



## STATE MEDICAL BOARD OF OHIO

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

February 14, 1992

Burton K. Ake, M.D.  
9451 Spring Hill Drive  
Anchorage, Alaska 99507

Dear Doctor Ake:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Kevin P. Byers, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on February 12, 1992, 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 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

  
Henry G. Gramblett, M.D.  
Secretary

HGC:em

Enclosures

CERTIFIED MAIL RECEIPT NO. P 741 123 618  
RETURN RECEIPT REQUESTED

cc: Christine S. Schleuss, Esq.

CERTIFIED MAIL RECEIPT NO. P 741 123 619  
RETURN RECEIPT REQUESTED

*Mailed 2/14/92*



# 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 Kevin P. Byers, Attorney Hearing Examiner, State Medical Board; and an excerpt of Minutes of the State Medical Board, meeting in regular session on February 12, 1992, including a Motion approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Burton K. Ake, 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.

(SEAL)

  
\_\_\_\_\_  
Henry G. Cramblett, M.D.  
Secretary

2/14/92  
\_\_\_\_\_  
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

\*

\*

BURTON KENNETH AKE, M.D.

\*

### ENTRY OF ORDER

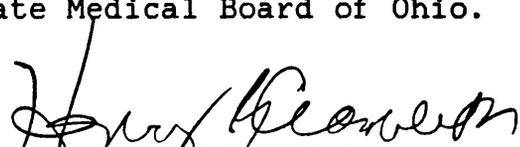
This matter came on for consideration before the State Medical Board of Ohio the 12th day of February, 1992.

Upon the Report and Recommendation of Kevin P. Byers, Attorney 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 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 for the above date.

It is hereby ORDERED that:

The certificate of Burton Kenneth Ake, M.D., to practice medicine and surgery in Ohio is permanently REVOKED.

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

  
\_\_\_\_\_  
Henry G. Cramblett, M.D.  
Secretary

(SEAL)

2/14/92  
\_\_\_\_\_  
Date

STATE MEDICAL BOARD

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REPORT AND RECOMMENDATION  
IN THE MATTER OF BURTON KENNETH AKE, M.D.

On December 16, 1991, the Matter of Burton Kenneth Ake, M.D., came on before Kevin P. Byers, Attorney Hearing Examiner for the State Medical Board of Ohio.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

- A. By letter dated September 11, 1991, mailed September 12, 1991 (State's Exhibit #1), the State Medical Board notified Burton Kenneth Ake, M.D., that it intended to determine whether to limit, revoke, suspend, or refuse to register or reinstate his certificate to practice medicine and surgery, or to reprimand or place him on probation for the following reason:

On or about June 10, 1991 Dr. Ake pled guilty in the Superior Court, Third Judicial District, Anchorage, Alaska, to one count of Sexual Assault in the First Degree, an unclassified felony, in violation of AS 11.41.410(a)(1) and one count of Sexual Assault in the Second Degree, a class B felony, in violation of AS 11.41.420(a)(1).

The Board alleged that the foregoing guilty pleas individually constituted "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), Revised Code.

- B. By letter dated October 8, 1991, and received by the Medical Board on October 10, 1991 (State's Exhibit #2), Dr. Ake requested a hearing in this Matter.

II. Appearances

- A. On behalf of the State of Ohio: Lee I. Fisher, Attorney General, by Odella Lampkin, Assistant Attorney General
- B. No personal appearance on behalf of Dr. Ake, although he did submit extensive written contentions and exhibits on his behalf.

III. Testimony Heard

No witnesses were presented.

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IV. Exhibits Examined

In addition to State's Exhibits #1 and #2 noted previously, the following exhibits were identified and admitted into evidence in this Matter:

A. Presented by the State

1. State's Exhibit #3: October 11, 1991 letter to Dr. Ake from the State Medical Board advising him that a hearing set for October 24, 1991 was postponed until further notice pursuant to Section 119.09, Revised Code.
2. State's Exhibit #4: October 16, 1991 letter to Dr. Ake from the State Medical Board scheduling his hearing for December 16, 1991.
3. State's Exhibit #5: June 4, 1991 five-page Notice of Intent to Change Plea and Stipulation filed by Dr. Ake and his attorney in the Alaska criminal case.
4. State's Exhibit #6: June 10, 1991 three-page Information Amending Indictment filed by the Assistant Attorney General who prosecuted Dr. Ake in Alaska.
5. State's Exhibit #7: Three pages of docket sheets from Dr. Ake's appearances in the Superior Court, Third Judicial District, Anchorage, Alaska on June 4 and June 10, 1991.
6. State's Exhibit #8: A five-page Judgment and Order of Commitment in Case No. 3AN-S91-105OCR in the Superior Court, Third Judicial District, Anchorage, Alaska.

B. Presented by the Respondent

1. Respondent's Exhibit A: Twenty-six page clinical file from the Minirth-Meier Day Hospital in Richardson, Texas.
2. Respondent's Exhibit B: Fifteen-page psychological evaluation authored by Bruce N. Smith, Ph.D., and dated in July of 1991.
3. Respondent's Exhibit C: Eight-page psychiatric evaluation by Dr. Gene G. Abel of the Behavioral Medicine Institute of Atlanta dated July 9, 1991.

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4. Respondent's Exhibit D: Three hundred fifty-four pages of excerpts from the transcript of Dr. Ake's sentencing hearing in Anchorage, Alaska in August of 1991.
5. Respondent's Exhibit E: Fifty-eight-page treatment manual of the Hilland Mountain Correctional Center Sex Offender Program, dated August 1987.
6. Respondent's Exhibit F: Sixty pages of letters of support and commendation from friends, associates and colleagues of Dr. Ake.
7. Respondent's Exhibit G: Forty-page packet of Dr. Ake's Air Force records and various certifications and accomplishments.

V. Other Matters

Also admitted into evidence, although not titled exhibits, are: the December 6, 1991 nine-page hearing brief filed by Dr. Ake; his two-page affidavit; a November 22, 1991 therapy reimbursement order by the judge in Alaska and a December 3, 1991 restitution order by the same judge.

FINDINGS OF FACT

1. On or about June 10, 1991 Dr. Ake pled guilty in Superior Court, Third Judicial District, Anchorage, Alaska, to one count of Sexual Assault in the First Degree and one count of Sexual Assault in the Second Degree. The first plea resulted in an unclassified felony conviction in violation of Alaska Statute 11.41.410(a)(1), while the second plea resulted in a class B felony conviction, in violation of Alaska Statute 11.41.420(a)(1). Dr. Ake was convicted of sexually assaulting a number of female patients on seven different occasions over the course of three years.

These facts are established by State's Exhibits #5, #6, #7 and #8.

2. Dr. Ake had an exemplary medical career and credentials while in the active Air Force from which he retired as a lieutenant colonel in 1987. He was an OB/GYN and continued this specialty in private practice after his retirement. Dr. Ake presently enjoys the benefit of strong community, religious and family support in dealing with his conviction and potential incarceration.

These facts are established by Respondent's Exhibits D, F and G.

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3. Dr. Ake has been diagnosed by a psychiatrist and a psychologist as suffering from two primary mental disorders. The first primary diagnosis is Voyeurism with a second primary diagnosis of Paraphilia Not Otherwise Specified. Paraphilics generally suffer from recurrent, intense sexual urges and fantasies which they can commonly control. However, when periods of stress influence the paraphilic's lifestyle, control breaks down and they may act out their urges and fantasies, usually with non-consenting partners. Dr. Ake had a childhood period of voyeurism. Although he was eventually able to overcome and repress his voyeuristic impulses. The deviancy lay dormant/repressed for over 20 years. When he again began to engage in voyeurism, he would observe his female patients undressing. He was able to justify this to himself by rationalizing that he would see them unclothed during the office visit anyway. However, when external stressors influenced Dr. Ake, his Paraphilia became prominent and he began to inappropriately touch the genitals of some of his patients during physical examinations. This deviancy progressed to the point where he actually penetrated at least one pregnant patient with his penis during a bimanual vaginal exam. Dr. Ake's conduct was made public by his confession to his religious peers and his voluntary statements to licensing and law enforcement personnel. Dr. Ake's confessions came after a former patient confronted him about his inappropriate actions with her during the course of treatment. According to the mental health professionals who have evaluated Dr. Ake, he is an exceptional candidate for treatment and rehabilitation. However, the professionals agree that Dr. Ake should never again be allowed to practice medicine in a setting where he would see adult female patients.

These facts are established by Respondent's Exhibits A, B, C and D.

#### CONCLUSION

On or about June 10, 1991 Dr. Ake pled guilty to two felony counts of Sexual Assault which occurred in the State of Alaska, in the course of his practice, with a number of female patients. Dr. Ake's conduct occurred while he held a certificate issued by the State of Ohio to practice medicine and surgery. The foregoing convictions indisputably constitute "a plea of guilty to, or a judicial finding of guilt of, a felony", pursuant to Section 4731.22(B)(9), Revised Code.

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Dr. Ake submitted compelling information regarding his underlying mental disorders which ultimately led to his convictions of First Degree and Second Degree felony Sexual Assault. Dr. Ake's felonious conduct during the course of practice was reprehensible although he subsequently undertook extraordinary measures to ensure victim restitution and fully disclosed the scope of his activities. Dr. Ake has been forthright with the evaluating mental health professionals and his poignant hearing brief exemplifies genuine remorse. He also appears willing and capable of rehabilitation through therapy. Although Dr. Ake is suffering from mental disorders which affected his judgment and behavior, and the underlying felonious acts may not have been of his own free will, this Board's duty of public protection must be of prime concern. With this acknowledgement, the following order is offered.

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Burton Kenneth Ake, M.D., to practice medicine and surgery in Ohio is permanently REVOKED.

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

KEVIN P. BYERS  
Kevin P. Byers  
Attorney Hearing Examiner



# STATE MEDICAL BOARD OF OHIO

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

## EXCERPT FROM THE MINUTES OF FEBRUARY 12, 1992

### REPORTS AND RECOMMENDATIONS

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Dr. Gretter 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: Richard A. Yocum, M.D.; Douglas R. Nemec, M.D.; Jayantilal J. Bathani, M.D.; George D. J. Griffin, III, M.D.; Burton Kenneth Ake, M.D.; Antonio A. Romero, M.D.; and Jesusa N. Romero, M.D. A roll call was taken:

ROLL CALL:	Dr. Cramblett	- abstain
	Mr. Albert	- aye
	Dr. Stephens	- aye
	Mr. Jost	- abstain
	Dr. Garg	- aye
	Dr. Kaplansky	- aye
	Dr. Heidt	- aye
	Dr. Hom	- aye
	Ms. Rolfes	- aye
	Dr. Gretter	- aye

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

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All Assistant Attorneys General and all Enforcement Coordinators left the meeting at this time.

### REPORT AND RECOMMENDATION IN THE MATTER OF BURTON KENNETH AKE, M.D.

.....

MS. ROLFES MOVED TO APPROVE AND CONFIRM MR. BYERS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF BURTON KENNETH AKE, M.D. DR. STEPHENS SECONDED THE MOTION.

.....

A roll call vote was taken on Ms. Rolfes' motion:



# STATE MEDICAL BOARD OF OHIO

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EXCERPT FROM THE MINUTES OF FEBRUARY 12, 1992  
IN THE MATTER OF BURTON KENNETH AKE, M.D.

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ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Mr. Albert	- aye
	Dr. Stephens	- aye
	Mr. Jost	- abstain
	Dr. Garg	- aye
	Dr. Kaplansky	- aye
	Dr. Heidt	- aye
	Dr. Hom	- aye
	Ms. Rolfes	- aye

The motion carried.



# STATE MEDICAL BOARD OF OHIO

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

September 11, 1991

Burton Kenneth Ake, M.D.  
9451 Spring Hill Drive  
Anchorage, AK 99507

Dear Doctor Ake:

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 June 10, 1991 you pleaded guilty in the Superior Court, Third Judicial District, Anchorage, Alaska, to one count of Sexual Assault in the First Degree, an unclassified felony, in violation of AS 11.41. 410(a)(1); and one count of Sexual Assault in the Second Degree, a Class B felony, in violation of AS 11.41. 420(a)(1).

Your acts, conduct, and/or omissions as alleged in paragraph (1) 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.

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

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

*Mailed 9/12/91*

Burton Kenneth Ake, M.D.  
Page 2

September 11, 1991

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,

  
Henry G. Cramblett, M.D.  
Secretary

HGC:jmb

Enclosures:

CERTIFIED MAIL #P 055 328 921  
RETURN RECEIPT REQUESTED

cc: James H. McComas, Esq.  
SCHLEUSS & MCCOMAS  
500 L Street, Suite 300  
Anchorage, AK 99501

Admissibility of expert testimony on rape trauma syndrome, 42 ALR4th 879.  
Mental examination to determine competency or credibility of complainant in sexual offense prosecution, 45 ALR4th 310.

Conviction of rape or related sexual offenses on basis of intercourse accomplished under the pretext of or in the course of medical treatment, 65 ALR4th 1064.

**Sec. 11.41.410. Sexual assault in the first degree.** (a) A person commits the crime of sexual assault in the first degree if,

(1) being any age, the defendant engages in sexual penetration with another person without consent of that person;

(2) being any age, the defendant attempts to engage in sexual penetration with another person without consent of that person and causes serious physical injury to that person;

(3) being over the age of 18, the defendant engages in sexual penetration with another person

(A) who the defendant knows is mentally incapable; and

(B) who is entrusted to the defendant's care

(i) by authority of law; or

(ii) in a facility or program that is required by law to be licensed by the Department of Health and Social Services.

(b) Sexual assault in the first degree is an unclassified felony and is punishable as provided in AS 12.55. (§ 3 ch 166 SLA 1978; am § 8 ch 102 SLA 1980; am § 6 ch 143 SLA 1982; am § 10 ch 78 SLA 1983; am § 1 ch 96 SLA 1988)

**Cross references.** — For evidence of past sexual conduct in trials of sexual assault in any degree or attempt to commit sexual assault in any degree, see AS 12.45.045.

**Effect of amendments.** — The 1988 amendment repealed and reenacted subsection (a), which formerly related to the same subject matter.

**Legislative history reports.** — For a

report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

For legislative letter of intent relating to the amendments to (a) of this section by ch. 96, SLA 1988 (CSHB 545 (Jud)), see 1988 House Journal 3065.

NOTES TO DECISIONS

- I. General Consideration.
- II. Former Law.
  - A. Generally.
  - B. Age of Consent.
  - C. Procedure.

I. GENERAL CONSIDERATION.

**History of first-degree sexual assault statute.** — See Reynolds v. State, 664 P.2d 621 (Alaska Ct. App. 1983).

**Constitutionality.** — In order to prove a violation of AS 11.41.410(a)(1), the state must prove that the defendant knowingly

engaged in sexual intercourse and recklessly disregarded his victim's lack of consent. Construed in this way, the statute does not punish harmless conduct and is neither vague nor overbroad. Reynolds v. State, 664 P.2d 621 (Alaska Ct. App. 1983).

Sentence for attempted sexual assault and burglary held excessive. — See Hansen v. State, 657 P.2d 862 (Alaska Ct. App. 1983); Hancock v. State, 706 P.2d

1164 (Alaska Ct. App. 1985). (Decided under section as it read before 1982 amendment.)

**Sec. 11.41.420. Sexual assault in the second degree.** (a) An offender commits the crime of sexual assault in the second degree if

(1) the offender engages in sexual contact with another person without consent of that person;

(2) being over the age of 18, the offender engages in sexual contact with a person

(A) who the offender knows is mentally incapable; and

(B) who is entrusted to the offender's care

(i) by authority of law; or

(ii) in a facility or program that is required by law to be licensed by the Department of Health and Social Services; or

(3) being over the age of 18, the offender engages in sexual penetration with a person who the offender knows is

(A) mentally incapable; or

(B) incapacitated.

(b) Sexual assault in the second degree is a class B felony. (§ 3 ch 166 SLA 1978; am § 1 ch 78 SLA 1983; am § 2 ch 96 SLA 1988)

**Effect of amendments.** — The 1988 amendment, in subsection (a), deleted "the offender engages in" at the end of the introductory language, added "the offender engages in" at the beginning of paragraph (1), deleted "or" at the end of paragraph (1), rewrote paragraph (2), and added paragraph (3).

**Legislative history reports.** — For legislative letter of intent relating to the amendments to (a) of this section by ch. 96, SLA 1988 (CSHB 545 (Jud)), see 1988 House Journal 3065.

#### NOTES TO DECISIONS

**For cases construing former crime of rape,** see notes to AS 11.41.410.

**Attempted sexual assault in the first degree and sexual assault in the second degree are closely related,** since sexual penetration involves sexual contact and both offenses proceed on a theory of coerced assent. Nicholson v. State, 656 P.2d 1209 (Alaska Ct. App. 1982).

**Constitutionality of conviction where original charge was under AS 11.41.410.** — Where defendant was charged with attempted sexual assault in the first degree, he was thereby assumed to have notice that he might be convicted of second-degree sexual assault because of the similarities in the elements of the two offenses, and his conviction for the latter offense did not violate due process. Nicholson v. State, 656 P.2d 1209 (Alaska Ct. App. 1982).

**Evidence.** — Where victim woke up in the early morning hours to find defendant in her bed and fondling her breast, and where she testified that she was temporarily in shock and afraid he would hurt her, a jury could find that defendant's actions constituted second-degree sexual assault despite victim's momentary acquiescence in defendant's fondling her breast. Nicholson v. State, 656 P.2d 1209 (Alaska Ct. App. 1982).

**Exclusion of expert testimony regarding problems in evaluating the accuracy of eyewitness testimony was reversible error,** where the case turned on the testimony of a single witness — the victim, the excluded testimony was central to the defense, and it could not be said that its exclusion did not appreciably affect the jury's verdict. Skamarocius v. State, 731 P.2d 63 (Alaska Ct. App. 1987).