Moreover, a pre-admission history written by Dr. Nelson indicated that Patient 2 had also been taking Darvocet. Dr. Nguyen did not prescribe Darvocet to Patient 2. Dr. Nguyen testified that Dr. Nelson's reference to Darvocet must have been a typographical error. Dr. Nguyen testified that this conclusion was supported by the fact that Dr. Nelson had failed to note that Dr. Nguyen had been prescribing Vicodin. Nevertheless, when asked if he had investigated the possibility that another physician had been prescribing Darvocet, Dr. Nguyen admitted that he had not. (Tr. Vol. 1 at 53; St. Ex. 2B at 4).

2. Dr. Kikano testified regarding Patient 2. Dr. Kikano testified that the physical examination Dr. Nguyen performed on Patient 2's first visit had been inadequate. Dr. Kikano stated that Dr. Nguyen should have checked Patient 2's eye and fundi, looking for evidence of changes due to hypertension. Dr. Nguyen also should have checked the lower extremities for edema and checked his pulse. Dr. Kikano also noted that, on subsequent visits, Patient 2 had complained of headaches and indigestion, both of which can be related to hypertension. Nevertheless, Dr. Nguyen failed to perform any evaluation or assessment of Patient 2's

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hypertension. Finally, Dr. Kikano stated that Dr. Nguyen's diagnosis of reflux esophagitis had not been supported by history or physical findings. (Tr.Vol. 1 at 108-111).

Dr. Kikano also expressed concern that Dr. Nguyen had failed to record a history or clinical examination of Patient 2's hypertension on October 23, 1990, when Patient 2's blood pressure was 210/100. Dr. Kikano testified that Patient 2's blood pressure had been "significantly elevated, especially in someone who is 64 years of age. This high a blood pressure can be dangerous in terms of brain events, cardiac events or kidney events." Dr. Kikano concluded that the blood pressure reading of 210/100 had been a "dangerously high blood pressure." (Tr.Vol. 1 at 111-112; St. Ex. 2A at 7).

Dr. Kikano noted that Dr. Nguyen had ordered an EKG, which Dr. Nguyen interpreted as "LVH and strain." Dr. Kikano opined that Dr. Nguyen's interpretation was "equivocal"; the heart size was "borderline" and not necessarily reflective of left ventricular hypertrophy. More significantly, however, Dr. Kikano noted that, in Leads II, III, and AVF, the T wave was inverted, which could have been an indication of cardiac ischemia. Moreover, Leads II, III, and AVF reflected activity in the lower part of the heart. Dr. Kikano testified that damage in that area of the heart can produce symptoms which mimic esophagitis or indigestion. Dr. Kikano concluded that Dr. Nguyen's treatment of Patient 2 on this visit had been below the minimal standards of care because Patient 2's condition had warranted an urgent cardiac evaluation. (Tr.Vol. 1 at 112-113; St. Ex. 2A at 38).

Dr. Kikano further testified that, on April 6, 1992, Dr. Nguyen had failed to document a physical examination of Patient 2 when Patient 2 presented with complaints of retrosternal chest pain. Moreover, there was no documentation that Patient 2 had been sent to an emergency room. Dr. Kikano stated that, if Dr. Nguyen had done so, it should have been noted in the record. (Tr.Vol. 1 at 114-115, 179; St. Ex. 2A at 9).

Dr. Kikano testified that Dr. Nguyen's practice of prescribing controlled substances, such as Ativan, without seeing or evaluating the patient was highly inappropriate. Dr. Kikano testified that when prescribing controlled substances to patients, it is incumbent upon the physician to counsel the patient about tolerance, addiction and possible side effects. He further stated that such discussions must be documented in the medical record. Dr. Kikano concluded that Dr. Nguyen's failure to do so was inexcusable. (Tr.Vol. 1 at 115-116; St. Ex. 2A at 10, 11).

Dr. Kikano criticized Dr. Nguyen's use of Vicodin to treat gout pain. Dr. Kikano stated that gout pain is an intermittent occurrence, and patients do not require continuous prescription of analgesic medications. Dr. Kikano further stated that, even when analgesia is appropriate, the use of narcotics is not necessary. (Tr.Vol. 1 at 116-117; St. Ex. 2A at 11). On cross-examination, Dr. Kikano admitted that gout can be "extraordinarily painful" during an exacerbation of the condition. Nevertheless, Dr. Kikano testified that an anti-

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inflammatory medication should be used to treat both the inflammation and the resultant pain. (Tr. at 173-176).

Moreover, Dr. Kikano testified that the records do not support Dr. Nguyen's use of Ativan, Vicodin, and Lortab. In addition, Dr. Kikano testified that Dr. Nguyen's use of controlled substances had been inappropriate because Dr. Nguyen had failed to document any evaluation, possible side effects, or attempts to taper Patient 2's use of the multiple controlled substances. (Tr. Vol. 1 at 123).

Dr. Kikano also criticized Dr. Nguyen's failure to evaluate possible cardiac symptoms on November 16, 1993. Dr. Kikano emphasized that Patient 2 was a 64 year old man who had a history of hypertension and coronary artery disease. Dr. Kikano stated that Dr. Nguyen should have evaluated Patient 2's complaints of chest pain. (Tr. Vol. 1 at 117-118; St. Ex. 2A at 12).

Dr. Kikano noted that, on November 23, 1993, Dr. Nguyen's diagnoses of orchiditis and rule-out tumor were not supported by the physical findings. Dr. Kikano testified that the most prevalent finding for a diagnosis of orchiditis is tenderness of the testicle. Dr. Nguyen wrote only "knotty testes." Dr. Nguyen also stated that such a finding is not sufficient to suggest testicular cancer in a 66 year old man. (Tr. Vol. 1 at 118-119; St. Ex. 2A at 14). Nevertheless, Dr. Kikano acknowledged that a physical examination performed six weeks later demonstrated symptoms compatible with orchiditis. (Tr. Vol. 1 at 183-184; (St. Ex. 2B at 6, 7).

Dr. Kikano stated that Dr. Nguyen had not documented any information to support this use of Vicodin for Patient 2 in December 1993. He further noted that Vicodin should be used with caution in patients who have urinary retention because Vicodin can aggravate a urinary tract obstruction. (Tr. Vol. 1 at 122-123; St. Ex. 2A at 15).

Dr. Kikano concluded that Dr. Nguyen's prescribing and record-keeping in his care of Patient 2 had fallen below the minimal standard of care. (Tr. Vol. 1 at 123-124).

3. Dr. DiIullo testified that Dr. Nguyen's treatment of Patient 2 on October 23, 1990, April 11, 1991, and April 6, 1992, had been appropriate. (Tr. Vol. 4 at 26-27, 28-38, 39-45). Dr. DiIullo further testified that, in reaching that conclusion, he had reviewed only certain dates of treatment in the medical record of Patient 2. Dr. DiIullo stated that he had not had an opportunity to review the whole medical record prior to hearing. Moreover, Dr. DiIullo testified that he had reviewed portions of Dr. Kikano's testimony, but he had not reviewed Dr. Nguyen's testimony. (Tr. Vol. 4 at 33-34, 45-47). Nevertheless, Dr. DiIullo testified that it was not necessary that he review the whole record to comment on the treatment given by Dr. Nguyen on three particular dates. He stated as follows: "if I am making a judgment on specific questions, I am not sure looking at reams of other documents would really help me out." (Tr. Vol. 4 at 59).

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Dr. DiIullo testified that, on October 23, 1990, Patient 2's blood pressure had initially been 210/100. Dr. DiIullo testified that there is a lot of controversy in medical literature as to how much to lower an elderly person's blood pressure. Moreover, Dr. DiIullo testified that some individuals suffer from a syndrome in which their blood pressure will be elevated simply from the strain of going to the physician's office and having their blood pressure evaluated. (Tr. Vol. 4 at 15-198; St. Ex. 2A at 7).

Dr. DiIullo was presented with the facts that Patient 2 had been taking Inderide 80/25 for months and had had a stable blood pressure. On this visit, his blood pressure was 210/100. Dr. Nguyen did not change the blood pressure medication and gave a six month supply. Moreover, Dr. Nguyen did not recheck Patient 2 during the next six months. Dr. DiIullo would not comment on Dr. Nguyen's treatment of Patient 2 in the subsequent months, and responded that he was testifying only about the specific incident when Patient 2's blood pressure had dropped from 210/100 to 162/90 during the same examination. Dr. DiIullo concluded that Dr. Nguyen had done what he should have done to evaluate the blood pressure; he had ordered an EKG and electrolytes. (Tr. Vol. 4 at 19-21).

Dr. DiIullo further testified that the EKG had demonstrated that Patient 2 had been suffering no acute process. Moreover, the chemistry profile had not revealed any kidney breakdown, inflammatory process, anemia, or thyroid disease which may have caused or resulted from hypertension. Accordingly, Dr. DiIullo concluded, there was no further action Dr. Nguyen should have taken in response to the EKG or the chemistry profile. (Tr. Vol. 4 at 22-26). Dr. DiIullo concluded that the care Dr. Nguyen provided to Patient 2 on October 23, 1990, "met the appropriate standard of care for a reasonably prudent physician acting under the same or similar circumstances." (Tr. Vol. 4 at 26-27).

Dr. DiIullo further testified that Dr. Nguyen had appropriately diagnosed and treated Patient 2 for gout on April 11, 1991. (Tr. Vol. 4 at 28-38).

Finally, Dr. DiIullo testified that, on April 6, 1992, when Patient 2 presented with complaints of retrosternal chest pain, Dr. Nguyen had acted appropriately. Dr. DiIullo acknowledged that Dr. Nguyen had not even monitored Patient 2's vital signs. Nevertheless, Dr. DiIullo testified that, in such a situation, if the physician is concerned for the patient's well-being, it would be appropriate to send the patient to the emergency room without first taking vital signs. Dr. DiIullo specified, however, that he would have taken vital signs before transferring the patient. (Tr. Vol. 4 at 39-40).

Dr. DiIullo further testified that it had been appropriate to allow Patient 2 to drive himself to the emergency room, since the emergency department was only one or two blocks away. Dr. DiIullo stated that "you have to do a cost benefit analysis, what is the best therapy, at the best price, at the best time, how quickly you can get him over there. Dr. DiIullo clarified, however, that if the emergency room had been ten blocks away, it would have

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been different. (Tr. Vol. 4 at 40-42).

Dr. DiIullo concluded that Dr. Nguyen's care of Patient 2 on April 6, 1992, had been within the standards of care. (Tr. Vol. 4 at 44-45).

4. Dr. Leak testified regarding Patient 2. Dr. Leak testified that Dr. Nguyen had appropriately diagnosed and treated Patient 2's gout and arthritis. (Tr. Vol. 4 at 93-101). Dr. Leak further testified that Dr. Nguyen had appropriately used controlled substances to treat Patient 2's painful gout, epididymitis, inflammatory arthritis, and degenerative disease of the knee. (Tr. Vol. 4 at 101-105).

When asked if it had been appropriate for Dr. Nguyen to prescribe Vicodin for a two year period for these conditions, Dr. Leak testified that:

Any single one of those would be reasonable and appropriate if the patient were having a complaint. Because the medication, a medication like Vicodin, or a medication like Lorcet, is not an intelligent drug. It is not like - It is not a metabolic pattern specifically like the Allopurinol.

If the gentleman has an ache in his foot from where his gout resolved, uh, or if he has an ache in his knee from where he had his knee replacement performed, it would be very reasonable to continue these medications for this patient, given the menagerie of diseases that he has.

(Tr. Vol. 4 at 105) (See also Tr. Vol. 4 at 141).

Finally, Dr. Leak testified that Dr. Nguyen had appropriately prescribed Ativan to Patient 2 because Patient 2 had been experiencing "disturbing" conditions, such as drainage from his scrotum, gout, and had a history of nephrectomy. Dr. Leak concluded that Patient 2 had had many reasons to suffer anxiety, and that it had been appropriate for Dr. Nguyen to prescribe anxiolytic medications. (Tr. Vol. 4 at 103).

Dr. Leak did not address, however, the fact that Dr. Nguyen had frequently prescribed Ativan to Patient 2 without examining Patient 2. Moreover, on cross-examination, Dr. Leak admitted that he could not find any indication in the record as to why Dr. Nguyen had prescribed Ativan. Nevertheless, Dr. Leak "suspect[ed] [that Patient 2 had] had a lot of anxiety going on." (Tr. Vol. 4 at 148-150).

5. Dr. Nelson presented testimony by deposition on behalf of Dr. Nguyen regarding Patient 2. Dr. Nelson testified that, prior to the deposition, he had reviewed an expert report prepared by Dr. Kikano. Moreover, Dr. Nguyen had reviewed office notes for November 19, November 23, and December 27, 1993, only. Dr. Nelson testified that he had not been advised of the Board's full allegations against Dr. Nguyen. (Resp. Ex. L at 8-9, 18-19).

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Dr. Nelson testified that Dr. Nguyen's findings of indurated, swollen and tender testes, by themselves, reflected a diagnosis of orchiditis. Dr. Nelson added that no further physical examination would be required once the physician had made such a diagnosis. Dr. Nelson further testified that Dr. Nguyen's treatment of orchiditis had been appropriate. (Resp. Ex. L at 10-11).

Dr. Nelson also testified that Dr. Nguyen's use of Vicodin, a mild narcotic pain medication, had not been "contraindicated in a patient with coexisting orchitis and chronic urinary retention." Dr. Nelson explained that, even though urinary retention has been listed as a side effect of Vicodin, its use is not necessarily contraindicated. (Resp. Ex. L at 14-15, 28-30). Finally, Dr. Nelson noted that, at the time Dr. Nguyen first prescribed Vicodin to Patient 2, the diagnosis of urinary retention had not yet been made. (Resp. Ex. L at 31-32).

Dr. Nelson testified that he had seen Patient 2 for a consultation on November 29, 1993. At that time, Dr. Nelson had confirmed the diagnosis of epididymal orchiditis. (Resp. Ex. L at 12-13). Dr. Nguyen concluded that Dr. Nguyen's treatment of Patient 2's urinary condition had complied with the standards of care. (Resp. Ex. L at 17).

Patient 3

1. Patient 3 first saw Dr. Nguyen on November 15, 1993. She was 48 years old at that time. Patient 3 requested that Dr. Nguyen "follow-up" after her discharge from CCH. Patient 3 reported having a history of bilateral radical mastectomy, cholecystectomy, colectomy, chronic obstructive pulmonary disease [COPD], emphysema, and chronic bronchitis. She stated that she had been receiving multiple medications from her previous physician, Dr. Berzins. (St. Ex. 3A at 3-4).

Dr. Nguyen performed a physical examination. He listed his impressions as chronic LS sprain and spasm; COPD, emphysema and chronic bronchitis; and chronic anxiety.

Dr. Nguyen prescribed the following medications:

Soma, daily, as needed, 30 tablets;
Dalmane 30 mg., daily at bedtime, as needed, 30 tablets;
Valium 10 mg., three times per day, as needed, 45 tablets;
Tylenol #3, four times per day, 50 tablets;
Percocet 5, four times per day, as needed;
Entex LA, two times per day; and
Amoxil 500 mg., three times per day.

(St. Ex. 3A at 4).

Dr. Nguyen explained that he had known Patient 3 since 1980 through the CCH emergency room. He knew that she had been a long term patient of Dr. Berzins and that she had been taking the medications listed above for many years. Dr. Nguyen testified that he had been aware that Patient 3 had been taking these medications because Patient 3 had told him so. Dr. Nguyen admitted that he had not seen any of Patient 3's prior treatment records. (St. Ex. 4A at 15; Tr. Vol. 2 at 296-297, 302-303).

On cross examination, however, Dr. Nguyen was directed to another list of medications Dr. Nguyen had indicated in the history section of his New Patient Physical Exam Form. This list included only Valium, Tylenol #3, Percocet and Soma. Dr. Nguyen testified that, even though he had not included Dalmane in the list of medications, Patient 3 had been receiving it from Dr. Berzins. Dr. Nguyen testified that he remembers Patient 3 telling him this in November 1993. Dr. Nguyen explained that he had just forgotten to record it. (Tr. Vol. 2 at 360-361).

Dr. Nguyen testified that he had prescribed Soma for muscle relaxation, Dalmane for sleep, and Valium for anxiety and muscle relaxation. Dr. Nguyen explained that he had prescribed the two benzodiazepines, Dalmane and Valium, because both would metabolize to the same active metabolite. Moreover, the psychological effect would be more effective if Patient 3 had believed that one medication was for "nerves" and the other for "sleep." (Tr. Vol. 1 at 56-58; Tr. Vol. 2 at 298-301, 306, 363).

Dr. Nguyen further testified that he had prescribed both Soma and Valium because he had intended the Soma to be used as a muscle relaxant and the Valium as an anxiolytic. Nevertheless, Dr. Nguyen admitted that Soma and Valium, as well as Dalmane, all have a sedative effect. (Tr. Vol. 2 at 364).

Dr. Nguyen explained that he had prescribed pain medications, Tylenol #3 and Percocet, because Patient 3 had suffered back pain and incisional pain from "the surgical area." He did not specify which surgical area. Dr. Nguyen testified that he had continued to treat Patient 3 because her incisional scars verified that she had had chronic pain. Dr. Nguyen explained that he had intended that the Percocet be used only for "breakthrough pain," despite the fact that he had not recorded this in the medical record. Dr. Nguyen also testified that he had counseled Patient 3 as to how to use her medications properly, although he had not recorded this either. (Tr. Vol. 1 at 59-60; Tr. Vol. 2 at 299-304, 307, 365-367).

Dr. Nguyen further explained that he had continued to prescribe the controlled substances to "safeguard [Patient 3] from misuse of prescriptions for chronic painful conditions." (Tr. Vol. 1 at 58-59). Dr. Nguyen explained that his medical office is located:

in a very low socioeconomic area, and this patient is very able to go out on the street and buy drugs * * *. So my only reason that I really

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want to take this patient in my practice at that time is to safeguard from misuse or off the street and overdose and kill her. I seen so many happen from the emergency room.

(Tr.Vol. 1 at 58-59) (See also Tr.Vol. 2 at 346-348).

Dr. Nguyen saw Patient 3 again two weeks later. He prescribed an additional 40 Valium, 20 Vicodin, and 45 Valium. Again, two weeks later, he prescribed 30 Dalmane, 40 Tylenol #3, 20 Percocet, 45 Valium, and a 15 day supply of doxycycline. (St. Ex. 3A at 6, 7).

Dr. Nguyen testified that he had provided Patient 3 with that combination of medications because she had been on these medications for a very long time. Dr. Nguyen testified that Patient 3 had developed tolerance and needed the medications at the dose he had prescribed. Nevertheless, when questioned concerning the number of controlled substances Patient 3 had taken each day, Dr. Nguyen admitted that he had prescribed "a lot" of medication.

(Tr.Vol. 1 at 59-61; St. Ex. 3A at 4-8).

Dr. Nguyen later testified that, because Patient 3 never asked to increase her medications, Patient 3 had not developed tolerance to her medications. (Tr.Vol. 2 at 304). Despite this testimony, however, Dr. Nguyen admitted that Patient 3 had demonstrated drug-seeking behavior, and that he had tried to control the problem. (Tr.Vol. 1 at 67-68; Tr.Vol. 2 at 305, 369-370).

On Patient 3's first visit to Dr. Nguyen's office, Dr. Nguyen had also prescribed Entex LA and Amoxil. When asked why he had prescribed an antibiotic, Dr. Nguyen stated that Patient 3 had recently been discharged from CCH. He stated that, despite the fact that he had not recorded it, he remembered that Patient 3 had suffered an acute exacerbation of chronic bronchitis. Nevertheless, the medical record merely noted: "lungs: breathing sounds normal, no rhonchi, no rales." Again, Dr. Nguyen stated that he remembered Patient 3's complaint of increased coughing, despite his failure to document it in the record. (Tr.Vol. 1 at 62-63).

On November 15, 1993, Patient 3's blood pressure was 148/100. On the following four visits, however, Patient 3's blood pressure was exactly the same —on each visit, Dr. Nguyen noted Patient 3's blood pressure to be 118/70. (St. Ex. 3A at 4-8). Dr. Nguyen explained that, in his private practice, he had maintained patient records in his computer. When recording a new patient visit, Dr. Nguyen often started with the patient's previous record and made appropriate changes. Dr. Nguyen stated that on some occasions, he had simply forgotten to update the information from the previous visit. Dr. Nguyen admitted, however, that he had failed to monitor Patient 3's blood pressure on the subsequent three visits. (Tr.Vol. 1 at 65-66).

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Patient 3 presented to Dr. Nguyen's office on March 15, 1994, with a complaint of leg pain from a fall four weeks earlier. Dr. Nguyen testified that, despite Patient 3's complaints, he had not performed a musculoskeletal evaluation for the following reasons:

I really disregarded her complaint. I thought she tried to seek pain medication because she walked fine, no problem. I saw her walking and I tried not to pay much attention to that. I tried to show her that I do not believe her of that pain. That's long for four weeks with the leg pain. That's why I didn't really care about that complaint. I thought it was an excuse for the pain medication or something.

(Tr. Vol. 1 at 67-68). Dr. Nguyen stated that he had intended to document this reasoning in the record, but had failed to do so. (Tr. Vol. 1 at 68-69; St. Ex. 3A at 10-11) (See also Tr. Vol. 2 at 312-313).

On June 8, 1994, Patient 3 presented to the CCH emergency department with complaints of facial and abdominal pain after having been involved in an altercation with neighbors. (St. Ex. 3A at 60).

Starting in March 1994, Dr. Nguyen recorded Patient 3's blood pressure and weight as being exactly the same for several months at time. Dr. Nguyen recorded one blood pressure and weight on the six visits from March through July 1994. Dr. Nguyen recorded another blood pressure and weight for the next seven visits, from August 1994 through January 1995. Thereafter, Dr. Nguyen recorded another blood pressure and weight for the next twelve visits, from February through November 1995. Dr. Nguyen admitted that the values had not been accurate, but testified that it had been typographical error. Nevertheless, he minimized the significance of these mistakes by stating that Patient 3 had never had a blood pressure problem. (Tr. Vol. 1 at 73; St. Ex. 3A at 12-36).

On July 17, 1994, Patient 3 presented to the emergency room with a complaint of midsternal chest pain. A chest x-ray revealed right medial basal bronchopneumonia. On July 26, 1994, Patient 3 again appeared in the emergency department with complaints of chest pain; she was diagnosed with right lower lobe pneumonia. Dr. Nguyen did not mention the visits in his records. Instead, Patient 3's medical records for the seven visits from April until September 1994, all contain the same complaint, "follow up - hurting too much," and the same physical examination, "lungs: a few rhonchi, no rales, large ventral hernia from incision." Dr. Nguyen stated that the notes had all been similar because Patient 3's problems were "almost the same every time." (Tr. Vol. 1 at 69-70; St. Ex. 3A at 13-19, 62, 65).

On October 17, 1994, Dr. Nguyen noted an impression of pneumonia. Patient 3's reason for the visit was coughing and pain in the right chest. The physical examination noted only rales in the right base and a ventral hernia. Dr. Nguyen did not take Patient 3's temperature,

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monitor her blood pressure, or order a chest x-ray. Dr. Nguyen ordered an antibiotic and instructed Patient 3 to "return PRN." (St. Ex. 3A at 20). Dr. Nguyen testified that Patient 3 had "clearly" had pneumonia, based on the rales in the right lung and increased coughing. Dr. Nguyen further testified that he had made this diagnosis without taking her temperature or ordering a sputum culture because Patient 3 had not appeared to be more dyspneic or cyanotic than usual, and his treatment would have been the same regardless of the results. Moreover, Dr. Nguyen stated that he had not monitored Patient 3's blood pressure because he had not been concerned with congestive heart failure. (Tr. Vol. 2 at 315-316).

Two weeks later, on November 4, 1994, Dr. Nguyen again recorded an impression of pneumonia, but also noted "no rales now." Dr. Nguyen testified that Patient 3's pneumonia had not persisted and that listing an impression of pneumonia had been a typographical error. He further testified that he had known that Patient 3 had recovered from the pneumonia because she no longer had rales. When asked why he had prescribed another antibiotic, Dr. Nguyen stated that it had probably been for bronchitis. Nevertheless, Dr. Nguyen did not record an impression of bronchitis on this visit. (Tr. Vol. 1 at 71-72, 74; St. Ex. 3A at 21).

Again, on the following visit, Dr. Nguyen listed an impression of pneumonia. Again, Dr. Nguyen testified that the diagnosis had been a typographical error. (Tr. Vol. 1 at 74; St. Ex. 3A at 22).

On December 16, 1994, Patient 3 presented with complaints of "coughing up bloody phlegm." Dr. Nguyen wrote that he would refer Patient 3 to a pulmonologist. (St. Ex. 3A at 23). Dr. Nguyen testified that he had considered this symptom to be "more serious." Nevertheless, Dr. Nguyen did not record, and could not recall, any information provided by the pulmonologist. (Tr. Vol. 2 at 317).

From August 1994 through January 1995, Dr. Nguyen listed Patient 3's blood pressure as 138/78. (St. Ex. 3A at 18-25). From March through November 1995, Dr. Nguyen listed her blood pressure as 138/70. (St. Ex. 3A at 26-36).

On April 1, 1995, Patient 3 was seen in the emergency department for injuries suffered during an assault. The emergency department record documented that Patient 3 had had a history of colon and breast cancer. Upon examination, the emergency department physician noted "some enlarged bilateral axillary lymph nodes and [Patient 3] was strongly encouraged to follow-up with Dr. Nguyen and Dr. Bazerbashi for this as she has had minimal follow-up for her cancers. The patient acknowledged understanding of this." (St. Ex. 3B at 91).

On April 4, 1995, Patient 3 presented to Dr. Nguyen with concerns regarding the enlarged lymph nodes. Dr. Nguyen noted "questionable lymph nodes, but actually scar tissue on chest." Dr. Nguyen testified that he had identified the problem as scar tissue because Dr. Berzins, who had performed the bilateral mastectomy on Patient 3, had left a "horrible

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scar." Dr. Nguyen stated that he had advised Patient 3 to "wait and see how it turned out." (Tr.Vol. 1 at 75-76; Tr.Vol. 2 at 318; St. Ex. 3A at 27).

When asked how he would explain the discrepancy between his finding and the finding of the emergency department physician, Dr. Nguyen stated that "[t]hat's the difference in the examinations between the two doctors." (Tr.Vol. 2 at 380).

Over the next three months, although Patient 3 regularly saw Dr. Nguyen, the record does not mention Patient 3's lymph nodes. On July 7, 1995, however, Patient 3 presented with complaints of lymph nodes in the axillary area. Although he did not document an impression, Dr. Nguyen testified that he had diagnosed an infected lymph node because the node was tender to palpation. Dr. Nguyen prescribed an antibiotic and asked Patient 3 to see her oncologist. (Tr.Vol. 1 at 76-77; Tr.Vol. 2 at 319-320; St. Ex. 3A at 31).

On August 3, 1995, Dr. Nguyen noted "follow up, also lot of lymph node is better except in her chest wall." (St. Ex. 3A at 32). Dr. Nguyen stated that he had become concerned at this point and, although it is not documented in the record, he had referred Patient 3 to a surgeon. Dr. Nguyen rationalized his failure to act more quickly on his belief that Patient 3 had never really had a malignancy. As basis for this belief, Dr. Nguyen stated that Patient 3 had not undergone chemotherapy or radiation after the bilateral mastectomy. Therefore, Dr. Nguyen surmised that Dr. Berzins had probably performed the mastectomies without indication. Dr. Nguyen admitted, however, that not every patient who suffers cancer of the breast will undergo chemotherapy or radiation. Moreover, Dr. Nguyen stated that he had not seen any medical records regarding the surgery or aftercare. Finally, Dr. Nguyen admitted that he had been aware that Patient 3 had continued to see an oncologist. (Tr.Vol. 1 at 77-78; Tr.Vol. 2 at 370-372).

Dr. Nguyen further testified that he did not believe that Patient 3's colectomy had been engendered by a diagnosis of colon cancer. He stated that he believed the colectomy had resulted from a disease process other than colon cancer because he is very sure that Patient 3 had told him so, and because he believed that Dr. Berzins had done "a lot of unnecessary surgery on people." (Tr.Vol. 2 at 370-372). Despite this testimony, Dr. Nguyen admitted that records indicate that Patient 3 had had a history of breast and colon cancer. (Tr.Vol. 2 at 378-379; St. Ex. 3B at 91).

When asked why Patient 3 had been treated and was being followed by an oncologist, Dr. Nguyen testified that Patient 3 had seen a number of specialists. He stated that he had not contacted the oncologist to obtain information about Patient 3's condition because he had tried to stay out of the way of specialists. (Tr.Vol. 2 at 372).

Dr. Nguyen further testified that he had contacted a number of specialists to tell them not to give Patient 3 any pain medications. Dr. Nguyen stated that he had not inquired into Patient 3's problems or requested consultation reports. Dr. Nguyen testified that he had

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believed that the specialists ought to take care of the problems, and that Dr. Nguyen should not get involved. Nevertheless, Dr. Nguyen admitted that he had continued to treat Patient 3 for conditions which were also being treated by specialists. He stated that he had only done so in an emergency or when the patient couldn't see the specialist; however, this statement is not supported by Patient 3's medical record. (Tr.Vol. 2 at 373-377).

In September 1995, Patient 3 presented to the emergency department at CCH complaining that she had been assaulted by a man "on crack." She also stated that she had run out of medications prescribed by Dr. Nguyen and that she had an appointment scheduled with him later that day. Patient 3 complained of pain in her neck and back. (St. Ex. 3A at 78). Radiology studies revealed a fracture of the nose which may have been old or new. The x-rays also revealed a normal cervical spine, except for some early degenerative disk disease and osteoarthritic changes. Finally, the x-rays revealed degenerative disk disease and spondylosis of the lumbar spine. (St. Ex. 3A at 75). Dr. Nguyen testified that these conditions can cause pain and are consistent with the problems Dr. Nguyen had been treating in Patient 3. (Tr.Vol. 2 at 325).

In November 1995, the Drug Utilization Review Program of the Ohio Department of Human Services advised Dr. Nguyen that Patient 3 had been receiving multiple narcotics for the past 12 months. The letter further noted that:

The committee is concerned that physical and psychological dependency may develop when patients continue to receive narcotic pain medication on a long term basis. Please assess this situation considering the risk to benefit of continuous therapy.

(St. Ex. 3A at 41). Dr. Nguyen did not address the letter in his medical records, but continued to prescribe Percocet, Tylenol #3, Valium, Dalmane, and Soma. (St. Ex. 3A at 38).

2. Dr. Kikano testified regarding Patient 3. Dr. Kikano expressed concerns regarding Dr. Nguyen's use of two benzodiazepines, two pain medications, and Soma, a muscle relaxant. Dr. Kikano stated that the combination of these drugs is dangerous, as it may produce cognitive side effects, potential abuse, and possible dependence. Moreover, Dr. Kikano testified that the amount of controlled medications Dr. Nguyen prescribed in a two week period was "excessive" and "way too much for any individual." (Tr.Vol. 1 at 126-129, 137-138).

Moreover, Dr. Kikano noted that Dr. Nguyen had failed to document any history or physical findings to support a diagnosis of anxiety. Therefore, it had been inappropriate for Dr. Nguyen to prescribe controlled substances for chronic anxiety. (Tr.Vol. 1 at 127).

Regarding Dr. Nguyen's justification for failing to perform a musculoskeletal evaluation for Patient 3's complaints of leg pain on March 15, 1994, Dr. Kikano stated that

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Dr. Nguyen should have provided a thorough examination, especially because Patient 3 had fallen while taking large amounts of controlled substance medications. Moreover, Dr. Kikano stated that a physician's role is not to discount a patient's complaints depending on whether the physician believes the patient; the physician must take the patient's complaints at face value and perform an objective assessment. (Tr.Vol. 1 at 130-131). Dr. Kikano stated that he was even more troubled by Dr. Nguyen's statement that he had suspected that Patient 3 was trying to obtain additional controlled substances, especially since Patient 3 had been falling. (Tr.Vol. 1 at 132).

Dr. Kikano noted that Patient 3 had presented to Dr. Nguyen's office on October 17, 1994, with complaints of coughing and pain in the right side of the chest. Dr. Nguyen had listed rales in the physical findings and had diagnosed pneumonia. Dr. Kikano testified that, in a patient who has a history of COPD, rales alone would not support a diagnosis of pneumonia. Dr. Kikano noted that Dr. Nguyen had not checked Patient 3's temperature, employed a pulse oximeter, or ordered a chest x-ray. Dr. Kikano further testified that, if Patient 3 had actually had pneumonia, in addition to her chronic respiratory problems, Dr. Nguyen should have done a more thorough work-up to assess for impending respiratory failure or sepsis. Furthermore, Dr. Kikano testified that the z-pack antibiotics ordered by Dr. Nguyen would not have been the first choice in treating pneumonia in a patient with COPD. (Tr.Vol. 1 at 133-134; St. Ex. 3A at 20).

Dr. Kikano noted that, when Patient 3 returned to the office on November 4, 1994, Dr. Nguyen again documented an impression of pneumonia. Dr. Kikano criticized Dr. Nguyen's testimony that he had noted the impression of pneumonia in error because Patient 3 no longer had rales. Dr. Kikano stated that the presence or absence of rales is not a determining factor in the diagnosis of pneumonia. In addition, Dr. Kikano noted that Dr. Nguyen had prescribed an additional antibiotic, Bactrim. Dr. Kikano stated that if Patient 3 had had persistent pneumonia over a three week period, Dr. Nguyen should have ordered a chest x-ray. If the chest x-ray had revealed continued pneumonia, Patient 3 should have been hospitalized. In addition, Dr. Nguyen should have considered the possibility of cancer in this patient. (Tr.Vol. 1 at 134-135; St. Ex. 3A at 21).

Finally, Dr. Kikano testified that Dr. Nguyen had failed to appropriately evaluate Patient 3's complaints of enlarged lymph nodes in April 1995. Dr. Kikano testified that, in a 49 year old woman who has a history of bilateral mastectomy and colectomy, Dr. Nguyen should have documented his physical examination, assessment, impression, and treatment. Alternatively, Dr. Nguyen should have referred Patient 3 to an oncologist without delay. Dr. Kikano indicated that Dr. Nguyen's referral to an oncologist five months after Patient 3's first complaint was below the standard of care. (Tr.Vol. 1 at 136-137, 190-191; St. Ex. 3A at 27-34).

Dr. Kikano concluded that Dr. Nguyen's prescribing and record-keeping in his care and treatment of Patient 3 had fallen below the minimal standard of care. (Tr.Vol. 1 at 138-140).

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3. Dr. Leak testified regarding Patient 3. Dr. Leak testified that the key issues regarding Patient 3 were the multitude of diseases she was experiencing, which included natural degenerative diseases, disc compression, radiculopathy, and a history of cancer with a bilateral mastectomy, and a colectomy. Moreover, Patient 3 lived in an abusive environment, was assaulted, and experienced anxiety. Dr. Leak surmised that Patient 3 had had "issues, both the psychosocial and a very significant list of real diseases that are not imagined." (Tr.Vol. 4 at 106-110).

Dr. Leak further testified that Dr. Nguyen's use of Percocet and Tylenol #3 had been appropriate, because a patient can take Percocet rather than Tylenol #3 when the pain is more severe. On cross-examination, Dr. Leak admitted that Dr. Nguyen's records did not indicate that he had explained to Patient 3 how to use the two drugs alternatively. The State repeatedly asked Dr. Leak if Dr. Nguyen should have instructed Patient 3 regarding the use of these drugs and if his failure to do so had violated the standard of care. (Tr.Vol. 4 at 151-157). Dr. Leak finally answered, in part, as follows:

What happens in reality is that the patient learns what the medicine will do for them when the patient takes it. They will take the ones that help them to function and feel the best. They will not take them if they feel yucky unless it hurts real bad.

I don't know what discussions occurred with [Patient 3] but I only know the way the prescription is written. The pharmacist usually writes out how to take it.

(Tr.Vol. 4 at 157).

Furthermore, Dr. Leak testified that Patient 3 would not have had the capability or resources to participate in pain clinics or groups sessions. Accordingly, because a physician's duty is to minimize a patient's pain, Dr. Leak concluded that Dr. Nguyen's prescribing of controlled substances to Patient 3 was "done within the parameters of good judgment and good practice." (Tr.Vol. 4 at 111-112, 151-152).

Patient 4

1. Patient 4 first saw Dr. Nguyen on May 26, 1988. She was 55 years old at that time. Patient 4 stated that she had been diagnosed with diabetes mellitus eight months earlier. Her complaint was "aches all over." Her medications included Humulin-10 insulin, 28 units daily, and Darvocet p.r.n. for pain. Her previous physician had also prescribed Lanoxin, Capoten, Lasix, Nitro-Paste, K-Lyte, and Meproamate. Dr. Nguyen wrote

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“complains of increased pain with spasm, feels verry bad.” He did not record a physical examination, but prescribed Percocet 5 every 4 hours, 40 tablets. (St. Ex. 4A at 4).

Dr. Nguyen testified that he had known Patient 4 previously from the emergency department at CCH. Dr. Nguyen stated that Patient 4 decided to see Dr. Nguyen as her primary physician because Dr. Nguyen had diagnosed her diabetic condition through the emergency department. (Tr.Vol. 2 at 326-327).

Dr. Nguyen testified that, on Patient 4’s first visit to his office, he had performed a physical examination of Patient 4, but did not record it. He explained that he had believed that a medical record is maintained for the benefit of the treating physician, not for future scrutiny. Therefore, since he had been familiar with Patient 4 through the CCH emergency department, he had not needed to record the physical examination. (Tr.Vol. 1 at 18-19, 79-80).

Dr. Nguyen testified that he had prescribed Percocet for Patient 4, rather than the Darvocet she had previously been prescribed, because Patient 4 had had “long-term chronic painful condition with fractured lumbar spine, mostly moving around in wheelchair when she is out of the house. Darvocet is not enough to control the pain.” Nevertheless, Dr. Nguyen did not document a diagnosis or symptoms directly relating to his prescription of Percocet. (Tr.Vol. 1 at 81).

Patient 4 returned to Dr. Nguyen’s office three months later. At that time she requested Nitro-Paste samples. She also complained of pain in her back, left hip and left leg, and stated that her “nerves [were] real bad.” Her blood pressure was recorded as 150/94 and 160/100. Dr. Nguyen did not record any physical examination or diagnoses. Dr. Nguyen testified that he had performed a physical examination, as reflected by the recheck of her blood pressure. Dr. Nguyen also reasoned that Patient 4’s pain had not been “too much different.” (Tr.Vol. 1 at 81; St. Ex. 4A at 4).

Dr. Nguyen noted Patient 4’s previous medications, but prescribed Capoten rather than Tenormin, and Nitro-Paste rather than Transderm Nitro. (St. Ex. 4A at 4). Dr. Nguyen stated that he had prescribed Tenormin because it is “much cheaper” than Capoten. He further stated that he had prescribed Transderm Nitro because he had had samples available in his office. (Tr.Vol. 1 at 81-82).

Dr. Nguyen also admitted that, although there is no blood glucose level or other indication charted, he had changed her insulin dosage that day. When asked why, Dr. Nguyen stated that there “must have been some other reason why.” Dr. Nguyen suggested that Patient 4 must have shown him her records of home glucose monitoring. (Tr.Vol. 2 at 328-329).

Furthermore, Dr. Nguyen admitted that, when Patient 4 had been new to his practice in 1988, Dr. Nguyen had not evaluated Patient 4’s blood glucose levels despite her recent

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diagnosis of diabetes. He stated that he could not check blood glucose levels in his office because the tests would have been non-fasting, which would not have been helpful. When asked why he had not obtained a fasting blood glucose level, the following discussion transpired:

THE EXAMINER: Why couldn't you get a fasting blood sugar?

THE WITNESS: Because she came in not fasting.

THE EXAMINER: Didn't you tell her to make an appointment, come early in the morning and not eat?

THE WITNESS: I think we did. Not every time.

THE EXAMINER: Could you show me one?

THE WITNESS: Probably somewhere, somehow he have some. I think the very first blood sugar we did on her was done in January 1990.

THE EXAMINER: The first blood sugar, January 1990?

* * *

THE WITNESS: That was like about two years after.

THE EXAMINER: The result was 425.

THE WITNESS: She was seen in the emergency room at the time. It was abnormal.

THE EXAMINER: Was this [a] blood sugar you ordered? No, she came to the emergency room. So you didn't order this blood sugar?

THE WITNESS: I did order it, but that was in the emergency room. I was the ER doc.

MS. ALBERS: This says the physician was Elliot.

THE WITNESS: It was before me, but when I show up, I take over. The handwriting was mine. That would be -

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THE EXAMINER: Doctor, you were going to show us where you ordered a fasting blood sugar from your office. That's what I had asked you.

THE WITNESS: No, I didn't have a fasting blood sugar from my office.

THE EXAMINER: Thank you.

(Tr.Vol. 1 at 84-86; St. Ex. 4A at 85).

In September and October 1988, Patient 4 presented with blood pressure readings of 190/96, 200/98, 170/94 and 190/100. (St. Ex. 4A at 5-6). When asked to demonstrate his evaluation of Patient 4's hypertension, Dr. Nguyen testified that he had added Procardia to Patient 4's medical regimen. (Tr.Vol. 2 at 329-330). Dr. Nguyen further stated that:

[Patient 4] always have very quick bursts of high blood pressure after she negotiate her wheelchair from her van to the exam room. And after she sit a little bit, she be quiet, blood pressure back to normal.

My office policy is to check blood pressure before she allowed to leave, if the pressure back down to 160 systolic or less than 90 on the known high blood pressure patient.

(Tr.Vol. 1 at 82). Despite this testimony, Dr. Nguyen admitted that his medical records do not reveal any such blood pressure rechecking. Moreover, when asked to consider that Patient 4's blood pressure had been only 128/80 on her initial visit, Dr. Nguyen stated that, before he saw her on the initial visit, Patient 4 had been sitting in the waiting room for quite some time. Dr. Nguyen explained that he can remember the circumstances of that visit ten years ago, because he has a very good memory. (Tr.Vol. 1 at 82-83; Tr.Vol. 2 at 329-330).

On April 12, 1989, Patient 4 presented to Dr. Nguyen's office with a blood pressure of 220/120. Dr. Nguyen's notation states "doing better considering her multiple problems." He also listed medications and diagnoses. However, there is no physical examination or discussion of Patient 4's symptoms. Dr. Nguyen stated that, although it is not recorded in the record, his office staff had rechecked Patient 4's blood pressure before she had been allowed to leave the office. (Tr.Vol. 1 at 87-88).

Dr. Nguyen further testified that a blood pressure of 220/120 is "quite high." He clarified that statement, however, by stating that, in a patient who has a history of high blood pressure, a reading of 220/120 is "not terribly bad." Dr. Nguyen stated that he gave Patient 4 a Nitro-Dur patch because it was "the only thing [he] had in the office to give at that time" (Tr.Vol. 2 at 334). When asked if he hadn't thought it appropriate to reevaluate Patient 4

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during the next few days, Dr. Nguyen testified that the blood pressure reading had been the result of pain, infection, and confinement to a wheel chair. He added that Patient 4's blood pressure had been "fairly well controlled most of the time." (Tr. Vol. 2 at 334-335).

In October 1989, Patient 4's blood pressure was 200/98. (St. Ex. 4A at 15). On December 5, 1989, Patient 4 presented with a blood pressure of 212/70. Dr. Nguyen minimized the abnormal reading, despite his failure to document his reasoning, by stating that Patient 4 had probably not been taking her blood pressure medication prior to that visit. Dr. Nguyen reasoned that he generally prescribes blood pressure medications with refills sufficient to last six months; therefore, since he had last prescribed blood pressure medications in May 1989, she had probably been without medications for a few weeks. (Tr. Vol. 2 at 339; St. Ex. 4A at 16).

It should be noted, however, that the medical record reflects numerous occasions when Patient 4 had presented with blood pressure readings of 200/100 or higher and Dr. Nguyen had failed to record any physical examination. (St. Ex. 4A at 11, 15-17, 20, 21, 26, 34). Moreover, in July 1991, Dr. Nguyen recorded a significantly lower blood pressure reading of 90/60, but failed to acknowledge the change in blood pressure or document an evaluation. (St. Ex. 4A at 30). In addition, on numerous occasions, Dr. Nguyen saw Patient 4 without recording any blood pressure at all. (St. Ex. 4A at 25, 28, 29, 31, 32). Finally, in computer generated notes from January through May 1993, Dr. Nguyen uniformly recorded Patient 4's blood pressure as 154/80, and from August 1994 through December 1995, he consistently recorded her blood pressure as 142/70. (St. Ex. 4A at 49-58 and 38-42, respectively).

Dr. Nguyen acknowledged that he had failed to monitor or document an accurate blood pressure for Patient 4 for periods longer than one year. Nevertheless, Dr. Nguyen justified his conduct as follows:

I tried to practice myself, probably very sleepy when I do myself.
Spreading myself too thin at that time. I have, at that time, seven
different jobs. Do the best I can.

The mistake of not transferring from - most of the time from this
part of the record, transferred to, but probably didn't write it in.

* * *

I probably make a mistake of type. I didn't transfer all of the
information from note. I jot down to the computer typing out.
That was a problem, what it was. I certainly would not see her
without checking her blood pressure. And maybe not high, I didn't
pay much attention or something.

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(Tr. Vol. 2 at 341-342).

In August 1989, Patient 4 presented with complaints that she had been sweating and feeling lightheaded. She also stated that she had fallen the previous day. Dr. Nguyen's evaluation was recorded as: "Swelling too much, no other problems, chest clear, NHS, [illegible], breathing good." No blood pressure was recorded; no blood glucose level was ordered. (Tr. Vol. 1 at 87-88; Tr. Vol. 2 at 389; St. Ex. 4A at 13). When asked how he had evaluated her complaints, Dr. Nguyen stated:

Well, if you look at the date, it was in August. That's the middle of the summer, and her apartment have no air conditioning, so she sweat. And she is very unsteady lady with her back injury, and remember she is in the wheelchair most of the time, and at home, maybe try to move around might have fell. No added injury.

(Tr. Vol. 1 at 88). When asked about Patient 4's complaint of lightheadedness, Dr. Nguyen stated that he did not know why she had voiced that complaint, but at the time he had not identified any problem. Regarding his notation of "swelling too much," Dr. Nguyen testified that he had assumed that Patient 4's legs had been swelling because she had been taking Lasix and a potassium replacement. (Tr. Vol. 1 at 88-90; Tr. Vol. 2 at 337).

On numerous occasions, Dr. Nguyen wrote prescriptions for Percodan and other medications without recording anything but the date and the prescription in the medical record. (St. Ex. 4A at 19-58). On some occasions, Dr. Nguyen wrote prescriptions for Percodan for Patient 4's husband [Patient 2] and recorded the prescription in Patient 4's medical record. (St. Ex. 4A at 45-47, 50, 58). Dr. Nguyen explained that he had given the prescriptions to Patient 4 without requiring an office visit and, therefore, without billing for office visits. Dr. Nguyen admitted that he had not recorded any evaluation or assessment of Patient 4's need for these medications or of any side effects. Dr. Nguyen further admitted that Patient 4 had probably developed physical dependence on Percodan, but stated that she had needed the drug to relieve her pain. Dr. Nguyen did not specify which pain. (Tr. Vol. 1 at 90-93).

Dr. Nguyen testified that, in October 1988, Patient 4 had had a series of radiologic studies performed. A "CT scan of the lumbosacral spine reveal[ed] no evidence of herniation of the nuclei pulposi or spinal stenosis. Osteoarthritic changes [were] noted at both the L4-L5 and L5-S1 levels." (St. Ex. 4A at 66). An x-ray of the lumbosacral spine revealed a compression fracture of the body of L12 which appeared to be old. The report further revealed that "[t]he remaining vertebra are normal and the intervertebral disk spaces are well maintained throughout." (St. Ex. 4A at 67). Dr. Nguyen testified that these findings were consistent with Patient 4's history of having suffered a broken back and with the pain Patient 4 continued to suffer. (Tr. Vol. 2 at 331-333). Dr. Nguyen further testified that Patient 4 had needed medication for pain because "this lady has chronic, severe pain problem from her

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back injury, fractured lumbar spine, and mostly wheel chair bound. "Couldn't walk very much, very far, needs pain relief." (Tr.Vol. 2 at 342).

Dr. Nguyen ordered physical therapy for Patient 4 in 1990. Patient 4 attended only 2 sessions and terminated treatment on her own accord. (St. Ex. 4A at 94).

2. Dr. Kikano testified regarding Patient 4's initial visit to Dr. Nguyen's office, stating that Dr. Nguyen had failed to document any history or physical findings to justify his diagnoses of diabetes, possible congestive heart failure, and hypertension. In addition, Dr. Kikano testified that Dr. Nguyen had failed to include any focused examination to justify the prescription of an additional controlled substance, Percocet. (Tr.Vol. 1 at 142-143; St. Ex. 4A at 3).

Dr. Kikano further testified that, on Patient 4's next visit, Dr. Nguyen had changed her cardiac medicine from Capoten to Tenormin. Dr. Kikano testified that nothing in the history or physical examination justified substitution of the medication. Moreover, Dr. Kikano stated that Tenormin should be used with caution in a patient with diabetes. Dr. Kikano explained that Tenormin is a beta-blocker which can mask symptoms of hypoglycemia. Dr. Kikano also noted that Dr. Nguyen had not documented any blood glucose levels to evaluate Patient 4 for hypoglycemia. (Tr.Vol. 1 at 143; St. Ex. 4A at 4).

Dr. Kikano also testified that Patient 4 had reported to Dr. Nguyen's office on many occasions with dangerously high blood pressure, and on one occasion with a complaint of lightheadedness. Dr. Kikano testified that a complaint of lightheadedness could have been associated with hypertension or diabetes, but the record contained no evaluation of her complaint. (Tr.Vol. 1 at 144-146; St. Ex. 4A at 5).

Dr. Kikano noted that on February 3, 1989, Patient 4 presented with a blood pressure of 186/90 and complained of pain in her ribs, left side. Nevertheless, Dr. Nguyen did not document any evaluation of her symptoms. Dr. Kikano explained that, in a patient with hypertension and diabetes, a physician should be concerned that the patient may be suffering angina. (Tr.Vol. 1 at 148-149; St. Ex. 4A at 9).

Furthermore, when Patient 4 presented to Dr. Nguyen's office with a blood pressure of 220/120, Dr. Nguyen did not record any evaluation of the hypertension. Dr. Kikano acknowledged that Dr. Nguyen had ordered a NitroDur patch, which has an effect of decreasing blood pressure. Nevertheless, Dr. Kikano stated that Dr. Nguyen had failed to record any history or physical examination to justify its use. (Tr.Vol. 1 at 149-150; St. Ex. 4A at 11).

Dr. Kikano addressed Patient 4's August 11, 1989, complaints of sweating at night, lightheadedness, and falling. Dr. Kikano stated that Dr. Nguyen's note failed to address Patient 4's complaints, which could have been caused by hypoglycemia, hypertension, or

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cardiac problems. Instead, Dr. Nguyen entered a diagnosis of resolving pneumonia, which was not supported by the history or physical examination documented in the records. (Tr.Vol. 1 at 150-151; St. Ex. 4A at 13).

Finally, Dr. Kikano testified that Dr. Nguyen had prescribed Percodan for Patient 4, approximately monthly, from 1981 through 1995. Dr. Kikano testified that Dr. Nguyen often failed to perform any physical examination. On the occasions when he did document a physical examination, however, Dr. Nguyen did not address the diagnoses for which Percodan was prescribed. Moreover, Dr. Nguyen did not document Patient 4's response to treatment, alternative modalities of treatment, or any evaluation of dependency and addiction. (Tr.Vol. 1 at 151-152).

Dr. Kikano concluded that Dr. Nguyen's prescribing and record-keeping in his care and treatment of Patient 4 had fallen below the minimal standard of care. (Tr.Vol. 1 at 152-153).

3. Dr. Leak testified regarding Patient 4. Dr. Leak testified that Dr. Nguyen had appropriately prescribed controlled substance medications to treat Patient 4's painful conditions. Dr. Leak noted that these conditions included "degenerative disease," coronary artery disease, and diabetes. (Tr.Vol. 4 at 117-118). He stated that:

Her chances of hurting were high. Her chances of healing were low. This lady required humane management of her painful condition, uh, and to do less than that would be inhumane. It would be considered below the standard of care.

(Tr.Vol. 4 at 120). Moreover, Dr. Leak testified that Dr. Nguyen's use of Percocet had been appropriate, because Darvocet would not have been sufficient to treat Patient 4's pain. (Tr.Vol. 4 at 118).

Additional Testimony

1. Dr. McKee testified that he is the Medical Director at CCH. Dr. McKee has been familiar with Dr. Nguyen since August 1995, and has worked with him in the emergency department at CCH. Dr. McKee testified that he has been in a position to review Dr. Nguyen's medical care and medical records. Dr. McKee stated that his review of Dr. Nguyen has included such considerations as Dr. Nguyen's documentation of patient history, allergies, medications, physical examination, vital signs, and diagnoses. Dr. McKee concluded that Dr. Nguyen "documents his emergency records adequately." Moreover, Dr. McKee testified that he has never seen any indication that Dr. Nguyen's prescribing of narcotics is inappropriate. (Tr.Vol. 2 at 210-215, 227-228).

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- Dr. McKee testified that the emergency department at CCH contains 9 beds. The department sees approximately 16,000 to 18,000 patients per year. He further stated that the hospital has approximately 53 acute care beds, a geriatric unit, a psychiatric unit and a rehabilitation unit. (Tr. Vol. 2 at 229-231).
2. Michael L. Brown testified on behalf of Dr. Nguyen. Mr. Brown testified that he is the Chief Operating Officer for CCH. Mr. Brown stated that Dr. Nguyen had served as the Director of the Chemical Dependency Unit at CCH prior to its termination in Spring 1998. In addition, Mr. Brown stated that he is a Registered Nurse, and has worked with Dr. Nguyen in the Emergency Department at CCH. Mr. Brown stated that he has never been aware of any quality matters regarding Dr. Nguyen or his care of patients at CCH. (Tr. Vol. 2 at 233-239).
 3. Dr. DiIullo testified that he has known Dr. Nguyen for 10 or 12 years, since both were involved in local emergency departments. Dr. DiIullo stated that he has served as a director in emergency departments and urgent care facilities in which Dr. Nguyen has been employed, and has had an opportunity to observe Dr. Nguyen's practice. Dr. DiIullo testified that he has never known Dr. Nguyen to experience any "adverse outcomes or significant patient complaints." (Tr. Vol. 4 at 8-9).

FINDINGS OF FACT

1. The evidence presented at hearing supported the following allegations regarding Patients 1 through 4 made by the Board in its August 12, 1998, notice of opportunity for hearing:
 - a. In the routine course of his treatment of Patients 1 through 4, Dr. Nguyen failed to conduct appropriate histories and physical examinations prior to treatment, failed to address presenting complaints and symptoms, made diagnoses not supported by documentation in his medical records, failed to treat the diagnosed conditions appropriately, and failed to address preventive care. In addition, Dr. Nguyen prescribed controlled substances and other dangerous drugs in an inappropriate manner.
 - b. Examples of Dr. Nguyen's inappropriate management of Patient 1 include the following:
 - i. Dr. Nguyen prescribed Darvon 65 and Valium 10 mg. to Patient 1 at each visit through June 10, 1994, without adequately assessing Patient 1's condition, without evaluating side effects, and without considering alternative treatment options.
 - ii. On 6/17/94, Patient 1 was hospitalized in a detoxification and rehabilitation center.

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Dr. Nguyen prescribed controlled substances to Patient 1 based solely on Patient 1's representation that Dr. Berzins had prescribed them previously. Dr. Nguyen made no efforts to obtain Patient 1's records from Dr. Berzins' office. Dr. Nguyen argued that a physician should be allowed to rely on the truthfulness of a patient. Nevertheless, Dr. Nguyen admitted that he had often refused to see patients from Dr. Berzins' office because those patients were only seeking controlled substances.

Dr. Nguyen also testified that he had not tried to treat Patient 1's pain with any modality other than prescribing controlled substances because Patient 1 had been determined to be disabled by the BWC years earlier. Dr. Nguyen assumed that Patient 1 had exhausted his options for BWC approved treatment alternatives without making any inquiry to the BWC to confirm this fact.

Dr. Nguyen continued to refill controlled substances without evaluating Patient 1's response to the medications, or evaluating Patient 1 for evidence of dependence or addiction. As noted in the State's Closing Argument, Dr. Nguyen had not assessed Patient 1 for potential addiction or dependency and had not been aware that Patient 1 had had a problem with addiction until one week before Patient 1's admission to a rehabilitation unit.

Dr. Leak's rationalization that Dr. Nguyen's prescribing had been justified because Dr. Nguyen had not exceeded the recommendations in the PDR, and had not prescribed near-lethal dosages, is not credible. Similarly, Dr. Leak's testimony that Dr. Nguyen need not document Patient 1's response to controlled substances because there was an "inferred success [because Patient 1's] consumption did not escalate" is similarly without merit.

- c. Examples of Dr. Nguyen's inappropriate management of Patient 2 include the following:
 - i. On April 12, 1989, Patient 2 presented to Dr. Nguyen's office for an initial visit. Patient 2 requested blood pressure medication. Dr. Nguyen did not record a history or a physical examination. Nevertheless, Dr. Nguyen entered a diagnosis of hypertension and prescribed Inderide 80/25.
 - ii. On October 23, 1990, Patient 2 presented to Dr. Nguyen's office with a significantly elevated blood pressure of 210/100. Dr. Nguyen failed to conduct and/or document an appropriate physical examination. In particular, Dr. Nguyen failed to document whether Patient 2 was experiencing symptoms such as headache, chest pain, or shortness of breath, all of which may be associated with elevated blood pressure.

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- iii. On 4/6/92, Patient 2 presented with a complaint of retrosternal chest pain. Dr. Nguyen failed to conduct and/or document a physical examination, and Dr. Nguyen failed to formulate and/or document a treatment plan.

Dr. DiIullo's testimony that it had been appropriate for Dr. Nguyen to allow Patient 2 to drive himself to the emergency room, since the emergency department was only one or two blocks away, is preposterous.

Moreover, Dr. Leak's testimony that Dr. Nguyen's prescribing of controlled substances over a two year period to treat various unspecified conditions is not convincing. Similarly unconvincing is Dr. Leak's testimony that Dr. Nguyen had appropriately prescribed Ativan to Patient 2 because Patient 2 had been experiencing various "disturbing" conditions, despite the fact that Dr. Nguyen had never diagnosed anxiety.

- d. Examples of Dr. Nguyen's inappropriate management of Patient 3 include the following:
 - i. On November 15, 1993, Patient 3 presented to Dr. Nguyen's office for an initial visit. Patient 3 had a history of bilateral mastectomy, cholecystectomy, colectomy, chronic obstructive pulmonary disease (emphysema), and chronic bronchitis. Dr. Nguyen diagnosed "chronic LS sprain and spasm" and "chronic anxiety." However, these diagnoses are not supported by the documented history and physical examination.
 - ii. Dr. Nguyen prescribed Soma, Dalmane, Valium 10 mg, Tylenol #3, and Percocet, without indication. In addition, Dr. Nguyen continued to prescribe multiple controlled substances to Patient 3, without indication, through January 4, 1996. Throughout the time that Dr. Nguyen prescribed these controlled substances to Patient 3, Dr. Nguyen failed to evaluate and/or document whether Patient 3 was dependent upon and/or abusing the controlled substances.
 - iii. On March 15, 1994, Patient 3 presented to Dr. Nguyen's office with persistent leg pain from a previous fall. Dr. Nguyen failed to conduct and/or document a musculo-skeletal examination, and Dr. Nguyen failed to adopt and/or document an adequate treatment plan.
 - iv. On October 17, 1994, Patient 3 presented to Dr. Nguyen's office with coughing and pain in her right chest. Dr. Nguyen failed to conduct and/or document an appropriate physical examination. Dr. Nguyen entered a diagnosis of pneumonia, which is not supported by the documented findings in his records.

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- v. On November 4, 1994, Patient 3 presented to Dr. Nguyen's office, and Dr. Nguyen again documented a diagnosis of pneumonia. If Patient 3 had pneumonia, and the pneumonia had persisted for three weeks, Dr. Nguyen should have conducted additional diagnostic testing and explored other treatment options, including hospitalization.
- vi. On July 7, 1995, and August 3, 1995, Dr. Nguyen's records reflect that Patient 3's reason for the visit was "lymph node[s] on axillary." Dr. Nguyen failed to address these complaints, despite Patient 3's history of bilateral mastectomy.

Dr. Nguyen prescribed dangerous combinations of controlled drugs which could have produced cognitive side effects, abuse, and dependence. Moreover, as noted by Dr. Kikano, the amount of controlled medications Dr. Nguyen prescribed in a two week period was "excessive" and "way too much for any individual." Dr. Leak's testimony that Dr. Nguyen's prescribing of controlled substances to Patient 3 was "done within the parameters of good judgment and good practice" was not supported by the evidence.

In addition, Dr. Nguyen repeatedly ignored potentially threatening conditions. For example, Dr. Nguyen refused to even evaluate Patient 3's complaint of leg pain after a fall, because Dr. Nguyen assumed that Patient 3 had been seeking additional narcotics. In addition, Dr. Nguyen minimized Patient 3's fall, despite Patient 3's use of large amounts of controlled substances.

Finally, Dr. Nguyen failed to seriously evaluate Patient 3's enlarged axillary lymph nodes, despite Patient 3's history of breast and colon cancer. Most unbelievable, however, is Dr. Nguyen's rationalization that Patient 3 had never really had cancer because Dr. Nguyen believes that Dr. Berzins had performed a lot of unnecessary surgeries. Dr. Nguyen also argued that Patient 3 could not have had cancer because she had not undergone chemotherapy or radiation after the bilateral mastectomy. Dr. Nguyen came to this conclusion despite the fact that he had never seen Patient 3's previous records, that he was aware that not every patient who suffers cancer of the breast will undergo chemotherapy or radiation, and that he had been aware that Patient 3 had continued to see an oncologist. Finally, Dr. Nguyen's reasoning was similarly inconceivable when he stated that he had not contacted the oncologist to obtain information about Patient 3's condition because he had tried to "stay out of the way of specialists."

- e. Examples of Dr. Nguyen's inappropriate management of Patient 4 include the following:

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- i. On May 26, 1988, Patient 4 presented to Dr. Nguyen's office for an initial visit. Patient 4 had a history of heart disease and diabetes. Dr. Nguyen failed to conduct and/or document a physical examination.
- ii. On May 26, 1988, Dr. Nguyen prescribed Percocet to Patient 4 without indication.
- iii. On February 3, 1989, Patient 4 presented to Dr. Nguyen's office with elevated blood pressure and pain in her left chest. Dr. Nguyen failed to conduct and/or document an updated history and a physical examination, and Dr. Nguyen failed to address Patient 4's symptoms.
- iv. On April 12, 1989, Patient 4 presented to Dr. Nguyen's office with dangerously high blood pressure of 220/120. Dr. Nguyen failed to conduct and/or document a physical examination, and Dr. Nguyen failed to treat the high blood pressure.
- v. On August 11, 1989, Patient 4 presented to Dr. Nguyen's office with significant symptoms of sweating at night and light-headedness. Patient 4 had fallen the previous day. Dr. Nguyen failed to address these complaints. Instead, Dr. Nguyen entered a diagnosis of resolving pneumonia, which is not supported by the documentation in his records.
- vi. Dr. Nguyen prescribed Percodan to Patient 4 on multiple occasions, without conducting and/or documenting any physical examinations, and without evaluating and/or documenting any diagnoses or possible side effects.

Dr. Nguyen prescribed Percodan for Patient 4, approximately monthly, from 1981 through 1995. Dr. Nguyen often failed to perform any physical examination. On the occasions when he did document a physical examination, however, Dr. Nguyen did not address the diagnoses for which Percodan was prescribed. Moreover, Dr. Nguyen did not document Patient 4's response to treatment, alternative modalities of treatment, or any evaluation of dependency and addiction. Dr. Leak's testimony that Dr. Nguyen had appropriately prescribed controlled substances to treat Patient 4's various painful conditions was not convincing.

Dr. Nguyen repeatedly ignored significantly elevated blood pressure readings. Dr. Nguyen's justification for this failure to evaluate Patient 4 on these occasions, arguing that the blood pressure reading had been the result of pain, infection, and confinement to a wheel chair, is not acceptable. Dr. Nguyen's further justification, that Patient blood pressure had been "fairly well controlled most of the time," is clearly not supported by the record. Despite frequent readings of 200/100 or higher and readings as low as 90/60, Dr. Nguyen often saw Patient 4 without recording any blood pressure

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at all. Dr. Nguyen acknowledged that he had failed to monitor or document an accurate blood pressure for Patient 4 for periods longer than one year.

Finally, Dr. Nguyen ignored Patient 4's complaints of sweating at night, light-headedness, and falling, despite the fact that these symptoms could have been indications of hypoglycemia, hypertension, or cardiac problems. Dr. Nguyen did not evaluate Patient 4's complaint; his justification that it was summer and Patient 4 was confined to a wheelchair was ludicrous.

2. The evidence presented at hearing did not support the following allegations regarding Patients 2 made by the Board in its August 12, 1998, notice of opportunity for hearing:
 - a. Dr. Nguyen failed to identify and/or document specific abnormalities on an EKG he ordered for Patient 2 on October 23, 1990.
 - b. Dr. Nguyen inappropriately prescribed Vicodin to Patient 2 who suffered from urinary retention

Dr. Kikano may have disagreed with Dr. Nguyen's interpretation of the EKG. Nevertheless, Dr. Nguyen did document specific abnormalities when he interpreted the EKG for Patient 2. In addition, Dr. Nelson's testimony that the use of Vicodin in a patient with coexisting orchiditis and chronic urinary retention is not necessarily contraindicated was convincing.

CONCLUSIONS OF LAW

1. The conduct of Harry P. Nguyen, M.D., as described in Findings of Fact 1, constitutes "[f]ailure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code.
2. The conduct of Dr. Nguyen, as described in Findings of Fact 1, constitutes "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.
3. The conduct of Dr. Nguyen, as described in Findings of Fact 1, constitutes "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(D), Ohio Administrative Code.

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4. Pursuant to Rule 4731-11-02(F), Ohio Administrative Code, the violation of Rule 4731-11-02(D), as noted in Conclusion of Law 3, also constitutes violations of Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code.

* * * * *

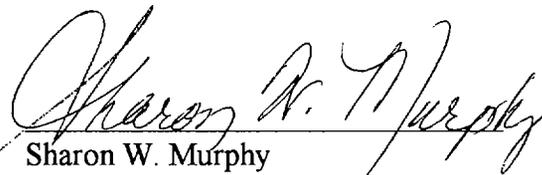
Dr. Nguyen argued that all of the Board's allegations arose from his treatment of patients in his private office. Moreover, Dr. Nguyen is board certified in emergency medicine. Accordingly, Dr. Nguyen asked that he be allowed to continue practicing in an emergency department setting. Nevertheless, the evidence at hearing revealed a physician who practices medicine recklessly, incompetently, and dangerously. These characteristics create as much danger to the public in an emergency department as in a private office. Moreover, Dr. Nguyen continues to defend his practice and fails to recognize these practice deficiencies. The Board has no option but to remove Dr. Nguyen from practice.

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Harry P. Nguyen, M.D., to practice medicine and surgery in the State of Ohio is hereby PERMANENTLY REVOKED.

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


Sharon W. Murphy
Attorney Hearing Examiner



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF APRIL 14, 1999

REPORTS AND RECOMMENDATIONS

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

Dr. Steinbergh 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 Loren Scott Carlson, D.O.; Bharesh Dedhia, M.D.; Neal Ronald Glass, M.D.; Raymond A. Morehead, M.D.; Harry P. Nguyen, M.D.; and Robert B. McFaul, D.O. A roll call was taken:

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

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

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

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

Dr. Steinbergh 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.

Dr. Steinbergh added that the matter of Robert B. McFaul, D.O., will be considered by the Board the following morning, to allow his attorney to be present during deliberations.

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

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HARRY P. NGUYEN, M.D.

Dr. Steinbergh directed the Board's attention to the matter of Harry P. Nguyen, M.D. She advised that objections were filed to Hearing Examiner Murphy's Report and Recommendation and were previously distributed to Board members.

Dr. Steinbergh continued that a request to address the Board has been timely filed on behalf of Dr. Nguyen. Five minutes would be allowed for that address.

Ms. Washington introduced Dr. Nguyen to the Board, stating that he would speak on his own behalf.

Dr. Nguyen thanked the Board for permission to address it. He stated that he stands before the Board, pleading his case, after he and his family went through eight months of anguish, shame, and uncertainty. He asked the Board to consider his unusual, exceptional situation. He came to America almost 24 years ago as a refugee with his wife. He has tried very hard to work himself up. He has had an Ohio license since 1979. Upon the Board's charging him, he realized that he didn't keep his office records as complete and as meticulous as they should be. This is not because he is reckless or because he disregards his patients' safety or well-being. This shortcoming is from lack of time. He spread himself too thin into many aspects of health care. His office, which is now closed, was a very small part of his practice. His office was where he thought he could help pay back the good fortune he has received since he came to the United States as a Vietnam refugee. His office patients are mostly refugees from all over the world and the poor. His main concern when he was in his office was to give the best care possible and to relieve pain and suffering for his patients, taking into consideration all factors.

Dr. Nguyen stated that he was always trying to better himself in medical knowledge. He always attended serious C.M.E. conferences, where he could actually learn something new. He became board certified in emergency medicine in 1990. Recently he has been certified in addiction medicine by the American Society of Addiction Medicine. He took that test the day before the Board's hearing, and he got the results in March 1999.

Dr. Nguyen stated that he has done many good things for the community, and he asked that the Board consider that. In 1988 and 1989 he worked with the Franklin County Children's Services, the Franklin County Prosecutor's Office, Columbus Children's Hospital, where he produced an educational poster for the health care provider to educate the provider of refugee home remedies and practices that can sometimes be misconstrued or mistaken as child abuse or battery. He also works with O.S.U. Research Foundation and the Dept. of Preventive Medicine in various health research. In 1989 he was featured on WSYX-TV as "someone you should know" for the work he has done for the community. Between 1987 and 1990 he helped to set up a free clinic at the Columbus Shelter. In 1996 he was one of the physicians in Franklin County who was awarded the EMS Physician of the Year by the Columbus Fire and Police Departments. In 1997 he was elected Physician of the Year at Columbus Community Hospital.

Regarding the patient records the Board reviewed, Dr. Nguyen stated that he sincerely believes that he was trying to be a very good doctor, taking care of the patients' problems. He felt he was doing the best he could to try to help the situation. He has taken a lot of time to study addiction medicine.

Dr. Steinbergh advised that Dr. Nguyen would have another minute to speak.

Dr. Nguyen stated that he has tremendous regret that the office records for these patients do not reflect the care he gave them. He asked the Board to please consider the fact that he has already closed his office, which was less than 10% of his practice. He did that so that the Board would recognize and understand that he knows that his recordkeeping was inadequate and so that the Board would no longer have concern about that aspect of his practice. At this point he practices only emergency medicine at Columbus Community Hospital. The Director there has agreed to review all of his records. He has not had any complaints for the last 19 years as an emergency room physician.

Dr. Nguyen stated that he is willing to take any course or any suggestion from the Board to remedy whatever deficiency the Board thinks he has. He asked that the Board give him a chance and to not permanently revoke his license.

Dr. Steinbergh asked whether the Assistant Attorney General wished to respond.

Ms. Albers stated that she would like to point out to the Board that this is not just a case involving the overprescribing of narcotics, even though there were documented in the record of this case very serious violations of the Board's prescribing rules and §4731.22(B)(2). This case also documented numerous violations of care that fell below the standard of care required for physicians in this state. Dr. Nguyen was

treating many patients with high blood pressure and many times went without documenting blood pressures and not addressing symptoms such as sweating at night, lightheadedness and falling. He justified this at hearing by saying that it was summer and the patients lived in non-air-conditioned buildings. There were also incidents noted in the transcript where Dr. Nguyen would prescribe medication and then not document the amount. Another patient appeared in his office post-mastectomy with lymph nodes on the axillary. Dr. Nguyen failed to address this serious condition, until several months afterwards. Dr. Nguyen tried to justify this at hearing by saying that the patient's previous physician had done a lot of unnecessary surgeries and that he didn't believe that this patient had really had cancer, despite the mastectomy.

Ms. Albers stated that these were just a few of the incidents brought forth at hearing. As a result, she strongly supports the Hearing Examiner's Proposed Order, and urged the Board to adopt it.

DR. AGRESTA MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF HARRY P. NGUYEN, M.D. DR. SOMANI SECONDED THE MOTION.

Dr. Steinbergh stated that she would now entertain discussion in the above matter.

Dr. Egner spoke in favor of the motion, noting that the Board takes revoking licenses very seriously. To hold himself up to this Board as an expert in addiction medicine, and yet not recognize how poorly he prescribed and managed pain medications is inconsistent and doesn't give her any reassurance that he wouldn't do the same thing tomorrow. He definitely practiced below minimal standards. To say that Dr. Nguyen only practiced this way in his private practice but not in the other areas that he practiced doesn't make sense. She doesn't believe that he would practice one way in seeing patients in his office and then with a higher or different standard of care in an emergency room setting or hospital setting. She believes that Dr. Nguyen practices the same way all of the time, noting that the Board only has records of his office practice.

Dr. Egner continued that Dr. Nguyen did spread himself too thin. She got tired reading the number of hours he worked per week. However, she doesn't believe that the Board can write an order that says that Dr. Nguyen will only work in the emergency room a specified number of hours per week. The Board either trusts how he practices medicine, or it doesn't. That's what the Board must decide today.

Dr. Stienecker agreed with Dr. Egner that Dr. Nguyen did spread himself too thin in an attempt to do all things for all people. However, there was also testimony from people who worked with him in emergency rooms and hospitals that he did, in fact, give better care in those circumstances than he did in his office. Dr. Stienecker stated that he believes the Board should give Dr. Nguyen a chance to work in the areas where he does good work and limit where he cannot work, and prevent Dr. Nguyen from overextending himself.

DR. STIENECKER MOVED TO AMEND THE CONCLUSIONS IN THE MATTER OF HARRY P. NGUYEN, M.D., BY SUBSTITUTING THE FOLLOWING LANGUAGE FOR THE PARAGRAPHS FOLLOWING THE FIVE STARS ON PAGE 44 OF THE REPORT AND RECOMMENDATION:

The evidence presented at hearing clearly supported the State's allegations that Dr. Nguyen's conduct violated the law relating to the practice of medicine. Dr. Nguyen prescribed controlled substances over long periods of time without adequate assessment and evaluation. In addition, Dr. Nguyen failed to adequately monitor patients' conditions, such as hypertension and diabetes. Finally, Dr. Nguyen carelessly maintained medical records, failing to record appropriate vital signs, patient complaints, physical findings, and diagnoses.

On the other hand, the evidence suggests that Dr. Nguyen prescribed controlled substances because he believed that his patients were legitimately experiencing chronic pain. Dr. Nguyen repeatedly testified that the patient's comfort is the physician's primary responsibility. Moreover, Dr. Nguyen has taken steps to improve his practice deficiencies. Dr. Nguyen is board certified in emergency medicine. In addition, he has recently prepared for, taken, and passed the certification examination of the American Society of Addiction Medicine. Furthermore, when he realized that his many professional obligations were affecting his ability to practice appropriately, Dr. Nguyen significantly decreased his professional commitments.

The evidence suggests that Dr. Nguyen is willing to take the necessary steps to improve his practice deficiencies. Nevertheless, Dr. Nguyen warrants close monitoring in a structured environment to ensure the safety of the public.

DR. STIENECKER FURTHER MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF HARRY P. NGUYEN, M.D., BY SUBSTITUTING THE FOLLOWING:

It is hereby ORDERED that:

1. The certificate of Harry Nguyen, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Nguyen's certificate is SUSPENDED for an indefinite period of time, but not less than six months.
2. The Board shall not consider reinstatement of Dr. Nguyen's certificate to practice unless all of the following minimum requirements have been met:
 - a. Dr. Nguyen shall submit an application for reinstatement, accompanied by appropriate fees.

- b. Dr. Nguyen shall take and pass an examination to be administered by the Board or its designee related to the content of the *DEA Physician's Manual*, which manual may be obtained from the offices of the Board. In the event that Dr. Nguyen fails this examination, he must wait at least three months between re-examinations. Dr. Nguyen must pass this examination before submitting his application for reinstatement.
 - c. Upon submission of his application for reinstatement, Dr. Nguyen 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 [CME] requirements for relicensure for the CME acquisition period(s) in which they are completed.
 - d. Upon submission of his application for reinstatement, Dr. Nguyen shall provide acceptable documentation of satisfactory completion of 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 CME requirements for relicensure for the CME acquisition period(s) in which they are completed.
 - e. Upon submission of his application for reinstatement, Dr. Nguyen shall submit to the Board and receive its approval for a plan of practice in Ohio which, until otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Nguyen's activities will be directly supervised and overseen by a monitoring physician approved in advance by the Board. The monitoring physician shall monitor Dr. Nguyen and his patient charts. The monitoring physician shall provide the Board with reports on Dr. Nguyen's progress and status and on the status of his patient charts on a quarterly basis or as otherwise directed by the Board.
 - f. In the event that Dr. Nguyen has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.
3. Upon reinstatement, Dr. Nguyen's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
 - a. Dr. Nguyen shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions,

and limitations.

- b. Dr. Nguyen shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
- c. Dr. Nguyen shall appear in person for interviews before the full Board or its designated representative within three months of the date in which probation becomes effective, at three month intervals thereafter, and upon his request for termination of the probationary period, or as otherwise requested by the Board.

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

- d. Dr. Nguyen shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of probation. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
- e. Dr. Nguyen's practice shall be limited to a supervised structured environment in which Dr. Nguyen's activities will be directly supervised and overseen by the monitoring physician approved in advance by the Board. The monitoring physician shall monitor Dr. Nguyen and his patient charts. The chart review may be done on a random basis, with the number of charts reviewed to be determined by the Board. The monitoring physician shall provide the Board with reports on Dr. Nguyen's progress and status and on the status of his patient charts on a quarterly basis. All monitoring physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Nguyen's quarterly declaration. It is Dr. Nguyen's responsibility to ensure that the reports are timely submitted.

Dr. Nguyen shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

In the event that the approved monitoring physician becomes unable or unwilling to serve, Dr. Nguyen shall immediately notify the Board in writing and shall make arrangements for another monitoring physician as soon as practicable. Dr. Nguyen shall refrain from practicing until such supervision is in place, unless otherwise determined by the Board. Dr. Nguyen shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

- f. Dr. Nguyen shall keep a log of all controlled substances purchased, prescribed, dispensed, or administered. Such log shall be submitted in the format approved by the Board thirty (30) days prior to Dr. Nguyen's personal appearances before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Nguyen shall make his patient records with regard to such prescribing available for review by an agent of the Board upon request. Dr. Nguyen shall not seek the Board's approval for a change in this provision for a minimum of one year from the reinstatement of his certificate.
 - g. When working in an emergency department, Dr. Nguyen shall have all orders and/or prescriptions for controlled substances as defined by State or Federal law countersigned within twenty-four (24) hours by a physician who is fully authorized under state and federal law to prescribe, dispense and administer controlled substances and who is employed and/or has privileges in the hospital or institution in which Dr. Nguyen is employed and/or has privileges. Dr. Nguyen shall not seek the Board's approval for a change in this provision for a minimum of one year from the reinstatement of his certificate.
 - h. Within thirty days of reinstatement of his certificate, Dr. Nguyen shall provide a copy of this Order to all employers or entities with which he is under contract to provide physician services or is receiving training, and the Chief of Staff at each hospital where Dr. Nguyen has privileges or appointments. Further, Dr. Nguyen shall provide a copy of this Order to all employers or entities with which he contracts to provide physician services, or applies for or receives training, and the Chief of Staff at each hospital where Dr. Nguyen applies for or obtains privileges or appointments.
 - i. If Dr. Nguyen violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may set aside the stay order and impose the permanent revocation of Dr. Nguyen's certificate.
4. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Nguyen's certificate will be fully restored.

This Order shall become effective thirty days from the date of mailing of notification of approval by

the Board.

DR. SOMANI SECONDED THE MOTION.

Dr. Stienecker stated that he believes the terms of his Proposed Order cover a lot of the Board's concerns in this case.

Dr. Bhati stated that he has a little concern about this. This wasn't only a drug case. Looking at the cases, you can find problems with management of hypertension, diabetes and C.O.P.D. Major symptomatology has been ignored. The second patient had a colectomy and a mastectomy. She comes back with axillary lymph nodes, and it's totally ignored. A patient comes in with leg pains, it's ignored. A patient comes in with chest pain, it's ignored. A patient comes in with shortness of breath, it's ignored. Dr. Bhati stated that he has significant concerns about Dr. Nguyen's treating the patient as a whole, even in the emergency room setting. This might be just the tip of the iceberg. The question is whether it can be remedied. Dr. Bhati stated that he thinks that it can be remedied, and suggested that the Board require Dr. Nguyen complete a six-month mini-residency in internal medicine. He would have a hard time approving the proposed amendment without that addition.

Dr. Agresta stated that he would be happier with a one-year suspension rather than a six-month suspension. He agreed with Dr. Bhati regarding the management of the cases in the record. Dr. Agresta added, however, that he believes there are enough constraints in the proposed amendment that if he does everything required, Dr. Nguyen should be able to work in a controlled environment.

DR. STIENECKER AND DR. SOMANI AGREED TO CHANGE THE MINIMUM SUSPENSION PERIOD TO ONE YEAR.

Dr. Bhati asked that they include a mini-residency requirement.

Dr. Stienecker noted that Dr. Nguyen is double boarded. He finds it difficult to require a mini-residency in internal medicine if he's boarded in emergency medicine.

Dr. Steinbergh stated that she supports the amendment to the Proposed Order. When she read the hearing record, the evidence was clear that Dr. Nguyen has been exposed to peer review at the hospital setting, and that peer review committees had found no problems with his hospital and emergency room records. From that perspective, she felt more comfortable with this type of amendment.

Dr. Buchan stated that he appreciates Dr. Stienecker's comments, as well as others who support the amendment, but his feeling is that this case goes beyond prescribing issues. It truly gets to the heart of the practice of medicine regarding standard of care issues. He noted cases of dangerously high blood pressure, diabetes, and cancer management. Despite his being boarded, there are some huge issues here regarding standards of care that he does not feel are remediable. Dr. Buchan spoke in support of the Hearing

Examiner's Proposed Order, adding that revocation is the only reasonable thing the Board can do in this case.

Dr. Somani stated that he seconded the proposed amendment because, although he was somewhat troubled by this case, he feels it is appropriate. There are two sides to the story. All of the evidence is that Dr. Nguyen's supervised emergency room practice may not be as deficient as his independent practice for chronic management of those patients. It is very obvious that he is not board certified in internal medicine. He had only two years of training. Then he went on to emergency medicine where he seems to have done better.

Dr. Somani stated that he agrees that there are clear, glaring problems with his chronic management of the patients with diabetes, hypertension, etc. He believes it is probably appropriate that Dr. Nguyen stick with emergency room practice where there are a number of colleagues and his records are more supervised. Dr. Somani noted that in the case of a patient with orchiditis Dr. Nguyen made the appropriate diagnosis, although he didn't put that in the record. The urologist seems to support the diagnosis.

Dr. Somani stated that he thinks during the one-year suspension, the Board should require some evidence that Dr. Nguyen has gone back to re-learn some of those areas where he is clearly deficient. Even though the practice, based upon the amendment, may be restricted to the emergency room setting.

Dr. Steinbergh stated that Dr. Bhati has suggested a mini-residency.

Dr. Somani stated that he would support the addition of that.

Dr. Stienecker stated that the Board would need someone to craft that amendment.

DR. STIENECKER WITHDREW HIS MOTION TO AMEND. DR. SOMANI, AS SECOND, AGREED.

DR. BHATI MOVED TO TABLE THE MATTER OF HARRY P. NGUYEN, M.D. DR. SOMANI SECONDED THE MOTION. A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Dr. Egner	- nay
	Mr. Browning	- nay
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- abstain

Dr. Buchan - nay
Dr. Steinbergh - aye

The motion carried.

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DR. BHATI MOVED TO REMOVE THE MATTER OF HARRY P. NGUYEN, M.D., FROM THE TABLE. DR. SOMANI SECONDED THE MOTION. A vote was taken:

VOTE:

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

The motion carried.

DR. BHATI MOVED TO AMEND THE CONCLUSIONS IN THE MATTER OF HARRY P. NGUYEN, M.D., BY SUBSTITUTING THE FOLLOWING LANGUAGE FOR THE PARAGRAPHS FOLLOWING THE FIVE STARS ON PAGE 44 OF THE REPORT AND RECOMMENDATION:

The evidence presented at hearing clearly supported the State's allegations that Dr. Nguyen's conduct violated the law relating to the practice of medicine. Dr. Nguyen prescribed controlled substances over long periods of time without adequate assessment and evaluation. In addition, Dr. Nguyen failed to adequately monitor patients' conditions, such as hypertension and diabetes. Finally, Dr. Nguyen carelessly maintained medical records, failing to record appropriate vital signs, patient complaints, physical findings, and diagnoses.

On the other hand, the evidence suggests that Dr. Nguyen prescribed controlled substances because he believed that his patients were legitimately experiencing chronic pain. Dr. Nguyen repeatedly testified that the patient's comfort is the physician's primary responsibility. Moreover, Dr. Nguyen has taken steps to improve his practice

deficiencies. Dr. Nguyen is board certified in emergency medicine. In addition, he has recently prepared for, taken, and passed the certification examination of the American Society of Addiction Medicine. Furthermore, when he realized that his many professional obligations were affecting his ability to practice appropriately, Dr. Nguyen significantly decreased his professional commitments.

The evidence suggests that Dr. Nguyen is willing to take the necessary steps to improve his practice deficiencies. Nevertheless, Dr. Nguyen warrants close monitoring in a structured environment to ensure the safety of the public.

DR. BHATI FURTHER MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF HARRY P. NGUYEN, M.D., BY SUBSTITUTING THE FOLLOWING:

It is hereby ORDERED that:

1. The certificate of Harry Nguyen, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Nguyen's certificate is SUSPENDED for an indefinite period of time, but not less than one year.
2. The Board shall not consider reinstatement of Dr. Nguyen's certificate to practice unless all of the following minimum requirements have been met:
 - a. Dr. Nguyen shall submit an application for reinstatement, accompanied by appropriate fees.
 - b. Dr. Nguyen shall take and successfully complete at least six months of training in a post-graduate training program, approved in advance by the Board, in the area of internal medicine. Dr. Nguyen shall provide the Board with acceptable documentation verifying successful completion of such program.
 - c. Dr. Nguyen shall take and pass an examination to be administered by the Board or its designee related to the content of the DEA Physician's Manual, which manual may be obtained from the offices of the Board. In the event that Dr. Nguyen fails this examination, he must wait at least three months between re-examinations. Dr. Nguyen must pass this examination before submitting his application for reinstatement.
 - d. Upon submission of his application for reinstatement, Dr. Nguyen 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 [CME] requirements for relicensure for the CME acquisition period(s) in which they are completed.

- e. Upon submission of his application for reinstatement, Dr. Nguyen shall provide acceptable documentation of satisfactory completion of 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 CME requirements for relicensure for the CME acquisition period(s) in which they are completed.
 - f. Upon submission of his application for reinstatement, Dr. Nguyen shall submit to the Board and receive its approval for a plan of practice in Ohio which, until otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Nguyen's activities will be directly supervised and overseen by a monitoring physician approved in advance by the Board. The monitoring physician shall monitor Dr. Nguyen and his patient charts. The monitoring physician shall provide the Board with reports on Dr. Nguyen's progress and status and on the status of his patient charts on a quarterly basis or as otherwise directed by the Board.
 - g. In the event that Dr. Nguyen has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.
3. Upon reinstatement, Dr. Nguyen's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
- a. Dr. Nguyen shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.
 - b. Dr. Nguyen shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 - c. Dr. Nguyen shall appear in person for interviews before the full Board or its designated representative within three months of the date in which probation becomes effective, at three month intervals thereafter, and upon his request for termination of the probationary period, or as otherwise requested by the Board.

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. Although the Board will

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

- d. Dr. Nguyen shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of probation. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
- e. Dr. Nguyen's practice shall be limited to a supervised structured environment in which Dr. Nguyen's activities will be directly supervised and overseen by the monitoring physician approved in advance by the Board. The monitoring physician shall monitor Dr. Nguyen and his patient charts. The chart review may be done on a random basis, with the number of charts reviewed to be determined by the Board. The monitoring physician shall provide the Board with reports on Dr. Nguyen's progress and status and on the status of his patient charts on a quarterly basis. All monitoring physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Nguyen's quarterly declaration. It is Dr. Nguyen's responsibility to ensure that the reports are timely submitted.

Dr. Nguyen shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

In the event that the approved monitoring physician becomes unable or unwilling to serve, Dr. Nguyen shall immediately notify the Board in writing and shall make arrangements for another monitoring physician as soon as practicable. Dr. Nguyen shall refrain from practicing until such supervision is in place, unless otherwise determined by the Board. Dr. Nguyen shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

- f. Dr. Nguyen shall keep a log of all controlled substances purchased, prescribed, dispensed, or administered. Such log shall be submitted in the format approved by the Board thirty (30) days prior to Dr. Nguyen's personal appearances before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Nguyen shall make his

patient records with regard to such prescribing available for review by an agent of the Board upon request. Dr. Nguyen shall not seek the Board's approval for a change in this provision for a minimum of one year from the reinstatement of his certificate.

- g. When working in an emergency department, Dr. Nguyen shall have all orders and/or prescriptions for controlled substances as defined by State or Federal law, countersigned within twenty-four (24) hours by a physician who is fully authorized under state and federal law to prescribe, dispense and administer controlled substances and who is employed and/or has privileges in the hospital or institution in which Dr. Nguyen is employed and/or has privileges. Dr. Nguyen shall not seek the Board's approval for a change in this provision for a minimum of one year from the reinstatement of his certificate.
 - h. Within thirty days of reinstatement of his certificate, Dr. Nguyen shall provide a copy of this Order to all employers or entities with which he is under contract to provide physician services or is receiving training, and the Chief of Staff at each hospital where Dr. Nguyen has privileges or appointments. Further, Dr. Nguyen shall provide a copy of this Order to all employers or entities with which he contracts to provide physician services, or applies for or receives training, and the Chief of Staff at each hospital where Dr. Nguyen applies for or obtains privileges or appointments.
 - i. If Dr. Nguyen violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may set aside the stay order and impose the permanent revocation of Dr. Nguyen's certificate.
4. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Nguyen's certificate will be fully restored.

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

DR. SOMANI SECONDED THE MOTION.

Dr. Steinbergh stated that she would now entertain discussion in the above matter.

Dr. Egner stated that, as far as mini-residency training goes, she believes it has a very limited use. If there is a physician who needs some re-teaching and supervision in a very specific area or around a specific procedure, it then has some use. In this case, she doesn't know where it would begin or what it would cover.

Dr. Steinbergh stated that she believes the Board's concerns were with general internal medicine issues.

That's what would be addressed.

Dr. Egner stated that she doesn't think it really works for problems this broad. She added that these programs are hard to find and she's not sure that they meet the Board's needs. She believes the Board has enough information here that it should be able to come to a conclusion as to whether or not the Board feels comfortable with this doctor practicing. She does not feel comfortable with Dr. Nguyen's continued practice in Ohio.

Dr. Egner continued that when a patient sees a physician in private practice, there are ways to find out about that physician before going. You can talk to friends or look the physician up on the Board's website. When a patient rolls into the emergency room, he or she doesn't know who he or she is going to see. The patient deserves the best. That's not what these patients will be getting with Dr. Nguyen. She doesn't know that Dr. Nguyen practices well in a structured setting. Dr. Egner stated that she re-read the recommendations submitted into the record, and they were not glowing. They say he performed adequately, that they don't know of something bad. Sometimes she questions whether people, if they haven't been good with their peer review, are afraid to say something negative about a physician for fear of putting themselves in a libelous position. Dr. Egner stated that she hates to put too much weight into the statement that they haven't found a problem so he must be okay. That's the kind of recommendation that the Board is getting from the hospital.

Dr. Egner concluded by stating that it doesn't make sense that someone would use such different medical judgment in two different settings. The medical judgment he used in his office was terrible. It wasn't a little bad, it was terrible. Dr. Egner spoke against the amendment and in support of the Proposed Order.

Dr. Buchan stated that he continues to support the original Proposed Order in this case. This is beyond a prescription issue and an addictionology issue, and has to do with the standard of care. Dr. Buchan stated that he's not an expert, but he relied on the State's expert to make that case, and he thinks the case was well made. This is an unfortunate scenario, but revoking the license is the right thing to do in this case. He sees no compromise. He doesn't believe a mini-residency of six months or a year and six months will do the job.

Dr. Steinbergh stated that, although she appreciates Dr. Egner's and Dr. Buchan's concerns, in her heart she feels that Dr. Nguyen is open to remediation, and she does not feel comfortable with permanent revocation in this case. She thinks the proposed amendment will give him that remediation. She added that Dr. Nguyen is aware of his problems. The amendment calls for him to practice under a plan approved by the Board and under a monitoring physician for the next five years.

Dr. Bhati stated that nobody denies that there are areas of concern in Dr. Nguyen's practice. The question is whether or not Dr. Nguyen is salvageable. Dr. Bhati feels that he is. Dr. Nguyen is double boarded. He made mistakes, but Dr. Bhati feels that that can be corrected. After the six months of mini-residency in internal medicine, the Board will receive a recommendation from the program that will state that

Dr. Nguyen is able to manage diabetic, blood pressure and C.O.P.D. situations. If not, the Board will not reinstate his license. The Board is giving him another chance to get training without exposing the citizens of the state to poor medical practice. Dr. Bhati stated that before the Board now, the only issue is the care of his private patients. There is not any evidence of poor emergency room care.

Dr. Talmage stated that Dr. Bhati has expressed the situation well, and he has nothing to add to it.

Dr. Agresta commented that Dr. Nguyen will have to jump through a lot of hoops to get his license reinstated. The question is whether or not he'll be able to jump through those hoops.

Mr. Browning suggested that if the Board sees fit to let Dr. Nguyen continue to practice, it limit the time he practices.

Dr. Steinbergh stated that that will be handled in the practice plan.

Mr. Browning suggested that someone who is getting a specialty in addiction medicine, who's working over 100 hours besides, has lost any sense of perspective. That played its way out in Dr. Nguyen's practice where the standards completely collapsed. There was a complete collapse of judgment in terms of the treatment of patients.

Dr. Steinbergh again stated that that will be covered under the practice plan.

Mr. Browning stated that putting him through a mini-residency is putting him right back into loads of hours of time. His concern is that he can't just manage the patients, he can't manage himself.

Dr. Steinbergh stated that his license will be suspended during the period of the mini-residency. His license will be suspended for a year, which will permit him to be re-educated and to reconsider his practice plan. This Board has the ability to deny a practice plan it feels is inappropriate.

Dr. Somani stated that, although he supports the amendment, he is concerned that Dr. Nguyen will use his double boarded status, particularly in addictionology and pain management, to market himself as an expert. The Board has a new policy for pain management, requiring consultations in some situations with experts in pain management. Dr. Nguyen's expertise is very poor, judging from his management of the patients identified at hearing. Dr. Somani is concerned about Dr. Nguyen's being consulted by others to serve as an expert in pain management. He wants the Board to keep that in mind when approving Dr. Nguyen's future practice plan. It should be limited to the emergency room.

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

VOTE:	Dr. Bhati	- aye
	Dr. Talmage	- aye

Dr. Somani	- aye
Dr. Egner	- nay
Mr. Browning	- nay
Dr. Stienecker	- aye
Dr. Agresta	- aye
Dr. Garg	- abstain
Dr. Buchan	- nay
Dr. Steinbergh	- aye

The motion carried.

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

VOTE:	Dr. Bhati	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Dr. Egner	- nay
	Mr. Browning	- nay
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- abstain
	Dr. Buchan	- nay
	Dr. Steinbergh	- aye

The motion carried.



State Medical Board of Ohio

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

August 12, 1998

Harry P. Nguyen, M.D.
4700 Bright Road
Dublin, OH 43016

Dear Doctor Nguyen:

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

- (1) In the routine course of your treatment of Patients 1 - 4 (as identified on the attached Patient Key - Key confidential and not subject to public disclosure), you failed to conduct appropriate histories and physical examinations prior to treatment, and/or you failed to address presenting complaints and/or symptoms, and/or you failed to perform necessary diagnostic testing, and/or you made diagnoses not supported by documentation in your records, and/or you failed to treat the diagnosed conditions appropriately, and/or you failed to address preventive care. In addition, you prescribed controlled substances and other dangerous drugs to Patients 1 - 4 in an inappropriate manner. Examples of such treatment include, but are not limited to, the following:
 - (a) On 5/18/93, Patient 1 presented to your office for an initial visit. Patient 1 had a remote history of work-related back and lower extremity injury. You prescribed Darvon 65 and Valium 10 mg at the initial visit. You continued to prescribe Darvon 65 and Valium 10 mg at each visit through 6/10/94, without adequately assessing Patient 1's condition, without evaluating side effects, and without considering alternative treatment options. On 6/17/94, Patient 1 was hospitalized in a detoxification and rehabilitation center.
 - (b) On 4/12/89, Patient 2 presented to your office for an initial visit. Patient 2 requested blood pressure medication. You did not take a history, and you failed to conduct and/or document a physical examination. However, you entered a diagnosis of hypertension and prescribed Inderide 80/25.
 - (c) On 10/23/90, Patient 2 presented to your office with a significantly elevated blood pressure of 210/100. You failed to conduct and/or document an appropriate physical examination. In particular, you failed to document

Mailed 8/13/98

whether Patient 2 was experiencing symptoms such as headache, chest pain, or shortness of breath, all of which may be associated with elevated blood pressure. In addition, your medical records for 10/23/90, indicate that you obtained an abnormal EKG for Patient 2. However, you failed to identify and/or document the specific abnormalities, and you failed to adopt and/or document an adequate treatment plan.

- (d) On 4/6/92, Patient 2 presented with a complaint of retrosternal chest pain. You failed to conduct and/or document a physical examination, and you failed to formulate and/or document a treatment plan.
- (e) On 12/27/93, Patient 2 presented to your office for a follow-up visit. Your medical records contain a letter to you from a urologist indicating that Patient 2 was seen by the urologist on 12/20/93, and was diagnosed with urinary retention. The letter also stated that Patient 2 was scheduled for surgery for a transurethral resection of the prostate. On 12/27/93, despite the urologist's diagnosis that Patient 2 suffered from urinary retention, you inappropriately prescribed Vicodin.
- (f) On 11/15/93, Patient 3 presented to your office for an initial visit. Patient 3 had a history of bilateral mastectomy, cholecystectomy, colectomy, chronic obstructive pulmonary disease (emphysema), and chronic bronchitis. You diagnosed "chronic LS sprain and spasm" and "chronic anxiety." However, these diagnoses are not supported by the documented history and physical examination. You prescribed Soma, Dalmane, Valium 10 mg, Tylenol #3, and Percocet, without indication. In addition, you continued to prescribe multiple controlled substances to Patient 3, without indication, through 1/4/96. Throughout the time that you prescribed these controlled substances to Patient 3, you failed to evaluate and/or document whether Patient 3 was dependent upon and/or abusing the controlled substances.
- (g) On 3/15/94, Patient 3 presented to your office with persistent leg pain from a previous fall. You failed to conduct and/or document a musculo-skeletal examination, and you failed to adopt and/or document an adequate treatment plan.
- (h) On 10/17/94, Patient 3 presented to your office with coughing and pain in her right chest. You failed to conduct and/or document an appropriate physical examination. You entered a diagnosis of pneumonia, which is not supported by the documented findings in your records.
- (i) On 11/4/94, Patient 3 presented to your office, and you again documented a diagnosis of pneumonia. If Patient 3 had pneumonia, and the pneumonia had

persisted for three weeks, you should have conducted additional diagnostic testing and explored other treatment options, including hospitalization.

- (j) On 7/7/95 and 8/3/95, your records reflect that Patient 3's reason for the visit was "lymph node[s] on axillary." You failed to address these complaints, despite Patient 3's history of bilateral mastectomy.
- (k) On 5/26/88, Patient 4 presented to your office for an initial visit. Patient 4 had a history of heart disease and diabetes. You failed to conduct and/or document a physical examination. In addition, you prescribed Percocet without indication.
- (l) On 2/3/89, Patient 4 presented to your office with elevated blood pressure and pain in her left chest. You failed to conduct and/or document an updated history and a physical examination, and you failed to address Patient 4's symptoms.
- (m) On 4/12/89, Patient 4 presented to your office with dangerously high blood pressure of 220/120. You failed to conduct and/or document a physical examination, and you failed to treat the high blood pressure.
- (n) On 8/11/89, Patient 4 presented to your office with significant symptoms of sweating at night and light-headedness. Patient 4 had fallen the previous day. You failed to address these complaints. Instead, you entered a diagnosis of resolving pneumonia, which is not supported by the documentation in your records.
- (o) You prescribed Percodan to Patient 4 on 2/8/91, 2/25/91, 5/7/91, 6/3/91, 7/2/91, 8/13/91, 8/26/91, 9/14/91, 10/22/91, 11/5/91, 11/19/91, 12/3/91, 1/28/92, 2/10/92, 3/9/92, 3/23/92, 4/6/92, 4/20/92, 6/2/92, 8/12/92, 9/8/92, 9/21/92, 10/5/92, 10/19/92, 11/2/92, 11/16/92, 12/14/92, 6/4/93, 8/26/93, 11/29/93, 12/13/93, 3/1/94, 6/6/94, 9/13/94, 1/20/95, 7/10/95, 12/8/95, and on other dates, despite failing to conduct and/or document any physical examinations, and despite failing to evaluate and/or document any diagnoses or possible side effects.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "[f]ailure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "[a] departure from, or the failure to conform to, minimal

standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established,” as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Further, 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. 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.

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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,


Anand G. Garg, M.D.
Secretary

AGG/bjs
Enclosures

CERTIFIED MAIL #Z 395 591 262
RETURN RECEIPT REQUESTED