

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

FERNANDO C. LARACH, M.D.

CASE NO. 96CVF-05-3566

APPELLANT,

V.

JUDGE NODINE MILLER

STATE MEDICAL BOARD OF OHIO

APPELLEE.

FILED  
COMMON PLEAS COURT  
FRANKLIN COUNTY, OHIO  
97 JUL -3 PM 11:00  
CLERK OF COURTS

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FINAL JUDGMENT ENTRY NUNC PRO TUNC

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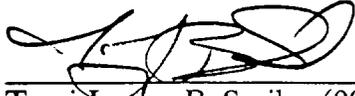
On December 13, 1996, this Court rendered a Decision in favor of Appellant, Fernando C. Larach, M.D. Appellee, the State Medical Board of Ohio, filed a Motion for Reconsideration on December 23, 1997, which this Court DENIED on March 26, 1997. In accordance with that Decision and the denial of the Motion for Reconsideration, it is hereby ORDERED that the order of the State Medical Board of Ohio is hereby REVERSED and VACATED as not being supported by reliable, probative and substantial evidence and not being in accordance with the law. All costs to be paid by the State Medical Board of Ohio.

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Judge Nodine Miller

APPROVED:

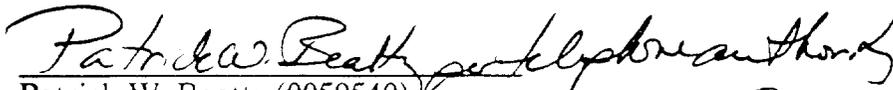
Counsel for Appellant



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Terri-Lynne B. Smiles (0034481)  
James E. Morgan (0061289)  
Hahn Loeser & Parks LLP  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215  
Tele: (614) 221-0240  
Fax: (614) 221-5909

Counsel for Appellee



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Patrick W. Beatty (0059540)  
Assistant Attorney General  
Health & Human Services Section  
30 East Broad Street, 26th Floor  
Columbus, Ohio 43215-3428  
Tele: (614) 466-8600  
Fax: (614) 466-6090



FERNANDO C. LARCH, M.D. :

Appellant, :

v. :

STATE MEDICAL BOARD OF OH :

Appellee. :

CASE NO. 96CVF05-3566

JUDGE MILLER

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JESSE D. ODDI  
CLERK OF COURTS

**DECISION DENYING APPELLEE'S  
MOTION FOR RECONSIDERATION  
FILED DECEMBER 23, 1996**

Rendered this 26<sup>th</sup> day of March, 1997.

MILLER, J.

Appellant Fernando C. Larach, M.D. appealed the order of the State Medical Board suspending his medical license. The Medical Board took action in the belief that Dr. Larach provided false and/or misleading information on his 1994 Ohio renewal application. Specifically, Dr. Larach answered "no" when asked if disciplinary action had been initiated against him in any other state. In fact, when he signed his renewal application, on April 4, 1994, he was under investigation by the state of Florida. Dr. Larach claimed that he was unaware of the investigation when he signed the application, and therefore had no intent to deceive or mislead the Ohio Board.

On May 4, 1994, Dr. Larach entered into a consent agreement with the Florida Department of Business and Professional Regulation, resolving the charges there. The Consent Agreement included an acknowledgment by Dr. Larach that he received proper service of the Complaint. The State relies on that admission as evidence that Dr. Larach did have notice of the Complaint when he signed his renewal application.

On December 16, 1996, this Court issued a decision reversing the Board's suspension of Dr. Larach's license. The Court concluded that the Board's decision was

not supported by reliable, probative, and substantial evidence. The State promptly filed a motion for reconsideration on December 23, 1996. Dr. Larach filed a memorandum in opposition on January 3, 1997.

The State objected to the Court's statement that Dr. Larach cooperated with Florida authorities in 1992, in a case against another physician, "without formal charges" against Dr. Larach. At the time, there was a formal charge pending against Dr. Larach. Whether or not a charge existed at the time is not the main point; what the Court intended to say was that Dr. Larach apparently cooperated without being aware that he was the subject of a separate charge.

Ultimately, the state's case rests entirely on the admission of service in the consent decree. The Court is not impressed by this evidence. The Court would be more impressed by a certified mail receipt signed by Dr. Larach, or an explanation for why none exists. As Dr. Larach has noted, the concession of jurisdiction was an indispensable predicate to any consent decree. Moreover, the admission of service does not indicate when service occurred. There is no independent evidence that it happened before April 4, 1996.

The Board failed to show that its decision was supported by sufficient evidence. Nothing in the present motion convinces the Court that its earlier opinion was in error. The Court asks that Counsel for Dr. Larach prepare and submit a final judgment entry reflecting this opinion within fifteen days.

*TM Miller 3-26-97*  

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JUDGE NODINE MILLER

Copies to:

Terri-Lynne S. Smiles  
James M. Morgan  
Kevin P. Byers  
Attorneys for Appellant

Patrick W. Beatty  
Attorneys for Appellee

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

FILED  
COMMON PLEAS COURT  
FRANKLIN CO., OHIO  
96 DEC 16 PM 3: 38

FERNANDO C. LARACH, M.D.,

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Appellant,

]

CASE NO. 96CVF-05-3566

vs.

]

JUDGE MILLER

STATE MEDICAL BOARD  
OF OHIO,

]

]

Appellee.

]

DECISION ON THE MERITS  
ON AN ADMINISTRATIVE APPEAL

Rendered this 17<sup>th</sup> day of December, 1996

MILLER, J.

This case comes before this Court on an R.C. §119.12 administrative appeal from a decision of the Appellee State Medical Board suspending Appellant Fernando C. Larach, M.D.'s medical license for alleged misrepresentations on his 1994 Ohio renewal application. The matter is submitted on the record below and the briefs of counsel.

The basic issue before the Board was did Dr. Larach misstate his knowledge of any disciplinary proceedings in other states on April 4, 1994 when he answered a question to that effect "No" on his Ohio renewal application, in light of events surrounding his licensure in Florida. The basic chronology is that in 1987, Dr. Larach set up a practice in Florida. In the fall of 1992, he was asked to be a witness in regard to another physician's care of a patient that Dr. Larach had seen. Without formal charges, he cooperated with the Florida medical authorities in proceedings which eventually lead to the other doctor's suspension. To maintain his other license

in Ohio, Dr. Larach filled out his renewal card on April 4, 1994, and answered the question about discipline in other states in the negative. On May 4, 1994, Dr. Larach entered into a consent agreement with the Florida authorities regarding treatment of the other doctor's patient. That consent agreement was approved by the Florida Board on October 12, 1994. Florida Board records from 1996 indicate that "Records reflect no disciplinary action against your license prior to the October 12, 1994 action."

The key questions in the case may be the famous "What did he know and when did he know it?" This inquiry involves the exact language of the Ohio renewal question, which asks whether the applicant has "had any disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio?" (emphasis added). While it is clear that Dr. Larach knew that another Florida doctor was the target of an investigation, there is insufficient evidence to show that he knew that he was then subject to Florida discipline. As far as Dr. Larach knew, he was helping the Florida Board sanction an incompetent doctor. By way of analogy, someone can be a witness in a grand jury proceeding about someone else's felonious conduct, but until that witness is indicted, it can not be said that criminal proceedings have been initiated against the witness. The Board's inferences and suppositions do not rise to the level of substantial evidence for discipline in Ohio.

The Court finds that the decision below is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The decision of the

Appellee Board is REVERSED.

Counsel for Appellant shall prepare an appropriate judgment entry.

*Miller 12.13-96*  
NODINE MILLER, JUDGE

**Appearances:**

Terry-Lynne B. Smiles, Esq.  
Counsel for Appellant

Patrick W. Beatty, Esq.  
Counsel for Appellee

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

CIVIL DIVISION

JUN 5 11:10:52 AM '96  
CLERK OF COURTS

FERNANDO C. LARACH, M.D. :

Appellant,

CASE NO. 96CVF05-3566

v.

JUDGE MILLER

STATE MEDICAL BOARD OF OHIO :

Appellee.

**DECISION AND ENTRY GRANTING**  
**THE MOTION OF APPELLANT FOR SUSPENSION**  
**OF THE STATE MEDICAL BOARD'S ORDER**  
**FILED MAY 13, 1996**

Rendered this 4th day of June, 1996.

MILLER, J.

Appellant, Fernando C. Larach, M.D. has moved this Court for an order staying execution of the State Medical Board's May 8, 1996 order suspending Dr. Larach's license to practice in the state of Ohio. The Board voted to suspend Dr. Larach's license after determining he made a misrepresentation of material fact on his application for license renewal.

Dr. Larach is also licensed in Florida, where on October 14, 1992, the Florida Board of Medicine filed a complaint against him. The specific allegations against Dr. Larach in Florida are not contained in the present record. Dr. Larach claims he was not informed of the complaint. On April 4, 1994, Dr. Larach signed the Ohio renewal application. That form contained the following question: "At any time since signing your last application for renewal of your certificate have you . . . Had any disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio?" Dr. Larach answered "no."

On May 4, 1994, Dr. Larach signed a consent agreement presented by the Florida Board. He maintains that he only learned of the proceedings against him in the days or weeks immediately preceding his signing of the consent agreement. That agreement included a stipulation that Dr. Larach had in fact been properly served with the complaint. Because Dr. Larach entered into that stipulation, the Ohio Board concluded he must have lied on his renewal form, and lied again when he denied knowledge of the Florida proceedings.

O.R.C. §119.12 sets the guidelines for consideration of appeals from the State Medical Board.

[T]he court may grant a suspension (of the Board's order) and fix its terms if it appears to the court that an unusual hardship will result from the execution of the agency's order pending determination of the appeal and the health, safety, and welfare of the public will not be threatened by suspension of the order.

The inclusion of the adjective "unusual" means the appellant must demonstrate the harm will be greater than merely loss of income, which is attendant on the suspension of every professional license. State Medical Board v. Alsleben, (Mar. 17, 1980) Summit Cnty. No. CV80-3-0614, unreported.

Dr. Larach is concerned that the Medical Board may now report his suspension to the National Practitioners Data Bank (NPDB). The NPDB's information is available to countless hospitals, insurance carriers, residential care facilities, and other health care providers, all of whom may elect to cut ties with Dr. Larach on the basis of that report. It appears the certain insurance plans, HMO's and PPO's **require** the termination of any suspended physician from their reimbursement policies. This would clearly amount to an unusual hardship.

In its memorandum contra the motion to suspend the order, filed May 22, 1996, the State describes these possible injuries as "speculation . . . [which] does not rise to

the level of actual hardship." The State seems to assume that the statute requires a showing of **actual** injury. This is not the case. The Court reviews these cases in order to put a stay in place, if warranted, before the damage occurs. Dr. Larach's concerns are not far-fetched. Moreover, if they came true, the results would be disproportionately harmful, given the nature of the alleged offense.

The State Medical Board did not find Dr. Larach guilty of a deviation from the accepted standard of care. The Board found that he made a misrepresentation on his forms. That conclusion was based on an alleged admission in the consent decree. The boiler-plate language of a consent agreement is a slender reed upon which to balance a significant legal conclusion. Dr. Larach's administrative sin, if true, does not make him a danger to the health, safety, or welfare of the Ohio community, especially since he does not regularly practice in the state.

The Court hereby orders that the Board's suspension of Dr. Larach's license be STAYED. This stay will remain in effect until there is a final adjudication of this matter on the merits.

**IT IS SO ORDERED.**

*Miller 6-9-96*  
\_\_\_\_\_  
NODINE MILLER, JUDGE

COPIES TO:

Terri Lynee B. Smiles  
Kevin P. Byers  
Attorneys for Appellant

Patrick W. Beatty  
Attorney for Appellee

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

Fernando C. Larach, MD,  
235 Estado Way NE  
St. Petersburg, Florida 33704  
Appellant

v.

State Medical Board of Ohio  
77 South High St., 17th Floor  
Columbus, Ohio 43266-0315  
Appellee.

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CASE NO. \_\_\_\_\_

JUDGE \_\_\_\_\_

Appeal from the State Medical Board of Ohio

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APPELLANT'S NOTICE OF APPEAL

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Pursuant to RC 119.12, notice is hereby given that Appellant, Fernando C. Lararch, MD, appeals the decision and order of the State Medical Board dated May 8, 1996, mailed May 9, 1996, and received by Appellant's counsel on May 13, 1996, (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.

*KP BYERS*

Kevin P. Byers 0040253  
The LeVeque Tower  
50 West Broad Street, Suite 4300  
Columbus, Ohio 43215-3310  
614.228.6283 Fax 228.6425

Attorney for Fernando C. Larach, MD

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KEVIN P. BYERS CO., L.P.A. . . . . 50 West Broad Street, Suite 4300  
Columbus, Ohio 43215-3310 . . . . . (614) 228-6283

Certificate of Service

I certify that an original of the foregoing document was hand delivered this 13th day of May, 1996, to the Clerk of the Common Pleas Court of Franklin County, 369 South High Street, Columbus, Ohio 43215 and also a copy was placed in first class U. S. Mail addressed to Assistant Attorney General Patrick W. Beatty, Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43266-3428.

KPBYERS  
Kevin P. Byers

KEVIN P. BYERS CO., L.P.A. . . . . 50 West Broad Street, Suite 4300  
Columbus, Ohio 43215-3310 . . . . . (614) 228-6283

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# STATE MEDICAL BOARD OF OHIO

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

May 10, 1996

Fernando C. Larach, M.D.  
5039 Central Avenue  
St. Petersburg, FL 33710

Dear Doctor Larach:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Suzanne E. Kelly, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on May 8, 1996, 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 a copy of that Notice of Appeal with the Franklin County Court of Common Pleas within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Thomas E. Gretter, M.D.  
Secretary

TEG:em  
Enclosures

Certified Mail Receipt No. P 152 983 527  
Return Receipt Requested

cc: Kevin P. Byers, Esq.

Certified Mail No. P 152 983 528  
Return Receipt Requested

*Mailed 5-9-96*



# 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 Suzanne E. Kelly, Attorney Hearing Examiner, State Medical Board; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on May 8, 1996, including Motions approving and confirming the Report and Recommendation 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 Fernando C. Larach, 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)

Thomas E. Gretter, M.D.  
Secretary

5/8/96

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

\*

\*

FERNANDO C. LARACH, M.D.

\*

## ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 8th day of May, 1996.

Upon the Report and Recommendation of Suzanne E. Kelly, 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 of Ohio for the above date.

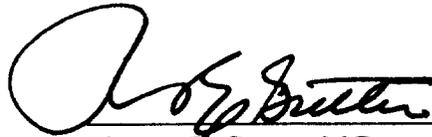
It is hereby ORDERED that:

- A. The certificate of Fernando C. Larach, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than one (1) year.
- B. The State Medical Board shall not consider reinstatement of Dr. Larach's certificate to practice unless and until all of the following minimum requirements are met:
  1. Dr. Larach shall submit an application for reinstatement, accompanied by appropriate fees.
  2. Dr. Larach shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution stating whether he has complied with all the terms, conditions, and limitations imposed by the Florida Board and any other state licensing authority.
  3. Dr. Larach shall immediately notify the Board, in writing, of any modification or change to any term, condition, or limitation imposed by any other state licensing authority.

4. Dr. Larach shall immediately notify the Board in writing should he fail to comply with any term, condition, or limitation of his probation or with any term, condition, or limitation imposed by any other state medical board.
  5. In the event that Dr. Larach has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Larach's fitness to resume practice.
- C. Upon reinstatement, Dr. Larach's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of five (5) years:
1. Dr. Larach shall obey all federal, state, and local laws, and all rules governing the practice of medicine in the state in which he is practicing.
  2. Dr. Larach shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution stating whether he has complied with all the terms and conditions of his probation in this State and with all terms, conditions, or limitations imposed by any other state medical board.
  3. Dr. Larach shall appear in person for interviews before the full Board or its designated representative within three months of the reinstatement of his certificate and upon his request for termination of the probationary period, or as otherwise requested by the Board.
  4. Dr. Larach shall notify the Board of any action <sup>in</sup> any state taken against a certificate to practice medicine held by Dr. Larach in that state. Moreover, Dr. Larach shall provide acceptable documentation verifying the same.
  5. Dr. Larach shall immediately notify the Board in writing should he fail to comply with any term, condition, or limitation of his probation or with any term, condition, or limitation imposed by any other state medical board.
  6. Dr. Larach shall immediately notify the Board in writing of any modification or change to any term, condition, or limitation imposed by any other state medical board.
  7. Dr. Larach shall refrain from commencing practice in Ohio without prior written Board approval. Moreover, should he commence practice in Ohio, the Board may place Dr. Larach's certificate under additional terms, conditions, or limitations, including the following:
    - a. Dr. Larach shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
    - b. Dr. Larach shall appear in person for interviews before the full Board or its designated representative at three month intervals or as otherwise requested by the Board.

- c. Dr. Larach shall provide a copy of this Order to all employers and the Chief of Staff at each hospital where he has, applies for, or obtains privileges.
- 8. If Dr. Larach violates probation in any respect, the Board, after giving Dr. Larach notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of Dr. Larach's certificate.
- D. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Larach's certificate will be fully restored.

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



Thomas E. Gretter, M.D.  
Secretary

(SEAL)

5/1/96

Date

**REPORT AND RECOMMENDATION  
IN THE MATTER OF FERNANDO C. LARACH, M.D.**

The Matter of Fernando C. Larach, M.D., came on for hearing before Suzanne E. Kelly, Attorney Hearing Examiner for the State Medical Board of Ohio on March 11, 1996.

**INTRODUCTION**

I. Basis for Hearing

A. By letter dated December 6, 1995 (State's Exhibit 1), the State Medical Board of Ohio [Board] notified Fernando C. Larach, M.D., that it intended to determine whether to discipline Dr. Larach's certificate to practice medicine and surgery, for one or more of the following reasons:

1) On or about April 4, 1994, Dr. Larach signed a renewal application for the current biennium for his Certificate to Practice medicine and surgery in Ohio certifying that the information provided was true and correct in every respect.

a) In response to the question: "At any time since signing your last application for renewal of your certificate have you:

\*\*\*\* (5) Had any disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio?

Dr. Larach answered "No."

Dr. Larach's last application for renewal was signed June 8, 1992. On or about October 14, 1992, the Florida Board of Medicine filed an Administrative Complaint, including allegations of violation of minimum standards which was, in fact, an initiation of disciplinary action.

The Board alleged that Dr. Larach's acts, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constituted "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code." Further, the Board alleged that Dr. Larach's acts, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constituted "publishing a false,

fraudulent, deceptive, or misleading statement,' as that clause is used in Section 4731.22(B)(5), Ohio Revised Code."

The Board advised Dr. Larach of his right to request a hearing in this Matter.

- B. On January 5, 1996, Kevin P. Byers, Esq., submitted a written hearing request on behalf of Dr. Larach. (State's Exhibit 2)

II. Appearances

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

**EVIDENCE EXAMINED**

I. Testimony Heard

- A. Presented by the State

The State presented no witnesses.

- B. Presented by the Respondent

Fernando C. Larach, M.D.

II. Exhibits Examined

In addition to State's Exhibit 1 and 2, the following exhibits were identified and admitted into evidence.

- A. Presented by the State

1. State's Exhibit 3: January 16, 1996, letter to Attorney Byers from the Board advising that a hearing had been set for January 19, 1996, but further advising that the hearing had been postponed pursuant to Section 119.09, Ohio Revised Code.
2. State's Exhibit 4: January 18, 1996, letter to Attorney Byers from the Board scheduling the hearing for March 11, 1996.

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3. State's Exhibit 5: February 13, 1996, Entry reassigning this matter from Hearing Examiner Sharon Murphy to Hearing Examiner Suzanne E. Kelly.
4. State's Exhibit 6: Copy of 1994 Application for License Renewal.
5. State's Exhibit 7: Copy of 1992 Application for License Renewal
6. State's Exhibit 8: A certified copy of the Final Order from the Agency for Health Care Administration, State of Florida, issued in, *Florida Agency for Health Care Administration v. Fernando Larach-Roman, M.D.*, Case No. 9201762. (15 pp.)
7. State's Exhibit 9: December 21, 1995, letter to the Board from the Agency for Health Care Administration, State of Florida, enclosing a certified copy of Dr. Larach's risk management evaluation. (29 pp.)

B. Presented by the Respondent

1. Respondent's Exhibit A: Curriculum vitae of Fernando C. Larach, M.D. (5 pp.)
2. Respondent's Exhibit B: March 7, 1996, letter to Dr. Larach from the Agency for Health Care Administration, State of Florida, regarding the Final Order.
3. Respondent's Exhibit C: January 24, 1995, letter to Dr. Larach from Grover C. Freeman, Esq. (3 pp.)

### 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. Fernando C. Larach, M.D., earned his medical degree from the National Autonomous University of Honduras in 1981. In 1985, Dr. Larach completed a three year residency in internal medicine at Wright State University. He then completed a two year rheumatology fellowship at Loyola University of Chicago. Following his fellowship, Dr. Larach opened a solo private practice in

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St. Petersburg, Florida. Dr. Larach currently maintains this practice. (Respondent's Exhibit [Res. Ex.] A; Tr. 13-15)

2. On October 8, 1992, the State of Florida, Department of Professional Regulation, Board of Medicine [Florida Board] filed an administrative complaint [complaint] against Dr. Larach. The complaint charged Dr. Larach with prescribing dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice. The complaint also alleged that Dr. Larach engaged in gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment that is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances. (State Exhibit [St. Ex.] 8)
  
3. On May 4, 1994, Dr. Larach signed a consent agreement [agreement]. Under this agreement with the Florida Board, Dr. Larach did not admit or deny the allegations contained in the complaint. The agreement required Dr. Larach to:
  - avoid future violations of the Florida statutes and rules;
  - pay a \$3,000.00 fine within ninety days of the Florida Board's Final Order;
  - attend five hours of Category I Continuing Medical Education in the area of Internal Medicine Diagnosis and five hours of Category I in the area of Risk Management.
  - submit to the Florida Board a review by an independent certified risk manager, and
  - comply with suggestions enumerated in the risk manager's report.

(St. Ex. 8)

4. On April 4, 1994, Dr. Larach signed a renewal application for the current biennium for his certificate to practice medicine and surgery in Ohio certifying that the information provided was true and correct in every respect. In response to the following question:

At any time since signing your last application for renewal of your certificate have you:

- \*\*\*\*(5) Had any disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio?

Dr. Larach answered, "No." Dr. Larach had signed his previous renewal application on July 1, 1992. (St. Exs. 6 & 7)

5. According to Dr. Larach, his involvement with the Florida Board began in 1992 or 1993 when the Florida Board contacted him to be a witness against a Dr. Popick. Dr. Larach worked for Dr. Popick temporarily in 1987 and 1988. In 1992 or 1993, Dr. Larach gave a deposition to the Florida Board regarding the care received by one of Dr. Popick's patients. This patient became the subject of the complaint against Dr. Larach. Dr. Larach testified that no one informed him that he was the subject of a Florida Board complaint during or after his deposition. Following his deposition, Dr. Larach's next contact with the Florida Board was in May 1994 when his attorney informed him that he should accept a consent agreement with the Florida Board. Dr. Larach testified that he never received a copy of the complaint. Dr. Larach could not recall when he hired his attorney, when he was notified of the Florida Board's action against him, or when he first received the consent agreement. (St. Ex. 8; Tr. 19-21, 25-31)

Dr. Larach testified that on April 4, 1994, he "had no idea that there was any disciplinary action taking place against [him]." Dr. Larach explained that he did not learn of a complaint against him until just a few "days or weeks" prior to signing the consent agreement on May 4, 1994. Dr. Larach denied that he had received a copy of the complaint. However, the consent agreement signed by Dr. Larach includes a stipulation that Dr. Larach was properly served with the complaint. (St. Ex. 8; Tr. 16-18)

6. Dr. Larach testified that he interpreted question 5 to mean that "a disciplinary action has been started." An administrative complaint would have been the start of an investigation, which in Dr. Larach's opinion, was different from a disciplinary action. Dr. Larach contacted the Florida Board to determine if any other disciplinary actions were taken prior to October 12, 1994. The Florida Board responded that no other disciplinary actions were taken prior to October 12, 1994, confirmation of the consent agreement. The Florida Board did not state when the October 12, 1994, action began. (Res. Ex. B; Tr. 23, 33)
7. The October 14, 1992, complaint filed by the Department before the Florida Board details the charges against Dr. Larach. The complaint also requests that the Florida Board enter an order imposing a range of discipline from reprimand to revocation. It does not request that the Florida Board undertake an investigation to determine the basis for the complaint. The consent agreement entered into by Dr. Larach describes the complaint as the charge against Dr. Larach. (St. Ex. 8)

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### FINDINGS OF FACT

1. On or about April 4, 1994, Dr. Larach signed a renewal application for the current biennium for his Certificate to Practice medicine and surgery in Ohio certifying that the information provided was true and correct in every respect.
2. In response to the following question: "At any time since signing your last application for renewal of your certificate have you:

Had any disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio?

Dr. Larach answered "No."

Dr. Larach's last application for renewal was signed June 8, 1992. On or about October 14, 1992, the State of Florida, Department of Business and Professional Regulation filed an Administrative Complaint with the Florida Board. The complaint included allegations and requested discipline.

3. The Administrative Complaint filed by the State of Florida, Department of Business and Professional Regulation was the initiation of a disciplinary action.
4. Dr. Larach's testimony that he was unaware of the October 14, 1992, Administrative Complaint in April 1994 is not credible.

### CONCLUSIONS

1. As set forth in Findings of Fact 1 through 4, the conduct of Dr. Larach in signing the application for renewal of his certificate to practice medicine and surgery in the State of Ohio constituted "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code."
2. As set forth in Findings of Fact 1 through 4, the conduct of Dr. Larach in signing the application for renewal of his certificate to practice medicine and surgery in the State of Ohio constituted "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code."

OHIO MEDICAL BOARD  
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### PROPOSED ORDER

It is hereby ORDERED that:

- A. The certificate of Fernando C. Larach, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than one (1) year.
- B. The State Medical Board shall not consider reinstatement of Dr. Larach's certificate to practice unless and until all of the following minimum requirements are met:
  1. Dr. Larach shall submit an application for reinstatement, accompanied by appropriate fees.
  2. Dr. Larach shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution stating whether he has complied with all the terms, conditions, and limitations imposed by the Florida Board and any other state licensing authority.
  3. Dr. Larach shall immediately notify the Board, in writing, of any **modification or change to any term, condition, or limitation imposed by any other state licensing authority.**
  4. Dr. Larach shall immediately notify the Board in writing should he fail to comply with any term, condition, or limitation of his probation or with any term, condition, or limitation imposed by any other state medical board.
  5. In the event that Dr. Larach has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under **Section 4731.222, Ohio Revised Code**, to require additional evidence of Dr. Larach's fitness to resume practice.
- C. Upon reinstatement, Dr. Larach's certificate shall be subject to the following **PROBATIONARY** terms, conditions, and limitations for a period of five (5) years:
  1. Dr. Larach shall obey all federal, state, and local laws, and all rules governing the practice of medicine in the state in which he is practicing.

**Report and Recommendation**  
**In the Matter of Fernando C. Larach, M.D.**  
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OHIO

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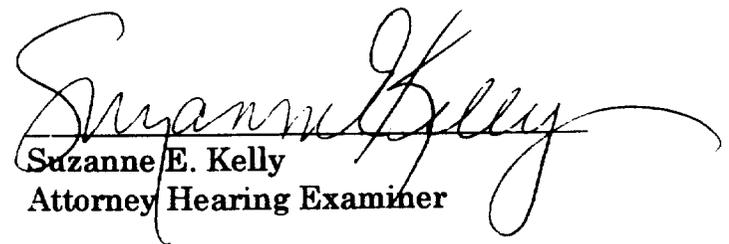
2. Dr. Larach shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution stating whether he has complied with all the terms and conditions of his probation in this State and with all terms, conditions, or limitations imposed by any other state medical board.
3. Dr. Larach shall appear in person for interviews before the full Board or its designated representative within three months of the reinstatement of his certificate and upon his request for termination of the probationary period, or as otherwise requested by the Board.
4. Dr. Larach shall notify the Board of any action in any state taken against a certificate to practice medicine held by Dr. Larach in that state. Moreover, Dr. Larach shall provide acceptable documentation verifying the same.
5. Dr. Larach shall immediately notify the Board in writing should he fail to comply with any term, condition, or limitation of his probation or with any term, condition, or limitation imposed by any other state medical board.
6. Dr. Larach shall immediately notify the Board in writing of any modification or change to any term, condition, or limitation imposed by any other state medical board.
7. Dr. Larach shall refrain from commencing practice in Ohio without prior written Board approval. Moreover, should he commence practice in Ohio, the Board may place Dr. Larach's certificate under additional terms, conditions, or limitations, including the following:
  - a. Dr. Larach shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
  - b. Dr. Larach shall appear in person for interviews before the full Board or its designated representative at three month intervals or as otherwise requested by the Board.
  - c. Dr. Larach shall provide a copy of this Order to all employers and the Chief of Staff at each hospital where he has, applies for, or obtains privileges.
8. If Dr. Larach violates probation in any respect, the Board, after giving Dr. Larach notice and the opportunity to be heard, may institute

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whatever disciplinary action it deems appropriate, up to and including the permanent revocation of Dr. Larach's certificate.

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

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

  
Suzanne E. Kelly  
Attorney Hearing Examiner

EXCERPT FROM THE DRAFT MINUTES OF MAY 8, 1996

REPORTS AND RECOMMENDATIONS

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

Dr. Stienecker 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: Fernando C. Larach, M.D.; Todd W. Estroff, M.D.; and George L. Colvin, D.O.

A roll call was taken:

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

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

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

Dr. Stienecker - aye

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

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

REPORT AND RECOMMENDATION IN THE MATTER OF FERNANDO C. LARACH, M.D.

.....  
**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. KELLY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF FERNANDO C. LARACH, M.D. MS. NOBLE SECONDED THE MOTION.**  
.....

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

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Gretter	- abstain
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Ms. Noble	- aye
	Mr. Sinnott	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.



# STATE MEDICAL BOARD OF OHIO

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

December 6, 1995

Fernando C. Larach, M.D.  
5039 Central Avenue  
St. Petersburg, FL 33710

Dear Doctor Larach:

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 April 4, 1994, you signed a renewal application for the current biennium for your Certificate to Practice medicine and surgery in Ohio certifying that the information provided was true and correct in every respect.
  - a) In response to the following question: "At any time since signing your last application for renewal of your certificate have you:
    - ... 5.) Had any disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio?

You answered, "No."

Your last application for renewal was signed June 8, 1992. On or about October 14, 1992, the Florida Board of Medicine filed an Administrative Complaint, including allegations of violation of minimum standards which was, in fact, an initiation of disciplinary action.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code.

Mailed 12/7/95

December 6, 1995

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

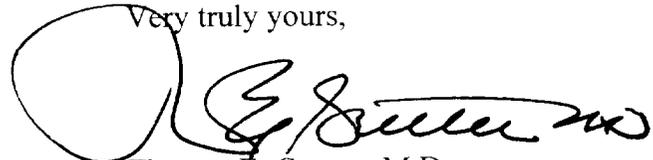
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in black ink, appearing to read "T. E. Gretter, M.D.", written over a circular stamp or seal.

Thomas E. Gretter, M.D.  
Secretary

TEG/bjm  
Enclosures

CERTIFIED MAIL # P 348 886 986  
RETURN RECEIPT REQUESTED