

# State Medical Board of Ohio

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Richard A. Whitehouse, Esq.  
Executive Director

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October 13, 2010

Michael M. McClellan, M.D.  
5553 Wasigo Drive  
Cincinnati, OH 45230

RE: Case No. 10-CRF-020

Dear Doctor McClellan:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Patricia A. Davison, Esq., Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on October 13, 2010, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

Such an appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board and the Franklin County Court of Common Pleas. The Notice of Appeal must set forth the Order appealed from and state that the State Medical Board's Order is not supported by reliable, probative, and substantive evidence and is not in accordance with law. The Notice of Appeal may, but is not required to, set forth the specific grounds of the appeal. 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.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3934 3487 5812  
RETURN RECEIPT REQUESTED

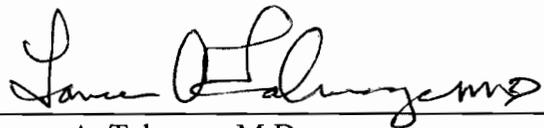
Cc: Robert L. Dawson, Esq.  
CERTIFIED MAIL NO. 91 7108 2133 3934 3487 5829  
RETURN RECEIPT REQUESTED

*Mailed 11-4-10*

**CERTIFICATION**

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Patricia A. Davidson, Esq., State Medical Board Attorney Hearing Examiner; and excerpt of the Minutes of the State Medical Board, meeting in regular session on October 13, 2010, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Michael M. McClellan, M.D., Case No. 10-CRF-020, 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)

October 13, 2010

\_\_\_\_\_  
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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CASE NO. 10-CRF-020

MICHAEL M. MCCLELLAN, M.D.

\*

**ENTRY OF ORDER**

This matter came on for consideration before the State Medical Board of Ohio on October 13, 2010.

Upon the Report and Recommendation of Patricia A. Davidson, Esq., 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 modification, approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

- A. **FINE:** Michael M. McClellan, M.D., shall pay a FINE of \$3,000 to the State Medical Board of Ohio. This fine shall be paid no later than thirty days after the Board's mailing of notification of approval of this Order.
- B. **DOCUMENTATION OF CME:** Dr. McClellan shall supply documentation acceptable to the Board of satisfactory completion of the requisite number of CME credits for the CME period ending in April 2010. The CME credits applied toward satisfying the CME requirements for the cycle ending in April 2010 shall not include any credits applied to make up the deficiency for the CME cycle ending in April 2008. The documentation for the CME period ending in April 2010 shall be due in the Board's offices within thirty days of the effective date of this Order, unless otherwise determined by the Board.

Moreover, Dr. McClellan shall supply documentation acceptable to the Board of satisfactory completion of the requisite number of CME credits for two additional CME periods thereafter. Documentation for the two additional CME periods 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 WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER**

1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. McClellan shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training, and the chief of staff at each hospital or healthcare center where he has privileges or appointments.

In the event that Dr. McClellan provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, Dr. McClellan shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

2. **Required Reporting To Other Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. McClellan shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate.
3. **Required Documentation of the Reporting Required by Paragraph C:** Dr. McClellan shall provide the Board with **one** of the following documents as proof of each required notification within 30 days of the date of each such notification: (1) the return receipt of certified mail within 30 days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

- D. **VIOLATION OF ORDER:** If Dr. McClellan 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 immediately upon the mailing of the notification of approval by the Board.



Lance A. Talmage, M.D.

Secretary

(SEAL)

October 13, 2010

Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

**In the Matter of**

\*

**Case No. 10-CRF-020**

**Michael M. McClellan, M.D.,**

\*

**Hearing Examiner Davidson**

**Respondent.**

\*

**REPORT AND RECOMMENDATION**

Basis for Hearing

In a notice of opportunity for hearing dated March 10, 2010, the State Medical Board of Ohio notified Michael M. McClellan, M.D., that it intended to determine whether to take disciplinary action against his certificate to practice allopathic medicine and surgery in Ohio, based on his alleged failure to comply with requirements for continuing medical education [CME] during the two-year CME period ending April 1, 2008. In addition, the Board alleged that Dr. McClellan had made a false statement on his 2008 renewal application with respect to his compliance with CME requirements. The Board further alleged that Dr. McClellan's conduct constitutes

- “making a false, fraudulent, deceptive, or misleading statement \* \* \* in relation to the practice of medicine and surgery, \* \* \* or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,” as that language is used in Ohio Revised Code Section [R.C.] 4731.22(B)(5); and
- “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 language is used in R.C. 4731.22(B)(20), with reference to certain laws regarding CME requirements: R.C. 4731.281, Ohio Administrative Code Section [Rule] 4731-10-02; and Rule 4731-10-08.

On March 31, 2010, Dr. McClellan submitted a hearing request.

Appearances

Richard Cordray, Attorney General, by Melinda Snyder, Assistant Attorney General, on behalf of the State of Ohio. Robert J. Dawson, Esq., for the Respondent.

Hearing Date: August 24, 2010

**SUMMARY OF THE EVIDENCE**

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

### **Background**

1. Michael M. McClellan, M.D., received his medical degree in 1988 from the University of Cincinnati College of Medicine. In 1989, the Board granted him a license to practice allopathic medicine and surgery in Ohio under certificate number 35.058680. (State of Ohio eLicense Center at <<https://license.ohio.gov/lookup/default.asp?division=78>>)
2. Dr. McClellan has practiced internal medicine in Cincinnati for 21 years. From 1991 through May 2008, he practiced with seven other internists as Hyde Park Internists. One of his partners was Michael Maeder, M.D. (Tr. at 9, 56)
3. Dr. McClellan testified that he and several other physicians decided to form a new practice group, Hyde Park Medical Associates, and the new practice split from Dr. Maeder's practice in May 2008. Dr. McClellan testified that his move to the new medical office took place on May 28, 2008. (Tr. at 95-96)
4. With regard to CME, Dr. McClellan testified that, having practiced in Ohio for 21 years, he has completed the biennial renewal process about ten times. He testified that he knows he must complete 100 hours of CME every two years and that at least 40 of those hours must be in Category 1. (Tr. at 9-11)

### **The 2008 Renewal Application**

5. On February 21, 2008, Dr. McClellan submitted an on-line application to renew his medical license, which was due to expire in July 2008. (St. Ex. 1, 2A) Lengthy instructions were provided regarding the various fields in the renewal questionnaire. With regard to the CME requirements, the instructions state: "To apply for this renewal, you must have completed 100 hours of continuing medical education during your most recent CME period as described in your renewal notice." (St. Ex. 2B)
6. When completing the questionnaire, Dr. McClellan answered "Yes" when asked "Have you met the above CME requirements for your license?" (St. Ex. 1A, Tr. at 12)

### **Audit - CME Period ending April 1, 2008**

7. By letter dated February 12, 2009, the Board notified Dr. McClellan that he had been randomly selected for an audit of his CME compliance for the two-year CME cycle ending April 1, 2008. The Board stated that Dr. McClellan, upon renewing his license, had certified that he had completed the requisite hours of CME during the period of April 2, 2006 through April 1, 2008. (St. Ex. 3, Tr. at 13) In addition, the Board stated that, within three weeks, Dr. McClellan must demonstrate that he had completed at least 100 CME hours of combined Category 1 and Category 2. The Board stated that Dr. McClellan must provide documentation that he had actually completed at least 40 hours of Category 1 CME but that documentation was not required for Category 2 hours. (St. Ex. 3)

8. In a letter dated March 5, 2009, the Board granted Dr. McClellan's request for more time to submit the required documentation. The Board approved an extension of time to March 26, 2010, for Dr. McClellan to submit a log of CME activities together with documentation of the Category 1 hours for the period ending in April 2008. (St. Ex. 5; Tr. at 13)
9. In a letter to the Board dated March 24, 2009, which was received by the Board on March 26, 2009, Dr. McClellan stated:

Thank you for your extension of time to submit my CME documentation. As I mentioned, I have moved my office within the last year and my CME folder and certificates were lost. I have tried to reproduce the files, but unfortunately my Category 1 level credits which I have been able to find only total 24.

In addition, I have earned more than 20 Category 1 credits through Up to Date, Inc. This is an online program which was shared at my previous office under the name of one of my partners, Michael Maeder, MD. There is not a specific identifier to my name and license on this program. I cannot retroactively access the programs which I completed on Up to Date at this time.

I have enclosed a copy of the documentation that I have been able to recover. \* \* \*

(St. Ex. 4)

#### **Testimony from the Board's CME & Renewal Assistant**

10. In May 2009, Dr. McClellan submitted additional certificates of CME activities to Liz Hawk, the Board's CME & Renewal Assistant. (St. Ex. 7) Ms. Hawk testified that Dr. McClellan has submitted satisfactory documentation for a total of 26 hours of Category 1 CME for the two-year cycle ending April 1, 2008. (Tr. at 46-49, 101; St. Exs. 6-7)
11. Further, Ms. Hawk testified that, with regard to the subsequent CME cycle ending in April 2010 (following the CME cycle at issue here), Dr. McClellan submitted documentation of 75 hours of Category 1 CME. According to Ms. Hawk's testimony, the documents submitted by Dr. McClellan demonstrate enough Category 1 hours to make up the deficiency for the cycle ending in April 2008, with enough additional hours to satisfy the Category 1 requirement for the CME cycle ending in April 2010. (Tr. at 48-50)

#### **Additional Evidence**

12. During the hearing, Dr. McClellan provided further testimony regarding the move of his medical practice in 2008 and his inability to provide CME certificates to the Board in 2009. First, he explained that, on May 28, 2008, Hyde Park Medical Associates separated from Hyde Park Internists and became a new practice organization, moving to a new location. He stated that all their "equipment and records and files and everything was loaded into moving trucks

and brought to the new location,” and that, in the move, his CME file “was gone.”

Dr. McClellan stated that, when he received the audit notice from the Board, he could not find the file. He stated that he contacted CME providers to obtain replacement certificates. (Tr. at 95-96; St. Ex. 4)

13. In addition, Dr. McClellan testified that he had also participated in substantial hours of Category 1 CME by doing research using an online database, UpToDate Inc., a service that provides information regarding medical diagnosis and treatment, for which Category 1 CME is approved. Dr. McClellan stated that, when he had practiced with Hyde Park Internists prior to May 28, 2008, the group had paid for a subscription to the UpToDate service, and all eight physicians in the group had access to the UpToDate service. He acknowledged, however, that the subscription was held in the name of “Michael Maeder MD.” He agreed that, when he accessed the UpToDate database for research and CME, he accessed the database using Dr. Maeder’s name. Dr. McClellan further stated that he did not keep an independent log of his searches and CME on the UpToDate database that was used by the whole practice. (Tr. at 15-1, 92)
14. Dr. McClellan explained that, when he was informed of the CME audit, he had contacted his former practice and the UpToDate administrator. He testified that he had been informed that the practice had been sold and that the new management had dropped the subscription for UpToDate. He further testified that he had been unable to obtain any record of the CME activities provided to Hyde Park Internists by UpToDate. (Tr. at 62-63)
15. However, Dr. McClellan stated that the subscription was subsequently reactivated, and he was able to obtain computer printouts of the “usage logs” from UpToDate for “Michael Maeder MD.” (Tr. at 63) Dr. McClellan submitted copies of the UpToDate usage logs for several periods:
  - January 3, 2006 through June 30, 2006 (Resp. Ex. G at 7-29);
  - January 1, 2007 through October 28, 2007 (Resp. Ex. G at 30-59);
  - January 2, 2008 through August 24, 2008 (Resp. Ex. G at 61-78);
  - January 7, 2008 to November 19, 2008 (Resp. Ex. G at 60, 79-85); and
  - April 11, 2008 through November 12, 2008 (Resp. Ex. G at 87-91).<sup>1</sup>
16. Dr. McClellan testified that he had gone through the usage logs and marked with an asterisk each CME activity that he had personally completed. (Tr. at 58-59) Although Dr. McClellan acknowledged that all the pages state that the usage logs are for “Michael Maeder MD,” he testified that he had been able to determine that a number of the listed CME activities were “definitely” ones that he had performed. He explained that he was sure about certain CME activities shown on the printouts because he remembered performing certain research activities with regard to specific patients’ diagnoses or treatment. (Tr. at 59-61, 95)

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<sup>1</sup> The CME cycle at issue was from April 2, 2006 through April 1, 2008. Therefore, some of the activities shown on the usage logs are outside the relevant period of time.

17. For example, Dr. McClellan testified that he knew that patient “G.M.” had congenital adrenal hyperplasia and that he had used the UpToDate service to review the medical literature on the current treatment for and management of that problem. (Tr. at 60) Dr. McClellan further testified that even more of the CME activities shown on Dr. Maeder’s usage logs were probably his activities, but he is sure only of the ones he marked with an asterisk, because those searches related to particular patients. (Tr. at 59-61, 69)
18. Dr. McClellan marked the following items on the UpToDate usage logs with a handwritten asterisk, to indicate that he had participated in that activity:

Date	Description of CME Activity	Category 1 CME Credit	Resp. Ex. G at page
4/6/06	high altitude disease in adults	0.050	p. 16
4/7/06	Mastocytosis	0.167	p. 16
5/3/06	Preventive treatment of migraine in adults	0.167	p. 13
5/3/06	Acute treatment of migraine in adults	0.067	p. 13
5/11/06	Overview of congenital adrenal hyperplasia due to CYP21A2 (21-hydroxylase deficiency)	0.050	p. 11
5/11/06	Treatment of congenital adrenal hyperplasia due to CYP21A2 (21-hydroxylase deficiency) in adults	0.033	p. 11
5/11/06	Clinical manifestations & staging of medullary thyroid cancer	0.067	p. 11
5/11/06	Clinical manifestations and diagnosis of multiple endocrine neoplasia type 2	0.050	p. 11
5/12/06	Restless legs syndrome	0.100	p. 11
5/12/06	Organophosphate and carbamate toxicity	0.117	p. 11
5/15/06	Approach to the patient with anal pruritis	0.100	p. 11
5/24/06	Treatment of methicillin-resistant or vancomycin-resistant Staphylococcus aureus infection in adults	0.017	p. 10
6/7/06	Management of the complications of chronic lymphocytic leukemia	0.017	p. 9
6/14/06	Approach to the patient with headache syndromes other than migraine	0.167	p. 8
6/20/06	Microbiology and pathogenesis of tuberculosis	0.017	p. 8
1/8/07	d dimer, Diagnosis of acute pulmonary embolism	0.500	p. 57
3/2/07	Clinical features and diagnosis of male hypogonadism, causes of primary hypogonadism, causes of secondary hypogonadism	0.500	p. 54
3/6/07	Genetics and pathogenesis of Huntington disease	0.500	p. 54
3/14/07	High altitude disease in adults, Diamox	0.500	p. 53
3/30/07	Clinical manifestations and diagnosis of multiple endocrine neoplasia type 2	0.500	p. 52
5/25/07	Melasma, Hydroquinone drug information	0.500	p. 47
7/30/07	Non-hormonal treatment of menopause	0.500	p. 42

Date	Description of CME Activity (contin.)	Category 1 CME	Resp. Ex. G at page
8/6/07	Management of hypertension in pregnancy, Angiotensin converting enzyme inhibitors and receptor blockers in pregnancy, Labetalol drug information, Methyldopa drug information	0.500	p. 41
8/15/07	Idiopathic hyperhidrosis	0.500	p. 40
8/21/07	pseudo gout, Treatment of calcium pyrophosphate crystal deposition disease	0.500	p. 39
8/23/07	Treatment of Sjögrens syndrome	0.500	p. 39
8/27/07	Treatment of resistant depression in adults	0.500	p. 38
8/31/07	Management of anticoagulation before and after elective surgery, Anticoagulation to prevent embolization in atrial fibrillation	0.500	p. 37
9/7/07	Peripheral neuropathy, Overview of polyneuropathy	0.500	p. 37
9/7/07	Treatment of methicillin-resistant or vancomycin-resistant Staphylococcus aureus infection in adults	0.500	36-37
9/14/07	Pharmacologic and surgical treatment of the Raynaud phenomenon, nonpharmacologic therapy for Raynaud phenomenon,	0.500	35-36
9/21/07	abnormal sperm count, evaluation of male infertility, treatment of male infertility, donor insemination.	0.500	p. 35
9/21/07	semen analysis: Intracytoplasmic sperm injection, Evaluation and treatment of male infertility	0.500	34-35 <sup>2</sup>
10/9/07	Verapamil: Drug information	0.500	p. 33
10/18/07	Vancomycin: Drug information. Treatment of antibiotic-associated diarrhea created by Clostridium difficile	0.500	p. 32
10/18/07	Pathogenesis and diagnosis of tinnitus	0.500	p. 32
10/26/07	lupus anticoagulant – Dx of the antiphospholipid syndrome	0.500	p. 31
2/8/08	seminoma, Overview of treatment for testicular germ cell tumors	0.500	p. 73
2/11/08	Clinical presentation and diagnosis of gastrointestinal lymphomas, Management of gastrointestinal lymphomas	0.500	p. 73
2/13/08	Campral, Acamprosate drug information, Treatment of alcohol abuse and dependence	0.500	p. 73
2/13/08	Medical therapy in asymptomatic aortic stenosis	0.500	p. 73
2/25/08	sialadenitis, Salivary gland stones	0.500	p. 72
2/29/08	Glucose intolerance; Diagnosis, prediction and prevention of type 2 diabetes mellitus	0.500	p. 71

<sup>2</sup> A handwritten asterisk has been marked next to this CME activity on the UpToDate list (Resp. Ex. G at 34-35), denoting that Dr. McClellan completed this CME activity. However, this activity was omitted from the Respondent's summary chart set forth at Resp. Ex. G, pages 3-4.

Date	Description of CME Activity (contin.)	Category 1 CME	Resp. Ex. G
3/3/08	Ehlers danlos, Clinical features and diagnosis of thoracic aortic aneurysm	0.500	p. 71
3/17/08	Differential diagnosis of abdominal pain in adults, acute intermittent porphyria	0.500	p. 69
3/20/08	Clinical manifestations and diagnosis of gout, treatment and prevention of recurrent gout	0.500	p. 69
3/27/08	Statins in fatty liver disease, nonalcoholic steatohepatitis	0.500	p. 69

19. The Category 1 CME hours listed above total approximately 17.2 hours. (The Respondent lists a total of 18.686 hours on his chart, Resp. Ex. G, but the difference is not material because the deficiency of Category 1 CME hours in this matter is 14 hours.)
20. The evidence includes additional documents from the UpToDate service, including formal certificates of participation in CME activities, but all the certificates state that "Michael Maeder, MD" was the individual who participated in the educational activities. (Resp. Ex. G at 6, 30, 60, 78, 87)
21. When asked whether he had been concerned that he had done the CME activities under Dr. Maeder's name and would not be able to prove that he had actually completed the CME activities, Dr. McClellan responded: "I guess my feeling was I was doing the work, and I knew that I was taking care of my requirements, and I thought that was what I needed to do." (Tr. at 17-18)
22. Dr. McClellan further testified that he now has his own subscription to UpToDate and prints out a certificate in his own name when he completes a CME activity. (Tr. at 17-18)
23. Dr. McClellan testified that, when he stated on the renewal application that he had completed the required CME, he believed it was true. (Tr. at 68-70, 93)

#### **Testimony of Dr. Maeder**

24. Dr. Maeder testified by telephone from his office in Cincinnati. He confirmed that the UpToDate account had been used by all the physicians in their practice group. Dr. Maeder explained that, before the group was formed, he had purchased an individual subscription to UpToDate in his own name, and that later, when the group was formed, the group took over paying for the subscription, although the account name was not changed to reflect its use by the whole group. That is, he did not obtain a site subscription. Dr. Maeder confirmed that Dr. McClellan had left the group in May 2008, and that the group was subsequently bought by Christ Hospital, which discontinued the UpToDate subscription. Dr. Maeder stated that he had later re-subscribed on his own. (Tr. at 74-83)

25. Dr. Maeder testified that he and other members of the practice used UpToDate to perform the searches that are reflected in the usage logs. (Tr. at 84-86) Dr. Maeder stated that he knew that he himself had not performed certain searches because he specializes in endocrinology, and many of the searches are unrelated to endocrinology. Dr. Maeder believes that Dr. McClellan very likely performed more than 18 hours of CME using the UpToDate service during the period at issue. (Tr. at 88-90)
26. Dr. Maeder acknowledged that he did not have personal, first-hand knowledge that Dr. McClellan had actually performed each of the CME activities through UpToDate that are listed by Dr. McClellan in his chart (which is titled "Exhibit A" to Dr. Maeder's affidavit, which is at the beginning of Respondent's Exhibit G). However, Dr. Maeder explained that, although he does not know which searches were performed by Dr. McClellan, he knew that Dr. McClellan did searches regularly when they worked at the same practice. (Tr. at 88-90)
27. Further, Dr. Maeder testified that he had found Dr. McClellan to be "extremely trustworthy." Dr. Maeder stated: "I worked with him a long time, have a lot of respect for Dr. McClellan. I know for a fact that he looked up more information than what you provided for me here [on the list]. He was always searching for information in regard to his patients, so I have no – I know he did searches here." (Tr. at 78, 90)

### SELECTED STATUTES AND RULES

R.C. 4731.281 provides in part:

(A) On or before the deadline \* \* \* for renewal of a certificate of registration, each person holding a certificate under this chapter to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery shall certify to the state medical board that in the preceding two years the person has completed one hundred hours of continuing medical education. The certification shall be made upon the application for biennial registration submitted pursuant to division (B) of this section. \* \* \* The board may require a random sample of persons holding a certificate to practice under this chapter to submit materials documenting completion of the continuing medical education requirement during the preceding registration period, but this provision shall not limit the board's authority to investigate pursuant to section 4731.22 of the Revised Code.

\* \* \*

(E) If an individual certifies completion of the number of hours and type of continuing medical education required to receive a certificate of registration or reinstatement of a certificate to practice, and the board finds through the random samples it conducts under this section or through any other means that the individual did not complete the requisite continuing medical education, the board may impose a civil penalty of not more than five thousand dollars. \* \* \* A civil penalty imposed under this division may be in addition to or in lieu of any other action the board may take under section 4731.22 of the Revised Code. \* \* \*

In addition, Rule 4731-10-02, provides in part:

**Requisite hours of continuing medical education for license renewal or reinstatement**

(A) The respective CME program requirements \* \* \* shall consist of two categories, category 1 and category 2.

\* \* \*

(2) In a two-year CME period, a licensee shall be required to earn a total of one hundred hours of CME, of which a minimum of forty hours shall be category 1 \* \* \*.

(3) When undertaking a CME program, a licensee shall be responsible for ascertaining from the sponsor or co-sponsor whether the CME program will be credited toward the category 1 or category 2 requirement.

\* \* \*

(C) If a licensee has not completed the requisite hours of CME, a licensee is not eligible for license renewal or license reinstatement until such time as the requisite hours have been completed. \* \* \*

Further, Rule 4731-10-08 provides in part:

**Evidence of continuing medical education**

(A) Each applicant for license renewal or license reinstatement shall certify that the applicant has completed the requisite hours of CME since the start of the CME period.

(B) The board may select applications for verification that all CME requirements have been met. Licensees whose applications are selected shall submit additional documentation of compliance with CME requirements as the board may require. Failure to submit the additional documents shall constitute a violation of section 4731.281 of the Revised Code and section 4731.22 of the Revised Code.

(C) Applicants and licensees have a continuing **obligation to maintain detailed records of CME hours earned**. Each applicant or licensee **shall be responsible for and shall retain written verification** obtained from the sponsoring entity of attendance at category 1 CME programs.

**Written verification shall include** a description of the CME activity, the location of the CME activity, the dates of attendance, the hours of each CME activity and the category of CME.

Each applicant or licensee shall retain written documentation of category 2 CME completed during the CME period. **Records of all CME undertaken shall be retained** by the licensee for two years after the end of the CME period **and shall be made available to the board upon request**.

(Rule 4731-10-08) (Emphasis added, and blank lines inserted for ease of reading)

### FINDINGS OF FACT

1. On February 21, 2008, Michael M. McClellan, M.D., submitted his online renewal application for the biennial registration of his certificate to practice medicine and surgery in Ohio. At that time, his certificate was due to expire on July 1, 2008. As part of his renewal application in 2008, Dr. McClellan certified that he had met the CME requirements for licensure.

For his license renewal in 2008, the period for which Dr. McClellan certified completion of the required CME was the two-year period from April 2, 2006 through April 1, 2008.

2. In a letter dated February 12, 2009, the Board notified Dr. McClellan that he was required to complete and submit a log demonstrating that he had completed at least 100 hours of CME during the CME cycle ending April 1, 2008, and to provide documentation that he had completed at least 40 hours of Category 1 CME credits.

In a letter dated March 5, 2009, the Board granted Dr. McClellan's request for an extension of time to file his CME documentation. The Board extended the time to March 26, 2009.

3. On March 26, 2010, Dr. McClellan submitted documentation for 24 credits of Category 1 CME. He later submitted additional documentation, for a total of 26 hours of Category 1 CME for the two-year period ending on April 1, 2008. He failed to provide the required documentation of 40 hours of Category 1 CME for the subject period.

### CONCLUSIONS OF LAW

1. Dr. McClellan's acts, conduct, and/or omissions, as set forth above in Findings of Fact 1 through 3, individually and/or collectively, constitute "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 language is used in R.C. 4731.22(B)(20), with reference to: Ohio Administrative Code Section [Rule] 4731-10-08.

Dr. McClellan failed to comply with one or more of the following obligations set forth in Rule 4731-10-08: to keep detailed records of CME hours earned, to retain the required written verification of attendance obtained from sponsors of Category 1 CME programs, to retain records of all CME undertaken for two years after the end of the CME period, and to make the records available to the Board upon request.

2. Dr. McClellan's acts, conduct, and/or omissions, as set forth above in Findings of Fact 1 through 3, individually and/or collectively, constitute "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 language is used in R.C. 4731.22(B)(20), with reference to: Rule 4731-10-02.

Dr. McClellan did not provide the required verification to establish that he had completed 40 hours of Category 1 CME for the two-year period ending April 1, 2008.

3. The credible evidence does not establish that the acts, conduct, and/or omissions of Michael McClellan, as set forth above in Findings of Fact 1 through 3, individually and/or collectively, constitute “[m]aking a false, fraudulent, deceptive, or misleading statement \* \* \* in relation to the practice of medicine and surgery \* \* \* or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,” as that language is used in R.C. 4731.22(B)(5).

Although Dr. McClellan cannot be given credit under the CME laws in Ohio for the activities for which he lacks acceptable written verification from the CME sponsor, the testimony of Dr. McClellan was sufficiently credible to convince the Hearing Examiner that Dr. McClellan did not knowingly or intentionally make a false, fraudulent, deceptive or misleading statement to the Board when completing his 2008 renewal application.

4. Pursuant to R.C. 4731.281, the Hearing Examiner concludes that, based on Dr. McClellan’s certification of his “completion of the number of hours and type of continuing medical education required to receive a certificate of registration or reinstatement of a certificate to practice,” and based on the determination that he “did not complete the requisite continuing medical education,” the Board may therefore “impose a civil penalty of not more than five thousand dollars” and that this penalty “may be in addition to or in lieu of any other action the board may take under section 4731.22 of the Revised Code.”

#### **Analysis**

It is clear that Dr. McClellan failed to maintain acceptable records to verify Category 1 CME as required and failed to make available to the Board the proper verification documents for a portion of his required hours of Category 1 CME. Dr. McClellan provided the proper verification for only 26 hours of Category 1 CME.

The Hearing Examiner believes that the Board should not give credit for Category 1 CME hours when the physician cannot provide a reliable written verification from the sponsoring CME provider, except in rare circumstances as noted below. As a matter of policy, it is essential for the Board’s orderly and efficient administration of CME verification that the proof of compliance must be a written verification from the sponsoring organization rather than testimonial evidence from licensees and their co-workers.

The Hearing Examiner does *not* suggest that there can never be a situation in which a licensee, through no fault of his own, cannot obtain a certificate from the activity’s sponsor. However, that is not the situation here. Dr. McClellan could have obtained and retained acceptable documentation of his CME activities. With regard to any CME performed through the UpToDate service, Dr. McClellan knew that he had been accessing the online service using someone else’s name. Dr. McClellan chose to use that service when he had reason to know that UpToDate would never be able to provide verification that he, Dr. McClellan, had completed any CME activity through the online service. Therefore, in this case, the Hearing Examiner

recommends against accepting testimonial evidence for the purpose of demonstrating that the CME credits were actually earned.

The amount of the recommended fine is based on the fact that Dr. McClellan failed to demonstrate completion of 14 of the required 40 hours of Category 1 CME, which is 35% of the total requirement. Therefore, the proposed fine is 35% of the total that could be assessed. Under the circumstances presented in this matter, the Hearing Examiner believes that this fine, together with several future audits, constitutes a sufficient penalty, and that it is not necessary to impose a reprimand or a period of suspension.

### **PROPOSED ORDER**

It is hereby ORDERED that:

- A. **FINE:** Michael M. McClellan, M.D., shall pay a FINE of \$ 1,750.00 to the State Medical Board of Ohio. This fine shall be paid no later than thirty days after the Board's mailing of notification of approval of this Order.
- B. **DOCUMENTATION OF CME:** Dr. McClellan shall supply documentation acceptable to the Board of satisfactory completion of the requisite number of CME credits for the CME period ending in April 2010. The CME credits applied toward satisfying the CME requirements for the cycle ending in April 2010 shall not include any credits applied to make up the deficiency for the CME cycle ending in April 2008. The documentation for the CME period ending in April 2010 shall be due in the Board's offices within thirty days of the effective date of this Order, unless otherwise determined by the Board.

Moreover, Dr. McClellan shall supply documentation acceptable to the Board of satisfactory completion of the requisite number of CME credits for two additional CME periods thereafter. Documentation for the two additional CME periods 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 WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER**

1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. McClellan shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training, and the chief of staff at each hospital or healthcare center where he has privileges or appointments.

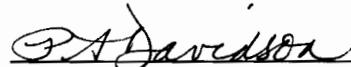
In the event that Dr. McClellan provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency

medical services provider in Ohio, Dr. McClellan shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

2. **Required Reporting To Other Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. McClellan shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate.
3. **Required Documentation of the Reporting Required by Paragraph C:** Dr. McClellan shall provide the Board with **one** of the following documents as proof of each required notification within 30 days of the date of each such notification: (1) the return receipt of certified mail within 30 days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

D. **VIOLATION OF ORDER:** If Dr. McClellan 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 immediately upon the mailing of the notification of approval by the Board.

  
\_\_\_\_\_  
Patricia A. Davidson  
Hearing Examiner

# State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.  
Executive Director

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## EXCERPT FROM THE DRAFT MINUTES OF OCTOBER 13, 2010

### REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Suppan announced that the Board would now consider the Reports and Recommendations, and the Proposed Findings and Proposed Order appearing on its agenda.

Dr. Suppan asked whether each member of the Board had received, read and considered the hearing records; the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: Peter William S. Grigg, M.D.; Michael M. McClellan, M.D.; Justin Fredric Weiss, M.D.; Donald D. Woodard, M.D.; Taira Lynn Woodroffe, M.D.; and David K. Zipfel, M.D. A roll call was taken:

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Dr. Talmage	- aye
	Mr. Morris	- aye
	Dr. Ramprasad	- aye

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

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Dr. Talmage	- aye
	Mr. Morris	- aye
	Dr. Ramprasad	- aye

Dr. Suppan noted that, in accordance with the provision in section 4731.22(F)(2), Ohio 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. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member. However, Dr. Talmage and Mr. Albert

may vote on the matter of Taira Lynn Woodroffe, M.D., as that case is not disciplinary in nature and only involves the Respondent's qualifications for licensure.

Dr. Suppan reminded all parties that no oral motions may be made during these proceedings.

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

.....  
MICHAEL M. MCCLELLAN, M.D.

Dr. Suppan directed the Board's attention to the matter of Michael M. McClellan, M.D. She advised that objections were filed to Hearing Examiner Davidson's Report and Recommendation and were previously distributed to the Board members.

Dr. Suppan continued that a request to address the Board has been timely filed on behalf of Dr. McClellan. Five minutes would be allowed for that address.

Dr. McClellan was accompanied by his attorney, Robert Dawson.

Mr. Dawson stated that the case involving Dr. McClellan is essentially a bookkeeping error. Mr. Dawson stated that the hearing examiner had opined that Dr. McClellan has met and exceeded the Continuing Medical Education (CME) requirements for the 2006-2008 period, and the only issue was his ability to provide all of the certificates. Mr. Dawson stated that Dr. McClellan was unable to provide all of the certificates for two reasons. First, Dr. McClellan has moved and some of his documents were lost. Second, some of the certificates were in an electronic format on an online system which Dr. McClellan was unable to produce certificates for.

Mr. Dawson continued that the hearing examiner found that Dr. McClellan had committed no fraud and was truthful when he indicated he had completed all of his CME hours on his renewal application. Mr. Dawson pointed out that Liz Hawk, the Board staff member who oversees CME matters, testified that Dr. McClellan is in full compliance and has caught up with his CME requirements above and beyond what he was unable to certify.

Mr. Dawson agreed with the hearing examiner that this case warrants leniency. Mr. Dawson stated that Dr. McClellan had committed a minor infraction and there had been no danger to the public or to any patients due to his lapse in record-keeping. Mr. Dawson asked that the Board to impose the minimum fine of \$1,000.00 instead of the fine of \$1,750.00 recommended by the hearing examiner. Mr. Dawson also asked that Dr. McClellan not be required to report the Board's action to all of his employers.

Dr. McClellan stated that since he became a physician 22 years ago, he has not missed a single day of scheduled work. Dr. McClellan stated that he is thankful for the opportunity to do good work and he

strives to do the best for each of his patients. Dr. McClellan stated that all physicians feel the pressure and the need to be perfect and that any mistake is not acceptable. Dr. McClellan stated that he tries to be perfect every day, but we are all human. Dr. McClellan also tries to have integrity in the way he lives his life professionally and personally. Dr. McClellan stated that he is somewhat embarrassed to appear before the Board because, through a set of circumstances, things were not done perfectly.

Dr. McClellan stated that he was unable to produce all of the certificates that he earned in the CME cycle 2006-2008. Dr. McClellan assured the Board that he, in fact, completed the necessary work to fulfill his CME requirements.

Dr. Suppan asked if the Assistant Attorney General would like to respond. Ms. Snyder stated that she would like to respond.

Ms. Snyder stated that Dr. McClellan is unable to provide written verification for fourteen of the 40 category I CME hours required for the 2006-2008 CME cycle. Ms. Snyder stated that Dr. McClellan is asking the Board to give him credit for the fourteen hours that he allegedly completed through another physician's name in an internet search engine called Up To Date. Ms. Snyder characterized Up To Date as "Wikipedia for the medical world." When a physician puts in a research request into Up To Date, the physician gets the desired information and CME credit as well. Dr. McClellan and seven other physicians apparently used another physician's account on Up To Date, and therefore there is no way of knowing what searches were conducted by Dr. McClellan and which were conducted by one of the other physicians.

Ms. Snyder stated that the Board has a rule which requires physicians to keep an independent log of CME hours. The purpose of the rule is to prevent predictaments like Dr. McClellan's, in which a physician has to reconstruct what he or she did years ago. Therefore, the State supports the hearing examiner's Proposed Order.

Ms. Snyder noted that, in Dr. McClellan's objections, he asks the Board to find that he was in compliance for the CME cycle ending in April 2010. Ms. Snyder stated that the 2008-2010 CME cycle is not an issue before the Board today; the only issue currently before the Board is whether Dr. McClellan was in compliance with the 2006-2008 CME cycle.

**Dr. Madia moved to approve and confirm Ms. Davidson's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Michael M. McClellan, M.D. Mr. Hairston seconded the motion.**

Dr. Suppan stated that she would now entertain discussion in the above matter.

Dr. Mahajan stated that the hearing examiner did an excellent job analyzing the events regarding this case. Dr. McClellan had signed into Up To Date under the name of his partner, Michael Maeder, M.D. Due to a relocation of the practice, some records were lost.

Dr. Mahajan stated that a group of physicians can subscribe to Up To Date, but each physician should get a

separate number so the system can document who is signed on and is entitled to CME credits. For whatever reason, the physicians in Dr. McClellan's group did not get individual numbers. Dr. Mahajan opined that the Board cannot take Dr. McClellan's word and analysis that he completed the CME hours that he claimed he completed without documentation, even though Dr. Maeder sent a letter to the Board supporting Dr. McClellan's claims.

Dr. Mahajan stated that the hearing examiner recommended a fine of \$1,750.00, which is 35% of the maximum fine of \$5,000.00, because Dr. McClellan's missing fourteen hours is 35% of the 40 hours required. Dr. Mahajan opined that this fine is very lenient, but stated he would not object to that amount.

Dr. Mahajan asked for input from the other Board members.

Dr. Stephens opined that Dr. McClellan should have the maximum fine of \$5,000.00. Dr. Stephens stated that, contrary to Mr. Dawson's statement, the failure of a physician to obtain the required CME hours is a major infraction. Dr. Stephens stated that CMEs ensure that physicians stay current on medical knowledge and treatments. For example, a physician could learn in a CME that a commonly-used treatment has been found to actually be harmful to patients. Therefore, not fulfilling the CME requirements can put patients and the public in danger. Dr. Stephens stated that each physician is responsible for his or her own paperwork and certificates. Dr. Stephens opined that this is more than just a bookkeeping error and that Dr. McClellan deserved the maximum penalty allowed.

**Dr. Stephens moved to amend the Proposed Order to state that Dr. McClellan shall pay a fine of \$5,000.00. Dr. Strafford seconded the motion.** A vote was taken:

ROLL CALL:	Dr. Strafford	- nay
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- nay
	Dr. Suppan	- nay
	Dr. Madia	- nay
	Dr. Talmage	- abstain
	Mr. Morris	- aye
	Dr. Ramprasad	- abstain

The proposed amendment did not carry.

Dr. Suppan called for a vote on Dr. Madia's motion to approve and confirm the Proposed Order:

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- nay
	Dr. Stephens	- nay
	Dr. Mahajan	- aye

Dr. Suppan	- aye
Dr. Madia	- aye
Dr. Talmage	- abstain
Mr. Morris	- aye
Dr. Ramprasad	- abstain

The motion did not carry.

Dr. Madia stated that he is not personally opposed to fining Dr. McClellan \$5,000.00. However, Dr. Madia noted that in the past, physicians who did not meet their CME requirements had a fine which was prorated based on the number of deficient CME hours.

Dr. Stephens stated that the Board cannot put a price on the welfare of patients. Dr. Stephens stated that Dr. McClellan's failure to attend a CME could have resulted in the death of a patient.

**Mr. Morris moved that the Board adopt the Hearing Examiner's Findings of Fact, Conclusions of Law, and Proposed Order, with the exception that the fine to be paid by Dr. McClellan be \$3,000.00. Dr. Madia seconded the motion.**

Dr. Suppan stated that she would now entertain discussion of the above motion.

Dr. Stephens asked why a \$5,000.00 fine is not acceptable in this case. Dr. Mahajan opined that Dr. McClellan has learned his lesson and will not be deficient in CME hours in the future. Dr. Mahajan also noted that Dr. McClellan is a general practitioner starting in a new office, and opined that fining him the maximum amount may be excessive. Dr. Stephens opined that Dr. McClellan has not learned his lesson and pointed out that his attorney claimed this was merely a bookkeeping issue. Dr. Madia opined that whatever the amount of the fine imposed on Dr. McClellan, it will not make much difference on his lifestyle.

A vote was taken on Mr. Morris' motion:

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- nay
	Dr. Mahajan	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Dr. Talmage	- abstain
	Mr. Morris	- aye
	Dr. Ramprasad	- abstain

The motion carried.

# State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.  
Executive Director

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March 10, 2010

Case number: 10-CRF-020

Michael M. McClellan, M.D.  
5553 Wasigo Drive  
Cincinnati, Ohio 45230

Dear Doctor McClellan:

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 reprimand you or place you on probation for one or more of the following reasons:

- (1) In your renewal application due on or about July 1, 2008, for the biennial registration of your certificate to practice medicine and surgery for the July 2, 2008 – July 1, 2010 period, you certified that during the April 2, 2006 – April 1, 2008 Continuing Medical Education [CME] cycle, you had completed or would complete the requisite hours of CME as required by Section 4731.281, Ohio Revised Code.
- (2) By certified mail dated February 12, 2009, 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 April 2, 2006 – April 1, 2008 CME cycle, and to provide documentation that, in fact, you had completed at least forty hours of Category 1 CME credits. Despite certifying on the aforementioned renewal application that you had completed all CME requirements, you submitted documentation of only 22 hours of Category 1 CME credits.

On or about February 19, 2009, you requested an extension to submit your CME because your office relocated and your certificates were misplaced. By certified mail dated March 5, 2009, the Board approved your request for an extension to provide proof of your CME by March 26, 2009. In your March 24, 2009, response to the Board, you acknowledged that you did not fulfill the CME requirements.

*Mailed 3-11-10*

Your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,” as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute “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.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute “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: Rule 4731-10-02, Ohio Administrative Code.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute “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: Rule 4731-10-08, Ohio Administrative 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 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

Michael M. McClellan, M.D.

Page 3

revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand you 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 that reads "Lance A. Talmage, M.D." with a small "RW" written below the name.

Lance A. Talmage, M.D.  
Secretary

LAT/LLS/fib  
Enclosures

CERTIFIED MAIL #91 7108 2133 3936 3069 5290  
RETURN RECEIPT REQUESTED