

16599A05

FILED

COURT OF APPEALS  
FRANKLIN COUNTY, OHIO

04 DEC -7 PM 1:47

CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

04-00010 P 3-1

Robert A. Graor, M.D., :

Appellant-Appellant, :

v. :

State Medical Board, :

Appellee-Appellee. :

No. 04AP-72  
(C.P.C. No. 03CV-799)

(REGULAR CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the opinion of this court rendered herein on December 7, 2004, appellant's assignments of error are overruled, and it is the order and judgment of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs to be assessed to appellant.

SADLER, PETREE & KLATT, JJ.



Judge Lisa L. Sadler

HEALTH & HUMAN

DEC 10 2004

SERVICES SECTION

[Cite as *Graor v. State Med. Bd.*, 2004-Ohio-6529.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Robert A. Graor, M.D.,	:	
Appellant-Appellant,	:	
v.	:	No. 04AP-72
State Medical Board,	:	(C.P.C. No. 03CV1799)
Appellee-Appellee.	:	(REGULAR CALENDAR)

---

O P I N I O N

Rendered on December 7, 2004

---

*Bieser, Greer & Landis, LLP, David C. Greer and Karen T. Dunlevey, for appellant.*

*Jim Petro, Attorney General, and Kyle C. Wilcox, for appellee.*

---

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Appellant, Robert A. Graor, M.D., appeals from the January 7, 2004 decision and entry of the Franklin County Court of Common Pleas affirming the February 13, 2003, order of appellee, Ohio State Medical Board ("the Board"), permanently revoking appellant's license to practice medicine. For the reasons that follow, we affirm the judgment of the trial court.

{¶2} On July 10, 2002, the Board notified appellant of its intention to determine whether or not to take disciplinary action against his medical license based upon allegations he violated R.C. 4731.22(B)(5). Specifically, the Board alleged appellant misrepresented his credentials by claiming he was board certified in internal medicine.

{¶3} An evidentiary hearing was held on December 3 and 4, 2002. The evidence presented consists of the following. In August 1981, appellant completed the internal medicine board examination and was awaiting his results. Thereafter, appellant was hired as a staff physician at the Cleveland Clinic. Appellant completed various forms for the Cleveland Clinic in preparation for his new position, including a biography. The biography asked if he was board<sup>1</sup> certified, to which appellant testified he answered in the affirmative. Thereafter, appellant learned he did not pass the board examination. As a result, his biography contained the notation "Failed Exam 1981."

{¶4} Appellant began his new position in January 1982. Before the correction could be made to his board results in his biography, appellant testified that the secretaries in his department created his first curriculum vitae ("CV") from the tainted biography form. Appellant testified that he never personally submitted a CV to the Cleveland Clinic. Appellant averred that the secretaries in his department created CV for the staff physicians. The Cleveland Clinic maintained a copy of appellant's CV on computer, and the CV was saved on a disc for him when he left. Appellant testified that he never used or reviewed this CV.

---

<sup>1</sup> The American Board of Internal Medicine ("ABIM") certifies physicians in the specialties of internal medicine and its subspecialties, including cardiology.

{¶5} The Cleveland Clinic also maintained a second submission of appellant's CV. Under the heading "certification," the CV states "American Board of Internal Medicine-National Board of Medical Examiners, 1982." (State's Exhibit No. 3.) Appellant denied that the second CV states he was ABIM certified, and stated that he "does not believe" he created the CV. (Tr. at 251.)

{¶6} In 1993 and 1994, appellant was involved in research and obtained funds for research. During that time, appellant was alleged to have embezzled a total of \$1,066,709 from his research account at Cleveland Clinic. In December 1994, appellant was indicted for this activity and found guilty of five felony counts of theft and five felony counts of aggravated grand theft by the Cuyahoga County Court of Common Pleas. Appellant left his employment with the Cleveland Clinic in September 1994. In 1995, the Board revoked appellant's license to practice medicine as a result of these convictions, but stayed the revocation and ordered a suspension of appellant's license for no less than five years.

{¶7} Appellant testified that he did not practice medicine during his suspension. However, a liability insurance application submitted by the Board indicated that he practiced medicine in New Mexico from 1996 through 1999.

{¶8} In 1999, Mr. Jeff Shutte, Dr. Salim Dahdah, his wife Cindy Dahdah, appellant and his wife attended a dinner meeting related to appellant's potential employment with the Ohio Institute of Cardiac Care ("OICC") in Springfield, Ohio. Dr. Dahdah was the sole shareholder of OICC. Mr. Shutte, an employee of OICC, testified that he asked appellant if he was ABIM certified, to which Mr. Shutte testified that

appellant responded in the affirmative. Mrs. Dadah, who also attended the meeting, testified that appellant unequivocally stated he was certified by the ABIM. Conversely, appellant testified that Dr. Dahdah and he frequently discussed the fact that he was not ABIM certified, and his plans for registering to take the Board examination.

{¶9} In early 2000, appellant was hired by Dr. Dahdah, and his license to practice medicine was reinstated. Thereafter, Mrs. Dahdah received a copy of appellant's CV from Dr. Dahdah, indicating appellant was ABIM certified. Appellant testified that without a prior viewing of its contents, he "possibly" gave Mr. Shutte the computer disc from the Cleveland Clinic with the contaminated CV. (Tr. at 266.) However, appellant denied submitting his CV to OICC, and testified that the Dr. Dahdah may have obtained the CV sometime between 1990 and 1993, when Dr. Dahdah was trying to recruit him to join his practice. The CV included dates through 1995, the year after appellant was terminated from Cleveland Clinic. Mrs. Dahdah asked appellant to submit a second CV because the first CV had an incorrect home address. Under the category "certification," the second CV also indicated that appellant was ABIM certified. (State's Exhibit No. 5.) Again, appellant denied ever submitting his CV to OICC.

{¶10} In 2000, an application for premises liability insurance was filed on appellant's behalf. (State's Exhibit No. 6.) Appellant testified that his secretary completed portions of the premises liability insurance application, and he completed other portions. On the same line where the secretary wrote that he was ABIM certified, appellant added the date of 1982. Appellant explained that he had done so to indicate that he was board eligible in 1982, then later admitted he was actually board eligible in 1981.

{¶11} Appellant also applied for privileges at Good Samaritan Hospital. (State's Exhibit No. 7.) In the application, appellant indicated he was ABIM certified. Directly below this answer, appellant answered "yes" to a question asking, "if not certified, are you currently eligible or qualified to sit for the board examination in your discipline." Appellant received privileges at Good Samaritan, but these privileges were revoked after the hospital learned of his false representations on his application.

{¶12} In February 2000, appellant applied for a clinical faculty appointment at Wright State University. This application also indicated appellant was ABIM certified. A CV attached to the application also stated that appellant was ABIM certified. Appellant denied submitting the CV, and stated he was unaware of the misinformation until a Wright State employee advised appellant that his clinical faculty appointment application stated he was ABIM certified. Upon receiving this information, appellant testified that he clarified his Board status with Dr. Dahdah's office and Good Samaritan Hospital. Mr. Shutte spoke with appellant, who indicated that he had been ABIM certified but had lost his certification because of his felony convictions. Mr. Shutte contacted the ABIM and was told that appellant took the examination in 1981, failed, and appellant has never been ABIM certified.

{¶13} On January 17, 2003, the hearing examiner filed her Report and Recommendation ("Report"), which proposed appellant's medical license should be permanently revoked.

{¶14} Appellant filed objections to the Report. On February 12, 2003, the Board met to consider the Report and appellant's objections. After consideration of the Report and objections, the Board permanently revoked appellant's license to practice medicine.

{¶15} On February 18, 2003, appellant appealed the Board's decision to the Franklin County Court of Common Pleas, pursuant to R.C. 119.12. On January 7, 2004, the trial court affirmed the decision of the Board. In its decision, the trial court recognized that at the time appellant was accused of submitting a false CV to the Cleveland Clinic in 1981, there was no prohibition against false statements under R.C. 4731.22. As such, the court determined that, to the extent the Board's order found the 1981 submission violated R.C. 4731.22, the order was not in accordance with the law.

{¶16} Nevertheless, the court found "overwhelming evidence" was presented to demonstrate appellant violated R.C. 4731.22 on several occasions since his 1995 stayed revocation. Specifically, the court found that reliable, probative, and substantial evidence existed to support that appellant submitted a CV to OICC misrepresenting that he was ABIM certified. The court found that appellant lied to Mr. Shutte about his credentials at the dinner meeting, and lied again when he indicated he was ABIM certified, and the certification was rescinded after his felony convictions. Further, the court determined that reliable, probative, and substantial evidence existed that appellant provided false information on his applications for premises liability insurance, privileges at Good Samaritan Hospital, and his clinical faculty appointment at Wright State University. Finally, the court found that appellant acted with intent to mislead and provide false information regarding his credentials. As such, the court did not modify the Board's order

with regard to the permanent revocation of appellant's license. (January 7, 2004 Decision, 11-15.)

{¶17} Appellant timely appeals and asserts the following assignments of error<sup>2</sup> for our review:

- I. THE TRIAL COURT ERRED IN AFFIRMING THE STATE MEDICAL BOARD OF OHIO'S ORDER PERMANENTLY REVOKING DR. GRAOR'S MEDICAL LICENSE, WHICH WAS NOT SUPPORTED BY RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE AND WAS NOT IN ACCORDANCE WITH THE LAW.
- II. THE TRIAL COURT ERRED BY REFUSING TO MODIFY THE PENALTY ASSESSED BY THE BOARD OR TO REMAND THIS CASE BACK TO THE BOARD IN LIGHT OF ITS HOLDING THAT CERTAIN PORTIONS OF THE BOARD'S FINDINGS WERE NOT IN ACCORDANCE WITH THE LAW.
- III. THE TRIAL COURT ERRED IN REFUSING TO MODIFY THE PENALTY ASSESSED BY THE BOARD OR TO REMAND THIS CASE BACK TO THE BOARD IN LIGHT OF EVIDENCE THAT THE PENALTY ASSESSED UPON DR. GRAOR IS DISPROPORTIONATE TO THE OFFENSE AND INCONSISTENT WITH PRIOR BOARD RULINGS.
- IV. THE TRIAL COURT ERRED BY REFUSING TO MODIFY THE PENALTY ASSESSED OR TO REMAND THIS CASE BACK TO THE BOARD IN LIGHT OF THE BOARD'S FAILURE TO CONSIDER MITIGATING FACTORS.

{¶18} Under R.C. 119.12, when a common pleas court reviews an order of an administrative agency, it must consider the entire record and determine whether the

---

<sup>2</sup> Although he does not set forth assignments of error, appellant presented a statement of issues for our review, which we interpret to be, and refer to as, his assignments of error.

agency's order is supported by reliable, probative, and substantial evidence and is in accordance with the law. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 110-111, 17 O.O.3d 65, 407 N.E.2d 1265.

{¶19} In *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571, 589 N.E.2d 1303, the Supreme Court of Ohio defined the evidence required by R.C. 119.12: "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. "Substantial" evidence is evidence with some weight; it must have importance and value.

{¶20} The common pleas court's "review of the administrative record is neither a trial *de novo* nor an appeal on questions of law only, but a hybrid review in which the court 'must appraise all the evidence as to the credibility of the witnesses, the probative character of the evidence, and the weight thereof.' " (Emphasis sic.) *Lies v. Veterinary Med. Bd.* (1981), 2 Ohio App.3d 204, 207, 2 OBR 223, 441 N.E.2d 584, quoting *Andrews v. Bd. Of Liquor Control* (1955), 164 Ohio St. 275, 280, 58 O.O. 51, 131 N.E.2d 390. Even though the common pleas court must give due deference to the administrative agency's resolution of evidentiary conflicts, the findings of the agency are not conclusive. *Conrad*, *supra*, at 111.

{¶21} An appellate court's standard of review in an administrative appeal is even more limited than that of a common pleas court. *Pons v. Ohio State Med. Bd.* (1993), 66

Ohio St.3d 619, 621, 1993 Ohio 122, 614 N.E.2d 748. In *Pons*, the Supreme Court of Ohio stated:

\* \* \* While it is incumbent on the trial court to examine the evidence, this is not a function of the appellate court. The appellate court is to determine only if the trial court has abused its discretion, *i.e.*, being not merely an error of judgment, but perversity of will, passion, prejudice, partiality, or moral delinquency. Absent an abuse of discretion on the part of the trial court, a court of appeals may not substitute its judgment for [that of an administrative agency] or a trial court. Instead, the appellate court must affirm the trial court's judgment. \* \* \*

*Id.*, citing *Lorain City School Dist. Bd. of Edn. v. State Emp. Relations Bd.* (1988), 40 Ohio St.3d 257, 260-261, 533 N.E.2d 264. (Emphasis sic.) Nonetheless, an appellate court does have plenary review of purely legal questions in an administrative appeal. *Big Bob's, Inc. v. Ohio Liquor Control Comm.*, 151 Ohio App.3d 498, 2003-Ohio-418, 784 N.E.2d 753, at ¶15. Therefore, we must also determine whether the common pleas court's decision is in accordance with law.

{¶22} In his first assignment of error, appellant argues that the Board's order was not supported by reliable, probative, and substantial evidence and that the trial court erred in affirming the Board's decision to permanently revoke his license to practice medicine. In this case, the board determined that appellant violated R.C. 4731.22(B)(5), which states:

(B) The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or

reprimand or place on probation the holder of a certificate for one or more of the following reasons:

\* \* \*

(5) Making a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board.

Appellant admits that misstatements were made regarding his ABIM status. Nonetheless, appellant argues that he cannot lose his medical license unless the Board found that appellant made those statements, and that he acted with intent to deceive. Appellant contends that the Board offered no evidence to rebut appellant's explanation of the events, and adopted their own speculative version of what could have transpired. Appellant cites to various findings of fact in the record, arguing that only administrative staff have ever prepared or submitted the misinformation in his CV. As such, appellant argues that the Board cannot prove he intended to make any misstatements in his CV. Appellant asserts that *Rajan v. State Med. Bd. of Ohio* (1997), 118 Ohio App.3d 187, 692 N.E.2d 238, discretionary appeal not allowed, 79 Ohio St.3d 1449, 680 N.E.2d 1022, and *Webb v. State Med. Bd. of Ohio* (2001), 146 Ohio App.3d 621, 767 N.E.2d 782, support his position.

{¶23} The Board argues contra that the evidence submitted supports that in many instances, appellant falsely indicated that he had ABIM certification. The Board contends

that the hearing examiner addressed appellant's credibility and found many statements to support her conclusion that appellant intended to misrepresent his Board status.

{¶24} The issue before this court is to determine whether the trial court abused its discretion in affirming the Board's decision to permanently revoke appellant's license to practice medicine in Ohio. For the following reasons, we hold that the trial court did not abuse its discretion.

{¶25} The Board reviewed exhibits presented by the State and appellant, along with testimony from the hearing. At appellant's evidentiary hearing, the State's witnesses included employees of OICC, a government investigator and representative from the ABIM. Appellant testified on his own behalf, and presented testimony from several witnesses who spoke of his good character and skill as a physician. The hearing examiner determined that appellant's testimony that he was not responsible for the misinformation lacked credibility, and the evidence was sufficient to support a conclusion that appellant intended to misrepresent his ABIM certification.

{¶26} The trial court did consider the evidence in arriving at the judgment that it entered affirming the order of the Board. The court gave a rational analysis of its finding that there was reliable, probative, and substantial evidence supporting the Board's findings of the violations with which appellant was charged. The record shows that the findings of the trial court primarily depended upon the credibility of witnesses. For example, Mr. Shutte and Mrs. Dahdah testified that appellant had falsely represented himself to be ABIM certified during a dinner meeting regarding his position at OICC. Further, Mr. Shutte testified that after learning that appellant was not ABIM certified,

appellant told him that he had been ABIM certified but had lost his certification because of his felony convictions. Appellant testified that he was unaware of the misinformation contained in his CV, and argued that this information was generated or submitted by administrative staff. However, appellant's explanation was an issue of fact to be resolved by the Board and its hearing examiner who had an opportunity to observe the witnesses as they testified. We see no basis for the trial court to make a contrary finding. Thus, the trial court did not abuse its discretion and we may not substitute our judgment for that of the Board or the trial court. Appellant's testimony and rationalizations were not found to be credible.

{¶27} Moreover, appellant's reliance on *Rajan* and *Webb* are misplaced. In *Rajan*, we found that the hearing examiner failed to make findings of fact with regard to any evidence that the appellant acted with the intent to deceive or mislead. In *Webb*, we found that there was a finding by the hearing examiner that the appellant's misrepresentations to the Board were unintentional. *Rajan* and *Webb* are distinguishable from the instant case. Appellant's intent may be inferred from the surrounding circumstances. *Hayes v. State Med. Bd.* (2000), 138 Ohio App.3d 762, 770, 742 N.E.2d 238. We find the hearing officer's analysis in her Report cites to specific facts which support a conclusion that appellant intended to misrepresent his ABIM status.

{¶28} The trial court is bound to uphold the order of the Board if it is supported by reliable, probative, and substantial evidence and is in accordance with the law. In this case, we find the trial court did not abuse its discretion in determining that the Board's

order is supported by reliable, probative, and substantial evidence and is in accordance with the law. Accordingly, appellant's first assignment of error is overruled.

{¶29} In his second assignment of error, appellant argues that the trial court erred by refusing to modify the permanent revocation of appellant's medical license, or to remand this case back to the Board, in light of its holding that certain portions of the Board's findings were not in accordance with the law. Because the court found that appellant's representations to Cleveland Clinic in 1981 did not violate R.C. 4731.22, appellant argues the Board's reliance on this evidence requires modification of the Board's order. At an absolute minimum, appellant argues this case should be remanded back to the Board to reevaluate without the Board's consideration of this evidence.

{¶30} The Board argues contra that the trial court's order also indicates there was "overwhelming evidence that [appellant violated] R.C. 4731.22 on several occasions since his 1995 revocation," and there is no basis to modify the Board's order. (January 7, 2004 Decision at 15.) In support of its position, the Board cites *Landefeld, M.D. v. State Med. Bd.* (June 15, 2000), Franklin App. No. 99AP-612, 2000 Ohio App. LEXIS 2556, at \*18, stay granted, 89 Ohio St.3d 1440, 731 N.E.2d 686, cause dismissed, 89 Ohio St.3d 1474, 733 N.E.2d 249, in which we found "pursuant to R.C. 4731.22(B), the board may revoke a individual's certificate to practice for 'one or more' of the enumerated reasons and thus, in a given case, the trial court would only need to find substantial, reliable and probative evidence supporting one ground for revocation in order to uphold the board's order."

{¶31} We agree with the Board's position. In accordance with *Landefeld*, we find the trial court did not abuse its discretion by refusing to modify the Board's penalty, as there was evidence of additional violations of R.C. 4731.22(B)(5) that occurred after appellant's 1995 stayed revocation of his medical license. Appellant's second assignment of error is overruled.

{¶32} Appellant's remaining assignments of error will be addressed out of order. In his fourth assignment of error, appellant argues that the Board refused to consider mitigating factors in its decision to revoke appellant's license. Appellant presented evidence of his character and his skill as a physician. Appellant contends that the Board did not consider this evidence, and the trial court's failure to consider this evidence constitutes an abuse of discretion. We disagree.

{¶33} In *Urban v. State Med. Bd.*, Franklin App. No. 03AP-426, 2004-Ohio-104, we found that the Board "*may* consider aggravating and mitigating circumstances in deciding what penalty to impose." *Id.* at ¶17, citing State Medical Board of Ohio, Disciplinary Guidelines, Appendix B: Aggravating and Mitigating Factors. (Emphasis added.) Here, the report and recommendation of the hearing examiner acknowledged that she heard testimony from appellant, and the witnesses who spoke on his behalf. In affirming the Board's decision, the trial court indicated that it completed a "thorough review of the entire record." (January 17, 2004 Decision at 11.) Accordingly, we find that the trial court did not abuse its discretion in concluding that the order of the Board was supported by reliable, probative, and substantial evidence and was otherwise in accordance with the law. As such, appellant's fourth assignment of error is overruled.

{¶34} In his third assignment of error, appellant argues that the trial court erred in refusing to modify the penalty assessed by the Board or remand this case back to the Board. Appellant contests that evidence had been presented that the permanent revocation of appellant's license is disproportionate to the offense and inconsistent with prior Board rulings. In support of his position, appellant submitted a summary of the Board's recent cases in which a physician's license was permanently revoked. Appellant maintains that the offenses in the summary were much more serious than those against appellant. Further, appellant submitted a summary of cases where the Board imposed less serious penalties for more serious offenses.

{¶35} In *Urban*, we recently considered whether or not an order permanently revoking the appellant's license to practice medicine for a violation of R.C. 4731.22(B)(5) was disproportionate to sanctions in other cases, and whether or not the trial court erred in not modifying the Board's sanction. In affirming, we found that once reliable, probative, and substantial evidence is found to support an order by the Board, the reviewing court may not modify a sanction authorized by R.C. 4731.22(B)(5). *Urban* at ¶22, citing *Henry's Cafe, Inc. v. Bd. of Liquor Control* (1959), 170 Ohio St. 233, 163 N.E.2d 678. The Board has the right to permanently revoke appellant's license if the circumstances merit permanent revocation. *Id.*, citing *Bouquett v. Ohio State Med. Bd.* (1997), 123 Ohio App.3d 466, 472-473, 704 N.E.2d 583; *Roy v. Ohio State Med. Bd.* (1995), 101 Ohio App.3d 352, 655 N.E.2d 771.

{¶36} In keeping with this precedent, we decline to modify the sanction imposed by the Board. R.C. 4731.22(B) clearly provides for the possible penalty of license

revocation for the infractions with which appellant was found to have violated, and, accordingly, this sanction will not be disturbed by this court. As such, appellant's third assignment of error is overruled.

{¶37} Based on the foregoing, appellant's first, second, third and fourth assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed

*Judgment affirmed.*

PETREE, and KLATT, JJ., concur.

---

IN THE COURT OF COMMON PLEAS, BRADLEY COUNTY, OHIO  
STATE MEDICAL BOARD  
OF OHIO

2004 JAN 23 P 5:01

ROBERT ALAN GRAOR, M.D.,

Appellant

v.

STATE MEDICAL BOARD OF OHIO,

Appellee

Case No. 03CVF-1799  
JUDGE D. CAIN

CLERK OF COURTS

2004 JAN 22 PM 2:25

FILED  
COMMON PLEAS COURT  
BRADLEY COUNTY, OHIO

**JUDGMENT ENTRY AFFIRMING THE STATE MEDICAL BOARD'S  
FEBRUARY 12, 2003 ORDER PERMANENTLY REVOKING  
APPELLANT'S LICENSE TO PRACTICE MEDICINE AND SURGERY IN OHIO**

This case is before the Court upon the appeal, pursuant to R.C. 119.12, of the February 12, 2003 Order of the State Medical Board of Ohio which permanently revoked Appellant, Robert Alan Graor, M.D.'s license to practice medicine and surgery in Ohio. For the reasons stated in the decision of this Court rendered on January 6, 2004, and filed on January 7, 2004, which decision is incorporated by reference as if fully rewritten herein, it is hereby:

ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of Appellee, State Medical Board of Ohio, and the February 12, 2003, Order of the State Medical Board in the matter of Robert Alan Graor, M.D., is hereby AFFIRMED. Further, the Stay Order imposed April 10, 2003 is lifted. Costs to Appellant.

IT IS SO ORDERED.

\_\_\_\_\_  
Date

\_\_\_\_\_  
JUDGE DAVID E. CAIN

APPROVED:

**STATE MEDICAL BOARD  
OF OHIO**

**DAVID C. GREER (009090)**  
**Bieser, Greer & Landis, LLP**  
**400 National City Center**  
**6 North Main Street**  
**Dayton, Ohio 45402-1908**  
**937-223-3277**  
**937-223-6339 Facsimile**  
**Counsel for Robert Alan Graor, M.D.**

**2004 JAN 23 P 5:01**

**KYLE C. WILCOX (0063219)**  
**Assistant Attorney General**  
**30 East Broad Street, 26<sup>th</sup> Floor**  
**Columbus, Ohio 43215**  
**614-466-8600**  
**614-466-6090 Facsimile**  
**Counsel for the State Medical Board**

IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

ROBERT ALAN GRAOR, MD,

Appellant,

vs.

STATE MEDICAL BOARD OF OHIO,

Appellee.

CASE NO. 03CVF-02-1799

JUDGE CAIN

FILED  
COMMON PLEAS COURT  
FRANKLIN COUNTY, OHIO  
2004 JAN -7 PM 1:32  
CLERK OF COURTS

DECISION AFFIRMING ORDER OF THE  
STATE MEDICAL BOARD OF OHIO

Rendered this 6<sup>th</sup> day of Jan, 2004.

**CAIN, J.**

Robert Alan Graor ("Dr. Graor") appeals, pursuant to R.C. 119.12, a February 12, 2003 order of the Appellee State Medical Board of Ohio ("Board"), which permanently revoked his certificate to practice medicine and surgery in Ohio.

**I. Procedural History.**

In a letter dated July 10, 2002, the Board notified Dr. Graor that it intended to determine whether or not to take disciplinary action against him due to his alleged "continuing course" of misrepresentation of his credentials between 1983 and 2000. The letter alleged that Dr. Graor violated R.C. 4731.22 (B)(5) and informed Dr. Graor of his right to a hearing on the allegations.

Dr. Graor requested a hearing in a letter to the Board dated July 16, 2002. The hearing, before Board Hearing Officer Sharon W. Murphy, took place on December 3, 2002 and December 4, 2002.

On January 17, 2003, the hearing officer mailed Dr. Graor her 22-page Report and Recommendation ("R & R"), which included findings of fact and conclusions of law. The hearing officer found there was insufficient evidence to establish that Dr. Graor intended to publish a false or misleading statement by referring on various occasions to the medical school that he had attended, "The University of Health Sciences --The Chicago Medical School" as "University of Chicago Medical School" or "University Chicago Medical School." However, the hearing officer concluded that Dr. Graor, by falsely representing in numerous situations that he was board certified and/or board qualified, violated R.C. 4731.22 (B)(5). The hearing officer recommended the permanent revocation of Dr. Graor's certificate to practice medicine and surgery in Ohio.

Dr. Graor was notified that the full Board would consider the matter at its February 12, 2003 meeting. On February 5, 2003, Dr. Graor filed written objections to the R & R. At the February 12, 2003 Board meeting, Dr. Graor appeared and his attorney spoke on his behalf. Board members discussed the hearing officer's proposed order and approved it by a vote of 7-0, with two abstentions. The Board mailed Dr. Graor an "Entry of Order" permanently revoking his certificate to practice medicine and surgery. The Order became effective on February 12, 2003, the day that it was mailed. The Board also informed Dr. Graor of his right to judicial review.

On February 18, 2003, Dr. Graor filed a Notice of Appeal to this Court. On the same date, Dr. Graor filed an expedited motion to stay execution of the Board's order. In the motion, Dr. Graor sought permission to continue treating existing patients during the pendency of this appeal. The Board opposed the motion. The Court granted Dr. Graor's motion on February 18, 2003.

On March 17, 2003, Dr. Graor filed an expedited motion to amend the stay of execution. In this motion, Dr. Graor asked the Court to expand the previously issued stay to allow him to see new patients as well as existing patients.

On March 28, 2003, the Board filed a motion asking the Court to require Dr. Graor to show cause why he should not be found in contempt of court. Attached to the motion was an affidavit of David Katco, an enforcement coordinator employed by the Board. In the affidavit, Katco stated that Dr. Graor had been seeing new patients in violation of the Court's February 18, 2003 stay order. On March 28, 2003, the Board also filed a motion to vacate the stay order because of Dr. Graor's alleged violation thereof. On April 10, 2003, the Court granted Dr. Graor's motion to stay the Board's order in its entirety until this appeal is decided.

## II. Facts.

The record established the following relevant facts. Appellant Robert Alan Graor graduated from the University of Health Sciences/The Chicago Medical School in 1978 with an M.D. degree. This university is not affiliated with the University of Chicago Pritzker School of Medicine. (Tr. 152, 155.)

After his graduation from medical school, Dr. Graor completed an internal medicine residency, followed by a fellowship in peripheral vascular disease at the Cleveland Clinic in Cleveland, Ohio. Next, he completed a cardiovascular disease fellowship. The latter fellowship was modified insofar as Dr. Graor did not give up his position of employment at Cleveland Clinic. Dr. Graor did not receive a certificate for the second fellowship. Following the second fellowship, Dr. Graor joined the staff of Cleveland Clinic. He continued working there until 1994.

Dr. Graor's work at Cleveland Clinic included patient care, education of medical students and health staff, research and development, and outreach information and education. He published extensively in the field of cardiovascular diseases, and was the first physician in the world to use a stent to open narrow renal arteries. (Tr. 260.)

Sometime in or after 1982, Dr. Graor completed an application for membership in the Academy of Medicine of Cleveland. Dr. Graor wrote on the application that he graduated in 1978 from "University Chicago Medical School."<sup>1</sup> On a different Cleveland Clinic Foundation form, he indicated that he was board certified in internal medicine in 1981. (Ex. 3, second page.) In fact, Dr. Graor had taken the internal medicine certification examination but did not pass. (Tr. 169.) Dr. Graor testified as follows:

"I think this staff biography was filled out in the period of time -- it would be the fall of 1981 prior to my coming on staff in January of '82. I had taken my boards and was hopeful and put in there certified. So when this was filled out, I was expecting certification." (Tr. 167.)

Dr. Graor last worked at the Cleveland Clinic around September 1, 1994. He was indicted on a felony charge in the fall of 1994, and pleaded guilty to felony counts of grand theft and aggravated grand theft in the Cuyahoga County Court of Common Pleas in December 1994. (Tr. 258.) The felony related to the embezzlement of more than one million dollars (\$1,000,000.00) from a research fund at the Cleveland Clinic Foundation. As a result of the conviction, Dr. Graor was incarcerated for ten months.

On December 6, 1995, the State Medical Board of Ohio voted to permanently revoke Dr. Graor's certificate to practice medicine and surgery. However, the Board

---

<sup>1</sup> Dr. Graor provided the same response on a membership application for the Chicago Medical Library Association. (Ex. 3, sixth page.)

stayed the revocation, and indefinitely suspended Dr. Graor from practice for a minimum of five years. Several probationary terms were attached to the suspension.

Dr. Graor testified at the hearing that he did not practice medicine between 1995 and 2000. However, an insurance application that he completed in 2000 stated that he practiced medicine in New Mexico from 1996 through 1999. (Ex. 6, page 7.) The Board reinstated Dr. Graor's certificate in January 2000.

The Ohio Institute of Cardiac Care ("OICC") was a medical association with several offices in southwest Ohio. Cindy Dahdah was employed by OICC from 1990 through 2001. Ms. Dahdah oversaw administrative operations at OICC. Her husband, Dr. Salim Dahdah, was the sole shareholder of OICC. (Tr. 29, 85.)

The American Board of Internal Medicine ("ABIM") is the organization that certifies and recertifies physicians in the specialties of internal medicine and its subspecialties, including cardiology. Certification in internal medicine requires, among other things, a specified amount of training, demonstration of clinical competence, a demonstration of good standing in the medical community, and successful passage of an examination. Board certification in internal medicine is a prerequisite to certification in cardiology. (Tr. 134.)

In late 1999 or early 2000, Dr. Graor was seeking employment at OICC. Around that time, a curriculum vitae ("CV") bearing Dr. Graor's name was received by OICC. Dr. Graor, however, says that he did not submit the CV to OICC. (Tr. 208-209.) The CV falsely stated that Dr. Graor was certified by the ABIM. (Tr. 174, Ex. 4, second page.) Dr. Graor testified that the CV must have been prepared by his former secretary at the Cleveland Clinic, even though the CV included dates through 1995, the year after Dr.

Graor stopped working at Cleveland Clinic. (Tr. 113, 257.) Ms. Dahdah received the CV from her husband shortly after Dr. Graor began working at OICC in 2000. (Tr. 113.) The CV identified Dr. Graor's former wife, whom he divorced in 1995, as his current wife, and also included an improper home address for the doctor. (Tr. 256.)

Because the first CV contained an incorrect home address, OICC asked him to submit a correct one, which Dr. Graor did. (Ex. 5.) On the second CV, Dr. Graor listed under the category, "CERTIFICATION": 1. Diplomate of the National Board of Medical Examiners, 1982, 2. American Board of Internal Medicine, 3. Board Eligible Cardiovascular Diseases." Ms. Dahdah interpreted this to mean that Dr. Graor was board certified in internal medicine and board eligible in cardiology. Because Dr. Graor never was board certified in internal medicine, he has never been board eligible in cardiovascular diseases. Dr. Graor acknowledged that this information on the second CV was incorrect, but said that he did not submit this document to OICC. (Tr. 178-179.) The latest date on this CV indicates that he applied for licensure with the state of Ohio in December 1999. Dr. Graor, however, testified that he never had an occasion to use a CV to apply for any employment from 1982 through 2003. (Tr. 256.)

Jeffrey Shutte also handled administrative matters in the OICC office along with Ms. Dahdah, who is his sister. Shutte, Dr. and Ms. Dahdah, Dr. Graor and his wife met for dinner in Beavercreek, Ohio in 1999. Earlier, in an unrelated matter, Dr. Dahdah had chastised Shutte for not properly checking a doctor's credentials before he was employed. Therefore, Shutte specifically asked Dr. Graor at the dinner if he were board certified in internal medicine. Dr. Graor replied in the affirmative. OICC hired Dr. Graor based upon OICC's need for a peripheral vascular specialist/cardiologist. (Tr. 15-20, 91-92.)

Dr. Graor testified that he had told Dr. Dahdah prior to the dinner that he was not board certified. (Tr. 233-234.)

Once employed by OICC, an application was filed on Dr. Graor's behalf for professional and office premises liability insurance. A secretary in Shutte's office, Missy Gebhart, completed portions of the application, and Dr. Graor completed other portions. (Tr. 21, 117, 179-182.) It was the general practice in the office for a secretary to prepare such applications and for the doctor to review them for accuracy. (Tr. 94-97.) If the form needed a doctor's signature, it was tabbed with "Sign Here" stickers at the proper locations. (Tr. 118.)

On the insurance application, Dr. Graor responded to a question, "Please provide your Board Certification/Re-Certification information," by responding "ABIM, 1982." (Ex. 6, at seventh page.) The "ABIM" handwriting was Ms. Gebhart's; the date filled in as "1982" immediately to the right of "ABIM" was Dr. Graor's handwriting. (Tr. 182.) Dr. Graor testified that he was indicating that he was board eligible in 1982. (Tr. 183.) On the tenth page of the insurance application, Dr. Graor testified that he had read the application and certified that it was true. (Ex. 6, at tenth page, Tr. 184-185.) OICC terminated its relationship with Dr. Graor when it learned from its insurance carrier that it would terminate the entire group's coverage if Dr. Graor had falsified his application. (Tr. 23.)

Dr. Graor also submitted a January 18, 2000 application for privileges at Good Samaritan Hospital and Health Center in Dayton. In the application, Dr. Graor stated that he was board certified in internal medicine. (Ex. 7, at fifth page.) Again, this response was in Gebhart's handwriting. (Tr. 36, 119-120.) Just below that entry, Dr. Graor

answered in the affirmative to a question asking, "If not certified, are you currently eligible or qualified to sit for the board examination in your discipline." Dr. Graor signed the application. (Tr. 99.) On the signature page, he represented that the information he provided was accurate. (Tr. 190-191.) Dr. Graor testified that both the insurance application and Good Samaritan application were presented to him with "Sign Here" tabs on a hectic day. (Tr. 288-289.) In about April 2000, Dr. Graor received temporary privileges at Good Samaritan, but they were revoked after the hospital learned that his application was false. (Tr. 48, 275.)

Dr. Graor on one occasion told Shutte that he had been credentialed by the ABIM, but that the ABIM rescinded his certification when he was convicted of a felony. (Tr. 23-24.) Shutte thereafter contacted the ABIM, where someone told him that Dr. Graor took the ABIM test in 1981, failed it, and never took it again. (Tr. 26.)

On February 9, 2000, Dr. Graor applied for a clinical faculty appointment at Wright State University in Dayton. (Ex. 8, at third and fourth pages.) When the application was received at Wright State, it indicated that Dr. Graor was ABIM certified in internal medicine. Dr. Graor signed the application, but does not recall whether it was filled out at the time he signed it. (Tr. 196.) Submitted with the application was a CV bearing Dr. Graor's name. The CV contains Dr. Graor then-updated professional addresses and residential addresses. The CV also stated that Dr. Graor was certified by the ABIM. Dr. Graor testified that he did not create this CV and does not know where it came from. (Ex. 8, seventh and eighth pages, Tr. 197-198, 294.)

Elizabeth Hopkins is the ABIM's associate vice president of credentialing. In March 2000, the State Medical Board of Ohio asked Hopkins to check the board

certification status of Dr. Graor. She found that he was not and never had been certified in internal medicine. She notified the Board of these findings in a letter dated March 4, 2002. In a follow-up letter dated April 3, 2002, Hopkins informed the Board that an individual could not obtain primary certification in cardiovascular disease without first being certified in internal medicine. (Tr. 136-138, Exs. 9, 10.)

In October 2000, Dr. Graor was making plans to take the ABIM examinations the following summer. After Dr. Graor contacted the ABIM, he became aware of an e-mail dated February 7, 2000 in which Ms. Hopkins tells Dr. Graor that he should correct any misrepresentations about his certification status. She also asked Dr. Graor to forward a copy of an updated CV to her. Dr. Graor testified that he first learned of this e-mail in the fall of 2000. (Tr. 295-296, Ex. C.)

On April 6, 2001, Greg McGlaun, an investigator employed by the Board, spoke with Dr. Graor and his attorney at the attorney's office. McGlaun explained that he was investigating Dr. Graor's alleged misrepresentations on a CV. McGlaun showed Dr. Graor the second CV obtained by OICC. (Ex. 5.) Dr. Graor said he had never previously seen this document. (Tr. 265.) Dr. Graor stated that the errors regarding the certification must have been made by his secretary at Cleveland Clinic. He stated that the CV must have been one that he submitted to OICC about 10 years earlier. Dr. Graor further stated that when the issue of Dr. Graor's certification arose, Shutte and Ms. Dahdah told Dr. Graor to tell people that he had been board certified, but that the certification was suspended when he was convicted of a felony. (Tr. 217-222, 236-237.)

### III. Law.

This court must affirm the order of the Board if it is supported by reliable, probative and substantial evidence and is in accordance with law. R.C. 119.12; *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 111. This standard of proof was defined by the Supreme Court of Ohio in *Our Place v. Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571:

“(1) ‘Reliable’ evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) ‘Probative’ evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) ‘Substantial’ evidence is evidence with some weight; it must have importance and value.” (Internal citations omitted.)

To a limited extent, this Court may substitute its judgment for that of the administrative agency. However, the Court must give the agency due deference as to its resolution of evidentiary conflicts, since the hearing officer had the opportunity to view the witnesses' demeanor and weigh their credibility. *Conrad*, 63 Ohio St.2d at 111.

The Board's charges against Dr. Graor were made pursuant to R.C. 4731.22 (B)(5). At all relevant times, this statute has permitted the Board, upon a finding of a violation, to take disciplinary action, including revocation, upon a physician. Prior to March 9, 1999, the subsection prohibited "publishing a false, fraudulent, deceptive, or misleading statement." Since March 9, 1999, the subsection has prohibited:

"Making a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board.

As used in this division, 'false, fraudulent, deceptive, or misleading statement' means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived."

A violation under R.C. 4731.22 (B) (5) must be supported by findings that the statement or application in question was made with intent to mislead the Board. *Webb v. State Medical Bd.* (2001), 146 Ohio App.3d 621, *Rajan v. State Medical Bd.* (1997), 118 Ohio App.3d 187, 194.

#### **IV. Findings of the Court and Conclusion.**

Upon thorough review of the entire record, the Court finds that the Board's Order was supported by the preponderance of reliable, probative, and substantial evidence.

There was reliable, probative, and substantial evidence supporting the Board's finding that Dr. Graor submitted a CV to the Cleveland Clinic containing false information. The clinic certified that Exhibit 3 was within its possession. Among the documents contained in Exhibit 3 was a staff biography that Dr. Graor admitted he had prepared. The staff biography falsely stated that Dr. Graor was board certified in internal medicine.

There also was reliable, probative, and substantial evidence to support the Board's finding that in late 1999 or early 2000, Dr. Graor submitted a CV to OICC, which falsely stated that he was board certified in internal medicine. The hearing officer understandably disbelieved Dr. Graor's testimony that he never submitted a CV to OICC.

Dr. Graor's first explanation was that Dr. Dahdah must have come into possession of the CV between 1990 and 1993 when the two men first met. However, this explanation makes no sense, since the CV contains information relating to Dr. Graor's activities in 1995. Faced with these facts, Dr. Graor changed his story to say that he must have given the CV to Dr. Dahdah in 1994, which also makes no sense. Similarly, the state presented reliable, substantial, and probative evidence to establish that Dr. Graor submitted the second false CV to OICC. Again, this CV stated that Dr. Graor was board certified by the ABIM and board eligible in cardiovascular disease.

The Court rejects Dr. Graor's argument that it must accept his explanation that he did not submit the CVs to OICC, because such evidence was not directly rebutted. The circumstantial evidence is more than sufficient to support the Board's findings. There was testimony that the CVs came into the possession of OICC and bore Dr. Graor's name. This occurred around the same time that Dr. Graor lied to Mr. Shutte at the dinner about his credentials, and shortly before Dr. Graor lied again by stating that he had been board certified, but the certification was rescinded when he pleaded guilty to felony charges.

Reliable, probative, and substantial evidence also supported the Board's findings that Dr. Graor provided false and misleading information on his premises liability insurance application. The hearing officer understandably disregarded Dr. Graor's incredible testimony that placed the date "1982" next to a response asking when he was board certified with the misunderstanding that the question asked when he was board eligible. (Ex. 6, seventh page.) The question clearly asks about certification; nothing suggests that it is inquiring about eligibility. Moreover, the evidence established that Dr. Graor became board eligible in 1981, when he failed the exam, not 1982.

Reliable, probative, and substantial evidence also supported the Board's findings that Dr. Graor provided false and misleading information on the January 18, 2000 application for privileges at Good Samaritan Hospital. Dr. Graor described the application as a "critically important document." (Tr. 191.) On this form the information that he provided was only partially false; but it was clearly misleading. On the fifth page of Exhibit 7, Dr. Graor represented that he was board certified in internal medicine; yet for the next question, he responded that he was board eligible. As with the other forms, he signed the form certifying that the information he provided was accurate.

The Board also heard reliable, probative, and substantial evidence to support its finding that Dr. Graor intentionally provided false and misleading information to Wright State University on his February 9, 2000 application for a clinical faculty appointment. Both the application and the CV attached to it stated that Dr. Graor was board certified in internal medicine and board eligible in cardiovascular diseases. Dr. Graor admitted he signed the application, but again he incredibly stated that he did not know he was making the application and did not know who prepared the CV.

In his brief, Dr. Graor repeatedly asserts that the accusation being made against him defy logic. The Court finds the opposite to be true. Dr. Graor would have the Board believe that throughout his medical career, he has been burdened by secretaries who, without Dr. Graor's authorization, prepared CVs bearing his name and containing false information about him. Dr. Graor also would have the Board believe that he has had secretaries who take the liberties to put false information on his important documentation without the doctor's authorization. Yet, at the same time, Dr. Graor wants the Board to believe that his Cleveland Clinic secretaries were kindly enough to make sure the doctor's

resume was kept up to date after Dr. Graor was fired from the clinic for embezzling more than a million dollars. Dr. Graor's persistent failure to take responsibility for important medical documents that he signed and repeated placement of the blame on secretaries were understandably found by the hearing officer to be lacking in veracity.

With one exception, as noted below, the Board's order was in accordance with the law. R.C. 4731.22 (B) authorizes the board to permanently revoke a doctor's certificate to practice medicine when a violation of subsection (B)(5) is found. As noted above, the evidence established that Dr. Graor made numerous false and misleading statements. The evidence also established that the false and misleading statements were in relation to the practice of medicine. Representations in a resume to a prospective employer (OICC), applications for hospital privileges, malpractice insurance, and faculty appointments are critical to the practice of medicine.

The record further established that Dr. Graor acted with intent to mislead. Intent is a question for the trier of fact. *State v. Gross* (1914), 91 Ohio St. 161, *Ziliox v. City View Apartment & Storage Co.* (1925), 20 Ohio App. 156. Moreover, intent to mislead another into relying on a misrepresentation or concealment often must be inferred from the totality of the circumstances, because it is rarely provable by direct evidence. *Leal v. Holtvogt* (1998), 123 Ohio App.3d 51, 76. In this case, the hearing officer, as trier of fact, could certainly infer Dr. Graor's intent to mislead and provide false information.

As Dr. Graor's counsel indicated in his closing arguments to the hearing officer, the only real issue in this case is credibility. (Tr. 342:10-11.) During his lengthy testimony before the hearing officer, Dr. Graor offered numerous purported explanations and justifications for his repeated false representations since the early 1980s that he was

board certified. The hearing officer, who had the opportunity to observe Dr. Graor's demeanor, found his various explanations "simply not credible," "unbelievable," or "too far-fetched to be believable." (R & R, at pages 20 and 21.) As Board members noted during their discussion of Dr. Graor's case, any argument that a person does not know what is on his own resume or CV is suspect. Upon thorough review of the transcript, this Court agrees with the hearing officer and the Board.

Where there is reliable, probative, and substantial evidence to support a violation of R.C. 4731.22 (B) and the discipline imposed is authorized by the statute, a trial court may not modify the discipline imposed. *Henry's Café, Inc. v. Board of Liquor Control* (1959), 170 Ohio St. 233. A permanent revocation is authorized by R.C. 4731.22 (B).

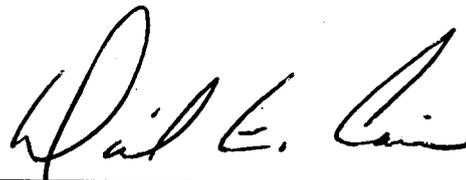
In his brief, Dr. Graor properly points out that at the time he was accused of submitting a false CV to Cleveland Clinic in 1981, R.C. 4731.22 did not include a prohibition against false statements, such the code sections at issue in this appeal. (See Section III, supra.) Therefore, to the extent that the Board found the 1981 submission violated R.C. 4731.22, the order was not in accordance with the law. However, based on the overwhelming evidence that Dr. Graor did violate R.C. 4731.22 on several occasions since his 1995 stayed revocation, the Court will not modify the Board revocation order.

Lastly, Dr. Graor's arguments that he was subjected to disparate treatment are without merit. This was not Dr. Graor's first serious offense. A mere five years before that events that led to this discipline, Dr. Graor admitted embezzling more than one million dollars that was intended for medical research. Based upon that criminal conduct, the Board revoked Dr. Graor's certificate to practice medicine, but gave him a second change by staying the revocation. Dr. Graor obviously did not learn his lesson, as he

continued to engage in lies and deceit. This time around, the Board had no reasonable choice but to permanently revoke his certification.

In support of his argument that the discipline imposed upon him is disproportionate, Dr. Graor submits Exhibit A to his brief. This exhibit includes a table of several other doctors' cases that came before the Board and the discipline that the Board imposed. However, since there is no evidence to suggest that the certificate of any doctor appearing on that list had been revoked prior to the case in question, the list is not probative on the issue of disparate treatment.

For these reasons, the Board's order is **AFFIRMED**. Counsel for Appellee shall prepare and submit an appropriate Judgment Entry reflecting this Decision pursuant to Local Rule 25.01. The judgment entry shall specifically provide that the stay order imposed on April 10, 2003 is lifted.



**JUDGE DAVID E. CAIN**

**Copies to:**

David C. Greer, Esq.  
Karen T. Dunlevey, Esq.  
Counsel for Appellant

Kyle C. Wilcox, Esq.  
Assistant Attorney General  
Counsel for Appellee

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

FILED  
COURT OF APPEALS  
FRANKLIN, OHIO  
04 JAN 21 PM 4:38  
CLERK OF COURTS

Robert Alan Graor, M.D.,  
Appellant-Appellant,

No. 04AP-72

v.  
State Medical Board of Ohio,  
Appellee-Appellee.

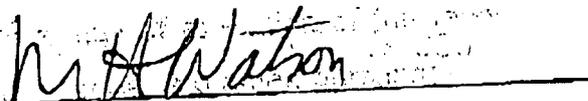
(REGULAR CALENDAR)

JOURNAL ENTRY

Appellant's January-20, 2004 motion for a stay of execution of the revocation order of the State Medical Board of Ohio pending appeal is granted pursuant to App.R. 7, conditioned upon appellant's posting with the clerk of the trial court a cash or supersedeas bond in the amount of \$1,000.

  
Judge William A. Klatt

  
Judge Susan Brown

  
Judge Michael H. Watson

04 APR 01 -- 0072

FILED  
COURT OF APPEALS  
FRANKLIN CO. OHIO  
2004 JAN 20 PM 12:18  
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO  
Civil Division

ROBERT ALAN GRAOR, M.D.	:	Case No. 03 CVF 02 1799
Appellant,	:	Judge David E. Cain
vs.	:	
	:	<u>NOTICE OF APPEAL</u>
STATE MEDICAL BOARD OF OHIO	:	OHIO STATE MEDICAL BOARD
Appellee.	:	JAN 20 2004

Notice is hereby given that Appellant Robert Alan Graor, M.D. hereby appeals the Decision Affirming Order of the State Medical Board of Ohio issued on January 7, 2004. The undersigned has been advised that a Judgment Entry will be filed relative to said Decision on January 20, 2004.

Respectfully submitted,

*David C. Greer*  
 David C. Greer (0009090)  
 Karen T. Dunlevey (0067056)  
 BIESER, GREER & LANDIS LLP, Of Counsel  
 400 National City Center  
 6 North Main Street  
 Dayton, Ohio 45402-1908  
 Telephone: (937) 223-3277  
 Facsimile: (937) 223-6339  
 Attorneys for Appellant Robert Alan Graor, M.D.

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
04 JAN 20 PM 12:09  
CLERK OF COURTS

BIESER, GREER & LANDIS  
ATTORNEYS AT LAW  
400 NATIONAL CITY CENTER  
6 NORTH MAIN STREET  
DAYTON, OHIO 45402  
(937) 223-3277

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Notice of Appeal has been hand-dleivered on this 20th day of January, 2004 to Kyle C. Wilcox, Assistant Attorney General, Health & Human Services Section, 30 East Broad Street, 26<sup>th</sup> Floor, Columbus, Ohio 43215-3428.

BIESER, GREER & LANDIS, LLP

By *Kenneth T. Frank*

8513.201180 \ 230573.2

OHIO STATE MEDICAL BOARD

JAN 20 2004

BIESER, GREER & LANDIS  
ATTORNEYS AT LAW  
400 NATIONAL CITY CENTER  
8 NORTH MAIN STREET  
DAYTON, OHIO 45402  
(937) 223-3277

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

Robert Alan Graor, M.D.,	:	
Appellant,	:	
vs.	:	Case No. 03CVF02-1799
State Medical Board of Ohio,	:	Judge Cain
Appellee.	:	

ORDER

The court has reviewed the findings, conclusions and orders of the State Medical Board. While it appears that the state has a strong case against the appellant, Dr. Graor's medical skills and medical practice habits are not being questioned. Furthermore, the court has evidence that the community will suffer a hardship if the Board's order is not stayed during the pendency of this appeal.

Therefore, the Board's order is hereby stayed until the appeal is decided.



David E. Cain, Judge

Copies to:

David C. Greer  
 Karen T. Dunlevey  
 Counsel for Appellant

Kyle C. Wilcox  
 Assistant Attorney General

FILED  
 COMMON PLEAS COURT  
 OHIO  
 2003 APR 10 PM 3:41  
 CLERK OF COURTS

STATE MEDICAL BOARD  
OF OHIO

STATE MEDICAL BOARD  
OF OHIO

~~BEFORE THE STATE MEDICAL BOARD OF OHIO~~

2003 FEB 18 A 9:34

IN THE MATTER OF: : SHARON W. MURPHY  
: ATTORNEY HEARING EXAMINER  
ROBERT ALAN GRAOR, M.D. :

---

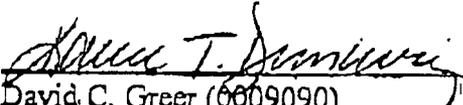
**RESPONDENT'S NOTICE OF APPEAL**

---

Now comes the Respondent to this action, Robert Alan Graor, M.D., by and through counsel, and hereby provides notice of his appeal of the State Medical Board's Entry of Order dated February 12, 2003 to the Franklin County Court of Common Pleas. A Notice of Appeal is also being filed with the Franklin County Court of Common Pleas. The Findings of Fact and Conclusions of Law issued by the Hearing Examiner and adopted by the Board are not supported by reliable, probative and substantial evidence and are not in accordance with the law. Similarly, the Board's chosen penalty of permanent revocation of Dr. Graor's medical license is also not supported by reliable, probative and substantial evidence and is not in accordance with the law.

Accordingly, the Respondent asks the Franklin County Common Pleas Court to review the evidence and reverse the Board's decision.

Respectfully submitted,

  
David C. Greer (6609090)  
Karen T. Dunlevey (0067056)  
BIESER, GREER & LANDIS LLP, Of Counsel  
400 National City Center  
6 North Main Street  
Dayton, Ohio 45402-1908  
Telephone: (937) 223-3277  
Facsimile: (937) 223-6339  
Attorneys for Respondent Robert Alan Graor, M.D.

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Notice of Appeal has been mailed this 18 day of February, 2003 to Kyle C. Wilcox, Assistant Attorney General, Health & Human Services Section, 30 East Broad Street, 26<sup>th</sup> Floor, Columbus, Ohio 43215-3428.

BIESER, GREER & LANDIS, LLP

By *Adam T. Jankovic*

STATE MEDICAL BOARD  
OF OHIO  
2003 MAR 11 P 2:41

10m

FILED  
COMMON PLEAS COURT  
FRANKLIN CO., OHIO  
2003 FEB 19 PM 2:22  
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO  
Civil Division

ROBERT ALAN GRAOR, M.D.	:	Case No. 03 CVF 02 1799
Appellant,	:	Judge David E. Cain
vs.	:	<u>ORDER AND ENTRY GRANTING</u>
STATE MEDICAL BOARD OF OHIO	:	<u>STAY OF EXECUTION</u>
Appellee.	:	

This matter came before the Court on the Appellant's Motion for Stay of Execution of Order of the State Medical Board of Ohio permanently revoking the Appellant's license to practice medicine. For the grounds set forth in the Appellant's Motion and for other good cause shown, said Motion is hereby GRANTED and a stay of execution of the State Medical Board's Order revoking Dr. Graor's license is hereby issued permitting Dr. Graor to see existing patients only pending the disposition of this appeal.

IT IS SO ORDERED.

The Honorable David E. Cain

Submitted by,

David C. Greer (0009090)  
Karen T. Dunlevey (0067056)  
BIESER, GREER & LANDIS LLP, Of Counsel  
400 National City Center  
6 North Main Street  
Dayton, Ohio 45402-1908  
Telephone: (937) 223-3277  
Facsimile: (937) 223-6339  
Attorneys for Appellant Robert Alan Graor, M.D.

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Order and Entry has been faxed this 18th day of February, 2003 to Kyle C. Wilcox, Assistant Attorney General, Health & Human Services Section, 30 East Broad Street, 26<sup>th</sup> Floor, Columbus, Ohio 43215-3428.

BIESER, GREER & LANDIS, LLP

By *Adam T. Jones*

FILED  
COMMON PLEAS COURT  
FRANKLIN CO., OHIO  
2003 FEB 18 PM 2:22  
CLERK OF COURTS



# State Medical Board of Ohio

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

February 12, 2003

Robert Alan Graor, M.D.  
2851 Legend Falls Court  
Beavercreek, OH 45431

Dear Doctor Graor:

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 February 12, 2003, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO

Anand G. Garg, M.D.  
Secretary

AGG:jam  
Enclosures

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5151 2364  
RETURN RECEIPT REQUESTED

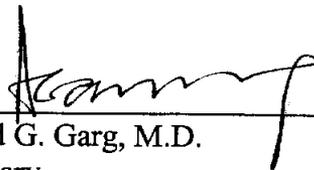
Cc: David C. Greer and Karen T. Dunlevey, Esqs.  
CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5151 2357  
RETURN RECEIPT REQUESTED

*Mailed 2-13-03*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on February 12, 2003, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Robert Alan Graor, 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)

February 12, 2003

Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF

\*

\*

ROBERT ALAN GRAOR, M.D.

\*

**ENTRY OF ORDER**

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

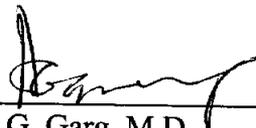
Upon the Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board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

It is hereby ORDERED that:

The certificate of Robert Alan Graor, M.D., to practice medicine and surgery in the State of Ohio is PERMANENTLY REVOKED.

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

(SEAL)

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

February 12, 2003  
\_\_\_\_\_  
Date

2003 JAN 17 A 9:22

**REPORT AND RECOMMENDATION  
IN THE MATTER OF ROBERT ALAN GRAOR, M.D.**

The Matter of Robert Alan Graor, M.D., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio, on December 3 and 4, 2002.

**INTRODUCTION**

**I. Basis for Hearing**

- A. By letter dated July 10, 2002, the State Medical Board of Ohio [Board] notified Robert Alan Graor, 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 a prior action against Dr. Graor by the Board and on allegations that Dr. Graor had repeatedly misrepresented his credentials on documents and/or in conversations. The Board further alleged that Dr. Graor's conduct constituted violations of Section 4731.22(B)(5), Ohio Revised Code. Accordingly, the Board advised Dr. Graor of his right to request a hearing in this matter. (State's Exhibit 1A).
- B. On July 17, 2002, David C. Greer, Esq., submitted a written hearing request on behalf Obstetrics & Gynecology Dr. Graor. (State's Exhibit 1B).

**II. Appearances**

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.
- B. On behalf of the Respondent: David C. Greer and Karen T. Dunlevey, Esqs.

**EVIDENCE EXAMINED**

**I. Testimony Heard**

**A. Presented by the State**

- 1. Jeffrey H. Shutte
- 2. Cindy Dahdah
- 3. Elizabeth A. Hopkins
- 4. Robert Alan Graor, M.D. as upon cross-examination
- 5. Gregory McGlaun

B. Presented by the Respondent

1. Roy Chu, Ph.D.
2. James Gentry Laws, D.O.
3. Leslie Graor
4. Robert Alan Graor, M.D.
5. Gordon John Garrett
6. Troy Alan Tyner

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A-1S: Procedural exhibits.
2. State's Exhibit 2: Certified copies of documents regarding Dr. Graor maintained by the Board. (Note: pages numbered by the Attorney Hearing Examiner post-hearing).
3. State's Exhibit 3: Certified copies of documents regarding Dr. Graor maintained by the Cleveland Clinic Foundation. (Note: pages numbered by the Attorney Hearing Examiner post-hearing).
4. State's Exhibits 4 and 5: Undated curriculum vitae for Dr. Graor.
5. State's Exhibit 6: Copy of an application for liability insurance for Dr. Graor.
6. State's Exhibit 7: Copy of documents related to Dr. Graor's application for privileges at Good Samaritan Hospital in Dayton, Ohio. (Note: pages numbered by the Attorney Hearing Examiner post-hearing).
7. State's Exhibit 8: Certified copies of documents related to Dr. Graor's application for faculty appointment at Wright State University School of Medicine in Dayton, Ohio.
8. State's Exhibits 9 and 10: Copies of letters to the Board from Elizabeth A. Hopkins, Associate Vice President, Registration and Credentials, ABIM.
9. State's Exhibit 11: Copy of a letter to the Board from Andrew S. Hannah, Acting University Registrar for Pritzker School of Medicine of the University of Chicago.

State's Exhibit 12: Copies of documents regarding Dr. Graor's original application for licensure in Ohio as maintained by the Board.

B. Presented by the Respondent

1. Respondent's Exhibit A: Dr. Graor's Application for Appointment to the Medical Staff at Franciscan Medical Center, Dayton, Ohio.
2. Respondent's Exhibit B: Dr. Graor's Application for Appointment to the Medical Staff at Miami Valley Hospital, Dayton, Ohio.
3. Respondent's Exhibit C: Copy of a February 7, 2000, electronic mail message from Elizabeth A. Hopkins to Internet: OHCardiac@aol.com.

Note: Social security numbers were redacted from exhibits by the Attorney Hearing Examiner with the agreement of the parties. See Hearing Transcript at 215.

### SUMMARY OF THE EVIDENCE

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

1. Robert Alan Graor, M.D., received his degree in medicine in 1978 from the University of Health Sciences – The Chicago Medical School in Chicago, Illinois. Subsequently, Dr. Graor completed a residency in internal medicine and a fellowship in peripheral vascular disease at the Cleveland Clinic Foundation [Cleveland Clinic] in Cleveland, Ohio. (Hearing Transcript [Tr.] at 151-152; Respondent's Exhibit [Resp. Ex.] A).

Dr. Graor testified that, six years later, he participated in a cardiovascular disease fellowship. He stated that the cardiovascular disease fellowship was "a modified fellowship that was equivalent to the standard fellowship" offered by the Cleveland Clinic. He explained that it had been modified because he was then employed at the Cleveland Clinic and, to do a standard fellowship, he would have had to terminate his employment. Therefore, his chairman had allowed him to complete the fellowship while he continued his employment. Dr. Graor testified that he had not received a certificate documenting his completion of the fellowship. Instead, one of the physicians provided him with a letter stating that he had completed an equivalent fellowship. (Tr. at 153-155).

Dr. Graor has never been certified by the American Board of Internal Medicine [ABIM]. Moreover, Dr. Graor has never been eligible for certification in cardiology. (Tr. at 136-137; State's Exhibit [St. Ex.] 9; Resp. Ex. C). Dr. Graor testified that he had taken the

examination for certification in internal medicine in 1981 but failed the examination. He did not attempt the examination a second time. (Tr. at 249; Resp. Ex. C).

2. In August 1979, Dr. Graor signed an application for licensure in Ohio. With the application, Dr. Graor submitted a copy of his diploma from the University of Health Sciences - The Chicago Medical School. The Board issued Dr. Graor a license in September 1979. (St. Ex. 12).
3. Dr. Graor was employed by the Cleveland Clinic from January 1982 through September 1994. Initially, Dr. Graor served as a staff physician in internal medicine and peripheral vascular disease. Subsequently, he served as a staff physician in cardiology. (Tr. at 161, 260).
4. Documents maintained by the Cleveland Clinic include a curriculum vitae for Dr. Graor submitted to the Cleveland Clinic in September 1981. (St. Ex. 2). Dr. Graor testified that he had not submitted a curriculum vitae to the Cleveland Clinic. Dr. Graor explained that he had been a student prior to that time and he had not yet created a curriculum vitae. Dr. Graor testified that his first curriculum vitae was “developed” or “generated” by the Cleveland Clinic. He stated that the secretaries in his department had created curricula vitae for the staff physicians. (Tr. at 162, 164, 175).

Nevertheless, in later testimony, Dr. Graor stated that he did not know whether he had prepared the curriculum vitae himself or if it had been prepared by someone else. (Tr. at 250-251; St. Ex. 3 at 3).

5. In a Staff Biography attached to the 1981 curriculum vitae, Dr. Graor indicated that he had been board certified in internal medicine in 1981. Nevertheless, in handwriting other than Dr. Graor’s, there is a notation which states “failed exam 1981.” Dr. Graor testified that he assumed that a record keeper at the Cleveland Clinic had added the notation that he had failed the examination in 1981. (Tr. at 249; St. Ex. 3 at 2).

Dr. Graor admitted that he had indicated in the Staff Biography that he had been certified in internal medicine in 1981. Dr. Graor explained that he had completed the Staff Biography after taking the certification examination but before receiving the results. He further explained that he had claimed to be board certified because he had anticipated that he would do better than he had. (Tr. at 167-169, 247-249; St. Ex. 3 at 2).

6. At some time during Dr. Graor’s employment with the Cleveland Clinic, Dr. Graor completed an Application for Membership and Classification Blank for the Academy of Medicine of Cleveland. In that document, Dr. Graor indicated that he had received a medical degree from the “University Chicago Medical School.” (St. Ex. 3 at 5; Tr. at 252).

Dr. Graor testified that the University of Health Sciences – The Chicago Medical School now known as the Finch University of Health Sciences – The Chicago Medical School, is a separate and distinct institution from the University of Chicago, Pritzker School of Medicine. (Tr. at 152, 156, 243).

Dr. Graor admitted that he “may have” used the term “University of Chicago Medical School” when discussing his medical education. Dr. Graor acknowledged that that was not the name of the institution from which he had obtained his medical degree, but stated that people who went to the University of Health Sciences – The Chicago Medical School often referred to it as the “University of Chicago Medical School.” (Tr. at 155-156).

Dr. Graor later testified that, if he had stated in a curriculum vitae or in an application that he had attended the University of Chicago Medical School, it had been a correct statement. Moreover, Dr. Graor does not believe that referring to the University of Health Sciences – The Chicago Medical School as the University of Chicago Medical School could have been confusing, since the University of Chicago medical school is known as the Pritzker School of Medicine. (Tr. at 165-167, 168).

Dr. Graor testified that he is not aware of any ranking of medical schools which would indicate that one school is better than the other. (Tr. at 156-157).

7. In the Application for Membership and Classification Blank for the Academy of Medicine of Cleveland, Dr. Graor also wrote that his specialty was peripheral vascular disease and that he had been “Board Certified” in 1982. (St. Ex. 3 at 5).

Dr. Graor acknowledged that he had asserted that he had been board certified in 1982. Dr. Graor explained that he had written that because, since there was no certification in peripheral vascular disease, his completion of the fellowship in peripheral vascular disease was the equivalent of board certification. (Tr. at 252-254; St. Ex. 3 at 5).

8. On June 27, 1984, Dr. Graor signed a membership application for the Cleveland Medical Library Association in which he indicated that he had received a medical degree from the “University Chicago Medical School.” (St. Ex. 3 at 6).
9. Documents maintained by the Cleveland Clinic include a second curriculum vitae for Dr. Graor. The second curriculum vitae contains the notation “[circa 1993]” written by someone other than Dr. Graor. Under the heading “Certification,” the curriculum vitae provides “American Board of Internal Medicine – National Board of Medical Examiners, 1982.” Moreover, the curriculum vitae lists Dr. Graor’s medical school as “University of Chicago Medical School.” (St. Ex. 3 at 4).

Dr. Graor denied that the curriculum vitae states that he was certified by the ABIM. He explained that, since there was also a reference to the National Board of Medical

Examiners, it reads as “nonsense.” (Tr. at 162-163, St. Ex. 3 at 4). Later, Dr. Graor testified that he “does not believe” that he created the curriculum vitae. (Tr. at 251; St. Ex. 3 at 4).

10. During the course of Dr. Graor’s employment at the Cleveland Clinic, Dr. Graor was actively involved in research and obtaining funds for that research. (St. Ex. 2 at 16). Between July 1993 and September 1994, Dr. Graor embezzled a total of \$1,066,709.00 from his research account at the Cleveland Clinic. (St. Ex. 2 at 17). Dr. Graor was terminated from the Cleveland Clinic in September 1994, and was indicted for that conduct in December 1994. (Tr. at 257-258).

On December 12, 1994, in the Cuyahoga County Court of Common Pleas, Dr. Graor pled guilty to five felony counts of Grant Theft and five felony counts of Aggravated Grand Theft, in violation of Section 2913.02, Ohio Revised Code. The court sentenced Dr. Graor to a term of incarceration for three years, with a concurrent term of five years probation. Dr. Graor also agreed to make full restitution to the Cleveland Clinic and to use the proceeds from the sale of two of his homes and his Cleveland Clinic pension fund to pay the restitution. (St. Ex. 2 at 17-18, 20).

11. On December 6, 1995, the Board issued an Order in the Matter of Robert A. Graor, M.D. (St. Ex. 2 at 6-39). The Order was based on Dr. Graor’s criminal convictions. In the December 1995 Order, the Board revoked Dr. Graor’s license to practice in the State of Ohio, but stayed the revocation. The Board also imposed an indefinite suspension for a period of not less than five years, followed by a period of probation for five years. (St. Ex. 2 at 8-10).
12. In an application for liability insurance, Dr. Graor indicated that he had practiced medicine in Santa Fe, New Mexico, from 1996 thorough 1999, and that he had practiced administrative medicine in Columbus, Ohio, from 1998 through 1999. (St. Ex. 6 at 7). At hearing, however, Dr. Graor testified that he had been “pretty much” “completely out of the practice of medicine” from September 1994 until January 2000. (Tr. at 262-263).
13. Jeffrey H. Shutte testified at hearing on behalf of the State. Mr. Shutte testified that he is a former employee of the Ohio Institute of Cardiac Care [OICC]. Mr. Shutte testified that the OICC is a cardiology and primary care medical practice located in Springfield, Ohio. He testified that he had served as the vice-president of the OICC before he left in 2000 or 2001. (Tr. at 15-17).

Mr. Shutte further explained that the OICC is owned by Salim Dahdah, M.D., and that Dr. Dahdah is the sole shareholder of the corporation. Mr. Shutte testified that Dr. Dahdah’s wife and Mr. Shutte’s sister, Cindy Dahdah, was also employed by the OICC. He stated that Ms. Dahdah had managed the administration of the practice. (Tr. at 27-29, 33-34).

14. Cindy Dahdah testified at hearing on behalf of the State. Ms. Dahdah testified that she is the wife of Dr. Dahdah. She is currently employed by Accubilling Management, a company that does billing and management for the OICC. Ms. Dahdah testified that, prior to her employment with Accubilling Management, she had been employed by the OICC from 1990 to 2001. (Tr. at 85-86).

Ms. Dahdah testified that, when she was employed by the OICC, she had been the Senior Vice President in charge of operations. Ms. Dahdah oversaw the billing, and met with Mr. Shutte on marketing, business development and credentialing. She stated that, during the time she worked there, the OICC had employed from six to between 100 and 120 employees. (Tr. at 87-88).

Ms. Dahdah testified that she had first met Dr. Graor when she and her husband attended a lecture given by Dr. Graor through the Cleveland Clinic in Milwaukee in the early 1990s. (Tr. at 89, 107). Ms. Dahdah testified that she next came into contact with Dr. Graor in approximately 1999 when Dr. Graor was trying to organize "The Heart Hospital" in Columbus, Ohio. She stated that Dr. Graor had expressed interest in working with the OICC at that time. (Tr. at 89).

15. Mr. Shutte testified that his duties for the OICC had included recruiting physicians. He stated that, in 1999, while working for the OICC, he had recruited Dr. Graor to the practice. (Tr. at 16-18).

Mr. Shutte testified that, in December 1999, he had attended a dinner meeting at a restaurant in Beavercreek, Ohio. In addition to Mr. Shutte, Dr. Dahdah, Ms. Dahdah, Dr. Graor, and Dr. Graor's wife Leslie attended the dinner meeting. Mr. Shutte testified that it was a "get to know you" meeting, determining where Dr. Graor would fit into the corporate scheme of the OICC. (Tr. at 18-19).

Mr. Shutte further testified that Dr. Graor's qualifications and credentials were discussed at the meeting. Mr. Shutte further testified that, during the course of the meeting, Mr. Shutte had asked Dr. Graor if he was board certified in internal medicine. Mr. Shutte testified that he specifically remembers asking the question because, on a past occasion, he had invited a non-certified cardiologist to the practice and Dr. Dahdah had been displeased. Therefore, Mr. Shutte stated that he asks every potential newcomer to the practice if they are board certified. (Tr. at 19-20).

Mr. Shutte testified that Dr. Graor had stated that he was board certified. (Tr. at 19-20).

Ms. Dahdah testified that she had also attended the meeting at the restaurant. Ms. Dahdah further testified that Dr. Graor had "unequivocally" stated that he was certified by the ABIM. (Tr. at 91-92).

16. Dr. Graor testified that, in his discussions with Dr. Dahdah in late 1999 and early 2000 regarding Dr. Graor's employment with the OICC, he had fully disclosed all of his problems, including his lack of board certification. Dr. Graor testified that Dr. Dahdah had not been concerned and, in fact, had been very excited about Dr. Graor joining the practice. Dr. Graor stated that he and Dr. Dahdah had discussed the fact that Dr. Graor would not be able to take the board examination until August 2001. Dr. Graor testified that he could not recall any specific conversations with Cindy Dahdah or Mr. Shutte, but stated that he knew that they had been aware of his board certification status. (Tr. at 233-236).

Dr. Graor testified that the dinner meeting in December 1999 had been a social gathering welcoming the Graors to the practice. Dr. Graor testified that he does not recall any discussion about board certification at that meeting. (Tr. at 237-239).

17. Leslie Graor testified at hearing on behalf of Dr. Graor. Ms. Graor testified that she had attended the meeting at the restaurant in late 1999 or early 2000. Ms. Graor described the dinner as a social dinner welcoming Dr. Graor to the OICC. Ms. Graor testified that she does not recall any conversation about Dr. Graor's credentials or certification. (Tr. at 129-130).
18. In January 2000, the Board reinstated Dr. Graor's license subject to a probationary period of five years. (Tr. at 158).
19. Ms. Dahdah testified that Dr. Graor had joined the OICC in late 1999 or early 2000. When he did so, he submitted a curriculum vitae. (Tr. at 89, 112-113; St. Ex. 4). In the curriculum vitae, it indicated that Dr. Graor was certified by the "American Board of Internal Medicine - National Board of Medical Examiners" in 1982, by the "American Board of Internal Medicine," and in "Cardiovascular Disease." (St. Ex. 4 at 2). The curriculum vitae further provides that Dr. Graor had attended the "University of Chicago Medical School." (St. Ex. 4 at 1).

Dr. Graor denied ever having submitted a curriculum vitae to the OICC. Dr. Graor explained that he had not really "applied" for a job at the OICC. He stated that "the job was there and it occurred." (Tr. at 169-170, 176, 178). Dr. Graor further testified that at no time from January 1982 through the present has he used a curriculum vitae to obtain hospital privileges or employment. (Tr. at 255-256).

20. Dr. Graor testified that he had not personally prepared the curriculum vitae that had first come into the possession of the OICC. Moreover, he stated that he does not know who provided the information contained in the document. Dr. Graor testified that he assumed his secretary at the Cleveland Clinic had prepared that curriculum vitae. (Tr. at 255-257, 265).

Moreover, Dr. Graor initially testified that the first curriculum vitae had probably come to the Dahdahs in the period from 1990 to 1993 when the Dahdahs had started recruiting him to their practice. When asked why a curriculum vitae that the Dahdahs obtained between

1990 and 1993 contained dates for 1994 and 1995, Dr. Graor changed his testimony and stated that the Dahdahs had may have obtained it in 1994. He stated that he recalled meeting Dr. Dahdah at a golf course in 1994. (Tr. at 170-172, 205-206; St. Ex. 4 at 2)

Dr. Graor was also asked why, if the Dahdahs had come into possession of the curriculum vitae between 1990 and 1993 or in 1994, the curriculum vitae contained an entry stating that Dr. Graor had been on a committee in 1992 and 1995. Dr. Graor responded that he had been appointed to the committee in 1992. Therefore, in 1993 or 1994, he would have known that he would still be a member of the committee through 1995. When it was pointed out that the curriculum vitae indicated “1992 and 1995” rather than “1992 through 1995,” Dr. Graor simply responded, without further explanation, that it should have said “1992 through 1995.” (Tr. at 170-172; St. Ex. 4 at 2).

Shortly thereafter, Dr. Graor testified that,

You know, these incorrect statements on [the curriculum vitae] were rolling around for a lot of years down there. And I think that it's very possible that this could have gotten in somebody's hand and should not have been in '94 or '93, maybe not '93, but '94, or I guess it's not beyond the realm of possibilities that it could have happened in '99. I don't know if Cleveland Clinic would have sent this out with me not being there or not.

(Tr. at 173).

21. Dr. Graor testified that he had had no copies of his curriculum vitae in his possession after leaving the Cleveland Clinic. (Tr. at 256). Dr. Graor explained that the only things he had been able to retrieve from the Cleveland Clinic after he left were some books and articles that he had published. Dr. Graor testified that he had been incarcerated from January 1, 1995, through October 1995. (Tr. at 263-264, 319).

Dr. Graor testified that, while Dr. Graor was incarcerated in 1995 or shortly thereafter, his ex-wife Lee Ann Graor had been able to retrieve some of Dr. Graor's things from the Cleveland Clinic. Dr. Graor stated that all of the things she had gotten from the Cleveland Clinic had been put in two boxes and his ex-wife had put them in storage for him. Dr. Graor testified that he had not retrieved the boxes from storage until “years later.” (Tr. at 310-314, 319-320).

Dr. Graor further testified that, in collecting Dr. Graor's possessions for his ex-wife, the Cleveland Clinic secretaries must also have gone to their computers, downloaded a copy of Dr. Graor's curriculum vitae, put the copy of the curriculum vitae on a floppy disc, and put the floppy disk in a box with Dr. Graor's possessions. When it was pointed out that the curriculum vitae at issue indicates that Dr. Graor had been terminated from the Cleveland Clinic in 1994, Dr. Graor testified that the secretaries must have updated his curriculum vitae

despite his previous termination because the secretaries would not have wanted it to appear that he had been there “one minute beyond” the date of his termination. (Tr. at 312-316).

22. Dr. Graor implied that he could not have created the curriculum vitae himself because he had not had access to a computer between 1994 and April 2000, when he and his wife purchased a computer. (Tr. at 266).
23. Ms. Dahdah testified that the first curriculum vitae submitted by Dr. Graor had stated that Dr. Graor lived in Brecksville, Ohio, which Ms. Dahdah knew to be incorrect. The curriculum vitae also listed Dr. Graor’s ex-wife as his current spouse. Therefore, Ms. Dahdah asked Dr. Graor for an updated curriculum vitae. She stated that Dr. Graor had responded that it would not be a problem because that he kept his curriculum vitae on a computer disk. (Tr. at 90-92, 113, 115).

Ms. Dahdah testified that, subsequently, Dr. Graor submitted a second curriculum vitae with a corrected address and listing his current wife. The second curriculum vitae indicated that Dr. Graor was certified by the ABIM and that he was board eligible for certification in cardiovascular diseases. (Tr. at 92-93, 115; St. Ex. 5 at 2).

The curriculum vitae further provides that Dr. Graor had attended the “University of Health Sciences, The Chicago Medical School.” (St. Ex. 5 at 1). [Note: This document has two duplicate pages and a number of missing pages.]

Dr. Graor testified that he did not know how the second curriculum vitae had been prepared, but stated that he had given copies of documents and possibly a computer disk containing Dr. Graor’s biographical information to Mr. Shutte. Dr. Graor further testified that, if he had had a computer disk containing biographical information, it would have been prepared by the secretaries at the Cleveland Clinic, not by Dr. Graor. (Tr. at 264-268; St. Ex. 5).

24. Ms. Dahdah testified that, when Dr. Graor began his employment at the OICC, Dr. Graor had applied for professional liability insurance and privileges at local hospitals. (Tr. at 93-94). Both Ms. Dahdah and Mr. Shutte identified an application for professional liability insurance completed, in large part, by Melissa [Missy] Gebhart, an employee of the OICC, on behalf of Dr. Graor. Dr. Graor signed the document on January 18, 2000. (Tr. at 21-22, 94-95; St. Ex. 6 at 11).

Under a request for information regarding board certification, Ms. Gebhart noted that Dr. Graor was certified by the ABIM. Dr. Graor added the year, “1982.” (Tr. at 95-96, 182; St. Ex. 6 at 7).

Ms. Gebhart wrote that Dr. Graor had attended the “University of Health Sciences, The Chicago Medical School.” (St. Ex. 6 at 6). Moreover, the application contains the answer

“yes” to questions regarding the revocation of a license to practice, the suspension of staff privileges, and conviction of a criminal offense. (Tr. at 38-39; St. Ex. 6 at 2).

25. Ms. Dahdah testified that, when Dr. Graor began his employment at the OICC, he had also applied for privileges at local hospitals. (Tr. at 93-94). Mr. Shutte stated that Dr. Graor had initially received temporary privileges at Good Samaritan Hospital in Dayton, Ohio. (Tr. at 50).

On January 17 and 18, 2000, Dr. Graor signed documents relating to an application for permanent privileges at Good Samaritan Hospital. The application contains some entries that were completed by Ms. Gebhart, and some entries that were completed by Dr. Graor. (Tr. at 35; St. Ex. 7).

In the application, Ms. Gebhart wrote that Dr. Graor was certified by the ABIM. In addition, however, below that entry, “Yes” is checked after the statement, “If not certified, are you currently eligible or qualified to sit for the board examination in your discipline.” (St. Ex. 7 at 6). Mr. Shutte suggested that the question regarding “discipline” may have referred to certification in subspecialty of cardiology. (Tr. at 36).

The application also indicates the answer “yes” for questions regarding the suspension or revocation of a license and for termination or revocation of hospital privileges. (Tr. at 37-38).

26. Dr. Graor testified that he remembers the day Ms. Gebhart asked him to sign the applications for professional liability insurance and for privileges at Good Samaritan Hospital. He stated that he had been very busy, and that he had been expected to see “this herd of patients that was unbelievable.” He stated that the applications had been lined-up on a counter and each had a series of tabs indicating where he was to sign. He stated that he had also been expected to fill in the blanks amidst the “hustle and bustle” in the office. (Tr. at 288-289).

Dr. Graor admitted that, in the application for professional liability insurance, he had added the date “1982” after an entry stating that he was certified by the ABIM. Dr. Graor explained that he had done so intending to indicate that he had been “board eligible” in 1982. Dr. Graor acknowledged that he had actually been “board eligible” in 1981. He could not explain why he had written 1982 instead of 1981. (Tr. at 182-184, 185-186, 289-290; St. Ex. 6 at 7).

Dr. Graor further testified that, in the application for privileges at Good Samaritan Hospital he had checked “Yes” after the statement, “If not certified, are you currently eligible or qualified to sit for the board examination in your discipline?” intending to indicate that he was board eligible. (Tr. at 290-291; St. Ex. 7 at 6).

27. Elizabeth A. Hopkins, Associate Vice President for Registration and Credentials, ABIM, testified at hearing by telephone on behalf of the State. Ms. Hopkins testified that the

ABIM is “the certifying organization that certifies and recertifies physicians in the specialties of internal medicine, subspecialties of internal medicine and areas of added qualifications.” She stated that she is responsible for “overseeing the process of registering and credentialing physicians for the certification and recertification examination as well as maintaining the candidate files.” (Tr. at 132-134).

Ms. Hopkins testified that, in order to be certified in internal medicine, a physician must complete training requirements, demonstrate satisfactory clinical competence, demonstrate good standing in the medical community, and possess an unrestricted license. Ms. Hopkins further testified that certification in internal medicine is a prerequisite for admission to the subspecialty examination for cardiovascular diseases. (Tr. at 134-135) (See also State’s Exhibit 10).

Moreover, Ms. Hopkins advised that Dr. Graor is not now, and has never been, certified in Internal Medicine by the ABIM. Moreover, since Dr. Graor is not certified in internal medicine, he is not eligible for certification in cardiology. (Tr. at 136-137) (See also State’s Exhibit 9).

28. Ms. Hopkins testified that, on January 24, 2000, she had received an e-mail message which purported to be from Dr. Graor. The message discussed the fact that Dr. Graor’s ex-wife had informed Dr. Graor that his ABIM certification had been rescinded. The message further asked what Dr. Graor needed to do in order to have his certification reinstated and whether Dr. Graor would be able to apply for the August 2000 certification examination. (Tr. at 147-150).

On February 7, 2000, Ms. Hopkins responded with an e-mail message addressed to “Internet: OHCardiac@aol.com,” the e-mail address at the OICC. The subject of the message was Dr. Graor. The message provided, in part, the following:

This is in response to your e-mail message of January 24, 2000, inquiring about your certification status. A check of our records indicates that you were never certified in Internal Medicine by this board since you did not pass the 1981 Certifying Examination. The ABIM did not recind [sic] your certification since you had never achieved that status

The ABIM is concerned that you may have reported to patients, colleagues, hospitals, societies, and/or other medical organizations that you are/were certified in Internal Medicine. If so, this could be construed as misrepresentation of your credentials and therefore must be corrected immediately. Please send the Board a copy of the corrected version of your Curriculum Vitae (if applicable) and any correction notices.

(Resp. Ex. C; Tr. at 146).

29. Dr. Graor testified that he had not sent the January 24, 2000, e-mail message sent to Ms. Hopkins. He added, however, that Mr. Shutte had admitted sending it. Moreover,

Dr. Graor stated that he had not been aware of Ms. Hopkins' February 7, 2000, e-mail response until the fall of 2000. (Tr. at 295-297).

30. Ms. Dahdah testified that she thought that the office had learned about Dr. Graor's ABIM status "much later" than February 7. (Tr. at 122-123). Ms. Dahdah stated that anyone in the office could have received that e-mail message. (Tr. at 124-125).
31. On February 9, 2000, Dr. Graor signed an Application for Clinical Faculty Appointment to the Wright State University School of Medicine, Department of Internal Medicine, in Dayton. A curriculum vitae for Dr. Graor was attached to the application. The curriculum vitae indicates that Dr. Graor was certified by the ABIM and was board eligible in Cardiovascular Diseases. (St. Ex. 8 at 8).

The application contains some entries that were completed by someone other than Dr. Graor, and some entries that were completed by Dr. Graor. In handwriting other than Dr. Graor's, the application indicates that Dr. Graor was qualified in cardiovascular diseases by the ABIM. It also indicates that Dr. Graor was certified by the ABIM in internal medicine. Nevertheless, that line is crossed out and next to it is written "not certified." (St. Ex. 8 at 4).

Documents maintained by the Wright State University School of Medicine contain two Verification[s] of Certification Status from the ABIM which indicate that Dr. Graor was not certified by that board. (St. Ex. 8 at 5-6).

Dr. Graor testified that he has no recollection of signing an application for appointment to the clinical faculty at Wright State University. Moreover, Dr. Graor testified that the curriculum vitae attached to the application had been created by someone other than him and that he had never seen it before. (Tr. at 197-198, 292-294; St. Ex. 8).

32. Ms. Dahdah testified that, while Good Samaritan Hospital was investigating Dr. Graor's application for permanent privileges, the hospital had called the OICC questioning Dr. Graor's board certification. Ms. Dahdah testified that she and Mr. Shutte had discussed the matter with Dr. Graor. She stated that Dr. Graor had explained to her that he had been board certified but, as a result of his criminal conviction and license suspension, his certification had been rescinded by the ABIM. He further stated that the letter rescinding his certification had been delivered to his ex-wife and that she had discarded it. Finally, he told Ms. Dahdah and Mr. Shutte that his attorneys were trying to resolve the matter. (Tr. at 100). Mr. Shutte testified that Dr. Graor had told him a similar story. (Tr. at 23-24).

33. Mr. Shutte testified that, when it was discovered that Dr. Graor was not board certified, Dr. Dahdah had advised Mr. Shutte to contact the OICC attorney. Mr. Shutte testified that the attorney had cautioned Mr. Shutte to contact the OICC malpractice liability insurance agent. Mr. Shutte did so. Mr. Shutte testified that the insurance agent had advised that, if Dr. Graor had been untruthful in the completion of his documents and if the OICC retained Dr. Graor as an employee, the insurer would cancel coverage for the OICC. (Tr. at 22-23, 32-33).

Mr. Shutte testified that, subsequently, he had contacted the ABIM and inquired about Dr. Graor's certification. The ABIM informed Mr. Shutte that Dr. Graor had taken the examination in 1981 and failed and that Dr. Graor never reattempted the examination. Therefore, Dr. Graor had never been certified by the ABIM. (Tr. at 26, 44-45).

34. When Good Samaritan Hospital discovered that Dr. Graor was not board certified, the hospital revoked Dr. Graor's temporary privileges. (Tr. at 48).
35. Ms. Dahdah explained that the OICC did not immediately try to distance themselves from Dr. Graor. She stated that Dr. Dahdah had wanted to help Dr. Graor and, at that time, there were a number of different stories being told and no one knew what to believe. Moreover, they were involved in numerous committee meetings at Good Samaritan Hospital before Good Samaritan Hospital made the final decision to deny Dr. Graor permanent privileges. (Tr. at 10-102).
36. On March 9, 2000, Dr. Graor signed an Application for Appointment to the Medical Staff at the Franciscan Medical Center in Dayton. The application appears to be completed, for the most part, by Ms. Gebhart. Attached to the front of the application is a note from Ms. Gebhart asking Dr. Graor to complete certain portions of the application. It also instructs Dr. Graor to sign the application in areas marked by Ms. Gebhart and to return the application to Ms. Gebhart. (Resp. Ex. A).

The application states that Dr. Graor completed his medical education at the "University of Health Sciences – Chicago." It also states that Dr. Graor is "qualified for examination," but not certified, by the ABIM in Internal Medicine and in Cardiovascular Disease. (Resp. Ex. A).

37. On March 9, 2000, Dr. Graor also signed an Application for Appointment to the Medical Staff at Miami Valley Hospital in Dayton. The application appears to be completed, for the most part, by Ms. Gebhart. There are also "sticky notes" asking Dr. Graor to sign the application in the appropriate places. (Resp. Ex. B). Ms. Dahdah explained that the OICC office staff had used these notes to indicate where the physician was to sign the application. (Tr. at 117-119).

The application states that Dr. Graor completed his medical education at the “University of Health Sciences Chicago, Ill.” It further indicates that Dr. Graor is not board certified. (Resp. Ex. B).

38. Dr. Graor testified that he had had no idea that misinformation about his credentials had been disseminated by the OICC until late April or early May 2000, when he received a telephone call from Wright State University asking if he was board certified. (Tr. at 232-233).
39. Dr. Graor testified that, when he worked for the OICC, he had been expected to see so many patients each day that he had been concerned about his ability to provide adequate care. Dr. Graor provided further details regarding his concerns about the practice. Dr. Graor testified that he had left the OICC in January 2001, as soon as his contract with the OICC expired. Dr. Graor testified that his relationship with the OICC had become very strained by that time. (Tr. at 270-287, 299-301).

Ms. Graor described Dr. Graor’s practice at the OICC. She stated that the OICC waiting room was often filled with seventy or eighty waiting patients. Dr. Graor was scheduled to see a new patient every five or six minutes. She further stated that Dr. Graor had been on call approximately twenty days each month. She said that she did not see much of her husband during that time. (Tr. at 131-132).

40. Dr. Graor testified that, after he left the OICC, he had been contacted by Dr. Steve Young, a physician he had known at the Cleveland Clinic. Dr. Graor testified that Dr. Young had been interested in recruiting Dr. Graor to join the staff at Grandview Medical Center in Dayton. After meeting people at Grandview Medical Center, Dr. Graor decided to open his own practice in Dayton. (Tr. at 302-304).
41. Greg McGlaun testified at hearing on behalf of the State. Investigator McGlaun testified that he is an investigator for the Board. Investigator McGlaun further testified that, in the course of his duties for the Board, he had gone to Dr. Graor’s home on March 30, 2001. Investigator McGlaun stated that he had spoken briefly with Dr. Graor at that time, and scheduled an interview for April 6, 2001. (Tr. at 215-218).

On April 6, 2001, Investigator McGlaun met with Dr. Graor and Dr. Graor’s attorney. At that time, Dr. Graor told Investigator McGlaun that the errors on his curriculum vitae had been made years earlier by Dr. Graor’s secretary at the Cleveland Clinic. Dr. Graor also told Investigator McGlaun that Dr. Graor did not recall giving the curriculum vitae to the OICC, but stated that he had interviewed with the OICC ten years previously and must have given it to them then. (Tr. at 218-219).

Finally, Investigator McGlaun testified that Dr. Graor had told him that Ms. Dahdah and Mr. Shutte had instructed Dr. Graor to tell people that he had been certified by the ABIM, but that he had lost his certification after his criminal conviction. (Tr. at 220).

42. Roy Chu, Ph.D., testified at hearing on behalf of Dr. Graor. Dr. Chu testified that he is the President of Grandview Medical Center in Dayton. Dr. Chu testified that he was involved in the recruitment of Dr. Graor to Grandview Medical Center. Dr. Chu stated that he had been approached by Dr. Young, a leading cardiologist at Grandview Medical Center, who had encouraged the privileging of Dr. Graor. (Tr. at 53-54).

Dr. Chu further testified that, in the summer of 2001, he had met with Dr. Graor, Dr. Young, and Troy Tyner, D.O., who was, at the time, the Acting Vice President for Medical Affairs at Grandview Medical Center. At the meeting, Dr. Graor advised the others of his background, including his problems at the Cleveland Clinic, his criminal conviction and incarceration. (Tr. at 56-59). Dr. Chu testified that he had been impressed with Dr. Graor's forthrightness. Because of that, and because of the recommendation by Dr. Young, the committee decided to grant Dr. Graor's request for privileges. (Tr. at 61).

Dr. Chu further testified that, to his knowledge, Dr. Graor has been straightforward and honest in his dealings with Grandview Medical Center. Dr. Chu testified that he has never known a physician to be so forthright about past problems. (Tr. at 58, 60-61). Dr. Chu further testified that, should Dr. Graor not be permitted to practice in Ohio, the Dayton community would suffer. Dr. Chu added that Dayton already suffers from a shortage of cardiologists. (Tr. at 62-63).

43. Troy Alan Tyner, D.O., testified at hearing on behalf of Dr. Graor. Dr. Tyner testified that he is a Consultative Internal Medicine Specialist; the President of Internal Medicine Care, Inc.; and Medical Director at Grandview Hospital. Dr. Tyner testified that he met Dr. Graor during the interviews at Grandview Medical Center when Dr. Graor was being considered for hospital privileges. (Tr. at 328-329). Dr. Tyner testified that Dr. Graor was very forthright about his past, and has been truthful in all of his dealings with Dr. Tyner. He stated that Dr. Graor has a very good reputation at the hospital. (Tr. at 331-332).
44. James G. Laws, D.O., testified at hearing on behalf of Dr. Graor. Dr. Laws testified that he has practiced cardiology in Dayton since 1971. He stated that he has privileges at Grandview Medical Center, Miami Valley Hospital, and Kettering Hospital, as well as the satellite hospitals Sycamore and Southview. (Tr. at 65).

Dr. Laws testified that he had been approached by Dr. Young regarding the credentialing of Dr. Graor by Grandview Medical Center. Dr. Laws further testified that, initially, he had tried to discourage Dr. Young from becoming involved in Dr. Graor's problems. Nevertheless, when Dr. Young persisted, Dr. Laws agreed to meet Dr. Graor. (Tr. at 67-68).

Dr. Laws testified that he had met with Dr. Graor. He found Dr. Graor to be "very forthright" and honest. Dr. Laws stated that Dr. Graor had explained the details of the felony conviction. Dr. Laws stated that he had been impressed with Dr. Graor, and decided

to support his request for privileges. Dr. Laws testified that, at Grandview Medical Center, for a physician to be granted privileges, “all it takes is a letter from the chairman of the department and a letter from the chief of staff and they will be given temporary privileges.” Dr. Laws testified that he had spoken with the chief of staff and the letters were written. Dr. Graor was given temporary privileges in cardiology. (Tr. at 67-69).

Dr. Laws testified that Dr. Graor “has proven himself to be a very competent, honest physician, and [Dr. Laws is] very happy to have [Dr. Graor] in [Dr. Laws’] group in cardiology.” Dr. Laws concluded that Dr. Graor is an “absolutely” honest person. (Tr. at 69, 84).

45. Dr. Laws further testified that, until recently, he had had no idea that there were two Chicago medical schools. When asked if one of the schools is more prestigious than the other, Dr. Laws testified that:

[I]t’s been my opinion [regarding] the pecking order of medical education that there are two cities that kind of -- I was taught this in Philadelphia, by the way, because I did train there -- that Boston in No. 1, Philadelphia is No. 2, and all others are No. 3, and that there isn’t any real good pecking order after you get through those two cities in their educational programs.

(Tr. at 74-75). Dr. Laws concluded that it would have made no difference to him which school Dr. Graor had attended. On the other hand, Dr. Laws testified that it would have made a significant difference if it turned out that Dr. Graor had lied. Dr. Laws explained that,

If the charge was true that [Dr. Graor] was lying, then one of the worst things in medicine is to be dishonest. There’s nothing worse than that. When you are dealing with the ill and the people that we deal with, these are the sickest, they die. You have to have true honesty. So if he had lied, that would have been a major problem for me.

(Tr. at 76).

Later, the following interaction transpired:

Dr. Laws: Honestly, I feel that integrity and honesty are the most important fundamentals in a physician. If he is not honest, then I don’t want to be dealing with him. I don’t want my patients to be dealing with him. I don’t want to refer people to him. I don’t want to invite him to come see my people. But – and I don’t want to be backing him if he’s dishonest. So honesty is one thing. Filling out a form that you

are required to fill out multiple times every year, to me that's different.

Mr. Wilcox: How about if someone had shown dishonesty in a major way in the past by being convicted of felonies when they stole several millions of dollars, that coupled with, you know, perhaps some inaccurate statements.

Dr. Laws: That's hard to overcome. I don't think I can walk away from that. All I can talk about is my personal - -

Mr. Wilcox: Dealings with people?

Dr. Laws: Right.

(Tr. at 83-84).

46. Gordon John Garrett testified at hearing on behalf of Dr. Graor. Mr. Garrett testified that he is the President of Heart to Honduras, a ministry to Latin America focused in the Honduras. He stated that Heart to Honduras is a "holistic ministry of agriculture, clothing, housing, medical teams, and discipling." (Tr. at 322-324).

Mr. Garrett testified that he had met Dr. Graor in 1999 when Dr. Graor was with a medical team in the Honduras. Mr. Garrett testified that Dr. Graor's contribution to Heart to Honduras has been significant and that Mr. Garrett holds Dr. Graor in very high regard. (Tr. at 324-328).

47. Ms. Hopkins testified that the ABIM offers a variety of means for individuals to verify a physician's certification status. These include a local phone number, an 800 phone number, a fax number and a web site. In addition, the American Board of Medical Specialties publishes a book that includes the names and addresses of all those who are board certified in internal medicine. Ms. Hopkins testified that the vast majority of hospitals who require board certification for credentialing obtain verification of board status for physicians applying for staff privileges. (Tr. at 141-146).

Dr. Chu testified that hospitals are strict in checking a physician's credentials before privileging that physician. He stated that any physician should know that. (Tr. at 59-60).

Finally, Dr. Laws testified that a physician would be a fool to misrepresent the fact that he or she is not board certified. He stated that it is too easy to catch the physician in the lie. (Tr. at 79-80).

### FINDINGS OF FACT

1. Robert Alan Graor, M.D., has never been certified by the American Board of Internal Medicine [ABIM]. Nevertheless, Dr. Graor repeatedly misrepresented that he had been so certified, as follows:
  - a. In September 1981, Dr. Graor submitted a curriculum vitae to the Cleveland Clinic Foundation in which he falsely indicated that he had been certified by the ABIM in 1982.
  - b. In late 1999 or early 2000, Dr. Graor submitted a curriculum vitae to Ohio Institute of Cardiac Care, Inc., in which he falsely indicated that he was certified by the ABIM and certified in cardiovascular disease.
  - c. Sometime after late 1999 or early 2000, Dr. Graor submitted a second curriculum vitae to the Ohio Institute of Cardiac Care, Inc., in which he falsely indicated that he was certified by the ABIM and was eligible for certification in cardiology.
  - d. On January 18, 2000, Dr. Graor signed an Application for Professional and Office Premises Liability Insurance in which he falsely indicated that he was certified by the ABIM.
  - e. On January 17 and 18, 2000, Dr. Graor signed documents in an application for privileges at Good Samaritan Hospital in Dayton, Ohio, in which he falsely indicated that he was certified by the ABIM.
  - f. On February 9, 2000, Dr. Graor signed an Application for Clinical Faculty Appointment which included a curriculum vitae. The application was forwarded to the Wright State University, School of Medicine, Department of Internal Medicine. In the application, Dr. Graor falsely indicated that he was certified by the ABIM and qualified for certification in cardiology.
  - g. Sometime in early 2000, when confronted about his misrepresentations regarding his lack of certification by the ABIM, Dr. Graor falsely stated that his internal medicine board certification had been rescinded after his felony conviction for embezzlement.
2. Dr. Graor received his medical degree from the University of Health Sciences – The Chicago Medical School, now known as the Finch University of Health Sciences – The Chicago Medical School. As part of a continuing course of conduct from in or about the early 1980s through 2000, Dr. Graor represented that he had attended either the “University of Chicago Medical School” or “University Chicago Medical School.”

3. On December 6, 1995, the Board issued an Order imposing a stayed revocation and an indefinite, but not less than five year, suspension of Dr. Graor's license to practice medicine and surgery in the State of Ohio. The Board's Order was based on Dr. Graor's conviction of five felony counts of Grant Theft and five felony counts of Aggravated Grand Theft, in violation of Section 2913.02, Ohio Revised Code. The conviction resulted from Dr. Graor's embezzlement of \$1,066,709.00 from the Cleveland Clinic Foundation.

### CONCLUSIONS OF LAW

1. The conduct of Robert Alan Graor, M.D., as set forth in Findings of Fact 1 which occurred prior to March 9, 1999, constitutes "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, as in effect from August 27, 1982, to March 8, 1999.
2. Dr. Graor's conduct, as set forth in Findings of Fact 1 which occurred on or after March 9, 1999, constitutes "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.
3. The testimony and evidence regarding Dr. Graor's referring to the University of Health Sciences – The Chicago Medical School as the "University of Chicago Medical School" or as the "University Chicago Medical School," as set forth in Findings of Fact 2, is not sufficient to support a conclusion that Dr. Graor intended to publish a false or misleading statement. The only evidence in the record is Dr. Graor's testimony that attendees of the school commonly referred to the school by these names. Moreover, the record contains no information that would support a motive for Dr. Graor to intentionally misrepresent the name of his school. For example, there is no testimony that the University of Chicago Medical School or the Pritzker Medical School is a more prestigious institution than the University of Health Sciences – The Chicago Medical School. Had such information been included in the record, the conclusion may have been different.

\* \* \* \* \*

The record amply supports a conclusion that Dr. Graor intended to misrepresent his status regarding certification by the American Board of Internal Medicine [ABIM]. Dr. Graor's testimony that he had been oblivious to, and was not responsible for, the misinformation in his numerous curricula vitae and applications for hospital privileges is simply not credible.

Dr. Graor admitted that he had intentionally lied about his board certification in the Staff Biography he submitted to the Cleveland Clinic in 1981. Dr. Graor justified that lie by stating that he had “anticipated” passing the examination.

In addition, Dr. Graor admitted that, in the Application for Membership for the Academy of Medicine of Cleveland, he had claimed to have been board certified in 1982. He justified this falsehood by stating that his completion of a fellowship in peripheral vascular disease is the equivalent of board certification. His reasoning is absurd.

Furthermore, Dr. Graor’s testimony regarding the many misrepresentations in his curricula vitae is not credible. Aside from the fact that the testimony of Mr. Shutte and Ms. Dahdah contradict Dr. Graor’s testimony, the stories Dr. Graor told simply do not make sense. Dates in the curricula vitae are inconsistent with his testimony. In fact, Dr. Graor on occasion changed his testimony when confronted with the inconsistent dates. On other occasions, Dr. Graor provided no explanation for the inconsistencies.

Dr. Graor’s testimony that not one of his numerous curricula vitae had been created by him is also unbelievable. His claim that a secretary at the Cleveland Clinic had updated his curriculum vitae after his termination from that institution and his incarceration for embezzlement is simply too far-fetched to be believable. Moreover, his testimony that, in 1999, he “may have” given a computer disk containing his biographical information to OICC — despite the fact that the information on the disk had been compiled by someone other than him at least five years earlier and that he had never reviewed that information before disseminating it — is highly improbable.

Additionally, Dr. Graor’s testimony that he had signed numerous documents completed by Ms. Gebhart without first reviewing the documents is also not believable. As noted by the State in closing argument, it is unlikely that a physician returning to practice after a five year suspension for a crime of fraud would be so careless in completing these documents. Moreover, in many of these documents, Dr. Graor made detailed changes in the information completed by Ms. Gebhart. It is inconsistent that he would make those detailed changes and yet, in every document, fail to notice the statement that he had been board certified in 1982. In fact, in one document, Dr. Graor added the year “1982” after Ms. Gebhart had listed his board certification in internal medicine. In light of all the testimony in this matter, Dr. Graor’s explanation that he had added the year “1982” to indicate that he had been “board eligible” in 1982, when in fact he had been board eligible in 1981, is simply not believable.

Dr. Graor argued in his defense that he would have been a fool to lie about his board certification when “everyone knows it’s so easy to check.” What is so amazing about this case is that Dr. Graor started lying about his board certification status in 1981 and he continued telling that lie for nineteen years before he “got caught.” Under those circumstances, Dr. Graor could easily have believed that he could continue his false story without fear of consequence.

Dr. Graor also argued in his defense that there was no possible motive for his conduct. Unfortunately, that is not true. It is conceivable that, in 1981, Dr. Graor had been so convinced that he would pass the certifying examination that he lied about passing it and that, when he later discovered that he had failed, he was so embarrassed by his failure and concerned about his image that he continued to perpetuate the myth.

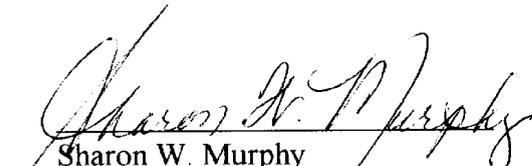
Accordingly, when Dr. Graor's recurrent dishonesty is considered in light of the fact that the Board had previously given him a second chance after his conviction for embezzlement in the course of practice, the Board has little choice as to the future of Dr. Graor's license to practice in this state.

### **PROPOSED ORDER**

It is hereby ORDERED that:

The certificate of Robert Alan Graor, M.D., to practice medicine and surgery in the State of Ohio is PERMANENTLY REVOKED.

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

  
Sharon W. Murphy  
Attorney Hearing Examiner



# State Medical Board of Ohio

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

## EXCERPT FROM THE DRAFT MINUTES OF FEBRUARY 12, 2003

### REPORTS AND RECOMMENDATIONS

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

Mr. Browning noted that Board members were notified by e-mail the previous day that the Matter of Charles Vernon Porter, M.D., has been tabled for this month.

Mr. Browning 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: Robert Alan Graor, M.D.; Faye F. Istanbooly, M.D.; Richard C. Juang, M.D.; and Alex Y. Tseng, D.O. A roll call was taken:

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

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye

Ms. Sloan	- aye
Dr. Davidson	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye
Mr. Browning	- aye

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

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

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

ROBERT ALAN GRAOR, M.D.

.....

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF ROBERT ALAN GRAOR, M.D. DR. BHATI SECONDED THE MOTION.**

.....

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

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

The motion carried.



# State Medical Board of Ohio

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

July 10, 2002

Robert Alan Graor, M.D.  
2851 Legend Falls Ct  
Beavercreek, OH 45431

Dear Doctor Graor:

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

- (1) As part of a continuing course of conduct from in or about 1983 to 2000, you misrepresented your credentials on several documents and/or in conversations including, but not limited to, the following:
  - (a) At some time during your employment with the Cleveland Clinic Foundation [CCF], you submitted a curriculum vitae [CV] to the CCF in which you falsely indicated that you were certified by the American Board of Internal Medicine in 1982. You also indicated in that same CV that you received an M.D. from the "University of Chicago Medical School." In fact, your medical degree is from the University of Health Sciences – The Chicago Medical School, now known as the Finch University of Health Sciences – The Chicago Medical School.
  - (b) At some time during your employment with the CCF, you completed an Application for Membership and Classification Blank for the Academy of Medicine of Cleveland in which you falsely indicated that you received an M.D. from the "University Chicago Medical School." In fact, your medical degree is from the University of Health Sciences – The Chicago Medical School, now known as the Finch University of Health Sciences – The Chicago Medical School.
  - (c) On or about June 27, 1984, during your employment with the CCF, you signed a membership application for the Cleveland Medical Library Association in which you falsely indicated that you received an M.D. from the "University Chicago Medical School." In fact, your

*Mailed 7-11-02*

medical degree is from the University of Health Sciences – The Chicago Medical School, now known as the Finch University of Health Sciences – The Chicago Medical School.

- (d) In or before October 1999, you submitted a CV to Ohio Institute of Cardiac Care, Inc., in which you falsely indicated that you were certified by the American Board of Internal Medicine and certified in “Cardiovascular Disease.”
  - (e) In or about October 1999, you submitted a second CV to Ohio Institute of Cardiac Care, Inc., in which you falsely indicated that you were certified by the American Board of Internal Medicine and eligible for certification in cardiology.
  - (f) In or about January 2000, you signed an Application – Professional and Office Premises Liability Insurance in which you falsely indicated that you were certified by the American Board of Internal Medicine.
  - (g) On or about January 18, 2000, you signed an application for privileges at Good Samaritan Hospital in Dayton, Ohio, in which you falsely indicated that you were certified by the American Board of Internal Medicine.
  - (h) In or about February 2000, you signed an Application for Clinical Faculty Appointment and forwarded a CV to the Wright State University, School of Medicine, Department of Internal Medicine, in which you falsely indicated that you were certified by the American Board of Internal Medicine and qualified for certification in cardiology.
  - (i) In or about June 2000, when confronted about your false representations that you were certified by the American Board of Internal Medicine, you falsely stated that your internal medicine board certification was revoked after your felony conviction for embezzlement. In fact, you have never been certified by the American Board of Internal Medicine.
- (2) On or about December 6, 1995, the State Medical Board of Ohio issued an Order imposing a stayed revocation and indefinite, but not less than five year, suspension of your license to practice medicine and surgery in the State of Ohio based on your guilty pleas to five felony counts of aggravated grand theft involving your knowingly and deceptively obtaining or exerting control of money in excess of one million dollars from the Cleveland Clinic

Foundation. On or about January 12, 2000, The State Medical Board of Ohio reinstated your license subject to a probationary period of five years.

Your acts, conduct, and/or omissions that occurred prior to March 9, 1999, as alleged in paragraphs (1)(a) through (c) above, individually and/or collectively, constitute "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, as in effect from August 27, 1982, to March 8, 1999.

Further, your acts, conduct, and/or omissions that occurred on or after March 9, 1999, as alleged in paragraphs (1)(d) through (i) above, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

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

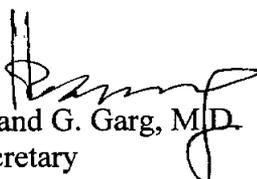
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

  
Anand G. Garg, M.D.  
Secretary

AGG/blt  
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5141 8185  
RETURN RECEIPT REQUESTED

cc: Nicholas E. Subashi, Esq.  
The Oakwood Building  
2305 Far Hills Avenue  
Dayton, OH 45419

CERTIFIED MAIL # 7000 0600 0024 5142 0010  
RETURN RECEIPT REQUESTED



# STATE MEDICAL BOARD OF OHIO

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

December 8, 1995

Robert A. Graor, M.D.  
13500 Shaker Blvd., #502  
Cleveland, Ohio 44120

Dear Doctor Graor:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Esq., Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on December 6, 1995, including Motions approving and confirming the Findings of Fact, amending the Conclusions of Law 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 of the Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Thomas E. Gretter, M.D.

Secretary

TEG:em  
Enclosures

CERTIFIED MAIL RECEIPT NO. P 348 887 158  
RETURN RECEIPT REQUESTED

cc: Alan T. Radnor, Esq.

CERTIFIED MAIL RECEIPT NO. P 348 887 159  
RETURN RECEIPT REQUESTED

Mailed 12-28-95



# STATE MEDICAL BOARD OF OHIO

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

## CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of R. Gregory Porter, Esq., Attorney Hearing Examiner, State Medical Board; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on December 6, 1995, including Motions approving and confirming the Findings of Fact, amending the Conclusions of Law 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 Robert A. Graor, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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

Thomas E. Gretter, M.D.  
Secretary

(SEAL)

12/14/95

\_\_\_\_\_  
Date



# STATE MEDICAL BOARD OF OHIO

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

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

\*

\*

ROBERT A. GRAOR, M.D.

\*

## ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 6th day of December, 1995.

Upon the Report and Recommendation of R. Gregory Porter, Hearing Examiner, Medical Board, in this matter designated 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 the certificate of Robert A. Graor, M.D., to practice medicine and surgery in the State of Ohio shall be permanently REVOKED. Such revocation is stayed, and Dr. Graor's certificate is hereby INDEFINITELY SUSPENDED for a minimum of five (5) years, such suspension to be retroactive to January 2, 1995, the beginning date of Dr. Graor's incarceration.

1. The State Medical Board shall not consider reinstatement of Dr. Graor's certificate to practice unless and until all of the following minimum requirements are met:
  - A. Dr. Graor shall submit an application for restoration, accompanied by appropriate fees.
  - B. Dr. Graor shall provide the Board with written reports of evaluation by two (2) psychiatrists acceptable to the Board, one of whom shall be chosen by the Board and the other of whom shall be nominated by Dr. Graor for prior Board approval, which reports shall indicate that Dr. Graor's ability to practice has been assessed and that Dr. Graor has been found capable of practicing in accordance with acceptable and prevailing standards of care. Such evaluations shall be at Dr. Graor's own expense. The evaluations must address:
    - 1) The existence or nonexistence of a psychiatric disorder evident in Dr. Graor;

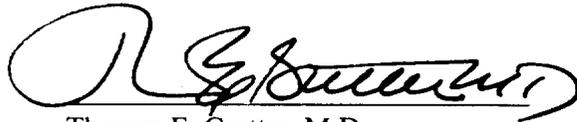
- 2) The amendability of such diagnosed disorder, if any, to treatment; the treatment completed to date by Dr. Graor; and the need, if any, for additional treatment with anticipated treatment modalities and time frames; and
- 3) Dr. Graor's ability to practice according to acceptable and prevailing standards of care.

Each report shall describe with particularity the bases for such determinations and shall set forth any recommended limitations upon Dr. Graor's practice, including the need for continued treatment, monitoring and/or counseling.

- C. Dr. Graor shall submit to the Board and receive its approval for a plan of practice in Ohio which, unless and until otherwise determined by the Board, shall be limited to an environment in which Dr. Graor will not manage, be the custodian of, or in any way distribute research grants, endowments, or any monies provided for medically related research. Any and all such monies, grants and/or endowments shall be managed by a third person, approved in advance by the Board. Such practice plan shall also conform to any limitations the Board may deem appropriate as a condition for reinstatement.
  - D. In the event that Dr. Graor 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 Dr. Graor's fitness to resume practice.
2. Upon reinstatement, Dr. Graor's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of five (5) years:
- a. Dr. Graor shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
  - b. Dr. Graor shall submit quarterly declarations under penalty of board disciplinary action, or criminal prosecution, stating whether or not there has been compliance with all the provisions of probation.
  - c. Dr. Graor shall appear in person for quarterly interviews before the full Board or its designated representative, or as otherwise requested by the Board.
  - d. In the event that Dr. Graor should leave Ohio for three (3) continuous months, or reside or practice outside the State, Dr. Graor must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.

- e. Dr. Graor shall provide the Board with acceptable documentation evidencing his compliance with the plan of recommended treatment, monitoring and/or counseling, if any, recommended pursuant to paragraph B., above, for the duration of this probationary period, or as otherwise determined by the Board.
  - f. Dr. Graor shall provide evidence satisfactory to the State Medical Board of successful completion of a minimum of 300 hours of community service, completed following release from incarceration.
  - g. Dr. Graor shall make all restitution to which he has previously agreed by way of his plea agreement with the Court or by separate agreements into which he has entered according to the terms of those agreements, which shall be incorporated herein by reference.
  - h. If Dr. Graor violates probation in any respect, the Board, after giving Dr. Graor notice and the opportunity to be heard, may set aside the stay order and impose the permanent revocation of Dr. Graor's certificate.
3. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Graor's certificate will be fully restored.

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



Thomas E. Gretter, M.D.  
Secretary

(SEAL)

12/14/95  
Date

REPORT AND RECOMMENDATION  
IN THE MATTER OF ROBERT A. GRAOR, M.D.

The matter of Robert A. Graor, M.D., came on for hearing before me, R. Gregory Porter, Esq., Hearing Examiner for the State Medical Board of Ohio, on July 11, 1995.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated February 8, 1995, (State's Exhibit 1), the State Medical Board notified Robert A. Graor, M.D., that it proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board alleged that, on or about December 12, 1994, in the Cuyahoga County Court of Common Pleas, Dr. Graor pleaded guilty to five counts of Grand Theft and five counts of Aggravated Grand Theft, all of which were felonies. The Board alleged that this guilty plea, individually and/or collectively, constitutes "(a) plea of guilty to, or a judicial finding of guilt of, a felony,' as that clause is used in Section 4731.22(B)(9), Ohio Revised Code." The Board alleged further that the acts, conduct, and/or omissions underlying Dr. Graor's guilty plea individually and/or collectively, constitute "(t)he obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice,' as that clause is used in Section 4731.22(B)(8), Ohio Revised Code."

Dr. Graor was advised of his right to request a hearing in this Matter.

- B. By letter received by the Board on March 2, 1995, (State's Exhibit 2) Gerald S. Gold, Esq., requested a hearing on behalf of Dr. Graor.

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Lili C. Kaczmarek, Assistant Attorney General.
- B. On behalf of Respondent: Alan T. Radnor, Esq.

STATE OF OHIO  
COURT OF COMMON PLEAS  
15 SEP 22 11:11:24

## EVIDENCE EXAMINED

### I. Testimony Heard

#### A. Presented by the State

No witnesses were presented

#### B. Presented by Respondent:

1. Joseph R. Hartmann, M.D.
2. Lee Ann Onder Graor

### II. Exhibits Examined

In addition to State's Exhibits 1 and 2, noted above, the following exhibits were identified and admitted into evidence:

#### A. Presented by the State:

1. State's Exhibit 3: March 3, 1995, letter to Gerald S. Gold, Esq., from the Board, advising that a hearing had been set for March 16, 1995, and further advising that the hearing was postponed pursuant to §119.09, Ohio Revised Code.
2. State's Exhibit 4: March 6, 1995, letter to Attorney Gold from the Board, scheduling a hearing for May 4, 1995. (2 pp.)
3. State's Exhibit 5: March 6, 1995, letter to the Board from Alan T. Radnor, Esq., notifying the Board of his appearance, and C. William O'Neill's and Keith W. Schneider's appearance, as Dr. Graor's representatives.
4. State's Exhibit 6: March 7, 1995, letter to Attorney Radnor from the Board, regarding Dr. Graor's representation.
5. State's Exhibit 7: March 22, 1995, Entry changing the time of the May 4, 1995, hearing from 9:00 A.M. to 1:00 P.M.
6. State's Exhibit 8: Parties' April 18, 1995, Joint Motion for Continuance. (2 pp.)

STATE MEDICAL BOARD  
1995  
95 SEP 22 11:11:24

7. State's Exhibit 9: April 25, 1995, Entry granting the Parties' Motion, and rescheduling the hearing to July 11, 1995.
8. State's Exhibit 10: Certified copies of ten Bills of Information, filed in the Cuyahoga County Common Pleas Court in *State of Ohio vs. Robert Graor*. (10 pp.)
9. State's Exhibit 11: Certified copy of Dr. Graor's Waiver of indictment, filed in *State vs. Graor* on December 20, 1994.
10. State's Exhibit 12: Certified copy of the Plea Agreement between Dr. Graor and the Cuyahoga County Prosecuting Attorney, filed in *State vs. Graor* on December 20, 1994. (3 pp.)
11. State's Exhibit 13: Journal Entry filed in *State vs. Graor* on December 28, 1994, in which Dr. Graor was sentenced to a period of incarceration followed by probation.
12. State's Exhibit 14: September 19, 1994, letter to the Board from Ralph A. Straffon, M.D., Chief of Staff of the Cleveland Clinic Foundation, notifying the Board that Dr. Graor's employment and clinical privileges had been terminated.

B. Presented by the Respondent

1. Respondent's Exhibit A-1: Respondent's Statement of Facts and Issues. (2 pp.)
2. Respondent's Exhibit A-2: List of texts and articles to which Dr. Graor contributed. Numbering refers to Respondent's Exhibits B-1 through B-48. (5 pp.)
3. Respondent's Exhibit A-3: Character reference letters in support of Dr. Graor. The first three pages of this exhibit contain a list of the authors of these letters, and a description of each author's relation to Dr. Graor.
4. Respondent's Exhibit A-4: Pie chart entitled "Research Money Procured by Robert Graor MD."

STATE MEDICAL BOARD  
95 SEP 22 11:24

5. Respondent's Exhibit A-5: Respondent's Proposed Order for the present Matter. A copy of the Board's February 8, 1995, notice (State's Exhibit 1) is attached. (8 pp.)
6. Respondent's Exhibit A-6: July 10, 1995, letter to Joseph E. Scott, Esq., from Suellen Oswald, Esq., counsel for The Cleveland Clinic Foundation, concerning Dr. Graor.
7. Respondent's Exhibits B-1 through B-48: Title page, along with copyright page, table of contents, and/or list of contributors, and in some cases the articles themselves, from articles and book chapters authored or co-authored by Dr. Graor. (Note: The books and excerpts themselves will be available for viewing by Board Members at the offices of the State Medical Board.)
8. Respondent's Exhibits B-49 through B-56: Letters written to Dr. Graor after his incarceration concerning publications and speaking engagements. An unpublished article is attached to Respondent's Exhibit B-56.
9. Respondent's Exhibit C: Curriculum vitae of Joseph R. Hartmann, M.D. (6 pp.)
10. Respondent's Exhibit D-1 through D-15: Copies of slides that were presented at hearing. Although admitted to the record at hearing, these were not received by the hearing examiner until August 17, 1995.
11. Respondent's Exhibit E-1: 20 mm. peripheral stent. (Note: This exhibit will be available for viewing by Board Members at the offices of the State Medical Board.)
12. Respondent's Exhibit E-2: Catheter. (Note: This exhibit will be available for viewing by Board Members at the offices of the State Medical Board.)
13. Respondent's Exhibit E-3: Atherectomy catheter. (Note: This exhibit will be available for viewing by Board Members at the offices of the State Medical Board.)

III. Post-Hearing Admissions to the Record

- A. At the request of the State the following additional exhibit is hereby admitted to the record:

State's Exhibit 15: August 10, 1995, Affidavit of Suellen Oswald.

- B. At the request of the Respondent, the following additional exhibits are hereby admitted to the record:

1. Respondent's Exhibit A-7: August 10, 1995, letter to the Board from Robert P. Duvin, Esq., concerning the settlement of Dr. Graor's financial obligations to The Cleveland Clinic Foundation.
2. Respondent's Exhibit D-16: Excerpt from the transcript of the present hearing, in which the Respondent marked the testimony of Dr. Hartmann to indicate which slide (in Respondent's Exhibits D-1 to D-15) Dr. Hartmann was referring to at various times during his testimony. (The Hearing Examiner took the liberty of marking this exhibit as Respondent's Exhibit D-16.)

- C. On the Hearing Examiner's own motion, the following additional exhibits are hereby admitted to the record:

1. Board Exhibit A: July 13, 1995, Entry holding the hearing record open until August 11, 1995, for the filing of additional evidence.
2. Board Exhibit B: State's August 10, 1995, Motion to hold the hearing record open an additional seven days. (3 pp.)
3. Board Exhibit C: August 10, 1995, Entry granting the State's Motion, and holding the hearing record open until August 18, 1995.
4. Board Exhibit D: State's August 16, 1995, submission of State's Exhibit 15. (2 pp.)
5. Board Exhibit E: Respondent's August 17, 1995, submission of Respondent's Exhibits A-6 and A-7, along with copies of the slides that were presented at the hearing, and an excerpt from the transcript describing where in Dr. Hartmann's testimony each slide was referred to. (2 pp.)

RECEIVED  
95 SEP 22 11:24

6. Board Exhibit F: Respondent's August 18, 1995, submission of textbooks and reprints of articles that Dr. Graor authored or co-authored. (2 pp.)
7. Board Exhibit G: Section 2913.02, Ohio Revised Code, entitled "Theft."
8. Board Exhibit H: Section 2967.13, Ohio Revised Code, entitled "Parole eligibility."
9. Board Exhibit I: Sections 2967.19 and 2967.193, Ohio Revised Code, entitled "Time off for good behavior" and "Days of credit may be earned or awarded," respectively.

#### PROCEDURAL MATTERS

At the request of the parties, the hearing record in this Matter was held open until August 11, 1995, for the submission of additional exhibits. On August 10, 1995, at the request of the State, this time was extended an additional seven days. The hearing record in this Matter closed on August 18, 1995.

#### SUMMARY OF THE EVIDENCE

All transcripts of testimony and exhibits, whether or not specifically referred to hereinafter, were thoroughly reviewed and considered by the Hearing Examiner prior to his findings and recommendations in this Matter.

1. Robert A. Graor, M.D., was employed as a physician with The Cleveland Clinic Foundation (CCF) from 1978 until August 31, 1994. Since February 1994, Dr. Graor had served as the Chairman of the Department of Vascular Medicine with that institution. (State's Exhibits [St. Ex.] 14 and 15) His employment and privileges at CCF were terminated effective August 31, 1994, "for violation of Foundation employment policies and financial misconduct." (St. Ex. 14)

Over the years, Dr. Graor was active in research, and successful in obtaining funds for his research. In total, CCF was awarded approximately \$15 million to support Dr. Graor's research. (St. Ex. 15; Respondent's Exhibits [Resp. Exs.] A-1 and A-4) Dr. Graor was responsible for managing these funds, which were deposited in an account created specifically for this purpose called the Peripheral Intervention Fund. When Dr. Graor needed to pay expenses, he would write a check from this account which would be co-signed by the chair of

STATE MEDICAL BOARD

30 SEP 22 11:25

the Department of Vascular Medicine. When Dr. Graor became chairman of that department, he no longer needed the co-signature. (St. Ex. 15; Tr. 67)

2. By affidavit, Suellen Oswald, counsel for CCF, stated that "Dr. Graor would not have had access to this money were it not for his employment with CCF." (St. Ex. 15)
3. Lee Ann Onder Graor, Dr. Graor's wife, testified that Dr. Graor was paid a salary of \$225,000 per year, although she was not certain if this was the amount he earned before or after he became chairman of his department. She testified that she and Dr. Graor kept their finances separate. (Tr. 69) Mrs. Graor is also employed by CCF, and is an administrator in the Department of General and Internal Medicine. (Tr. 57)

Mrs. Graor testified that Dr. Graor's income had taken a downward turn during the last few years because of rules changes at CCF. These changes limited external sources of income from pharmaceutical companies, speaking, or consulting. (Tr. 70-71) Additionally, Dr. Graor was responsible for alimony payments to his ex-wife of \$100,000 per year, and child support of \$30,000 per year. (Tr. 70-71)

4. Dr. Graor embezzled a total of \$1,066,709.00 from his research fund account at CCF. (St. Ex. 15) This occurred over a period of time stretching from July 13, 1993, through September 14, 1994. There were ten separate instances of such conduct, and the amount taken on each occasion ranged from \$24,742 to \$175,000. (St. Ex. 12)

Mrs. Graor testified that Dr. Graor used the money primarily to restore an old home that they had purchased, and to pay other bills and expenses. Mrs. Graor was not aware that Dr. Graor had embezzled this money. (Tr. 68-69)

5. By Bill of Information filed in the Cuyahoga County Common Pleas Court on December 12, 1994, Dr. Graor was charged with five counts of grand theft, (Counts 1 through 5), and five counts of aggravated grand theft, (Counts 6 through 10), all of which are violation of Section 2913.02, Ohio Revised Code. All of these offenses are felonies. (St. Ex. 10; Board Exhibit G) By Plea Agreement dated December 12, 1994, and filed with the court on December 20, 1994, Dr. Graor agreed to plead guilty to all of the counts. He agreed to a sentence of one year of incarceration each for counts 1 through 5; the sentences for counts 1 through 3 were to run consecutively, and the sentences for counts 4 and 5 were to run concurrently with the sentences for counts 1 through 3.

95 SEP 22 11:25

Regarding counts 6 through 10, Dr. Graor agreed to a sentence of 2 to 15 years on each count to run concurrently, which would be suspended provided that Dr. Graor successfully complete the terms of a five year probation. Dr. Graor agreed that he would not be eligible for shock probation or shock parole. Dr. Graor agreed that a condition of his probation would be restitution to CCF, and that the proceeds of the sale of his two homes, and his pension fund with CCF, would be turned over to CCF and applied towards restitution. (St. Ex. 12)

By Journal Entry filed on December 28, 1994, Dr. Graor was sentenced accordingly by Judge James J. Sweeney. Execution of the sentence was delayed until January 2, 1995, at 9:00 a.m., at which time Dr. Graor was to report to the county jail. (St. Ex. 13)

In summary, Dr. Graor's term of incarceration is three years, assuming that he will not violate probation. It appears from the documents that his five-year probation was to commence immediately, rather than be deferred until his release from prison. Because he was sentenced to definite terms of incarceration, he is ineligible for parole. Nevertheless, his sentence could potentially be reduced by up to one-third for good behavior. (St. Exs. 12 and 13; Board Exhibits H and I)

6. By letter dated August 10, 1995, counsel for CCF informed the Board that CCF and its insurance carrier, Federal Insurance Company, have settled the matter of restitution, "and Dr. Graor no longer has any financial obligation to CCF and/or Federal." (Resp. Ex. A-7)
7. A substantial volume of evidence was presented that Dr. Graor is an enormously gifted physician. He has published extensively in the field of cardiovascular diseases, as evidenced by Resp. Exs. B-1 through B-56.

Joseph Hartmann, M.D., an Illinois cardiologist and Director of the Midwest Cardiovascular Institute, testified enthusiastically on behalf of Dr. Graor. Dr. Hartmann stated that Dr. Graor was the first physician in the world to use a stent to open narrow renal arteries. (An example of such a stent was admitted to the record as Resp. Ex. E-1.) Dr. Graor took this technique and applied it to other areas of the body, such as the superior vena cava, with good results. Dr. Hartmann testified that the stent reduces the renarrowing rate of vessels following balloon catheterization and bypass surgery to 15 percent,

MISSOURI MEDICAL BOARD

15 SEP 22 11:25

which he characterized as a tremendous advancement. (Tr. 28-29, 33-34)  
Other examples of Dr. Graor's work follow:

- Dr. Hartmann testified that Dr. Graor was the first to show the superiority of urokinase versus streptokinase for dissolving arterial occlusions. (Tr. 43)
- Dr. Graor pioneered a technique whereby urokinase is used to partially dissolve a total occlusion, which is followed by removal of the remaining cholesterol with an atherectomy catheter. (An example of an atherectomy catheter was admitted to the record as Resp. Ex. E-3.) Dr. Hartmann expanded upon Dr. Graor's technique, and was the first to apply it to coronary arteries. (Tr. 41-44)
- Dr. Graor pioneered endovascular surgery to repair abdominal aortic aneurysm. A stent is tied to a dacron tube and maneuvered into position with a catheter. The stent is then expanded to fix the top of the dacron tube to healthy artery tissue above the aneurysm and hold it in place. Another stent is introduced and expanded to fix the other end of the dacron tube to healthy artery below the aneurysm. Dr. Hartmann testified that the patient can get up the night following the procedure and go home the next day. This technique allows patients to avoid the alternative of a very stressful surgery. (Tr. 49-51)

Dr. Hartmann testified that, in addition to his research, Dr. Graor was willing to share his knowledge and train other physicians in his new techniques. Dr. Hartmann testified that Dr. Graor did hands-on training with him at CCF and at Dr. Hartmann's lab near Chicago. Dr. Hartmann testified that Dr. Graor did not charge him for this training. (Tr. 31-33)

Dr. Hartmann stated that he believes that stealing any amount of money is wrong, "but what I'm concerned about is about [Dr. Graor] as a physician and losing him as a resource." (Tr. 55) Dr. Graor's criminal conviction has not altered Dr. Hartmann's opinion of Dr. Graor as a physician. "I tried to hire him when I heard he was leaving [CCF] before this came out. I would hire him tomorrow to be my partner." (Tr. 53-54, 55)

8. Mrs. Graor testified that she and Dr. Graor are now separated. The consequences of Dr. Graor's conduct have been very hard on her and other members of Dr. Graor's family. She testified that Dr. Graor has been receiving psychotherapy while in prison. She stated that she was speaking on his behalf

STATE OF OHIO  
COURT OF COMMON PLEAS  
95 SEP 22 11:25

because she believes that it would be a loss if he were not allowed to continue practicing medicine. (Tr. 64-65, 69-70)

9. A number of physicians, friends, community leaders, and relatives wrote letters in support of Dr. Graor, which were admitted to the record as Resp. Ex. A-3. Most of these letters were written to his criminal attorney on Dr. Graor's behalf concerning the criminal adjudication. The first of these letters is from Judge Sweeney, the sentencing judge, and dated March 28, 1995. In that letter, Judge Sweeney supported shock parole for Dr. Graor under certain conditions. The judge wrote, "Certainly fairness and equity demand that he be punished for [his criminal acts]. On the other hand, it would be a great loss to our community if his unique skills and talents were to be denied to those for whom they are literally a matter of life and death." (Resp. Ex. A-3)

#### FINDINGS OF FACT

On or about December 12, 1994, in the Cuyahoga County Court of Common Pleas, Robert A. Graor pleaded guilty to five counts of Grand Theft and five counts of Aggravated Grand Theft, violation of Section 2913.02, Ohio Revised Code. All of the counts were felonies.

Concerning the acts underlying Dr. Graor's plea, the evidence established that Dr. Graor knowingly obtained or exerted control over money on ten separate occasions totaling over one million dollars in the aggregate. Such conduct was committed by deception, and with the purpose to deprive the owner, The Cleveland Clinic Foundation, of these funds. These acts were committed in the course of Dr. Graor's employment with The Cleveland Clinic Foundation

#### CONCLUSIONS OF LAW

1. Robert A. Graor's guilty plea, as set forth in the Findings of Fact, above, individually and/or collectively, constitute "(a) plea of guilty to, or a judicial finding of guilt of, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.
2. Dr. Graor's acts, conduct and/or omissions underlying his guilty plea as set forth in the Findings of Fact, above, individually and/or collectively, constitute "(t)he obtaining of, or attempting to obtain, money or anything of value by fraudulent

RECEIVED  
SEP 22 11:25

misrepresentations in the course of practice," as that clause is used in Section 4731.22(B)(8), Ohio Revised Code.

The respondent argued that his conduct was not committed in the course of practice because he was acting in the capacity of administrator rather than physician when managing the Peripheral Intervention Fund. Nevertheless, the evidence presented is sufficient to support a conclusion that this conduct was committed in the course of Dr. Graor's practice. These funds had been awarded to CCF to support Dr. Graor's research, and Dr. Graor's research appears to have been a large proportion of his practice.

\* \* \* \* \*

The evidence presented in this case can leave no doubt in one's mind that Dr. Graor is a gifted physician, and has made significant contributions toward the treatment of cardiovascular diseases. Unfortunately, the evidence is also very clear that Dr. Graor embezzled enormous sums of money on repeated occasions. He was convicted in a criminal court of ten felony counts and is presently incarcerated as a result of this conduct.

Dr. Graor violated the trust of his employer, as well as a public trust, and in so doing exposed himself to criminal liability and placed his medical license at risk. That a physician with Dr. Graor's talent and professional standing would commit such acts is as shocking as it is tragic. This Board is responsible for enforcing standards for individuals holding licensure as physicians in Ohio. Requiring licensees to meet high standards of conduct promotes public confidence in the medical profession. Dr. Graor's conduct fell far short of the standards of conduct that is expected of a physician, and merits the severest sanction.

### PROPOSED ORDER

It is hereby ORDERED that the certificate of Robert A. Graor, M.D., to practice medicine and surgery in the State of Ohio shall be permanently REVOKED. This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.



R. Gregory Porter  
Attorney Hearing Examiner



# STATE MEDICAL BOARD OF OHIO

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

## EXCERPT FROM THE DRAFT MINUTES OF DECEMBER 6, 1995

### REPORTS AND RECOMMENDATIONS

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

Dr. Garg 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: Robert A. Graor, M.D.; Padmini Bhaskar, M.D.; John Charles Guidi, M.T.; Maged F. Hanna, M.D.; Paul Iahn, M.D.; Lawrence Stirling Krain, M.D.; Ajit Singh Nijjar, M.D.; Maryanne S. Olynyk, M.D.; Herbert W. Riemenschneider, M.D. A roll call was taken:

ROLL CALL:	Dr. Bhati	- aye
	Dr. Stienecker	- aye
	Dr. Gretter	- aye
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Ms. Noble	- aye
	Mr. Sinnott	- aye
	Dr. Heidt	- aye
	Dr. Steinbergh	- aye
	Dr. Garg	- aye

Dr. Garg 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:	Dr. Bhati	- aye
	Dr. Stienecker	- aye
	Dr. Gretter	- aye
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Ms. Noble	- aye
	Mr. Sinnott	- aye

Dr. Heidt	- aye
Dr. Steinbergh	- aye
Dr. Garg	- aye

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

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

REPORT AND RECOMMENDATION IN THE MATTER OF ROBERT A. GRAOR, M.D.

Mr. Sinnott left the meeting at this time.

Dr. Garg advised that this matter was initially considered by the Board in November. At that time it was tabled. A motion to confirm and approve the Proposed Findings of Fact, Conclusions of Law and Order is on the table.

Dr. Gretter left the meeting at this time.

**DR. STEINBERGH MOVED TO AMEND BY SUBSTITUTING THE FOLLOWING LANGUAGE FOR THE TWO PARAGRAPHS FOLLOWING \*\*\*\*\* OF THE CONCLUSIONS OF LAW ON PAGE 11 OF THE REPORT AND RECOMMENDATION IN THE MATTER OF ROBERT A. GRAOR, M.D.:**

The evidence presented in this case can leave no doubt in one's mind that Dr. Graor is a gifted physician who has made significant contributions to cardio-vascular research. Unfortunately, the evidence is also very clear that Dr. Graor embezzled enormous sums of money on repeated occasions. He was convicted in a criminal court of ten felony counts and was incarcerated as a result of his conduct.

Dr. Graor violated the trust of his employer, as well as the public trust, and in so doing exposed himself to criminal liability and placed his medical license at risk. Yet it must be recognized that at no time was Dr. Graor's conduct a threat to his patients' health and/or to the public in general. In weighing the aspects of this case, the Board must remain focused on its responsibility to set and enforce standards for individuals holding licensure as physicians in Ohio. Requiring licensees to meet high standards of conduct promotes public confidence in the medical profession. Dr. Graor's conduct fell short of the standards of conduct that is expected of a physician and merits sanction.

**SHE FURTHER MOVED THAT THE PROPOSED ORDER IN THE MATTER OF ROBERT A. GRAOR, M.D. BE AMENDED BY SUBSTITUTING THE FOLLOWING:**

It is hereby ORDERED that the certificate of Robert A. Graor, M.D., to practice medicine and surgery in the State of Ohio shall be permanently REVOKED. Such revocation is stayed, and Dr. Graor's certificate is hereby INDEFINITELY SUSPENDED for a minimum of three (3) years, such suspension to be retroactive to January 2, 1995, the beginning date of Dr. Graor's incarceration.

1. The State Medical Board shall not consider reinstatement of Dr. Graor's certificate to practice unless and until all of the following minimum requirements are met:
  - A. Dr. Graor shall submit an application for restoration, accompanied by appropriate fees.
  - B. Dr. Graor shall provide the Board with written reports of evaluation by two (2) psychiatrists acceptable to the Board, one of whom shall be chosen by the Board and the other of whom shall be nominated by Dr. Graor for prior Board approval, which reports shall indicate that Dr. Graor's ability to practice has been assessed and that Dr. Graor has been found capable of practicing in accordance with acceptable and prevailing standards of care. Such evaluations shall be at Dr. Graor's own expense. The evaluations must address:
    - 1) The existence or nonexistence of a psychiatric disorder evident in Dr. Graor;
    - 2) The amenability of such diagnosed disorder, if any, to treatment; the treatment completed to date by Dr. Graor; and the need, if any, for additional treatment with anticipated treatment modalities and time frames; and
    - 3) Dr. Graor's ability to practice according to acceptable and prevailing standards of care.

Each report shall describe with particularity the bases for such determinations and shall set forth any recommended limitations upon Dr. Graor's practice, including the need for continued treatment, monitoring and/or counseling.

- C. Dr. Graor shall submit to the Board and receive its approval for a plan of practice in Ohio which, unless and until otherwise determined by the Board, shall be limited to an environment in which Dr. Graor will not manage, be the custodian of, or in any way distribute research grants, endowments, or any moneys provided for medically related research. Any and all such moneys, grants and/or endowments shall be managed by a third person, approved in advance by the Board. Such practice plan shall also conform to any limitations the Board may deem appropriate as a condition for reinstatement.

- D. In the event that Dr. Graor 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 Dr. Graor's fitness to resume practice.
2. Upon reinstatement, Dr. Graor's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of five (5) years:
- a. Dr. Graor shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
  - b. Dr. Graor shall submit quarterly declarations under penalty of BOARD disciplinary action, or criminal prosecution, stating whether or not there has been compliance with all the provisions of probation.
  - c. Dr. Graor shall appear in person for quarterly interviews before the full Board or its designated representative, or as otherwise requested by the Board.
  - d. In the event that Dr. Graor should leave Ohio for three (3) continuous months, or reside or practice outside the State, Dr. Graor must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
  - e. Dr. Graor shall provide the Board with acceptable documentation evidencing his compliance with the plan of recommended treatment, monitoring and/or counseling, if any, recommended pursuant to paragraph B., above, for the duration of this probationary period, or as otherwise determined by the Board.
  - f. Dr. Graor shall provide evidence satisfactory to the State Medical Board of successful completion of a minimum of 300 hours of community service, completed following release from incarceration.
  - g. Dr. Graor shall make all restitution to which he has previously agreed by way of his plea agreement with the Court or by separate agreements into which he has entered according to the terms of those agreements, which shall be incorporated herein by reference.
  - h. If Dr. Graor violates probation in any respect, the Board, after giving Dr. Graor notice and the opportunity to be heard, may set aside the stay order and impose the permanent revocation of Dr. Graor's certificate.

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

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

Dr. Stienecker stated that he read the minutes of the November meeting regarding this case. He was not able to be present to hear Dr. Graor's oral presentation, but he did read the minutes and he has read Dr. Graor's objections to the Report and Recommendation.

**DR. STIENECKER SECONDED THE MOTION.**

Dr. Egner stated that she was in support of Dr. Steinbergh's proposed amendment in November, and she remains in support of it this month. She doesn't minimize what happened, but she can also make the distinction that there was no patient harm in Dr. Graor's medical practice. She is very much in favor of leaving him an avenue to regain his license to practice in Ohio.

Dr. Bhati stated that Dr. Graor was charged with and convicted of grand theft. He expressed concern that the proposed amendment would be setting a precedent in a situation of this magnitude. This isn't something minute. It was a very serious offense. He asked that members keep in mind that approving the amendment would definitely set a precedent for the future.

Dr. Steinbergh stated that she believes that the proposed amendment would put in place a very significant Order. Although none of the Board members can condone Dr. Graor's activities, she believes he needs a second chance to practice. She again stated that this is a very significant Board Order and is not to be taken lightly. Each physician that comes before the Board is an individual with an individual set of circumstances. She feels obligated to deal with each case on an individual level, and feels comfortable that the proposed amended Order is significant.

A vote was taken on Dr. Steinbergh's motion:

VOTE:	Dr. Bhati	- nay
	Dr. Stienecker	- aye
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- nay
	Ms. Noble	- nay
	Dr. Heidt	- nay
	Dr. Steinbergh	- aye

The motion failed.

Dr. Agresta stated that at the November meeting a five-year suspension was proposed, and he suggested that might be appropriate now.

**DR. AGRESTA MOVED TO AMEND BY SUBSTITUTING THE FOLLOWING LANGUAGE FOR THE TWO PARAGRAPHS FOLLOWING \*\*\*\*\* OF THE CONCLUSIONS OF LAW ON PAGE 11 OF THE REPORT AND RECOMMENDATION IN THE MATTER OF ROBERT A. GRAOR, M.D.:**

The evidence presented in this case can leave no doubt in one's mind that Dr. Graor is a gifted physician who has made significant contributions to cardio-vascular research. Unfortunately, the evidence is also very clear that Dr. Graor embezzled enormous sums of money on repeated occasions. He was convicted in a criminal court of ten felony counts and was incarcerated as a result of his conduct.

Dr. Graor violated the trust of his employer, as well as the public trust, and in so doing exposed himself to criminal liability and placed his medical license at risk. Yet it must be recognized that at no time was Dr. Graor's conduct a threat to his patients' health and/or to the public in general. In weighing the aspects of this case, the Board must remain focused on its responsibility to set and enforce standards for individuals holding licensure as physicians in Ohio. Requiring licensees to meet high standards of conduct promotes public confidence in the medical profession. Dr. Graor's conduct fell short of the standards of conduct that is expected of a physician and merits sanction.

**HE FURTHER MOVED THAT THE PROPOSED ORDER IN THE MATTER OF ROBERT A. GRAOR, M.D. BE AMENDED BY SUBSTITUTING THE FOLLOWING:**

It is hereby ORDERED that the certificate of Robert A. Graor, M.D., to practice medicine and surgery in the State of Ohio shall be permanently REVOKED. Such revocation is stayed, and Dr. Graor's certificate is hereby INDEFINITELY SUSPENDED for a minimum of five (5) years, such suspension to be retroactive to January 2, 1995, the beginning date of Dr. Graor's incarceration.

1. The State Medical Board shall not consider reinstatement of Dr. Graor's certificate to practice unless and until all of the following minimum requirements are met:
  - A. Dr. Graor shall submit an application for restoration, accompanied by appropriate fees.
  - B. Dr. Graor shall provide the Board with written reports of evaluation by two (2) psychiatrists acceptable to the Board, one of whom shall be chosen by the Board and the other of whom shall be nominated by Dr. Graor for prior Board approval, which reports shall indicate that Dr. Graor's ability to practice has been assessed and that Dr. Graor has been found capable of

practicing in accordance with acceptable and prevailing standards of care. Such evaluations shall be at Dr. Graor's own expense. The evaluations must address:

- 1) The existence or nonexistence of a psychiatric disorder evident in Dr. Graor;
- 2) The amenability of such diagnosed disorder, if any, to treatment; the treatment completed to date by Dr. Graor; and the need, if any, for additional treatment with anticipated treatment modalities and time frames; and
- 3) Dr. Graor's ability to practice according to acceptable and prevailing standards of care.

Each report shall describe with particularity the bases for such determinations and shall set forth any recommended limitations upon Dr. Graor's practice, including the need for continued treatment, monitoring and/or counseling.

- C. Dr. Graor shall submit to the Board and receive its approval for a plan of practice in Ohio which, unless and until otherwise determined by the Board, shall be limited to an environment in which Dr. Graor will not manage, be the custodian of, or in any way distribute research grants, endowments, or any moneys provided for medically related research. Any and all such moneys, grants and/or endowments shall be managed by a third person, approved in advance by the Board. Such practice plan shall also conform to any limitations the Board may deem appropriate as a condition for reinstatement.
  - D. In the event that Dr. Graor 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 Dr. Graor's fitness to resume practice.
2. Upon reinstatement, Dr. Graor's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of five (5) years:
- a. Dr. Graor shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
  - b. Dr. Graor shall submit quarterly declarations under penalty of BOARD disciplinary action, or criminal prosecution, stating whether or not there has been compliance with all the provisions of probation.
  - c. Dr. Graor shall appear in person for quarterly interviews before the full Board or its designated representative, or as otherwise requested by the Board.

- d. In the event that Dr. Graor should leave Ohio for three (3) continuous months, or reside or practice outside the State, Dr. Graor must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
  - e. Dr. Graor shall provide the Board with acceptable documentation evidencing his compliance with the plan of recommended treatment, monitoring and/or counseling, if any, recommended pursuant to paragraph B., above, for the duration of this probationary period, or as otherwise determined by the Board.
  - f. Dr. Graor shall provide evidence satisfactory to the State Medical Board of successful completion of a minimum of 300 hours of community service, completed following release from incarceration.
  - g. Dr. Graor shall make all restitution to which he has previously agreed by way of his plea agreement with the Court or by separate agreements into which he has entered according to the terms of those agreements, which shall be incorporated herein by reference.
  - h. If Dr. Graor violates probation in any respect, the Board, after giving Dr. Graor notice and the opportunity to be heard, may set aside the stay order and impose the permanent revocation of Dr. Graor 's certificate.
3. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Graor 's certificate will be fully restored.

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

**DR. STEINBERGH SECONDED THE MOTION.**

Dr. Heidt stated that in November he suggested a five-year suspension. He stated that he believes that that is the minimum penalty the Board should consider, and even that is bending over backwards for such a grievous offense against the normal character of a physician. He noted that Dr. Graor would have to take the SPEX for reinstatement if he is out of practice for more than two years.

Dr. Steinbergh stated that that is in the proposed amendment.

Dr. Heidt stated that this case is unfortunate. Dr. Graor is a great man, but his offense was also tremendous.

Dr. Stienecker stated that this case involves the integrity of a physician. He also considered the feelings of the general Board and the greater good of the community. The Board cannot take away from the egregiousness of this action.

A vote was taken on Dr. Agresta's motion:

VOTE:	Dr. Bhati	- aye
	Dr. Stienecker	- aye
	Dr. Egner	- nay
	Dr. Agresta	- aye
	Dr. Buchan	- nay
	Ms. Noble	- aye
	Dr. Heidt	- aye
	Dr. Steinbergh	- aye

The motion carried.

**DR. BHATI MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF ROBERT A. GRAOR, M.D. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:**

VOTE:	Dr. Bhati	- aye
	Dr. Stienecker	- aye
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Ms. Noble	- aye
	Dr. Heidt	- aye
	Dr. Steinbergh	- aye

The motion carried.

November 8, 1995

---

Dr. Heidt - aye  
Dr. Steinbergh - aye

The motion carried.

REPORT AND RECOMMENDATION IN THE MATTER OF ROBERT A. GRAOR, M.D.

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

Dr. Garg advised that a request to address the Board has been timely filed on behalf of Dr. Graor. Mr. Radnor and Dr. Graor would be allotted approximately five minutes for their address.

Dr. Gretter advised that he did not serve as Secretary in this case, due to a conflict of interest. He left the meeting at this time.

Dr. Garg indicated that he served as Secretary in this matter and would not vote or take part in the deliberations.

Mr. Sinnott left the meeting at this time, stating that he was recusing himself from consideration in this case since his lawfirm represents Dr. Graor in this matter.

Dr. Garg noted that Dr. Graor has hired a court reporter to be present during the deliberations, and he has been advised that a copy of the transcript is to be provided to the Medical Board.

Mr. Radnor stated that Dr. Graor will be making the presentation himself.

Dr. Graor indicated that he appreciates the Board's granting him time to address it. He had prepared an oral statement, but he is nervous and asked the Board to allow him to review his notes during the statement.

Dr. Graor stated that he was unable to be present at the hearing because he was in prison being punished for his wrongdoing. He has erred, he knows what he has done wrong, and he is fortunate to have the strong support of his family, friends, colleagues and patients. The consequences he has suffered over the past year have been severe. He has taken a huge fall from where he was. He was a nationally recognized physician in his field, and now he's ashamed for what has happened over the past year. The fall has been huge.

Dr. Graor stated that he has received calls since he has been out of prison from some of his former partners at the Cleveland Clinic. They have been kind and generous, and have expressed an interest in having things the way they were. He knows that he has let them down severely, and he knows that returning to the way things were is not possible.

Dr. Graor continued that he has been punished by the judicial system, and he would like the Board to consider this in a strong manner. Being in prison was a difficult time for him. It was something of a nightmare that he didn't expect and wasn't prepared for. It was a cold, hard time. It was a nightmare and it continues to haunt him every single day. He did use that time to concentrate on some fundamental personal things and try to effect some changes in his life. He knows that he's not an evil person, but what he did was an evil act that arose out of self-interest, impulse, fear and greed. He understands this, but he is before the Board to tell it that he thinks he's changed. He has formed a strong commitment to honesty and integrity, and his loyalty is unyielding at this point. Dr. Graor stated that he thinks he is different from others in this commitment because he's suffered these recent consequences. What has happened to him has shown him that any other way of life is not right and can ruin an individual.

Dr. Graor stated that he loves the practice of medicine. He enjoyed going to work every single day. He loves taking care of patients and spent 95% of his time taking care of patients. The remaining 5% involved administrative responsibilities and clinical research. He's a "patient" doctor, and not a bench researcher. He has published a fair number of scientific articles, but they were all on clinical research and patient-based treatments. He has never taken anything from a patient. The money he acquired was leftover money, after his research was completed. He took the money from a discretionary fund and clearly used it for reasons that were not part of what that discretionary fund was intended for.

He has also talked with several of his patients since he has been out of prison. Receiving letters from a lot of his patients while he was in prison was a sobering experience. No one patient has indicated to him since he has been out of prison that he has a lack of trust for him. Most have indicated that they want him to continue to be their physician.

Dr. Graor stated that, as he understands the Medical Board's process, his license hasn't been revoked. That's what this hearing is all about. There is a possibility of revocation, suspension, or some sort of limitation. Dr. Graor stated that, out of deference to the Board, he has chosen not to practice in the weeks since his release from prison, and he has advised his patients that he will not practice until the Medical Board has made its decision as to whether it will allow him to keep his license, or whether it will use its power to impose what he considers a death penalty on his medical practice as a result of the Board's findings. If, taken as a whole, his medical practice requires that ultimate punishment, he understands.

November 8, 1995

Dr. Graor stated that he has had his own personal struggles through this problem, but now he is asking that the Board give him a second chance. He's asking the Board not to take the most important thing that he can do for others away from him. He is willing to accept any restrictions. As the Board may be aware from the hearing transcript, he has been credited with the development of techniques and science associated with thrombolysis for peripheral arterial eschemia, major developments in the area of treating acute massive pulmonary emboli and the disturbances that occur as a result of that problem. Additionally, he has been involved with the newest area of intervention, that is endovascular grafting for aortic aneurysms and aortic dissections, and has developed some techniques for placing stents in renal arteries for severe renal artery stenosis and renal salvage. His involvement in these areas is important from a technical side, that is, device development, but probably more importantly, in developing the methods by which these procedures should be performed and the implementation of these devices into a human.

Dr. Graor stated that he hasn't been a bystander or a follower in these areas. He would like to continue to dedicate his life to these developments and to improving the way patients are treated; that is, developing more non-invasive, or less invasive, methods of treating some very severe illnesses. If he loses his license and his ability to treat patients, he won't be able to do any of these things. He asked the Board to remember that he is not dangerous, he is not abusive, and he has not been an abuser in the past. He will respond in whatever way the Board wants him to show that he is a responsible physician. He understands that it may be easy for the Board to be cynical over his repentance for his transgressions, but it has been a long time. It's been over a year that he's been suffering through this problem. He's had a long time to think about this.

Dr. Graor stated that he wished he had more than five minutes to talk with the Board. If he did, he and the Board might get to know each other better and the Board might see that there isn't a need to take his license.

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

Ms. Kaczmarek stated that this case presents a very unfortunate situation regarding Dr. Graor. As the Board knows by reading the transcript and reviewing the exhibits, Dr. Graor pled guilty to ten felonies involving grand theft and aggravated grand theft, involving over \$1 million from the Cleveland Clinic Foundation. Dr. Graor was a respectable physician, he is a gifted physician, and why he would put himself in the situation that he has is unthinkable. He obviously did not think of the consequences during the year that he embezzled on ten separate occasions and what it could possibly do to his future and his license. The Medical Board always holds physicians to high standards of care in the profession. The public trust in the profession is a factor that the Board always keeps in mind. Ms. Kaczmarek asked that the Board consider all of these things in making its ultimate decision in this case.

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF ROBERT A. GRAOR, M.D. DR. HEIDT SECONDED THE MOTION.**

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

**DR. STEINBERGH MOVED TO AMEND THE CONCLUSIONS OF LAW ON PAGE 11 OF THE REPORT AND RECOMMENDATION IN THE MATTER OF ROBERT A. GRAOR, M.D. BY SUBSTITUTING THE FOLLOWING LANGUAGE FOR THE TWO PARAGRAPHS FOLLOWING \*\*\*\*\*:**

The evidence presented in this case can leave no doubt in one's mind that Dr. Graor is a gifted physician who has made unique contributions to cardio-vascular research. Unfortunately, the evidence is also very clear that Dr. Graor embezzled enormous sums of money on repeated occasions. He was convicted in a criminal court of ten felony counts and was incarcerated as a result of his conduct.

Dr. Graor violated the trust of his employer, as well as the public trust, and in so doing exposed himself to criminal liability and placed his medical license at risk. Yet it must be recognized that at no time was Dr. Graor's conduct a threat to his patients' health and/or to the public in general. In weighing the aspects of this case, the Board must remain focused on its responsibility to set and enforce standards for individuals holding licensure as physicians in Ohio. Requiring licensees to meet high standards of conduct promotes public confidence in the medical profession. Dr. Graor's conduct fell short of the standards of conduct expected of a physician and merits sanction.

**DR. STEINBERGH FURTHER MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF ROBERT A. GRAOR, M.D. BY SUBSTITUTING THE FOLLOWING:**

It is hereby ORDERED that the certificate of Robert A. Graor, M.D., to practice medicine and surgery in the State of Ohio shall be permanently REVOKED. Such revocation is stayed, and Dr. Graor's certificate is hereby INDEFINITELY SUSPENDED for a minimum of one year or for the duration of his incarceration, whichever is longer, said suspension to be retroactive to January 2, 1995, the beginning date of Dr. Graor's incarceration.

November 8, 1995

---

1. The State Medical Board shall not consider reinstatement of Dr. Graor's certificate to practice unless and until all of the following minimum requirements are met:
  - A. Dr. Graor shall submit an application for reinstatement, accompanied by appropriate fees, if any.
  - B. Dr. Graor shall provide the Board with written reports of evaluation by two (2) psychiatrists acceptable to the Board, one of whom shall be chosen by the Board and the other of whom shall be nominated by Dr. Graor for prior Board approval, which reports shall indicate that Dr. Graor's ability to practice has been assessed and that Dr. Graor has been found capable of practicing in accordance with acceptable and prevailing standards of care. Such evaluations shall be at Dr. Graor's own expense. The evaluations must address:
    - 1.) The existence or nonexistence of a psychiatric disorder evident in Dr. Graor;
    - 2.) The amenability of such diagnosed disorder, if any, to treatment; the treatment completed to date by Dr. Graor; and the need, if any, for additional treatment with anticipated treatment modalities and time frames; and
    - 3.) Dr. Graor's ability to practice according to acceptable and prevailing standards of care.

Each report shall describe with particularity the bases for such determinations and shall set forth any recommended limitations upon Dr. Graor's practice, including the need for continued treatment, monitoring and/or counseling.
  - C. Dr. Graor shall submit to the BOARD and receive its approval for a plan of practice in Ohio which, unless and until otherwise determined by the BOARD, shall be limited to an environment in which Dr. Graor will not manage, be the custodian of, or in any way distribute research grants, endowments, or any moneys provided for medically related research. Any and all such moneys, grants and/or endowments shall be managed by a third person, approved in advance by the BOARD. Such practice plan shall also conform to any limitations the BOARD may deem appropriate as a condition for reinstatement.
  - D. In the event that Dr. Graor 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 Dr. Graor's fitness to resume practice.
2. Upon reinstatement, Dr. Graor's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of five (5) years:
  - A. Dr. Graor shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
  - B. Dr. Graor shall submit quarterly declarations under penalty of BOARD disciplinary action, or criminal prosecution, stating whether or not there has been compliance with all the provisions of probation.
  - C. Dr. Graor shall appear in person for quarterly interviews before the full Board or its designated representative, or as otherwise requested by the Board.
  - D. In the event that Dr. Graor should leave Ohio for three (3) continuous months, or reside or practice outside the State, Dr. Graor must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
  - E. Dr. Graor shall provide the Board with acceptable documentation evidencing his compliance with the plan of recommended treatment, monitoring and/or counseling, if any, recommended pursuant to paragraph B., above, for the duration of this probationary period, or as otherwise determined by the Board.
  - F. Dr. Graor shall provide evidence satisfactory to the State Medical Board of successful completion of a minimum of 300 hours of community service, completed following release from incarceration.
  - G. Dr. Graor shall make all restitution to which he has previously agreed by way of his plea agreement with the Court or by separate agreements into which he has entered according to the terms of those agreements, which shall be incorporated herein by reference.

November 8, 1995

H. If Dr. Graor violates probation in any respect, the Board, after giving Dr. Graor notice and the opportunity to be heard, may set aside the stay order and impose the permanent revocation of Dr. Graor's certificate.

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

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

**DR. EGNER SECONDED THE MOTION.**

Dr. Heidt stated that this is a very unfortunate situation. Dr. Graor is a brilliant man who has written 108 papers and 35 chapters in books. Not many can achieve that. He has contributed mightily to medicine and the advancement of medicine. He has treated his patients well. The problem here is not one of medicine, but yet it is. It is a matter that the role of physician entails much more than taking care of patients. It encompasses a tremendous amount of trust by everyone. This trust has been violated to a very great degree. One million dollars is a lot of money, but the deed has been done. He questioned whether one year of suspension would be sufficient. He stated that it's hard to say, but he doesn't think so.

A vote was taken on Dr. Steinbergh's motion:

VOTE:	Dr. Bhati	- nay
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- nay
	Dr. Heidt	- nay
	Dr. Steinbergh	- aye

The motion failed.

Dr. Garg asked whether there is any additional discussion on the original motion to approve and confirm.

Dr. Agresta stated that his original feeling in relationship to this case was that the license should be revoked. In spite of the fact that the man is certainly a brilliant clinician who has contributed greatly to medicine, Dr. Agresta believes that, as far as a physician is concerned, honesty and integrity are probably as important as brilliance. Patients expect and demand physicians to be honest. They take for granted that the physician is intelligent enough to practice. If a physician happens to be more than average, that's even more of a plus. Certainly Dr. Graor's gifts and help to cardiovascular disease are well documented. It's for that reason that Dr. Agresta feels Dr. Graor deserves at least one chance. He agrees that over \$1 million is a huge amount of money to embezzle. In the private sector this would be the end of him, maybe, maybe not. For those reasons he supported Dr. Steinbergh's amendment. Dr. Agresta stated that it does seem to encompass some of the things he thought about after he really reconsidered the issue and listened to his presentation. Dr. Graor did bring up two words for which Dr. Agresta was listening, that is, honesty and integrity. When looked at from that standpoint, one might be more willing to work something out in order to let this man continue to at least work in some capacity to continue in his endeavors. Dr. Agresta stated that he doesn't mean to minimize the problem at all, because the most important issue for a practicing physician is honesty and integrity.

Dr. Egner stated that she would speak greatly against revoking Dr. Graor's license. She doesn't take lightly what he did, but she believes that the Board has seen multiple times when it has given many physicians a second chance. Dr. Egner stated that she believes Dr. Graor has been punished for what he's done. She believes that he has learned from this a great deal, and she would like to know from those who were against the amendment where the problem lies. Do they want a stronger suspension? She wants to get it resolved, but will speak against revocation.

Dr. Buchan stated that there is no question that Dr. Graor's accomplishments far outnumber the problem situation, or the indiscretion as he believes Dr. Graor referred to it. But the reality is that this is a felony conviction, and that trust issue and the integrity issue is overwhelming in his mind. This is a teaching institution where data has been published. Dr. Graor has breached that level of integrity that is demanded at all levels, especially at the level of publishing a piece. Dr. Buchan expressed concern about putting this fellow back into practice based upon this breach of trust and the integrity statement that has been made.

Dr. Steinbergh agreed with Dr. Buchan, stating that it was an enormous struggle for her to propose this amendment. She believes that the public does expect, and has the right to expect, honesty from its physicians. There's no question about that. She disagrees with Mr. Radnor, who said in his argument that this was not committed in the course of his practice. It was, in fact, committed in the course of Dr. Graor's practice. Dr. Graor didn't rob a bank, he robbed from funds that were to be research funds.

November 8, 1995

Dr. Steinbergh stated that, having reviewed the hearing record, having reviewed his accomplishments, and having reviewed the entire event, she does personally feel that the man has paid and that his license should not be revoked. She suspects that the ethics in his personal life will have changed forever.

Dr. Bhati suggested that the matter be tabled at this time.

Dr. Garg stated that Dr. Heidt would like further discussion.

Dr. Heidt stated that he agrees with all that has been said. When he first reviewed the data, he was very discouraged and felt that revocation was the only solution. Perhaps it's not. He does believe that the suspension would have to be a major one. He doesn't think that one year is anywhere near enough. He might agree to a five-year suspension. He wouldn't go for less.

**DR. HEIDT MOVED TO AMEND THE CONCLUSIONS OF LAW ON PAGE 11 OF THE REPORT AND RECOMMENDATION IN THE MATTER OF ROBERT A. GRAOR, M.D. BY SUBSTITUTING THE FOLLOWING LANGUAGE FOR THE TWO PARAGRAPHS FOLLOWING \*\*\*\*\*:**

The evidence presented in this case can leave no doubt in one's mind that Dr. Graor is a gifted physician who has made unique contributions to cardio-vascular research. Unfortunately, the evidence is also very clear that Dr. Graor embezzled enormous sums of money on repeated occasions. He was convicted in a criminal court of ten felony counts and was incarcerated as a result of his conduct.

Dr. Graor violated the trust of his employer, as well as the public trust, and in so doing exposed himself to criminal liability and placed his medical license at risk. Yet it must be recognized that at no time was Dr. Graor's conduct a threat to his patients' health and/or to the public in general. In weighing the aspects of this case, the Board must remain focused on its responsibility to set and enforce standards for individuals holding licensure as physicians in Ohio. Requiring licensees to meet high standards of conduct promotes public confidence in the medical profession. Dr. Graor's conduct fell short of the standards of conduct that is expected of a physician and merits sanction.

**DR. HEIDT FURTHER MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF ROBERT A. GRAOR, M.D. BY SUBSTITUTING THE FOLLOWING:**

It is hereby ORDERED that the certificate of Robert A. Graor, M.D., to practice medicine and surgery in the State of Ohio shall be permanently REVOKED. Such revocation is stayed, and Dr. Graor's certificate is hereby INDEFINITELY SUSPENDED for a minimum of five years.

1. The State Medical Board shall not consider reinstatement of Dr. Graor's certificate to practice unless and until all of the following minimum requirements are met:
  - A. Dr. Graor shall submit an application for reinstatement, accompanied by appropriate fees, if any.
  - B. Dr. Graor shall provide the Board with written reports of evaluation by two (2) psychiatrists acceptable to the Board, one of whom shall be chosen by the Board and the other of whom shall be nominated by Dr. Graor for prior Board approval, which reports shall indicate that Dr. Graor's ability to practice has been assessed and that Dr. Graor has been found capable of practicing in accordance with acceptable and prevailing standards of care. Such evaluations shall be at Dr. Graor's own expense. The evaluations must address:
    - 1.) The existence or nonexistence of a psychiatric disorder evident in Dr. Graor;
    - 2.) The amenability of such diagnosed disorder, if any, to treatment; the treatment completed to date by Dr. Graor; and the need, if any, for additional treatment with anticipated treatment modalities and time frames; and
    - 3.) Dr. Graor's ability to practice according to acceptable and prevailing standards of care.

Each report shall describe with particularity the bases for such determinations and shall set forth any recommended limitations upon Dr. Graor's practice, including the need for continued treatment, monitoring and/or counseling.

- C. Dr. Graor shall submit to the BOARD and receive its approval for a plan of practice in Ohio which, unless and until otherwise determined by the BOARD, shall be limited to an environment in which Dr. Graor will not manage, be the custodian of, or in any way distribute research grants, endowments, or any moneys provided for medically related research. Any and all such moneys, grants and/or endowments shall be managed by a third person, approved in advance by the BOARD. Such practice plan shall also conform to any limitations the BOARD may deem appropriate as a condition for reinstatement

November 8, 1995

- D. In the event that Dr. Graor 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 Dr. Graor's fitness to resume practice.
2. Upon reinstatement, Dr. Graor's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of five (5) years:
- A. Dr. Graor shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
- B. Dr. Graor shall submit quarterly declarations under penalty of BOARD disciplinary action, or criminal prosecution, stating whether or not there has been compliance with all the provisions of probation.
- C. Dr. Graor shall appear in person for quarterly interviews before the full Board or its designated representative, or as otherwise requested by the Board.
- D. In the event that Dr. Graor should leave Ohio for three (3) continuous months, or reside or practice outside the State, Dr. Graor must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
- E. Dr. Graor shall provide the Board with acceptable documentation evidencing his compliance with the plan of recommended treatment, monitoring and/or counseling, if any, recommended pursuant to paragraph B., above, for the duration of this probationary period, or as otherwise determined by the Board.
- F. Dr. Graor shall provide evidence satisfactory to the State Medical Board of successful completion of a minimum of 300 hours of community service, completed following release from incarceration.
- G. Dr. Graor shall make all restitution to which he has previously agreed by way of his plea agreement with the Court or by separate agreements into which he has entered according to the terms of those agreements, which shall be incorporated herein by reference.
- H. If Dr. Graor violates probation in any respect, the Board, after giving Dr. Graor notice and the opportunity to be heard, may set aside the stay order and impose the permanent revocation of Dr. Graor's certificate.
3. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Graor's certificate will be fully restored.

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

**DR. BUCHAN SECONDED THE MOTION.**

Dr. Buchan indicated that he seconded the motion for discussion. He stated that he has a hard time holding Dr. Graor to a different standard than the Board would hold others. Dr. Graor is obviously a gifted fellow and Dr. Buchan feels terrible about this case, but to allow Dr. Graor to return to practice, is a hurdle which Dr. Buchan can't get over in his mind.

Dr. Steinbergh stated that if Dr. Graor is out of practice for five years, examination requirements should be included.

A vote was taken on Dr. Heidt's motion.

VOTE:	Dr. Bhati	- aye
	Dr. Egnor	- nay
	Dr. Agresta	- nay
	Dr. Buchan	- nay
	Dr. Heidt	- aye
	Dr. Steinbergh	- nay

The motion failed.

**DR. BHATI MOVED TO TABLE THE REPORT AND RECOMMENDATION IN THE MATTER OF ROBERT A. GRAOR, M.D. DR. STEINBERGH SECONDED THE MOTION.** A vote was taken:

November 8, 1995

VOTE:	Dr. Bhati	- aye
	Dr. Egnor	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Dr. Heidt	- aye
	Dr. Steinbergh	- aye

The motion carried.

Dr. Gretter and Mr. Sinnott returned to the meeting at this time.

**REPORT AND RECOMMENDATION IN THE MATTER OF PERRY V. MAYER, M.D.**

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

Dr. Garg advised that a request to address the Board has been timely filed on behalf of Dr. Mayer. Mr. Graff would be allotted approximately five minutes for his address.

Mr. Graff advised that Dr. Mayer couldn't be present today because he resides in Canada, where he is fully licensed. This case involves an unusual matter. During the time Dr. Mayer had a training certificate, he entered into a Consent Agreement with the Board. Dr. Mayer no longer has that training certificate, nor has he asked for its return. The time has expired under that Agreement. The Ontario Board who currently governs Dr. Mayer's practice is well aware of the issues behind that Agreement, and has communicated with this Board about them. Mr. Graff stated that the Ohio Board lacks jurisdiction to hold a Chapter 119. hearing. That matter was agreed to both by the Attorney General's Office and himself. The matter should be dismissed. The Board does not have the authority without Dr. Mayer's certificate or the ability to have a certificate to either limit, revoke, suspend, or deny him a license. It is simply a matter of jurisdiction. This is the wrong forum and the wrong method.

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

Mr. Pratt stated that this case does present an interesting procedural posture in that he, Mr. Graff and the Hearing Examiner all have a different take on, procedurally, where the Board stands. Contrary to Mr. Graff's objections and his presentation, the Attorney General does not take the position that the Board lacks jurisdiction over this matter. Clearly, the Consent Agreement into which the Board entered with the physician gives the Board that jurisdiction by consent. Where the Attorney General and the Hearing Examiner slightly differ is whether or not the Board was required to afford a Ch. 119. hearing in this matter. The agreement states that Ch. 119. is the proper procedure wherein action is initiated by the Board. Mr. Pratt stated that he would submit that no action was initiated in this matter. It was Dr. Mayer's request from the Board to be released from the Agreement that initiated the matter. Under the express terms of the Agreement, the language states that the Agreement may be terminated in writing at any time upon the agreement of the parties. That is the sole language that governs this matter. Mr. Pratt stated that the Board can simply say "yes" or "no," without any further consideration. That's what the Agreement provides. Nevertheless, the Board, in an abundance of caution, elected in this matter to provide a Ch. 119. hearing, and that proceeded.

Regardless of the procedural posture of the matter, one thing that is absolutely clear is that Dr. Mayer violated the terms of the Consent Agreement. That's not even objected to. The three findings that are made by the Hearing Officer were thoroughly established at the hearing. There were no objections that this, in fact, occurred, and it's quite obvious why Dr. Mayer wants to be released from this agreement. He can't abide by it. As a matter of fact, he's testing positive for urine screens. It's clearly in evidence. If the Board wants Dr. Mayer's perspective in how he's approaching the Board, all one has to look at is the date of the positive screen, found by the hearing examiner as being August 24, 1994, and look at the supporting evidence attached to Dr. Mayer's request for release from the Agreement. Dr. Mayer provides urine screens right up until the one that went positive. It's not Dr. Mayer that is being forthright and candid. The Board had to find this out on its own. Mr. Pratt stated that he would submit that any attempt to deceive the Board made by someone under those circumstances certainly substantiates the finding made by the Hearing Examiner. The Board in no event should release this physician from an agreement when circumstances such as those present have, in fact, occurred.

**DR. AGRESTA MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF PERRY V. MAYER, M.D. DR. STEINBERGH SECONDED THE MOTION.**

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

Dr. Agresta stated that he feels this case speaks for itself, and spoke in support of the motion.

A vote was taken on Dr. Agresta's motion:



# STATE MEDICAL BOARD OF OHIO

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

February 8, 1995

Robert A. Graor, M.D.  
9500 Euclid Avenue  
Cleveland, Ohio 44195

Dear Doctor Graor:

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

- (1) On or about December 12, 1994, in the Cuyahoga County Court of Common Pleas, you pleaded guilty to five (5) counts of Grand Theft and five (5) counts of Aggravated Grand Theft in violation of Section 2913.02, Ohio Revised Code, all felonies. The acts underlying your plea of guilt established that you knowingly obtained or exerted control over money in excess of one million dollars, with deception, with the purpose to deprive the owner, The Cleveland Clinic Foundation, of said property or services.

Your acts, as outlined above, were committed in the course of your employment with The Cleveland Clinic Foundation.

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

Further, your acts, conduct, and/or omissions underlying your guilty plea as alleged in paragraph (1) above, individually and/or collectively, constitute "(t)he obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice," as that clause is used in Section 4731.22(B)(8), 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.

*Mailed 2-9-95*

Graor, M.D.  
Page 2

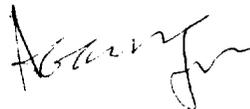
February 8, 1995

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., President  
Secretary Ad Hoc

AGG/bjm

Enclosures

CERTIFIED MAIL # P 348 888 192  
RETURN RECEIPT REQUESTED