



State Medical Board of Ohio

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

April 13, 2005

Ugo Ernesto Gallo, M.D.
2768 Goldleaf Drive
Akron, OH 44333

Dear Doctor Gallo:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 13, 2005, 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 an original Notice of Appeal with the State Medical Board of Ohio and a copy of the Notice of Appeal with 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

Lance A. Talmage, M.D.
Lance A. Talmage, M.D. *17AD*
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 7002 2410 0002 3141 3642
RETURN RECEIPT REQUESTED

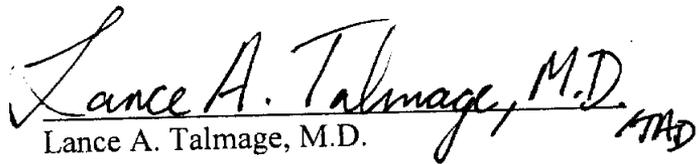
Cc: Kevin P. Byers, Esq.
CERTIFIED MAIL NO. 7002 2410 0002 3141 3628
RETURN RECEIPT REQUESTED

MAILED 4-14-05

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 April 13, 2005, 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 Ugo Ernesto Gallo, 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.


Lance A. Talmage, M.D.
Secretary

(SEAL)

April 13, 2005
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

UGO ERNESTO GALLO, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on April 13, 2005.

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:

- A. **REPRIMAND:** Ugo Ernesto Gallo, M.D., is REPRIMANDED for failure to timely submit documentation of compliance with Continuing Medical Education [CME] requirements for the October 2, 2000, through October 1, 2002, CME acquisition period.
- B. **DOCUMENTATION OF CME:** Dr. Gallo shall supply documentation acceptable to the Board of satisfactory completion of the requisite number of CME credits for the current CME period, and for two additional CME periods thereafter. This documentation shall be due in the Board's offices within thirty days of the conclusion of each CME period, unless otherwise determined by the Board.
- C. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, unless otherwise determined by the Board, Dr. Gallo shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Gallo shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or

applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

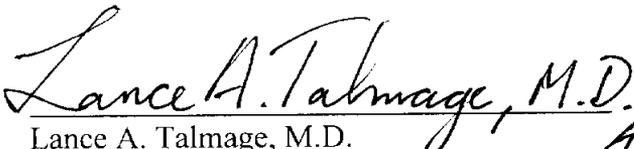
D. REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING

AUTHORITIES: Within thirty days of the effective date of this Order, unless otherwise determined by the Board, Dr. Gallo shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Gallo shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Gallo shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.

E. VIOLATION OF ORDER: If Dr. Gallo violates this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

EFFECTIVE DATE OF ORDER: This Order shall become effective thirty days after the mailing of notification of approval by the Board.

(SEAL)


Lance A. Talmage, M.D. *ATD*
Secretary

April 13, 2005

Date

2005 MAR -4 A 8:45

**REPORT AND RECOMMENDATION
IN THE MATTER OF UGO ERNESTO GALLO, M.D.**

The Matter of Ugo Ernesto Gallo, M.D., was heard by R. Gregory Porter, Esq., Hearing Examiner for the State Medical Board of Ohio, on January 7, 2005.

INTRODUCTION

I. Basis for Hearing

A. By letter dated August 11, 2004, the State Medical Board of Ohio [Board] notified Ugo Ernesto Gallo, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action upon allegations that Dr. Gallo had failed to respond to audit notices sent to him by the Board concerning his acquisition of CME, and that Dr. Gallo had failed to obtain the required hours of continuing medical education [CME] during the October 2, 2000, to October 1, 2002, CME acquisition period. Moreover, the Board alleged that Dr. Gallo's conduct constitutes the following violations:

- “‘fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board,’ as that clause is used in Section 4731.22(A), Ohio Revised Code”;
- “‘[m]aking a false, fraudulent, deceptive, or misleading statement,’ as that clause is used in Section 4731.22(B)(5), Ohio Revised Code”; and/or
- “‘violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,’ as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Section 4731.281, Ohio Revised Code, and Rules 4731-10-03 and 4731-10-08, Ohio Administrative Code, as in effect prior to February 28, 2003.”

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

B. On September 8, 2004, the Board received a written hearing request from Kevin P. Byers, Esq., on behalf of Dr. Gallo. (State's Exhibit 1B)

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.
- B. On behalf of the Respondent: Kevin P. Byers, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

- A. Presented by the State
 - 1. Ugo Ernesto Gallo, M.D., as upon cross-examination
 - 2. Kay Rieve
- B. Presented by the Respondent
Ugo Ernesto Gallo, M.D.

II. Exhibits Examined

- A. Presented by the State
 - 1. State's Exhibits 1A through 1L: Procedural exhibits.
 - 2. State's Exhibit 2: Certified copy of Dr. Gallo's July 8, 2002, license renewal application.
 - 3. State's Exhibit 3: Copy of an August 21, 2003, CME audit notice sent by the Board to Dr. Gallo, with certified mail receipt.
 - 4. State's Exhibit 4: Copy of a September 29, 2003, CME audit final notice sent by the Board to Dr. Gallo.
 - 5. State's Exhibit 5: Copy of a March 11, 2004, Report of Investigation concerning Dr. Gallo.
- B. Presented by the Respondent
 - 1. Respondent's Exhibit A: Dr. Gallo's Curriculum Vitae

2. Respondent's Exhibit B: Copies of a November 13, 2002, notice of opportunity for hearing; and a March 18, 2003, Order Dismissing Notice of Opportunity for Hearing, both filed in the Matter of Salvatore LaCognata, D.O.
- C. Admitted sua sponte by the Hearing Examiner post hearing
1. Board Exhibit A: The original, unredacted Hearing Transcript. [Note: This exhibit has been sealed to protect the confidentiality of a crime victim. See Procedural Matters, below.]
 2. Board Exhibit B: The original, unredacted condensed version of the Hearing Transcript. See Procedural Matters, below. [Note: This exhibit has been sealed to protect the confidentiality of a crime victim. See Procedural Matters, below.]

PROCEDURAL MATTERS

The Hearing Transcript in this matter contains testimony that identifies a crime victim. The Hearing Examiner determined post hearing that the nature of the crime is such that it would be inappropriate to identify the victim in a public record. Accordingly, portions of the Hearing Transcript were redacted from page 26, line 8, through page 32, line 25; page 49, line 20, through page 50, line 3; and page 53 line 2. The unredacted Hearing Transcript and condensed Hearing Transcript were marked as Board Exhibits A and B, respectively, and sealed to protect the confidentiality of a crime victim.

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. In his Curriculum Vitae, Ugo E. Gallo, M.D., stated that he had obtained his medical degree in 1986 from the University of Cincinnati College of Medicine in Cincinnati, Ohio. In 1987, Dr. Gallo completed a rotating internship at Akron City Hospital in Akron, Ohio, and, in 1989, he completed a residency in emergency medicine at that same institution. Dr. Gallo is a Diplomate of the National Board of Medical Examiners and of the American Board of Emergency Medicine, and a Fellow of the American College of Emergency Physicians. (Respondent's Exhibit [Resp. Ex.] A)

Dr. Gallo testified that he is an emergency physician at SUMMA Health System in Akron, Ohio. Dr. Gallo testified that SUMMA Health System is a teaching hospital, and that he holds an appointment as Assistant Professor of Emergency Medicine at the Northeastern Ohio Universities College of Medicine in Rootstown, Ohio. In addition, Dr. Gallo testified that he has a number of other responsibilities, such as attending weekly conferences for the residency,

participating in the Quality Assurance Board, and participating in the medical executive committee. Moreover, Dr. Gallo testified that he is working with one of his third-year residents on a “retrospective study to determine the necessity of an admission or appropriate discharge of a patient who would present with angioedema.” Finally, Dr. Gallo testified that he is also involved in other studies. (Resp. Ex. A; Hearing Transcript [Tr.] at 9-12)

Dr. Gallo further testified that he works between 16 to 18 nine-hour shifts per month. Dr. Gallo stated that two-thirds of his time is spent at the Akron City campus, and one-third is spent at the Saint Thomas campus. Both of these facilities are located in Akron. (Tr. at 12-13)

Dr. Gallo testified that he has been licensed to practice medicine in Ohio since 1987. Dr. Gallo further testified that he is not licensed in any other state. (Tr. at 13)

2. On or about July 8, 2002, Dr. Gallo signed and submitted to the Board an application for renewal of his certificate to practice medicine and surgery in Ohio. In signing that application, Dr. Gallo acknowledged that he had “completed or will have completed during the 2000–2002 registration period the requisite hours of continuing medical education certified by the Ohio State Medical Association and approved by the State Medical Board.” (State’s Exhibit [St. Ex.] 2; Tr. at 13-14)
3. By letter dated August 21, 2003, sent to Dr. Gallo via certified mail, return receipt requested, the Board advised Dr. Gallo that he had been randomly selected for an audit of the continuing medical education [CME] he had obtained during the period of October 2, 2000, through October 1, 2002. The Board further advised Dr. Gallo that he would be required to complete and submit a log demonstrating that he had completed at least one hundred hours of CME credit, and to provide documentation that he had completed at least forty hours of Category I CME credit. (St. Ex. 3) The certified mail receipt indicates that Dr. Gallo received the letter on August 23, 2003. (St. Ex. 3)

Dr. Gallo testified that he had received and read the August 21, 2003, letter from the Board. Dr. Gallo acknowledged that he did not send to the Board the information that it had requested. Moreover, Dr. Gallo acknowledged that he had not contacted the Board to explain why he had not done so. (Tr. at 15-17)

4. By letter dated September 29, 2003, the Board advised Dr. Gallo that, among other things, the Board had received proof of service of its August 21, 2003, letter, but had not yet received a response. The Board further advised Dr. Gallo that he must complete and return an enclosed CME log. Finally, the Board advised that the September 29, 2003, letter would be “the **final notice** [he] will receive regarding this matter prior to the initiation of disciplinary action regarding [his] license to practice.” (St. Ex. 4) (Emphasis in original) Finally, the Board advised Dr. Gallo to contact Ms. Liz Gerris within ten days of receipt of the letter “to avoid any further action being taken by this Board.” The Board provided a telephone number by which Dr. Gallo could reach Ms. Gerris. (St. Ex. 4)

The September 29, 2003, letter was returned to the Board unclaimed. (Tr. at 42)

Dr. Gallo testified that he does not recall receiving the Board's September 29, 2003, letter. (Tr. at 17-18)

5. In his March 11, 2004, Report of Investigation, Board Enforcement Investigator Peter J. Vitucci stated that, at the time that Dr. Gallo had been sent the two audit notices, Dr. Gallo's father had passed away; accordingly, Dr. Gallo's failure to respond may have been an oversight. In addition, Investigator Vitucci provided a chronology of events that occurred during his investigation. These include the following:
 - On March 2, 2004, Investigator Vitucci attempted to contact Dr. Gallo at Dr. Gallo's residence, but no one was home. Investigator Vitucci left an envelope alongside the front door containing his business card and a note for Dr. Gallo to contact him.
 - On March 4, 2004, Dr. Gallo contacted Investigator Vitucci by telephone. Dr. Gallo informed Investigator Vitucci that he had just found Investigator Vitucci's note. Further, Dr. Gallo told Investigator Vitucci that Dr. Gallo was not certain of his work schedule "however once he learns what it is he will call and advise"; nevertheless, Dr. Gallo never called Investigator Vitucci with that information.
 - On March 9, 2004, Investigator Vitucci delivered to Dr. Gallo at the Akron City Emergency Department "an envelope containing copies of the notice letter, receipt card, and a CME audit log[.]" Investigator Vitucci noted that Dr. Gallo apologized for causing an inconvenience.

(St. Ex. 5) Finally, Investigator Vitucci recommended that the Board cite Dr. Gallo if Dr. Gallo does not respond. (St. Ex. 5)

6. Dr. Gallo testified that, on the day that Investigator Vitucci had come to the Akron City Emergency Department, Dr. Gallo had had been the charge physician and it had been a busy shift. Dr. Gallo also testified that, after receiving the letter from Investigator Vitucci, Dr. Gallo "went back to [his] zone and put it amongst [his] collection of things[.]" (Tr. at 20-22) In addition, Dr. Gallo testified that he had not wanted to open the letter at work. (Tr. at 23-24) Moreover, Dr. Gallo testified,

I just told [my attorney, Kevin Byers,] this morning, I forgot about the letter because I—because of the day, I put it there. And when I went home, I totally—I had forgotten about it. I had never opened it, and it's not an excuse, but I—I must have misplaced it or because of where I put my little medical bag, as I call it, I must have not—it must have fallen out. And I never—I didn't—I never read it because I just forgot about it because I was dealing with the situation.

(Tr. at 22-23) Finally, Dr. Gallo testified that he never responded to the Board's request that he submit a log of his CME credits. (Tr. at 24, 38)

7. Dr. Gallo testified that, shortly after he had received the first CME notice from the Board on August 23, 2003, his father had passed away on September 17, 2003. Dr. Gallo further testified that he had begun the process of gathering documentation for his CME; however, when his father suddenly became ill and passed away, he put the CME issue "on the back burners." Dr. Gallo further testified that he had been responsible for family matters after his father's death because Dr. Gallo's brothers were living out of state at that time. Moreover, with regard to his CME, Dr. Gallo testified, "to be honest, [I] just put it out of my mind." (Tr. at 25)

Dr. Gallo further testified that, from about July 1997 until about winter 2003, he had been dealing with issues surrounding a close family member who had been a victim of a serious crime. Dr. Gallo also testified that he had not responded to the Board's letters because he had felt that it had been more important to protect his family member than to respond to the letters. In addition, Dr. Gallo testified that he had obtained more disturbing information concerning the crime against his family member about one month prior to the visit from Investigator Vitucci. Moreover, Dr. Gallo testified, "I wish, in retrospect, I would have written a letter and said I have these issues—I have issues at hand and could you give me an extension. But I—I didn't, and I take responsibility for that[.]" Nevertheless, Dr. Gallo acknowledged that he had continued to work, although he had scaled down his responsibilities somewhat. Furthermore, Dr. Gallo acknowledged that he had continued to pay his mortgage payments, utility bills, and taxes during this period. (Board Exhibits A and B at 26-34)

8. Dr. Gallo testified that, after he had received the Board's August 11, 2004, notice of opportunity for hearing, he had, with the assistance of hospital staff, gathered together his CME records. Dr. Gallo testified that that process had taken approximately two months. (Tr. at 36-37)
9. Kay Rieve testified that she is the Administrative Officer for the Board. Ms. Rieve further testified that her job duties include supervising the Licensure and the Records and Renewal Departments of the Board. Moreover, Ms. Rieve testified that, before the hearing, she had had an opportunity to review Dr. Gallo's case. (Tr. at 40)

Ms. Rieve testified that, in August 2003, Dr. Gallo had been selected as part of a random sample of a renewal group to be audited for CME compliance. Ms. Rieve further testified that audit notices had been mailed and hand-delivered to Dr. Gallo, but that Dr. Gallo had failed to respond to those notices. However, Ms. Rieve stated that, after the Board had sent to Dr. Gallo the August 11, 2004, notice of opportunity for hearing, Dr. Gallo's attorney provided the Board with documentation concerning Dr. Gallo's CME. Finally, Ms. Rieve acknowledged that, upon review, it was found that Dr. Gallo had completed the required hours of CME for the CME acquisition period under audit. (Tr. at 41-44)

10. Dr. Gallo testified that the current action has already impacted him professionally. Dr. Gallo testified that he currently has a contingent recertification for privileges at SUMMA Health System pending the outcome of the Board's action. (Tr. at 52-53)
11. Dr. Gallo testified that he now keeps careful records of his CME, and that he takes tests on his computer for a journal that he subscribes to, and that gives him documentation that he has completed the necessary hours. Finally, Dr. Gallo testified, "I can truthfully say that this would never happen again, and that if I ever do get audited again, I would be able to send a letter out the next day with all the necessary documents." (Tr. at 54-55)

FINDINGS OF FACT

1. In applying for renewal of his certificate to practice medicine and surgery for the January 2, 2003, through January 1, 2005, period, Ugo Ernesto Gallo, M.D., certified that he had completed or would complete during the 2000 through 2002 period (October 2, 2000, through October 1, 2002), the requisite hours of Continuing Medical Education [CME] as required by Section 4731.281, Ohio Revised Code.
2. By a certified mail letter dated August 21, 2003, the Board informed Dr. Gallo that he was required to complete and submit a log demonstrating that he had completed at least one hundred hours of CME during the 2000 through 2002 period and to provide documentation that he had actually completed at least forty hours of Category I CME credits. In addition, a certified mail letter dated September 29, 2003, from the Board again directed that Dr. Gallo submit documentation of his CME credits for the 2000 through 2002 period; however, that letter was returned unclaimed. Moreover, by letter hand-delivered on March 9, 2004, the Board again requested that Dr. Gallo submit documentation of his CME credits for the 2000 through 2002 period. Nevertheless, Dr. Gallo failed to respond to the notices requiring submission of a log documenting at least one hundred hours of CME completed during the 2000 through 2002 period.
3. Dr. Gallo's lack of response to the notices as detailed in Findings of Fact 2 rebuts the presumption under Rule 4731-10-08(A), Ohio Administrative Code, that he had completed the requisite hours of CME, and/or demonstrates that he had failed to keep detailed records of CME taken. However, following receipt of the Board's August 11, 2004, notice of opportunity for hearing, Dr. Gallo provided to the Board documentation that he had completed the requisite hours of CME for the 2000 through 2002 period.

CONCLUSIONS OF LAW

1. The failure of Ugo Ernesto Gallo, M.D., to respond to the audit notices and/or to submit documentation of his CME, as described in Findings of Fact 2, constitutes "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,"

as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Section 4731.281, Ohio Revised Code.

2. As described in Findings of Fact 3, Dr. Gallo had completed the requisite hours of CME for his 2000 through 2002 CME acquisition period. Accordingly, the evidence is insufficient to support a conclusion that the failure of Dr. Gallo to obtain the requisite CME constitutes “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Section 4731.281, Ohio Revised Code, and Rules 4731-10-03 and 4731-10-08, Ohio Administrative Code, as in effect prior to February 28, 2003. Nevertheless, the Board was substantially justified in bringing this allegation against Dr. Gallo, because Dr. Gallo did not provide the Board with documentation of his CME until after the Board had issued the notice of opportunity for hearing.
3. Further, as described in Findings of Fact 3, Dr. Gallo had completed the requisite hours of CME for his 2000 through 2002 CME acquisition period. Accordingly, the evidence is insufficient to support a conclusion that his conduct in certifying to the Board that he had completed the statutorily required CME constitutes “fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board,” as that clause is used in Section 4731.22(A), Ohio Revised Code. Nevertheless, the Board was substantially justified in bringing this allegation against Dr. Gallo, because Dr. Gallo did not provide the Board with documentation of his CME until after the Board had issued the notice of opportunity for hearing.
4. Finally, as described in Findings of Fact 3, Dr. Gallo had completed the requisite hours of CME for his 2000 through 2002 CME acquisition period. Accordingly, the evidence is insufficient to support a conclusion that his conduct in certifying to the Board that he had completed the statutorily required CME constitutes “[m]aking a false, fraudulent, deceptive, or misleading statement,” as that clause is used in Section 4731.22(B)(5), Ohio Revised Code. Nevertheless, the Board was substantially justified in bringing this allegation against Dr. Gallo, because Dr. Gallo did not provide the Board with documentation of his CME until after the Board had issued the notice of opportunity for hearing.

PROPOSED ORDER

It is hereby ORDERED that:

- A. **REPRIMAND:** Ugo Ernesto Gallo, M.D., is REPRIMANDED for failure to timely submit documentation of compliance with Continuing Medical Education [CME] requirements for the October 2, 2000, through October 1, 2002, CME acquisition period.
- B. **DOCUMENTATION OF CME:** Dr. Gallo shall supply documentation acceptable to the Board of satisfactory completion of the requisite number of CME credits for the current

CME period, and for two additional CME periods thereafter. This documentation shall be due in the Board's offices within thirty days of the conclusion of each CME period, unless otherwise determined by the Board.

- C. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, unless otherwise determined by the Board, Dr. Gallo shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Gallo shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
- D. **REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, unless otherwise determined by the Board, Dr. Gallo shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Gallo shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Gallo shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.
- E. **VIOLATION OF ORDER:** If Dr. Gallo violates this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

EFFECTIVE DATE OF ORDER: This Order shall become effective thirty days after the mailing of notification of approval by the Board.



R. Gregory Porter, Esq.
Hearing Examiner



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF APRIL 13, 2005

REPORTS AND RECOMMENDATIONS

Dr. Davidson announced that the Board would now consider the findings and orders appearing on the Board's agenda. She asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Khaled Mohammed Abdel Aziz, M.D., Ph.D.; Ugo Ernesto Gallo, M.D.; and Paul Po-Tsang Yang, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye

Dr. Davidson - aye

Dr. Davidson 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. Davidson 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.

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UGO ERNESTO GALLO, M.D.

.....

MR. BROWNING MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF UGO ERNESTO GALLO, M.D. DR. ROBBINS SECONDED THE MOTION.

.....

A vote was taken on Mr. Browning's motion to approve and confirm:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye

The motion carried.



State Medical Board of Ohio

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August 11, 2004

Ugo Ernesto Gallo, M.D.
2768 Goldleaf Drive
Akron, OH 44333

Dear Doctor Gallo:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio [Board] 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 fine, reprimand or place you on probation for one or more of the following reasons:

- (1) In applying for registration of your certificate to practice medicine and surgery for the January 2, 2003 – January 1, 2005 period, you certified that you had completed or would complete during the 2000 – 2002 period (October 2, 2000 – October 1, 2002) the requisite hours of Continuing Medical Education [CME] as required by Section 4731.281, Ohio Revised Code.
- (2) By a certified mail letter dated August 21, 2003, the Board informed you that you were required to complete and submit a log demonstrating that you had completed at least one hundred hours of CME during the 2000 - 2002 period and to provide documentation that you had actually completed at least forty hours of Category I CME credits. In addition, a certified mail letter dated September 29, 2003, from the Board again directed that you submit documentation of your CME credits for the 2000 - 2002 period; however, that letter was returned unclaimed. By hand-delivered letter on March 9, 2004, the Board again requested that you submit documentation of your CME credits for the 2000 – 2002 period. You have failed to respond to the notices requiring submission of a log documenting at least one hundred hours of CME completed during the 2000 – 2002 period.
- (3) Your lack of response to the notices as detailed in the above paragraph (2) rebuts the presumption under Rule 4731-10-08(A), Ohio Administrative Code, that you did complete the requisite hours of CME, and/or demonstrates that you failed to keep detailed records of CME taken.

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Your acts, conduct and/or omissions in certifying to the Board that you had completed the statutorily required CME, as set forth in the above paragraph (1), when, in fact, you had not done so, constitute "fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code.

Further, your acts, conduct and/or omissions in certifying to the Board that you had completed the statutorily required CME, as set forth in the above paragraph (1), when, in fact, you had not done so, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Further, your failure to respond to the audit notices, to obtain the requisite CME, and/or to submit documentation of same, as alleged in the above paragraphs (2) and (3) constitutes "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Section 4731.281, Ohio Revised Code, and Rules 4731-10-03 and 4731-10-08, Ohio Administrative Code, as in effect prior to February 28, 2003.

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 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 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 fine, reprimand or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, 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,

A handwritten signature in black ink, appearing to read "Lance A. Talmage, M.D.", with a stylized flourish at the end.

Lance A. Talmage, M.D.
Secretary

Enclosures

CERTIFIED MAIL #7000 0600 0024 5144 5679
RETURN RECEIPT REQUESTED