

MAY 13 2002

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

FINAL APPEALABLE ORDER

Dirk G. Wood, MD

Case No. 01CVF08-8050

Appellant,

JUDGE MCGRATH

vs.

State Medical Board of Ohio,

Appellee

TERMINATION NO. 10
BY *pm*

FILED
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
2002 MAY -8 PM 12:20
CLERK OF COURTS

DECISION AND JUDGMENT ENTRY

Rendered this 7th day of April 2002

MCGRATH, J.

This is an administrative appeal from an order of the State Medical Board of Ohio revoking appellant's license to practice medicine in this state. By way of background, in February 2001 appellant entered guilty pleas to twenty-five counts of felony violations relating to drugs and weapons. Thereupon, appellee commenced proceedings to discipline appellant. Appellant timely requested a hearing which was convened at his place of incarceration in London, Ohio. Following the hearing, the hearing examiner issued his report and recommendation. The hearing examiner proposed to the Board an order that called for the permanent revocation of appellant's certificate to practice medicine. The hearing officer, however, went on to state, "[u]nder these circumstances, the Board may wish to permit Dr. Wood to retain his license with appropriate monitoring to ensure his continued recovery."

Following the issuance of the hearing examiner's report and recommendation, the matter was scheduled for appellee's adjudication on August 8, 2001. Appellant timely objected to the report and recommendations and went on to request a continuance of the matter so as to permit him to personally appear and address the Board. The request to continue was denied by the Board president. Appellant made a second request for a continuance, but that request failed to find the necessary Board support and the hearing consequently proceeded on August 8, 2001 as scheduled. Because of his incarceration, appellant did not appear before the Board, but was represented by counsel who addressed the Board for five minutes.¹ Following that proceeding, the Board permanently revoked appellant's license to practice medicine. Thereupon, appellant timely filed the subject appeal.

This appeal is taken pursuant to R.C. 119.12. In relevant part, that statute provides:

Any party adversely affected by any order of an agency issued pursuant to an adjudication denying an applicant admission to an examination, or denying the issuance or renewal of a license or registration of a licensee, or revoking or suspending a license. . . may appeal from the order of the agency to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident, except that appeals from decisions of the liquor control commission, the state medical board, state chiropractic board, and board of nursing shall be to the court of common pleas of Franklin county.

* * *

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and

¹ Appellant was granted the opportunity to present his statement to appellee via video tape recording or otherwise inasmuch as it was realized he was confined at the time of the hearing. He elected to proceed through counsel.

such additional evidence as the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law.

- 1 -

Appellant argues that he has been denied due process of law because appellee refused to grant him a two-month continuance of the August 8, 2002 hearing date. The reason the continuance was sought was because appellant was in prison and as a result of his physical restraint, he was unable to appear at the hearing to address the Board. Implicit in appellant's request for a continuance was his hope that the common pleas court in Madison County would grant his motion for judicial release. Indeed, it was his optimistic aspiration to be released by October 10, 2001. Appellant's counsel, in his remarks to the Board on August 8, 2001, made appellant's position very clear with respect to the issue of appellant being present or proceeding in his absence. The Board's transcribed notes from the hearing contain the following important statement of position:

Mr. Byers stated that he appreciates the Board's reviewing his continuance request. He stated that he needs to make it clear for the record that the postponement was requested to a date certain, October 10 [, 2001]. If Dr. Wood is not available at that point in time, they would have been amenable with the Board's proceeding with Dr. Wood being absent, as it is doing today. (Emphasis added).

Appellant's present position of being denied his due process rights has a very discordant ring when it is realized that the Madison County court refused his request for judicial release and that appellant remained incarcerated on the day to which he sought to have his hearing continued. Through the voice of his counsel at the hearing, he implicitly agreed that the proceeding could be properly

held in his absence if he was unsuccessful in obtaining an early release. He was unsuccessful in being released early and cannot now be heard to alter his position by claiming a violation of due process rights because appellee proceed in his absence. Even if such right to be present existed as appellant argues, appellant waived it.

Furthermore, and acknowledging that appellant did have rights to due process with regard to notice and the provision of an administrative hearing, it is found that he did receive full measure of those rights. The fundamental requirement of procedural due process is notice and hearing, that is, an opportunity to be heard. Luff v. State (1927), 117 Ohio St. 102. As appellant points out, notice and hearing are necessary to comply with due process in an administrative proceeding that revokes an individual's license to practice a profession. Jewell v. McCann (1917), 95 Ohio St. 191. An acknowledged requirement of the Due Process Clause is "that an individual be given an opportunity for a hearing before he is deprived of any significant property interest." Boddie v. Connecticut (1971), 401 U.S. 371. In order to determine the type of hearing necessary, the governmental interest versus the private interest must be balanced. Cleveland Bd. of Edn. v. Loudermill (1985), 470 U.S. 532. Furthermore, it has been noted that a hearing need not be elaborate. Something less than a full evidentiary hearing is generally sufficient in an administrative action. Mathews v. Eldridge (1976), 424 U.S. 319.

In the present action appellant received what can only be described as a robust, full-measure due process hearing. Before the attorney hearing examiner

on May 1, 2001, appellant presented the testimony of nine witnesses, produced numerous items of documentary evidence,² and personally testified to the extent he wished. He also had the right to subpoena witnesses, object to the introduction of evidence, and compel the production of documents for the hearing. (R.C. 119.09). Nevertheless, his complaint is that because of his incarceration he was unable to address the Board prior to the announcement of its decision on the matter. In addition to those reasons given above, appellant's position is not well taken. The due process protections, rights and procedures afforded appellant at the May 1, 2001 hearing are all that is required. Appellee is correct in pointing out that although the Board typically does permit a licensee five minutes to address it prior to the commencement of its deliberation, such a practice is merely a courtesy and is not otherwise required.

O.A.C. 4731-13-15 sets forth a coherent scheme for providing the requisite adjudication hearing. By its terms, a hearing examiner may be appointed to conduct the due process hearing. In conducting the hearing, the examiner has the same powers and authority as the administrative agency. (R.C. 119.09). Following the conclusion of the hearing, the hearing examiner is required to submit and serve a report with findings and a recommendation of the action to be taken by appellee. Thereafter, the licensee may file timely objections to the report and those objections "shall be considered" by appellee before reaching a conclusion on the matter at hand. After considering the objections, appellee "**may** order additional testimony to be taken or permit the introduction of

² Appellant was granted additional time to submit additional documentary evidence following the hearing. Those documents were timely submitted and made a part of the record for consideration.

further documentary evidence. . .” (Emphasis added). Thereupon, appellee issues its decision in the form of an order which “shall have the same effect as if such hearing had been conducted by the agency.” (R.C. 119.09).

The hearing and administrative process followed in the instant case fully and completely complies with the statutory framework of R.C. 119.09 and the regulations of O.A.C. 4731-13-15. When appellant was testifying and addressing the hearing examiner on May 1, 2001, he was, in real effect, addressing appellee. What appellant actually questions herein is appellee’s decision not to hear him again at a time more convenient for appellant. This Court finds that appellant did not have a due process right to be heard a second time and that appellee did not have the obligation to afford appellant a second hearing.³

Clearly, the revocation of one’s license to practice his chosen profession is among the most severe sanctions imaginable. However, there is no statutory or administrative requirement that in all such cases the licensee has a right to personally address the members of the body charged with the responsibility to make a final decision on the matter of revocation. This Court is unable to conclude that for every state-granted property interest license, permit or certificate that is cancelled or revoked, the licensee or permittee must be able to personally address the individuals involved in the ultimate revocation. Permitting such interaction is a commendable policy and routinely practiced by appellee, but absent legislative entitlement, no such independent right is found to exist.

³ Appellant contends that because in his findings, the hearing examiner indicated that appellee “may wish to permit [appellant] to retain his license with appropriate monitoring to ensure his continued recovery,” appellant somehow became entitled to address appellee on that issue. No

Accordingly, the Court finds appellant's due process objections are not well taken.

- II -

Appellant next argues that appellee's order revoking his license to practice medicine fails to grant him equal protection of the law. He correctly notes that although appellee enjoys considerable discretion and latitude in crafting disciplinary orders, this governmental discretion cannot be exercised in a fashion that is violative of constitutional guarantees. Appellant claims the action of appellee in revoking his license demonstrates a lack of uniformity of treatment among similarly situated citizens. He claims legal support in Pack v. Cleveland (1982), 1 Ohio St. 3d 129 and State, ex rel. Doersam v. Indust. Comm. (1989), 45 Ohio St. 3d 115. These two cases, however, are notably distinguishable inasmuch as they concern legislative enactments relating to classifications as applied to particular individuals. In other words, the primary issue in each of those cases involved the requisite rationality of a legislative enactment. Here, no similar issue is presented. Appellant is not challenging the constitutionality of a statute, he is questioning the right of appellee to treat him differently than other physicians who have violated criminal laws.

In his written objections to the decision of the hearing examiner which recommended revocation of appellant's license, appellant called to the attention of appellee seven instances of cases wherein appellee elected to suspend and not revoke the licenses of offending practitioners. He has offered to this Court

direct support is given for this claimed enlargement of due process rights and none is identified by the Court.

three additional examples of physicians' license suspensions since the matter herein was decided. To the very limited extent revealed, most all⁴ of the cases cited by appellant concerned convictions of various drug laws with resultant license suspensions. None, however, are known to contain supplemental aggravating or enhancing features. In this case, although plausible but not legally excusable reasons were given in his defense, it nevertheless remains the case that appellee was faced not only with appellant's additional convictions involving the weapons,⁵ but was also forced to consider the fact that appellant's misconduct was not limited exclusively to self involvement, but that he also actively enlisted the illegal aid and assistance of several members of his office staff in acquiring drugs. In the transcribed synopsis of appellee's deliberations in this matter it is clear that the Board members were expressly mindful of not only appellant's drug abuse and drug convictions, but also of (1) the weapons convictions, (2) the improper involvement of office staff and, importantly, (3) the necessity for consistency of result. All of these subjects were mentioned during the course of appellee's deliberation. This Court is unable to say that in the absence of full knowledge of the salient facts and circumstances of the other instances of license suspension, the result obtained herein violated appellant's right to equal protection of the laws.

Moreover, this Court is limited in its authority to disregard the findings made and result obtained by appellee. In Clayman v. State Med. Bd. of Ohio

⁴ One of the instances reportedly involved fraud with an admission of a drug addiction and one instance reportedly involved treatment in lieu of conviction.

(1999), 133 Ohio App. 3d 122, the Franklin County Court of Appeals has explained:

The court of common pleas, in concluding that the board's order was supported by reliable, probative, and substantial evidence, was precluded from interfering with or modifying the penalty imposed if such penalty was authorized by law. King v. State Med. Bd., 1999 Ohio App. LEXIS 201 (Jan. 28, 1999), Franklin App. No. 98AP-570, unreported (1999 Opinions 52), citing Henry's Cafe, Inc. v. Bd. of Liquor Control (1959), 170 Ohio St. 233, 163 N.E.2d 678. The discretion thus granted to the board in imposing a wide range of potential sanctions reflects the deference due to the board's expertise in carrying out its statutorily-granted authority over the practice of medical professions in Ohio, tailored to the particular circumstances of each case. As such, appellant was not prejudiced by the court of common pleas' refusal to consider superficially comparable cases with different outcomes, since those would not be probative of a lack of reliable, probative, and substantial evidence to support the order issued by the board in this case.

Upon consideration, the Court finds appellant's arguments with respect to his claims of equal protection to be without merit.

- III -

Next, appellant contends appellee's order of rescission was not supported by reliable, probative and substantial evidence. In this regard, the statutory standard for review was explained in Our Place, Inc. v. Ohio Liquor Control Commission (1992), 63 Ohio St. 3d 570. Therein it was stated:

The evidence required by R.C. 119.12 can be defined as follows: (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.

⁵ Generally, the weapons charges involved possession or use of a dangerous ordnance, possession of a firearm muffler or silencer, possession of an automatic firearm and possession of a sawed-off firearm.

In this regard, it is noted R.C. 4731.22 (B) provides:

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:

* * *

(3) Selling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug;

* * *

(9) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony;

(10) Commission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed;

(11) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice[.]

Clearly, appellee had the authority to revoke appellant's certificate pursuant to the relevant statutes. Appellant argues, however, that when viewed as a whole, the evidence before appellee falls short of supporting the "harsh, lifetime penalty imposed." Appellant implies that appellee failed to take cognizance of its own Disciplinary Guidelines when reaching its result of license revocation. He points to the "aggravating" and "mitigating" tables contained in the Guidelines as suggesting that upon balance, a less severe penalty should have been imposed. The purpose of the Guidelines is offered at its preface. The following limited purpose of the Guidelines appears thus:

Disciplinary Guidelines are primarily for the Board's reference and guidance. They are subject to revision at the Board's discretion without notice to the public. Disciplinary Guidelines are intended to promote consistency in Board-imposed sanctions, but are not binding on the Board. The Board recognizes that individual matters present unique sets of circumstances which merit individual consideration by the Board. (Emphasis added).

Importantly, the Guidelines do not only contain aggravating and mitigating factors, they also set forth specific violations and suggested penalty ranges. For example:

CATEGORY I: IMPROPER PRESCRIBING, DISPENSING, OR ADMINISTERING OF DRUGS

(L.) PLEA OF GUILTY TO, JUDICIAL FINDING OF GUILT OF, OR JUDICIAL FINDING OF ELIGIBILITY FOR INTERVENTION IN LIEU OF CONVICTION FOR, A DRUG RELATED FELONY

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Permanent revocation of certificate or permanent denial of application

CATEGORY VIII: CRIMINAL ACTS OR CONVICTIONS

(A.) PLEA OF GUILTY TO, JUDICIAL FINDING OF GUILT OF, OR JUDICIAL FINDING OF ELIGIBILITY FOR INTERVENTION IN LIEU OF CONVICTION FOR, A FELONY COMMITTED IN COURSE OF PRACTICE

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Permanent revocation of certificate or permanent denial of application

Upon consideration of the record before this Court, this Court must conclude that the order of appellee is supported by reliable, probative and substantial evidence. Although there do exist articulable mitigating facts such as

the fact that appellant was a gun collector; the fact that he had not run afoul of disciplinary guidelines previously; the fact that he was a skilled, respected and beloved practitioner;⁶ and the fact that he held a drug addiction, they do not diminish the import and seriousness of his misconduct. Serious misconduct begets serious consequences. The conviction of twenty drug related felonies committed in the course of appellant's practice through the utilization of his certificate and involving members of his staff, coupled with the additional felony weapons convictions provides a sufficient body of reliable and probative evidence upon which the appellee's order could properly be made, and the Court so finds.

Wherefore, this Court affirms the August 8, 2001 Order entered by the State Medical Board of Ohio. Costs to appellant.



Patrick M, McGrath, Judge

Copies to:

Kevin P. Byers,
Counsel for Appellant

Rebecca J. Albers,
Counsel for Appellee

TPMc
Robbin Linton*

⁶ The Court was particularly struck with the sincere, warm and thoughtful letters of support submitted by appellant's patients. Although they are very compelling and thought provoking, it must be recalled that it is the Board who is charged with the responsibility for continually regulating the practice of medicine and surgery for the entire state. That comprehensive responsibility must be recognized and acknowledged when reviewing the actions of the Board in any particular case.

OHIO STATE MEDICAL BOARD

AUG 17 2001

STATE MEDICAL BOARD

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

Dirk G. Wood, MD, JD,
202 Tuttle Road
Springfield, Ohio 45503
Appellant,

*

v.

*

CASE NO. _____

State Medical Board of Ohio,
77 South High St., 17th Floor
Columbus, Ohio 43215-6127
Appellee.

JUDGE _____

*

Appeal from the State Medical Board of Ohio

APPELLANT'S NOTICE OF APPEAL

Pursuant to RC 119.12, notice is hereby given that Appellant, Dirk G. Wood, MD, JD, appeals the order of the State Medical Board dated August 8, 2001, mailed August 13, 2001, and received by Appellant's counsel on August 14, 2001, (copy attached as *Exhibit A.*) The Medical Board order is not supported by the necessary quantum of reliable, probative and substantial evidence nor is it in accordance with law.

Respectfully submitted,

KEVIN P. BYERS CO., L.P.A.

KPBYERS

Kevin P. Byers 0040253
Fifth Third Center
21 East State Street, Suite 220
Columbus, Ohio 43215
614.228.6283 Fax 228.6425

Attorney for Dirk G. Wood, MD, JD

STATE MEDICAL BOARD

Certificate of Service

I certify that an original of the foregoing document was hand delivered this 17th day of August, 2001, to the Court of Common Pleas of Franklin County, Ohio, 369 South High Street, 3d Floor, Columbus, Ohio 43215 and also a copy was deposited in first class U.S. Mail this same date addressed to Assistant Attorney General Rebecca J. Albers, Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3428.

KPB-ELS

Kevin P. Byers



State Medical Board of Ohio

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

August 8, 2001

Dirk Gregory Wood, M.D.
202 Tuttle Road
Springfield, OH 45503

Dear Doctor Wood:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on August 8, 2001, 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.
Anand G. Garg, M.D. /TAG
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. 7099 3220 0009 3045 9356
RETURN RECEIPT REQUESTED

Cc: Madison Correctional Institute, #404-774
P. O. Box 740
London, OH 43140
CERTIFIED MAIL RECEIPT NO. 7099 322 0009 3045 9363
RETURN RECEIPT REQUESTED

Mailed 8.13.01

In the Matter of Dirk Gregory Wood, M.D.
Page 2

Kevin P. Byers, Esq.
CERTIFIED MAIL RECEIPT NO. 7099 3220 0009 3045 9370
RETURN RECEIPT REQUESTED

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on August 8, 2001, 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 Dirk Gregory Wood, 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.
Anand G. Garg, M.D. /TAD
Secretary

(SEAL)

AUGUST 8, 2001

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

DIRK GREGORY WOOD, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on August 8, 2001.

Upon the Report and Recommendation of R. Gregory Porter, 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 Dirk Gregory Wood, 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 Board.

(SEAL)

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

AUGUST 8, 2001
Date

2001 JUN 18 P 1:11

**REPORT AND RECOMMENDATION
IN THE MATTER OF DIRK GREGORY WOOD, M.D.**

The Matter of Dirk Gregory Wood, M.D., was heard by R. Gregory Porter, Attorney Hearing Examiner for the State Medical Board of Ohio, on May 1, 2001.

INTRODUCTION

I. Basis for Hearing

- A. On February 14, 2001, the State Medical Board of Ohio [Board] sent a Notice of Immediate Suspension and Opportunity for Hearing to Dirk Gregory Wood, M.D. The Board advised Dr. Wood that the Clark County Prosecuting Attorney had reported pursuant to Sections 2929.24 and/or 3719.12, Ohio Revised Code, that on or about February 9, 2001, in the Clark County Common Pleas Court, Dr. Wood had pleaded guilty to, and been found guilty of, the following felonies: nineteen counts of violating Section 2925.23(B), Ohio Revised Code, Illegal Processing of Drug Documents; and one count of violating Section 2923.02, Ohio Revised Code, Attempt, as that section applies to Section 2925.11, Ohio Revised Code, Possession of Drugs. The Board notified Dr. Wood that, pursuant to Section 3719.121(C), Ohio Revised Code, his certificate to practice medicine and surgery in Ohio had been immediately suspended. The Board further advised Dr. Wood that continued practice would be considered practicing medicine without a certificate, in violation of Section 4731.41, Ohio Revised Code.

Moreover, the Board notified Dr. Wood that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio based on the guilty pleas noted above, and the acts underlying those guilty pleas. In addition, the Board alleged that on February 9, 2001, in the Clark County Common Pleas Court, Dr. Wood also pleaded guilty to five felony counts of violating Section 2923.17, Ohio Revised Code, Unlawful Possession of Dangerous Ordnance; Illegally Manufacturing or Processing Explosives.

The Board alleged that Dr. Wood's guilty pleas constitute "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents; Section 2925.11, Ohio Revised Code, Possession of Drugs, incorporating Section 2923.02, Ohio Revised Code, Attempt; and Section 2923.17, Ohio Revised Code, Unlawful Possession of Dangerous Ordnance; Illegally Manufacturing or Processing Explosives[; and/or] '[s]elling, giving

STATE OF OHIO
2001 JUN 19 P 1:11

away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,' as those clauses are used in Section 4731.22(B)(3), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents; and Section 2925.11, Ohio Revised Code, Possession of Drugs, incorporating Section 2923.02, Ohio Revised Code, Attempt.”

Accordingly, the Board advised Dr. Wood of his right to request a hearing in this matter. (State's Exhibit 1A)

- B. By document received by the Board on March 16, 2001, Kevin P. Byers, Esq., requested a hearing on behalf of Dr. Wood. (State's Exhibit 1B)

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Rebecca J. Albers, Assistant Attorney General.
- B. On behalf of the Respondent: Kevin P. Byers, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

Presented by the Respondent

- A. Thales Nicholas Pavlatos, M.D.
- B. Eyra Agudu, M.D.
- C. Howard Philip Fischbach III, M.D.
- D. Douglas Balchan
- E. Jane Balchan
- F. Juliana Furay
- G. Richard Furay, M.D.
- H. Camel Abraham, M.D.
- I. Dirk Gregory Wood, M.D.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A through 1Q: Procedural exhibits.
2. State's Exhibit 2: Prosecutor's Reporting Form from the Clark County Prosecuting Attorney's Office, concerning Dr. Wood. [Note: Dr. Wood's Social Security number was redacted from this document by the Hearing Examiner post-hearing.]
3. State's Exhibit 3: Copy of an Indictment, with portions redacted, from the Clark County Common Pleas Court concerning *State v. Dirk G. Wood*, Case Number 00CR-0203.
4. State's Exhibits 4 and 5: Certified copies of the Plea of Guilty and Judgment Entry of Sentence from *State v. Wood*.

B. Presented by the Respondent

1. Respondent's Exhibit A: Dr. Wood's curriculum vitae.
2. Respondent's Exhibit B: Copy of a July 13, 2000, letter from the Board to Dr. Wood.
3. Respondent's Exhibits C-1 through C-3: Copies of documents from the Ohio Physicians Effectiveness Program [OPEP] concerning Dr. Wood.
4. Respondent's Exhibit D: Copy of a February 13, 2001, letter addressed "To Whom It May Concern," from William O. Smith, M.D., regarding Dr. Wood.
5. Respondent's Exhibit E: Copy of an April 27, 2001, letter to Mr. Byers from Barron Farrier, CCDC III, Field Service Representative, OPEP, concerning Dr. Wood's recovery.
6. Respondent's Exhibit F: Copy of an April 26, 2001, letter to Dawn Valerie Mitchell, United States Department of Justice, Drug Enforcement Administration [DEA], from Mr. Byers, concerning the surrender of Dr. Wood's DEA registration.
7. Respondent's Exhibits G-1 through G-5, H-1 through H-8, I-1 through I-21, and J-1 through J-3: Letters of support written on behalf of

STATE BOARD OF MEDICAL EXAMINERS
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Dr. Wood. [Note: Respondent's Exhibits G-1, G-3, H-2, H-4, I-1 through I-21, and J-2 have been sealed to protect patient confidentiality.]

8. Respondent's Exhibit K: Copy of a December 13, 1999, letter to Dr. Wood from Sheriff Gene A. Kelly, Clark County Sheriff's Office, concerning the Sheriff's office firing range.

PROCEDURAL MATTERS

The hearing record in this matter was held open until May 18, 2001, to give the Respondent an opportunity to submit additional documents. These documents were timely submitted and entered into the record as Respondent's Exhibits J-1 through J-3 and K. (See Hearing Transcript at 144-146)

SUMMARY OF THE EVIDENCE

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

1. Dirk Gregory Wood, M.D., testified that he had attended Urbana University, Urbana, Ohio, and graduated when he was 19. Dr. Wood further testified that he attended graduate school for two years, doing research at the Ohio State University Department of Zoology, but did not take a degree. Dr. Wood testified that he next attended the Faculty of Medicine at the Autonomia University at Guadalajara, Mexico, and obtained his medical degree in 1980. Dr. Wood stated that he then attended a fifth pathway program at Albert Einstein College of Medicine in New York for one year. Finally, Dr. Wood participated in a residency in obstetrics and gynecology at William Beaumont Hospital, Royal Oak, Michigan, from 1982 through 1986. Dr. Wood testified that he was certified by the American Board of Obstetrics and Gynecology in 1988, and that he has taken the option to recertify each subsequent year. (Respondent's Exhibit [Resp. Ex.] A; Hearing Transcript [Tr.] at 89-92, 96)

Dr. Wood testified that he had attended medical school in Mexico by choice, and that he never applied to an American medical school. Dr. Wood testified that, at the time he graduated from college at age 19, he had intended to apply to an American medical school, which do not accept anyone under the age of 21. However, Dr. Wood further testified

I became acquainted with a friend who's now the chairman of geriatrics at the University of Arizona after I finished graduate school, and he talked about his training in Mexico. And I always thought that was a hole in my

education, cross-cultural language, another language. The clinical exposure there was much wider than it was in the United States. I was exposed to many tropical diseases, parasites that I would never see here.

(Tr. at 95-96)

Dr. Wood testified that he was licensed to practice medicine in New York in 1982, in Michigan in 1983, and in Ohio in 1984. Dr. Wood stated that his Ohio and Michigan certificates are current, and that his New York certificate is inactive. (Tr. at 91-92)

2. Dr. Wood testified that he began practicing in Springfield, Ohio, in 1986 following completion of his residency. Dr. Wood first entered into a partnership with another physician, which included “medical directorship of the oldest hospital based midwifery group in the country.” Following Dr. Wood’s partner’s terminal illness and death in 1993, Dr. Wood began solo practice, although he employed an associate for a brief period of time. (Tr. at 93-97)

Dr. Wood testified concerning his surgical practice that he annually performed approximately 100 open surgical procedures and approximately 200 laparoscopic procedures. (Tr. at 118)

Dr. Wood testified that in 1986, the same year he began practice in Springfield, he began studying law at Capital University Law School, Columbus, Ohio. Dr. Wood further testified that he took a year off from law school to study for his specialty boards, and obtained his law degree in 1991. (Resp. Ex. A; Tr. at 98-99)

3. Dr. Wood testified that, after finishing law school in 1991, he was appointed to an unexpired term as Coroner of Clark County, and ran for a full term thereafter. Dr. Wood testified that he was the Clark County Coroner for a period of six years. (Tr. at 98)
4. Dr. Wood testified that he began abusing drugs as the result of “many stressors and triggers” in his personal life and professional life. Dr. Wood testified that narcotics had been his drugs of choice. Dr. Wood further testified that he cannot pinpoint a specific time when he began using drugs: “It was a slow slide. There wasn’t anything profound that one day I decided to start abusing drugs. It was just availability, samples in the hospital, hurting [from being on his feet for long periods of time], bad day, stress.” Finally, Dr. Wood testified that the availability of samples in his office made it “much too easy * * * to resort to chemical vacations.” (Tr. at 99-109)

Dr. Wood testified that, by means of an intervention, his colleagues eventually confronted him concerning his drug use. Dr. Wood stated that the intervention took place on a

Wednesday, and he was in treatment by the following Friday morning. Dr. Wood further testified:

My pattern of abuse was bingeing when I was not on call or not in the country. It progressed over time. It was unmanageable; and on my own and in consultations with friends and colleagues, I sought treatment in January of 2000. * * * It was the dawning of the new year of 2000. I knew that something had to give. I wanted to avoid exactly this, incarceration, humiliation, ignominy; and I thought treatment would be the best option.

(Tr. at 99-100, 141)

Dr. Wood testified that in January and February 2000 he underwent 28 days of inpatient therapy at Sierra Tucson Rehabilitation Hospital [Sierra]. Dr. Wood testified that Sierra is a Board-approved treatment provider. Dr. Wood further testified that the program was “very intense. It’s supposedly one of the better programs in the country, with one of the highest success rates. It specializes in professionals and physicians and attorneys. They were the first to use equine therapy, which is popular these days.” Dr. Wood testified that he believes that the program was appropriate for him, and that he learned much about addictionology and his disease. (Resp. Ex. D; Tr. at 100-101, 127)

5. Dr. Wood testified that, following his release from treatment, he contracted with the Ohio Physicians Effectiveness Program [OPEP], and entered into intensive aftercare counseling with Green Memorial Hospital. Dr. Wood stated that Greene Memorial Hospital is a Board-approved aftercare facility. Dr. Wood further testified that his aftercare counseling with Greene Memorial Hospital lasted for six to eight months, and consisted of group therapy sessions of three or four hours, three times per week. Dr. Wood testified that, after the intensive aftercare counseling program ended, he began individual therapy with a counselor for one hour per week. (Tr. at 107)

Dr. Wood stated that his contract with OPEP required, among other things, that Dr. Wood attend three Alcoholics Anonymous [AA] or Narcotics Anonymous [NA] meetings per week. Dr. Wood further testified that his OPEP contract required one random urine screen per week. Dr. Wood testified that, to his knowledge, all of his urine screens have been negative. (Tr. at 107-108)

6. Dr. Wood presented three quarterly reports of his status from OPEP, dated July 10, 2000; October 16, 2000; and January 2, 2001. Each report indicates that Dr. Wood had remained abstinent and had been compliant with his contract. Moreover, a letter dated April 27, 2001, to Mr. Byers from Barron Farrier, CCDC III, Field Service Representative, OPEP, indicated that Dr. Wood had maintained abstinence and been

compliant with his recovery program. Mr. Farrier expressed support for Dr. Wood retaining his Ohio certificate. (Resp. Exs. C-1 through C-3 and E)

Dr. Wood also presented a letter dated February 13, 2001, from William O. Smith, M.D., who was Dr. Wood's monitoring physician. The letter indicated, among other things, that Dr. Wood had been monitored for drugs and alcohol on a weekly basis and had not given any evidence of relapse. (Resp. Ex. D; Tr. at 111)

Dr. Wood testified that he and Dr. Smith are friends. Dr. Wood further testified that Dr. Smith had been the individual who witnessed Dr. Wood abusing pills while on vacation, and had arranged for the intervention. (Tr. at 111)

Note that the State did not have an opportunity to cross-examine Mr. Farrier or Dr. Smith.

7. Dr. Wood testified that he had left Sierra against medical advice [AMA]:

That was because I didn't sign on to their complete program of aftercare. Their requirement to be discharged regularly was to sign on with all their aftercare programs over the phone; and as I was under no pressure to do so, I thought it would be better to search those out and investigate them in person, rather than doing it over the phone.

(Tr. at 132) Dr. Wood further testified, "I thought asking someone to enter into intensive psychotherapy over the phone was tantamount to arranging heart surgery over the phone. I thought it was really unreasonable." Moreover, Dr. Wood testified that Sierra had wanted him to commit to programs such as those he entered into with Greene Memorial and with OPEP. Dr. Wood testified that he has "pretty much completed all that they've originally wanted." Finally, Dr. Wood testified, "I spent the requisite amount of days, successfully completed all the programs. My only fault was that I did not contract and enter into all the aftercare that they usually recommend." (Tr. at 132-134)

8. Dr. Wood testified that, three days following his return from Sierra, his wife "moved out and moved in with someone else." Dr. Wood further testified that "two weeks after my return, just as I was getting my practice back together, the State Pharmacy Board came into my office and made [it] a crime scene. Towed my car away, [and] made a crime scene at my house." Dr. Wood further testified that the authorities confiscated all of the drugs in his office, as well as charts and records. Finally, Dr. Wood testified that "they strung tape around the periphery of [Dr. Wood's] house and turned the house upside down and the out buildings, went through the cat litter, the garbage, a full search." (Tr. at 101-103)
9. Dr. Wood testified that he reported his impairment situation and treatment to the Board shortly after returning from Sierra, but after the police raid. Nevertheless, Dr. Wood stated that he "was barely back by the time the police came in." The Board responded to

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Dr. Wood's self-report by letter dated July 13, 2000. Dr. Wood testified that he received that response a few months after filing his report. (Resp. Ex. B; Tr. at 109-110)

10. On April 10, 2000, an Indictment was filed in the Clark County Court of Common Pleas charging Dr. Wood with a number of criminal violations. On February 9, 2001, Dr. Wood pleaded guilty to the following:
 - a. Counts One through 19 of the Indictment, which had charged that Dr. Wood intentionally made, uttered, or sold, or knowingly possessed, false or forged prescriptions for controlled substances. Such conduct violated Section 2925.23(B), Ohio Revised Code, Illegal Processing of Drug Documents. The prescriptions underlying Counts One through Nine, Fourteen, and Sixteen were for Hydrocodone/APAP 10/650; and the prescription underlying Count Seventeen was for Hydrocodone/APAP 10/500. In addition, the prescriptions underlying Counts Ten, Eighteen, and Nineteen were for Norco 10/325, and the prescription underlying Count Fifteen was for Vicoprofen. Moreover, the prescriptions underlying Counts Eleven and Twelve were for Oxycontin 40 mg, and the prescription underlying Count Thirteen was for Oxycontin 80 mg. Finally, all of these counts, except Counts Eleven through Thirteen, constituted felonies of the fifth degree; Counts Eleven through Thirteen constituted felonies of the fourth degree. (State's Exhibits [St. Exs.] 3 and 4)
 - b. Amended Count Twenty-three, which had charged that Dr. Wood knowingly attempted to obtain, possess, or use 120 unit doses of Oxycontin, a schedule II controlled substance, in a manner not in accordance with Chapters 3719., 4729., and 4731., Ohio Revised Code. Such conduct violated Section 2923.02 as that section applies to Section 2925.11, Ohio Revised Code, Attempted Possession of Drugs, a felony of the third degree. (St. Exs. 3, 4, and 5)
 - c. Counts Twenty-four through Twenty-eight, which had charged that Dr. Wood did knowingly acquire, have, carry, or use dangerous ordnance. Such conduct violated Section 2923.17, Ohio Revised Code, Possession of Dangerous Ordnance, a felony of the fifth degree. Counts Twenty-four and Twenty-five concerned possession of a firearm muffler or silencer, Counts Twenty-six and Twenty-eight concerned possession of an automatic firearm, and Count Twenty-seven concerned possession of a sawed-off firearm. (St. Exs. 3 and 4)

The court accepted Dr. Wood's guilty pleas. In so doing, the court found, among other things, that Dr. Wood had "held a position of trust in that he was a physician and the offense related to that position; and [his] professional position facilitated the offense." Further, the court found "that a community control sanction is inconsistent with the purposes and principles of sentencing in Revised Code 2929.11." The court sentenced Dr. Wood to one year of incarceration for each violation, with the sentences to run concurrently with one

another. The court notified Dr. Wood that he may be subject to post release control for a period of up to three years following his release from incarceration. Finally, the court ordered Dr. Wood to pay a fine of \$77,500.00, plus costs. (St. Ex. 4 and 5)

Dr. Wood began serving his sentence on February 9, 2001. As of the date of the hearing, Dr. Wood was incarcerated at Madison Correctional Institution, London, Ohio. (St. Ex. 5; Tr. at 110-111)

11. Dr. Wood testified that when he entered the prison system he had to discontinue his aftercare. Dr. Wood testified that, since his incarceration, he has twice been tested on a random basis, with negative results. Dr. Wood further testified that he attends as many meetings as he can; however, out of three available meetings per week, he cannot attend all of them due to his prison chores. Moreover, Dr. Wood testified that he had attempted to enter a "drug dorm" rehabilitation program at the institution, but that he was not able to enter. Dr. Wood testified that he was refused entry because he had already been through rehabilitation, had been drug-free for one year, and the institution had other inmates with a greater need for that service. (Tr. at 108, 124-126)
12. Dr. Wood testified concerning his conduct underlying his pleas of guilty to illegal processing of drug documents. Dr. Wood testified that he had written prescriptions in the names of his employees who had had them filled and then returned the medication to Dr. Wood. Dr. Wood testified that his conduct had involved "three or four" employees. (Tr. at 137)
13. With regard to the weapons offenses, Dr. Wood testified that he has collected guns for a long time. Dr. Wood stated that he had sold his first gun collection to pay his tuition at medical school. Dr. Wood further testified that he collected various types of weapons, including guns, edge weapons, and crossbows. (Tr. at 104-105)

Dr. Wood further testified that the charges concerned three guns and two silencers "[w]hich are all licensed in the State of Ohio. You merely have to pay the money and undergo the check." Dr. Wood testified that three of the weapons offenses had concerned automatic weapons: a Russian World War II sidearm, an Uzi carbine, and a converted Mac-10. Dr. Wood testified that the other two offenses concerned the silencers. (Tr. at 134-135)

Dr. Wood testified that none of the weapons was "sawed-off," as stated in Count Twenty-seven. Dr. Wood testified that the Uzi carbine had been classified as sawed-off because the stock went to the end of the barrel. Dr. Wood further testified that it was a factory made Uzi carbine from Israel that had not been modified in any way. (Tr. at 139)

Dr. Wood testified that people who had known that he collected guns had given the items to him as gifts. Dr. Wood testified, "There were automatic weapons with silencers that were given to me many years ago when I was coroner. I put them away in a safe,

intending to register them at some time or another. Out of sight, out of mind. It was not a priority item. I just never did it.” Concerning the process for registering the weapons, Dr. Wood testified, “From my understanding now, you go through a registration process through the ATF and pay a considerable tax stamp on each weapon, and that tax stamp is incurred every time the weapon changes hands.” (Tr. at 134-135, 142-143)

Dr. Wood testified that the weapons that were seized from his house had been stored in a safe. Dr. Wood further testified that, during the search of his house, the police asked him to open the safe. Dr. Wood testified that he had not been in the safe for six years, and had lost the combination to the lock. Dr. Wood stated that he had had to call his mother, who had kept the combination, in order to open the safe for the police. (Tr. at 105-106)

Dr. Wood testified that local law enforcement had been aware of his affinity for collecting guns. Dr. Wood further testified that he “was allowed to shoot with the sheriff and had an invitation by him to that effect [to use] his shooting range at the jail.” Dr. Wood produced a copy of a letter to him from the Clark County Sheriff dated December 13, 1999, extending an invitation to witness a training demonstration at the shooting range. Dr. Wood indicated that he received this invitation after he had left the coroner’s office. In addition, Dr. Wood testified that he had built a shooting range in his backyard. Finally, Dr. Wood testified that, for the last seven or eight years, “I shot regularly with the chief and detectives and the warden at the jail in my backyard.” (Resp. Ex. K; Tr. at 104-105)

14. Dr. Wood testified that, during the one year time period between the police search of his office and home and his incarceration, and despite the fact that the criminal process was heavily covered by the local press, his patient numbers did not fall. Dr. Wood testified,

I was very gratified that I had such loyal patients. With the exception of Mercy [Medical Center] with a two-week investigatory suspension, there was no changes in my privileges or manner of practice. I practiced full, unrestricted medicine and surgery until the very day I was incarcerated.

In fact, the day I was incarcerated I performed one major surgery and four sterilizations in the morning and went to jail in the afternoon.

(Tr. at 127-128)

Dr. Wood testified that the time between the criminal investigation and his incarceration had been very stressful, and made the stress that he had undergone previously when using drugs “look like it was nothing.” Nevertheless, Dr. Wood testified that he did not use drugs as a respite because he believed “that that was no longer an option. That was slow suicide.” (Tr. at 128)

15. Dr. Wood presented a number of letters of support from health care professionals, friends, and patients. All of these letters portray Dr. Wood as a dedicated and caring physician. Moreover, all of the letters ask that Dr. Wood be allowed to retain his Ohio certificate. (Resp. Exs. G-1 through G-5, H-1 through H-8, I-1 through I-21, and J-1 through J-3; Tr. at 112-124)

Note that the State did not have an opportunity to cross-examine the authors of these letters.

16. Dr. Wood testified that he has voluntarily surrendered his DEA registration. (Resp. Ex. F; Tr. at 112)
17. Dr. Wood testified that, if he is allowed to retain his Ohio certificate, he would be willing to comply with any requirements that the Board may see fit to impose. (Tr. at 128-129)
18. Dr. Wood testified that he had not used drugs illicitly since entering treatment in Arizona. Dr. Wood testified that his sobriety date is January 10 or 12, 2000. (Tr. at 103, 140-141)
19. Thales Nicholas Pavlatos, M.D., testified as follows on behalf of Dr. Wood:
- a. Dr. Pavlatos is an anesthesiologist, and has been licensed to practice medicine in Ohio for approximately sixteen years. He practices at Mercy Medical Center, Springfield, Ohio. (Tr. at 21-23)
 - b. Dr. Pavlatos has worked with Dr. Wood on surgical cases “numerous times.” Dr. Pavlatos testified that Dr. Wood’s standard of care is excellent. Moreover, Dr. Pavlatos never noticed anything in Dr. Wood’s practice that would lead Dr. Pavlatos to believe that Dr. Wood had been impaired in the operating room. (Tr. at 23-25)
 - c. Dr. Pavlatos became aware that Dr. Wood had an impairment problem upon hearing rumors that Dr. Wood had gone to a rehabilitation facility in Arizona. In his capacity as president of the medical staff at Mercy Medical Center, Dr. Pavlatos contacted Dr. Wood about these rumors. Dr. Wood confirmed that he had an impairment problem and had attended a rehabilitation program. As a result, Dr. Wood’s privileges at Mercy Medical Center were suspended. (Tr. at 28)
 - d. Dr. Pavlatos is aware of Dr. Wood’s criminal convictions, and stated that that does not change his opinion of Dr. Wood. (Tr. at 24-25)
20. Eyra Agudu, M.D., testified as follows on behalf of Dr. Wood:
- a. Dr. Agudu is an obstetrician and gynecologist, and has been licensed to practice medicine in Ohio since 1998. Dr. Agudu practices in Springfield, Ohio. (Tr. at 34-35)

- b. When Dr. Agudu finished her residency and came to Springfield to start her practice, she shared office space with Dr. Wood for approximately six weeks while she sought a permanent location. During the time that she shared an office with Dr. Wood, Dr. Agudu had an opportunity to observe Dr. Wood's competency as a physician, his interaction with patients, and his surgical skills. Dr. Agudu testified that Dr. Wood was excellent in each of these regards. Dr. Agudu noted that she has consulted with Dr. Wood concerning her own patients' care. (Tr. at 35-38)
 - c. Dr. Agudu never observed any indication that Dr. Wood was impaired. Dr. Agudu first learned of Dr. Wood's impairment when Dr. Wood's criminal action was reported in the newspapers. (Tr. at 39-40)
 - d. Dr. Agudu is aware of Dr. Wood's criminal convictions, and stated that that does not change her opinion of Dr. Wood's competency as a physician. (Tr. at 36-37)
21. Howard Philip Fischbach III, M.D., testified as follows on behalf of Dr. Wood:
- a. Dr. Fischbach currently practices anesthesiology in Springfield, Ohio. He has worked with Dr. Wood in the operating room and in the delivery room, and believes Dr. Wood to be an excellent physician with whom to work. Dr. Fischbach stated that Dr. Wood's standard of care is "superb." Dr. Fischbach also stated that Dr. Wood "has a remarkable ability for external version; in other words, moving a baby into an appropriate position from outside the mother. This usually requires anesthesia." (Tr. at 40-44)
22. Douglas Balchan testified as follows on behalf of Dr. Wood:
- a. Mr. Balchan is a partner in the Real Foods Group, which does product development, sales, and sales management, and which is headquartered in Springfield, Ohio. He has lived in Springfield for approximately twenty-one years. (Tr. at 46-48)
 - b. Mr. Balchan has known Dr. Wood for at least ten or fifteen years, and is familiar with Dr. Wood's reputation in the community. Mr. Balchan stated that Dr. Wood is an "[e]xtremely good doctor. Somewhat eccentric, but a fun guy. Very, very useful and concerned in the community." Mr. Balchan had worked as a coroner's investigator with Dr. Wood, and stated that Dr. Wood was a "very dedicated, very committed" coroner. (Tr. at 48-54)
 - c. Mr. Balchan has seen Dr. Wood impaired in a social setting. Mr. Balchan testified that both he and Dr. Wood are fond of good quality beers and ales, and Mr. Balchan makes his own beer. Once or twice a year, Mr. Balchan and Dr. Wood got together at Dr. Wood's house to "sample a number of different beers." However, Mr. Balchan

stated that he never witnessed Dr. Wood do anything reckless at these times, such as getting behind the wheel of an automobile. (Tr. at 52)

23. Jane Balchan testified as follows on behalf of Dr. Wood:

- a. Ms. Balchan is the spouse of Douglas Balchan, who also testified on behalf of Dr. Wood. Ms. Balchan has lived in Springfield, Ohio for seventeen years. Further, Ms. Balchan had been a patient of Dr. Wood, and waived her right to patient confidentiality in this matter. (Tr. at 55-56, 61)
- b. Ms. Balchan has known Dr. Wood for ten or twelve years, and originally knew him socially rather than professionally. Dr. Wood was her ob/gyn for three or four years, until approximately one year previous to the hearing. Ms. Balchan credited Dr. Wood with saving her life during a bout with breast cancer. (Tr. at 56-59)
- c. Ms. Balchan testified that she is familiar with Dr. Wood's reputation in the community, and stated that Dr. Wood was loved by his patients. (Tr. at 59-60)

24. Juliana Furay testified as follows on behalf of Dr. Wood:

- a. Ms. Furay has lived in Springfield, Ohio since 1986. Ms. Furay had been acquainted with Dr. Wood through her husband, Richard Furay, M.D., prior to moving to Springfield. Further, Ms. Furay had been a patient of Dr. Wood, and waived her right to patient confidentiality. (Tr. at 62-64)
- b. Dr. Wood performed the first successful external version in Springfield with the delivery of Ms. Furay's second child. Ms. Furay stated that this permitted her to deliver the child naturally, rather than via Caesarean section or in a manner "more severe for the baby." In addition, the delivery of Ms. Furay's fourth and last child was substantially complicated due to the fact that Ms. Furay had undergone a major, 12-hour surgery in the lower abdominal area prior to discovering that she was pregnant. Ms. Furay testified that "[i]t was really a touch-and-go thing, whether or not this baby would survive, whether or not I could carry this baby." Ms. Furay stated that Dr. Wood "did an exceptional job" caring for her and her baby during her pregnancy, and that both she and the baby are fine. Nevertheless, Ms. Furay testified that "we had a lot of episodes * * * [w]e thought I might have a DVT, a deep vein thrombosis, or something that could be life threatening. [Dr. Wood] had to make a lot of decisions throughout this pregnancy in order for me to have a healthy outcome." (Tr. at 64-66)

- b. Dr. Furay is familiar with Dr. Wood's reputation in both the medical community and the general community. Dr. Furay testified that Dr. Wood has a good reputation in the medical community, and is regarded as an excellent technician with good clinical judgment. Dr. Furay is aware of no complaints concerning Dr. Wood's medical care. With regard to Dr. Wood's reputation in the general community, Dr. Furay testified that Dr. Wood was "an outstanding member of the community." (Tr. at 74-75)
- c. Dr. Furay and Dr. Wood were social friends, and Dr. Furay never suspected that Dr. Wood had been abusing drugs. Dr. Furay first learned of Dr. Wood's chemical impairment problem in January 2000, at which time a fellow physician invited Dr. Furay to attend an intervention for Dr. Wood. (Tr. at 75-77)

Dr. Furay and other physicians who knew Dr. Wood confronted Dr. Wood at the intervention concerning Dr. Wood's drug use. After some initial resistance, Dr. Wood admitted that he had been taking pills and that he needed help. (Tr. at 77)

- d. Dr. Furay testified that Dr. Wood was gun collector, and that Dr. Wood had weapons in his house that included a bazooka. Dr. Furay was not aware if any of the guns were illegal, inasmuch as he does not share Dr. Wood's fondness for guns. Dr. Furay also stated that Dr. Wood collected many things besides guns, such as medical books, historical memorabilia, and autographs. (Tr. at 77-80)
 - e. Dr. Furay is aware of Dr. Wood's felony convictions. He supports Dr. Wood's return to the medical community. (Tr. at 80-81)
26. Camel Abraham, M.D., testified as follows on behalf of Dr. Wood:
- a. Dr. Abraham has practiced anesthesiology in Springfield, Ohio, for approximately fifteen years. (Tr. at 84-86)
 - b. Dr. Abraham testified that he knows Dr. Wood, and that he has had an opportunity to observe Dr. Wood's standard of care. Dr. Abraham testified that Dr. Wood's medical care is appropriate, and that Dr. Wood treats his patients very well. Dr. Abraham further testified that he never observed any signs that Dr. Wood was impaired by drug abuse. Moreover, Dr. Abraham testified that he is aware of Dr. Wood's felony convictions, and that that does not alter his opinion of Dr. Wood. (Tr. at 86-88)

FINDINGS OF FACT

- 1. On February 9, 2001, in the Clark County Court of Common Pleas, Dirk Gregory Wood, M.D., pled guilty to nineteen felony counts of Illegal Processing of Drug Documents, in violation of Section 2925.23(B), Ohio Revised Code; one felony count of

Possession of Drugs, in violation of Section 2925.11, Ohio Revised Code, incorporating Section 2923.02, Ohio Revised Code, Attempt; and five felony counts of Unlawful Possession of Dangerous Ordnance; Illegally Manufacturing or Processing Explosives, in violation of Section 2923.17, Ohio Revised Code.

- a. The conduct set forth in Counts One through Nineteen of the indictment include that, on twelve separate occasions, Dr. Wood intentionally made, uttered, or sold, or knowingly possessed, false or forged prescriptions for hydrocodone/APAP of various strengths, all schedule III controlled substances; on three different occasions, Dr. Wood intentionally made, uttered, or sold, or knowingly possessed, false or forged prescriptions for Oxycontin of various strengths, all schedule II controlled substances; on three different occasions, Dr. Wood intentionally made, uttered, or sold, or knowingly possessed, false or forged prescriptions for Norco, a schedule III controlled substance; and on one occasion, Dr. Wood intentionally made, uttered, or sold, or knowingly possessed, false or forged prescriptions for Vicoprofen, a schedule III controlled substance.
- b. The conduct set forth in amended Count Twenty-three of the indictment includes that Dr. Wood knowingly attempted to obtain, possess, or use Oxycontin in a manner not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code.
- c. The conduct set forth in Counts Twenty-four through Twenty-eight of the indictment includes that Dr. Wood did knowingly acquire, have, carry, or use dangerous ordnance, to wit: two firearm mufflers or silencers, two automatic firearms, and one sawed-off firearm.

CONCLUSIONS OF LAW

1. The pleas of guilty of Dirk Gregory Wood, M.D., as set forth in the Findings of Fact constitute “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony,” as that clause is used in Section 4731.22(B)(9), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents; Section 2925.11, Ohio Revised Code, Possession of Drugs, incorporating Section 2923.02, Ohio Revised Code, Attempt; and Section 2923.17, Ohio Revised Code, Unlawful Possession of Dangerous Ordnance; Illegally Manufacturing or Processing Explosives.
2. Dr. Wood’s pleas of guilty as set forth in Findings of Fact 1.a and 1.b constitute “[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction of,

a violation of any federal or state law regulating the possession, distribution, or use of any drug,” as those clauses are used in Section 4731.22(B)(3), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents; and Section 2925.11, Ohio Revised Code, Possession of Drugs, incorporating Section 2923.02, Ohio Revised Code, Attempt.

* * * * *

Dr. Wood’s felony convictions and the conduct underlying those convictions constituted a profound breach of his responsibilities as a physician. He betrayed the public trust and, with regard to the nineteen convictions for Illegal Processing of Drug Documents, put his employees in jeopardy of being charged with criminal violations. With regard to the weapons charges, Dr. Wood presented convincing evidence that he is a gun collector, and it appears unlikely that Dr. Wood obtained the weapons for some nefarious purpose. Nevertheless, his failure to take the necessary regulatory steps to legally possess such devices is, at the very least, indicative of extremely poor judgment. Such conduct merits the severest sanction.

Nevertheless, Dr. Wood presented evidence that he had voluntarily entered a Board-approved treatment program. Dr. Wood further presented evidence that he has remained drug-free since January 2000. Moreover, Dr. Wood presented character evidence that portrays him as a skilled and dedicated physician, and as a person who is active within his community. Under these circumstances, the Board may wish to permit Dr. Wood to retain his license with appropriate monitoring to ensure his continued recovery.

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Dirk Gregory Wood, 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 Board.



R. Gregory Porter
Attorney Hearing Examiner



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF AUGUST 8, 2001

REPORTS AND RECOMMENDATIONS

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

Dr. Bhati 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 matter of Warrick Lee Barrett, M.D.; Christopher Chen, M.D.; Brian W. Davies, M.D.; Daniel X. Garcia, M.D.; Alan P. Skora, D.O.; Rezso Spruch, M.D.; Tom Reutti Starr, M.D.; Joseph A. Tore, M.D.; Quirino B. Valeros, M.D. and Dirk Gregory Wood, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye
	Dr. Bhati	- aye

Dr. Bhati 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. Talmage	- aye
	Dr. Somani	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye
	Dr. Bhati	- aye

Dr. Bhati 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.

Dr. Bhati 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.

.....
DIRK GREGORY WOOD, M.D.

.....

DR. AGRESTA MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF DIRK GREGORY WOOD, M.D. MR. BROWNING SECONDED THE MOTION.

.....

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

Vote:	Mr. Albert	- abstain
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye
	Dr. Bhati	- aye

The motion carried.



State Medical Board of Ohio

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

NOTICE OF IMMEDIATE SUSPENSION AND OPPORTUNITY FOR HEARING

February 14, 2001

Dirk Gregory Wood, M.D.
Hercare, Inc.
2029 East High Street
Springfield, Ohio 45503

Dear Doctor Wood:

In accordance with Sections 2929.24 and/or 3719.12, Ohio Revised Code, the Office of the Prosecuting Attorney of Clark County, Ohio, reported that on or about February 9, 2001, in the Clark County Court of Common Pleas, you pled guilty to nineteen (19) felony counts of Illegal Processing of Drug Documents, in violation of Section 2925.23(B), Ohio Revised Code; and one (1) felony count of Possession of Drugs, in violation of Section 2925.11, Ohio Revised Code, incorporating Section 2923.02, Ohio Revised Code, Attempt.

Therefore, pursuant to Section 3719.121(C), Ohio Revised Code, you are hereby notified that your license to practice medicine and surgery in the State of Ohio is immediately suspended. Continued practice after this suspension shall be considered practicing medicine without a certificate in violation of Section 4731.41, Ohio Revised Code.

Furthermore, 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) On or about February 9, 2001, in the Clark County Court of Common Pleas, you pled guilty to nineteen (19) felony counts of Illegal Processing of Drug Documents, in violation of Section 2925.23(B), Ohio Revised Code; one felony count of Possession of Drugs, in violation of Section 2925.11, Ohio Revised Code, incorporating Section 2923.02, Ohio Revised Code, Attempt; and five felony counts of Unlawful possession of dangerous ordnance; illegally manufacturing or processing explosives, in violation of Section 2923.17, Ohio Revised Code.

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- (A) The conduct set forth in counts one through nineteen (1-19) of the indictment include that, on twelve (12) different occasions, you intentionally made, uttered, or sold, or knowingly possessed false or forged prescriptions for hydrocodone/APAP of various strengths, all schedule III controlled substances; on three (3) different occasions, you intentionally made, uttered, or sold, or knowingly possessed false or forged prescriptions for Oxycontin of various strengths, all schedule II controlled substances; on three (3) different occasions, you intentionally made, uttered, or sold, or knowingly possessed false or forged prescriptions for Norco, a schedule III controlled substance; and on one (1) occasion, you intentionally made, uttered, or sold, or knowingly possessed false or forged prescriptions for Vicoprofen, a schedule III controlled substance.
- (B) The conduct set forth in amended count twenty-three (23) of the indictment includes that you knowingly attempted to obtain, possess, or use Oxycontin, when not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code.
- (C) The conduct set forth in counts twenty-four through twenty-eight (24-28) of the indictment includes that you did, knowingly acquire, have, carry or use any dangerous ordnance, to wit: two (2) firearm mufflers or silencers, two (2) automatic firearms, and one (1) sawed-off firearm.

Your pleas of guilty as alleged in paragraph (1) above, individually and/or collectively, constitute “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony,” as that clause is used in Section 4731.22(B)(9), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents; Section 2925.11, Ohio Revised Code, Possession of Drugs, incorporating Section 2923.02, Ohio Revised Code, Attempt; and Section 2923.17, Ohio Revised Code, Unlawful possession of dangerous ordnance; illegally manufacturing or processing explosives.

Further, your pleas of guilty as alleged in paragraph (1) above, individually and/or collectively, constitute “[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,” as those clauses are used in Section 4731.22(B)(3), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents; and Section 2925.11, Ohio Revised Code, Possession of Drugs, incorporating Section 2923.02, Ohio Revised Code, Attempt.

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.

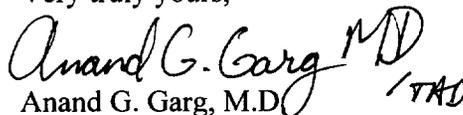
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at 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/krt
Enclosures

CERTIFIED MAIL #7000 0600 0024 5141 6433
RETURN RECEIPT REQUESTED

Duplicate mailing: 202 Tuttle Road
Springfield, Ohio 45505
CERTIFIED MAIL #70000 0600 0024 5141 6907
RETURN RECEIPT REQUESTED

Copy: Kevin P. Byers, Esq.
CERTIFIED MAIL #7000 0600 0024 5141 6426
RETURN RECEIPT REQUESTED