

# State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.  
Executive Director

(614) 466-3934  
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April 13, 2011

David Allen McMaken, M.D.  
462 Lockmead Drive  
Pataskala, OH 43062-7327

RE: Case No. 10-CRF-086

Dear Doctor McMaken:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Danielle R. Blue, 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, 2011, 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 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 3938 3021 3607  
RETURN RECEIPT REQUESTED

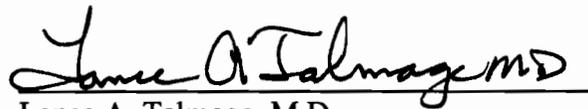
CC: James M. McGovern, Esq.  
CERTIFIED MAIL NO. 91 7108 2133 3938 3021 3614  
RETURN RECEIPT REQUESTED

*Mailed 4/14/11*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Danielle R. Blue, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 13, 2011, 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 David Allen McMaken, M.D., Case No. 10-CRF-086, 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, 2011

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

\*

\*

CASE NO. 10-CRF-086

DAVID ALLEN MCMAKEN, M.D.

\*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on April 13, 2011.

Upon the Report and Recommendation of Danielle R. Blue, 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. **PERMANENT REVOCATION, STAYED:** The certificate of David Allen McMaken, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, subject to the terms and conditions set forth below.
- B. **SUSPENSION OF CERTIFICATE; 30-DAY DELAY:** Commencing on the thirty-first day following the date on which this Order becomes effective, the certificate of Dr. McMaken to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than 90 days.
- C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. McMaken's certificate to practice until all of the following minimum requirements are met:
  - 1. **Application for Reinstatement or Restoration:** Dr. McMaken shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.

2. **Document Completion of CME to be Applied Retroactively to Two Previous CME Acquisition Periods:** Dr. McMaken shall provide documentation acceptable to the Board of satisfactory completion of 200 hours of Continuing Medical Education [CME], at least 80 of which shall be in Category I, to be applied retroactively to the CME requirements for the periods April 2, 2006 through April 1, 2008, and April 2, 2008 through April 1, 2010. It will be Dr. McMaken's responsibility to work with appropriate Board staff to ascertain what will be considered satisfactory documentation and to obtain the same. Dr. McMaken shall receive credit for any such CME completed, and documented in a manner acceptable to the Board, prior to the effective date of this Order.
  3. **Document Completion of CME During Suspension:** Dr. McMaken shall supply documentation acceptable to the Board of satisfactory completion of 100 hours of approved CME, at least 40 hours of which shall be in Category I, for each CME period, if any, during which Dr. McMaken's certificate remains suspended.
  4. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. McMaken has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.
  5. **Effect of Further Board Action During Suspension:** In the event that the Board initiates future formal proceedings against Dr. McMaken prior to his reinstatement, Dr. McMaken shall be ineligible for reinstatement until such future proceedings have been fully resolved by the Board.
- D. **PROBATION:** Upon reinstatement or restoration, Dr. McMaken's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
1. **Obey the Law:** Dr. McMaken shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
  2. **Declarations of Compliance:** Dr. McMaken shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which Dr. McMaken's certificate is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. **Personal Appearances:** Dr. McMaken shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. McMaken's certificate is restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances shall occur every six months thereafter, and/or as otherwise directed by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
  4. **Documentation of CME:** Subsequent to reinstatement or restoration, Dr. McMaken shall supply documentation acceptable to the Board of satisfactory completion of the requisite number of CME credits for the CME period in effect at the time of his reinstatement. These CME credits shall be in addition to the 200 credits which Dr. McMaken completed during or prior to his suspension and which have been accredited to the 2006 – 2008, and 2008 – 2010, CME periods. Moreover, Dr. McMaken shall supply documentation acceptable to the Board of satisfactory completion of the requisite number of CME credits for two additional CME periods thereafter. This documentation shall be due in the Board's offices within 30 days of the conclusion of each CME period, unless otherwise determined by the Board.
  5. **Tolling of Probationary Period While Out of Compliance:** In the event Dr. McMaken is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. McMaken's certificate will be fully restored.
- F. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. McMaken violates the terms of 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.
- G. **SUPERSEDE PREVIOUS BOARD ORDER:** Upon becoming effective, this Order shall supersede the terms and conditions set forth in the Board's January 10, 2007, Order.
- H. **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. McMaken 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. Further, Dr. McMaken shall promptly provide a copy of this Order to all employers or entities with which he contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or healthcare center where he applies for or obtains privileges or appointments.

In the event that Dr. McMaken provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

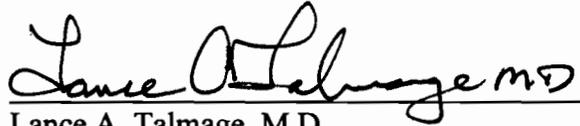
This requirement shall continue until Dr. McMaken receives from the Board written notification of the successful completion of his probation.

2. **Required Reporting to Other State Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. McMaken 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 professional license or certificate. Also, Dr. McMaken shall provide a copy of this Order at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue until Dr. McMaken receives from the Board written notification of the successful completion of his probation.

3. **Required Documentation of the Reporting Required by Paragraph H:** Dr. McMaken shall provide this Board with **one** of the following documents as proof of each required notification within 30 days of the date of each such notification: (a) the return receipt of certified mail within 30 days of receiving that return receipt, (b) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (c) 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 (d) 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.

**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)

April 13, 2011  
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

**In the Matter of** \*  
**David Allen McMaken, M.D.** \*  
**Respondent.** \*  
**Case No. 10-CRF-086**  
**Hearing Examiner Blue**

**REPORT AND RECOMMENDATION**Basis for Hearing:

By letter dated July 14, 2010, the State Medical Board of Ohio [Board] notified David Allen McMaken, M.D., that it intended to determine whether to take disciplinary action against his certificate to practice medicine and surgery in Ohio based on his alleged violations of a 2007 Order issued by the Board. The Board alleged, among other things, that Dr. McMaken failed to supply the Board with documentation showing satisfactory completion of Continuing Medical Education [CME] for the 2006 – 2008 CME period, beginning April 2, 2006 and ending April 1, 2008, as well as the 2008 – 2010 CME period, beginning April 2, 2008 and ending April 1, 2010. (State Exhibit [St. Ex.] 1A)

The Board charged that the above-mentioned acts, conduct, and/or omissions, individually and/or collectively, constitute a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as set forth in Ohio Revised Code Section [R.C] 4731.22(B)(15). (St. Ex. 1A)

The Board received Dr. McMaken’s request for a hearing on August 6, 2010. (St. Ex. 1B)

Appearances:

Mike DeWine, Attorney General of Ohio, and Kyle C. Wilcox, Assistant Attorney General, for the State of Ohio. James M. McGovern, Esq., on behalf of Dr. McMaken.

Hearing Date: February 4, 2011

**PROCEDURAL MATTERS**

The hearing record was held open for 60 days to allow the Respondent to submit additional evidence. On March 7, 2011, the Respondent submitted documentation of 79.25 hours of Category I CME credits, which was marked as Respondent’s Exhibit A. The Respondent also submitted an email attesting that he had completed 60 hours of Category II CME during each relevant CME period, which was marked as Respondent’s Exhibit B. The State had no

objections. Respondent's Exhibits A and B were admitted into evidence. The hearing record closed on March 7, 2011.

### SUMMARY OF THE EVIDENCE

All evidence admitted in this matter, even if not specifically mentioned, was thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

#### Background Information

1. David Allen McMaken, M.D., was initially licensed to practice medicine in Ohio in 1990. He currently holds an active license to practice medicine and surgery in Ohio, license number 35.060233. He testified that he is employed by Visiting Physicians Association which provides medical care to "people who are homebound by Medicare criteria, either by age, debility or injury." (Ohio eLicense Center at <https://license.ohio.gov/lookup>, query on February 18, 2011; Hearing Transcript [Tr.] at 20-21)

#### 2007 Board Order

2. On or about January 10, 2007, the Board issued an Order [2007 Board Order]. The 2007 Board Order, among other things, reprimanded Dr. McMaken; ordered him to pay a fine of \$5,000; required him to provide documentation showing satisfactory of completion of the requisite hours of Continuing Medical Education [CME] for the 2006 – 2008 CME period, the 2008 – 2010 CME period, and the 2010 – 2012 CME period; and required him to provide a copy of the 2007 Board Order to his employers and state licensing authorities. (St. Ex. 2)
3. The 2007 Board Order was based on a finding that Dr. McMaken had failed to complete the requisite 40 hours of Category I CME during the 2002 – 2004 CME period and during the 2004 – 2006 CME period. The 2007 Board Order was also based on a finding that Dr. McMaken had made a fraudulent statement when he certified on his 2004 application for renewal that he had successfully completed all required CME when actually he had earned 0 hours of Category I CME during the 2002 – 2004 CME. (St. Ex. 2)
4. The 2007 Board Order included the following provision in paragraph (C):

Dr. McMaken shall provide acceptable documentation of satisfactory completion of the requisite hours of Continuing Medical Education for the 2006 – 2008 CME period, as well as the two additional CME periods thereafter. **This documentation shall be due in the Board's offices within 30 days of the conclusion of each CME period, unless otherwise determined by the Board.**

(St. Ex. 2; Emphasis added)

**Board Letters to Dr. McMaken**

5. On January 16, 2007, the Board sent a certified letter to Dr. McMaken outlining the requirements of the 2007 Board Order. Kay L. Rieve, the Board's Administrator Officer for Licensure and Renewal, testified that the Board received a return receipt card from the United States Postal Service showing that Dr. McMaken had signed the card. The letter stated in pertinent part:

This is further pertaining to your Board Order, which became effective on January 10, 2007.

Please be advised that you must submit CME on or before May 1, 2008 for the April 2, 2006 to April 1, 2008 acquisition period. You will then be required to submit documentation for the April 2, 2008 to April 1, 2010 and April 2, 2010 to April 1, 2012 CME periods.

(St. Ex. 3 at 2-3; Tr. at 15)

6. On August 25, 2009, the Board sent a follow-up letter by regular mail to Dr. McMaken requiring him to submit his CME documentation pursuant to the 2007 Board Order. The letter stated in pertinent part:

This is pertaining to your Board Order, which became effective on January 10, 2007.

Please be advised that pursuant to your Board Order, you were to submit CME on or before May 1, 2008 for the April 2, 2006 to April 1, 2008 acquisition period. As of the above date, I have not received your CME documentation.

You must submit the above CME documentation to the Board by September 15, 2009 to the attention of Liz Hawk, to avoid any further action being taken by this Board.

(St. Ex. 3 at 4; Tr. at 16)

7. On January 5, 2010, the Board sent a certified letter to Dr. McMaken asking him to submit his CME documentation pursuant to the 2007 Board Order. The letter stated in pertinent part:

This is in regard to our recent request for Continuing Medical Education (CME) audit material and your submission of same.

The items checked below need to be submitted before we can proceed with the audit of your CME.

\* \* \*

X 5. You will need to submit documentation of having completed your 100-hour requirement for CME.

\* \* \*

X 9. Other: Regarding the audit letter from Debra L. Jones, 8/25/09 you must submit CME's for 4/2/06 through 4/01/08, due 9/15/09 and to date no documentation has been received. Please submit ASAP.

After you have obtained the necessary documentation, return it and/or any other required signatures, etc., to the State Medical Board of Ohio at the above address within three weeks of receipt of this letter. \* \* \*

(St. Ex. 3 at 5)

8. Ms. Rieve testified that Dr. McMaken has failed to submit any documentation of CME compliance for the periods specified in the 2007 Board Order. (Tr. at 18)

**Dr. McMaken's Response**

9. Dr. McMaken acknowledged that he is not in compliance with Paragraph C of the 2007 Board Order. (Tr. at 25, 27)
10. Dr. McMaken also admitted that he received the Board's letters as described above and did not respond. (Tr. at 26-27)
11. Dr. McMaken testified that he initially complied with the 2007 Board Order by doing CME activities on the evenings and weekends. However, he testified that he started having difficulty complying with the 2007 Order because he moved twice causing him to be unable to locate his previously completed CME documentation and he also could not block out any time from work to go to a CME seminar. (Tr. at 32-34, 43)
12. Dr. McMaken further testified that he didn't respond to the Board's letters because of fear, avoidance, and shame. He explained, in part:

Fear of what was going to happen. Fear of losing my license. Part of the reason counsel has been retained late in the game here, I bought a house. I exhausted pretty much all my savings.

I had to save up money to be able to retain counsel. Also I anticipate that there is going to be consequences from this action here today, this hearing; most likely, in the form of fines. I have to save up the money for that. That's the fear.

The avoidance is avoiding the inevitable. I am ashamed of being back here in front of you and the Board for another matter for which I should have learned my lesson the first time. And even going back further, should never been in the beginning. Should have never been [here] in the first place.

(Tr. at 42)

13. Dr. McMaken asked the Board to give him a second chance:

I realize that this is the second time, and I should have learned my lesson the first time. And like I said, at the beginning, yes, I had the best of intentions, and was actually doing what I had set out for myself on a self-directed basis.

But things got away from me. Time got away, circumstances. Before I moved from Blacklick to Pataskala, I lived in fear almost, and because of the circumstances and the crime that had happened. Part of it was also fear. I know I had not completed and part is avoidance, avoiding today, the inevitable.

But I do take the obligation seriously, and I know that this has to be, now, my number one priority. \* \* \*

But I'm just asking to - - I understand and I accept the responsibility, and I understand that this has to be my number one priority right now. \* \* \*

So I have some time that I can take off that I can devote to this and make myself do it.

(Tr. at 35-36)

14. At hearing, the Respondent requested that the hearing record be kept open 60 days so he may devote "every waking hour that I have" on completing his CME. On March 7, 2011, Dr. McMaken submitted documentation of 79.25 hours of Category CME credits. The Category I CME credits were completed from March 5, 2011 through March 7, 2011 via internet courses. (Resp. Ex. A; Tr. at 44)

15. According to Respondent's Exhibit B dated March 7, 2011, Dr. McMaken attests that he has completed a minimum of 60 hours of Category II CME during each CME period. He stated that he reads the following journals and publications regularly: Clinical Geriatrics, Mayo Clinic Proceedings, American Family Physician, The American Journal of Medicine, The Journal of the American Medical Association, Annals of Internal Medicine, and Journal of the National Medical Association. (Resp. Ex. B)

### FINDINGS OF FACT

1. On January 10, 2007, by Order of the Board [2007 Board Order], Dr. McMaken was found to be in violation of R.C. 4731.22(B)(5) and R.C. 4731.22(B)(20) to wit: Ohio Administrative Code Rules 4731-10-02 and 4731-10-08. The 2007 Board Order was based upon Dr. McMaken's failure to complete the requisite 40 hours of Category I CME during the 2002-2004 CME period and also during the 2004-2006 CME period. In addition, the Board also found that Dr. McMaken made a fraudulent statement when he certified in his application for renewal submitted to the Board on June 14, 2004 that he had successfully completed all required CME when he actually earned zero hours of Category I CME during the 2002-2004 CME period.
2. By certified mail letter dated January 16, 2007, the Board informed Dr. McMaken that he must submit his CME documentation on or before May 1, 2008 for the April 2, 2006 to April 1, 2008 acquisition period. The letter further stated that he was required, later, to submit documentation for the April 2, 2008 to April 1, 2010 and April 2, 2010 to April 1, 2012 CME periods.
3. On August 25, 2009, the Board sent another letter to Dr. McMaken requesting that he submits his CME documentation for the April 2, 2006 to April 1, 2008 CME period that was due on May 1, 2008.
4. By certified mail letter dated January 5, 2010, the Board informed Dr. McMaken that he must submit 100 hours of CME documentation for the April 2, 2006 to April 1, 2008 CME period.
5. Dr. McMaken failed to comply with Paragraph C of the 2007 Board Order. Paragraph C of the 2007 Board Order requires Dr. McMaken to provide acceptable documentation to the Board showing satisfactory completion of the requisite hours of CME for the 2006-2008 CME period, as well as two additional CME periods thereafter. Paragraph C further requires that said documentation must be provided to the Board within 30 days of the conclusion of each CME period. Dr. McMaken failed to supply to the Board documentation showing satisfactory completion of CME for the 2006 – 2008 CME

period, beginning April 2, 2006 and ending April 1, 2008, as well as the 2008 – 2010 CME period, beginning April 2, 2008 and ending April 1, 2010.

6. From March 5, 2011 through March 7, 2011, Dr. McMaken completed 79.25 Category I CME credits.

### **CONCLUSION OF LAW**

The acts, conduct, and/or omissions of Dr. McMaken as set forth above in the Findings of Fact, individually and/or collectively, constitute a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as set forth in R.C. 4731.22(B)(15).

### **DISCUSSION OF PROPOSED ORDER**

Dr. McMaken admits that he failed to comply with Paragraph C of the 2007 Board Order. He testified that he had initially complied with the 2007 Board Order by completing CME in the evenings and weekends; however, he is unable to show any documentation of CME completion.

He then claims that he could not take off any time from work to attend a CME seminar. Yet, it is common knowledge that there is more than one avenue to complete CME. For example, he could have continued to complete CME on the evenings or weekends as he claims he had done or he could have completed CME on the internet as he did in March 2011.

He further admits that he failed to respond to the Board’s letters because he feared the consequences of his actions. In other words, Dr. McMaken willfully ignored two letters from the Board starting in 2009. If Dr. McMaken’s claim that he had started to comply with the 2007 Board Order is accepted as the truth, then it defies logic as to why he would not respond to the Board’s August 2009 and January 2010 letters.

Dr. McMaken now wants a second chance from this Board because he has finally learned his lesson. However, the Hearing Examiner does not believe that Dr. McMaken has sufficiently demonstrated that he has learned his lesson. Prior to March 5, 2011, Dr. McMaken completed 0 CME hours. This means that Dr. McMaken had failed to complete *any CME hours for two reporting periods after having been fined and sanctioned by the Board in 2007 for similar behavior*. At the hearing, Dr. McMaken requested additional time so he could complete his CME requirements. However, despite claiming he was going to devote “every waking hour that I have” to completing the CME requirements, he did not complete any CME until *two days* before the hearing record was set to close.

Based on the foregoing, the Hearing Examiner recommends a stayed permanent revocation, a suspension of Dr. McMaken’s license for at least 90 days, and probation for at least five years. In addition, Dr. McMaken must meet certain terms and conditions included in the Proposed

Order before the Board considers reinstating or restoring his license. Of note, this Proposed Order would supercede the 2007 Board Order.

### **PROPOSED ORDER**

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED:** The certificate of David Allen McMaken, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, subject to the terms and conditions set forth below.
- B. **SUSPENSION OF CERTIFICATE; 30-DAY DELAY:** Commencing on the thirty-first day following the date on which this Order becomes effective, the certificate of Dr. McMaken to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than 90 days.
- C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. McMaken's certificate to practice until all of the following minimum requirements are met:
  1. **Application for Reinstatement or Restoration:** Dr. McMaken shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  2. **Document Completion of CME to be Applied Retroactively to Two Previous CME Acquisition Periods:** Dr. McMaken shall provide documentation acceptable to the Board of satisfactory completion of 200 hours of Continuing Medical Education [CME], at least 80 of which shall be in Category I, to be applied retroactively to the CME requirements for the periods April 2, 2006 through April 1, 2008, and April 2, 2008 through April 1, 2010. It will be Dr. McMaken's responsibility to work with appropriate Board staff to ascertain what will be considered satisfactory documentation and to obtain the same. Dr. McMaken shall receive credit for any such CME completed, and documented in a manner acceptable to the Board, prior to the effective date of this Order.
  3. **Document Completion of CME During Suspension:** Dr. McMaken shall supply documentation acceptable to the Board of satisfactory completion of 100 hours of approved CME, at least 40 hours of which shall be in Category I, for each CME period, if any, during which Dr. McMaken's certificate remains suspended.

4. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. McMaken has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.
  5. **Effect of Further Board Action During Suspension:** In the event that the Board initiates future formal proceedings against Dr. McMaken prior to his reinstatement, Dr. McMaken shall be ineligible for reinstatement until such future proceedings have been fully resolved by the Board.
- D. **PROBATION:** Upon reinstatement or restoration, Dr. McMaken's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
1. **Obey the Law:** Dr. McMaken shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
  2. **Declarations of Compliance:** Dr. McMaken shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which Dr. McMaken's certificate is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
  3. **Personal Appearances:** Dr. McMaken shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. McMaken's certificate is restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances shall occur every six months thereafter, and/or as otherwise directed by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
  4. **Documentation of CME:** Subsequent to reinstatement or restoration, Dr. McMaken shall supply documentation acceptable to the Board of satisfactory completion of the requisite number of CME credits for the CME period in effect at the time of his reinstatement. These CME credits shall be in addition to the 200 credits which Dr. McMaken completed during or prior to his suspension and which have been accredited to the 2006 – 2008, and 2008 – 2010, CME periods. Moreover, Dr. McMaken shall supply documentation acceptable to the Board of satisfactory completion of the requisite number of CME credits for two additional CME periods thereafter. This documentation shall be due in the Board's offices

within 30 days of the conclusion of each CME period, unless otherwise determined by the Board.

5. **Tolling of Probationary Period While Out of Compliance:** In the event Dr. McMaken is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.

- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. McMaken's certificate will be fully restored.
- F. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. McMaken violates the terms of 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.
- G. **SUPERSEDE PREVIOUS BOARD ORDER:** Upon becoming effective, this Order shall supersede the terms and conditions set forth in the Board's January 10, 2007, Order.
- H. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER:**

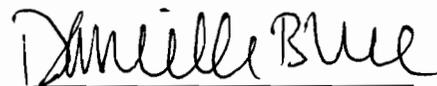
1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. McMaken shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training, and the Chief of Staff at each hospital or healthcare center where he has privileges or appointments. Further, Dr. McMaken shall promptly provide a copy of this Order to all employers or entities with which he contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or healthcare center where he applies for or obtains privileges or appointments.

In the event that Dr. McMaken provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

This requirement shall continue until Dr. McMaken receives from the Board written notification of the successful completion of his probation.

2. **Required Reporting to Other State Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. McMaken 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 professional license or certificate. Also, Dr. McMaken shall provide a copy of this Order at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue until Dr. McMaken receives from the Board written notification of the successful completion of his probation.
  
3. **Required Documentation of the Reporting Required by Paragraph H:** Dr. McMaken shall provide this Board with **one** of the following documents as proof of each required notification within 30 days of the date of each such notification: (a) the return receipt of certified mail within 30 days of receiving that return receipt, (b) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (c) 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 (d) 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.

**EFFECTIVE DATE OF ORDER:** This Order shall become effective immediately upon the mailing of the notification of approval by the Board.



Danielle R. Blue, Esq.  
Hearing Examiner

# State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.  
Executive Director

(614) 466-3934  
med.ohio.gov

## EXCERPT FROM THE DRAFT MINUTES OF APRIL 13, 2011

### 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: Orduen Abunku, M.D.; Paul Dominic Lopreato, P.A.; David Allen McMaken, M.D.; David Jeffrey Ogle, M.D.; Joseph C. Russell, M.D.; and Robert Joseph Sclabassi, M.D. A roll call was taken:

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Suppan	- aye
	Mr. Albert	- aye
	Dr. Madia	- aye
	Dr. Talmage	- aye
	Dr. Amato	- aye
	Ms. Elsass	- 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. Steinbergh	- aye
	Dr. Suppan	- aye
	Mr. Albert	- aye
	Dr. Madia	- aye
	Dr. Talmage	- aye
	Dr. Amato	- aye
	Ms. Elsass	- 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. In addition, Dr. Amato served as Acting Supervising Member in the cases of Paul Dominic Lopreato, P.A.; David Allen McMaken, M.D.; and David Jeffrey Ogle, M.D. Therefore, Dr. Amato cannot vote in those matters. However, all Board members may vote on the matter of Robert Joseph Sclabassi, 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.

.....  
DAVID ALLEN MCMAKEN, M.D., Case No. 10-CRF-086  
.....

**Dr. Steinbergh moved to approve and confirm Ms. Blue's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of David Allen McMaken, M.D. Mr. Hairston seconded the motion.**

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

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Suppan	- aye
	Mr. Albert	- abstain
	Dr. Madia	- aye
	Dr. Talmage	- abstain
	Dr. Amato	- abstain
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye

The motion to approve carried.



# State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.  
Executive Director

(614) 466-3934  
med.ohio.gov

July 14, 2010

Case number: 10-CRF- 086

David Allen McMaken, M.D.  
462 Lockmead Drive  
Pataskala, Ohio 43062

Dear Doctor McMaken:

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) On or about January 10, 2007, by Order of the Board [2007 Board Order], you were found to be in violation of Section 4731.22(B)(5) and Section 4731.22(B)(20), Ohio Revised Code, to wit: Section 4731.281, Ohio Revised Code, and Rules 4731-10-02 and 4731-10-08, Ohio Administrative Code. The 2007 Board Order was based upon your failure to complete the requisite 40 hours of Category 1 Continuing Medical Education [CME] during 2002-2004 CME period, as well as your failure to timely complete the requisite 40 hours of Category 1 CME during the 2004-2006 CME period. Moreover, the 2007 Board Order also found that by certifying that you had successfully completed all required CME in your application for renewal of your certificate to practice medicine and surgery submitted to the Board on or about June 14, 2004, you made a fraudulent statement, as you had earned zero hours of Category 1 CME during the 2002-2004 CME period.
- (2) Paragraph C of the 2007 Board Order requires you to provide acceptable documentation to the Board showing satisfactory completion of the requisite hours of CME for the 2006-2008 CME period, as well as the two additional CME periods thereafter. Paragraph C further requires that said documentation must be provided to the Board within 30 days of the conclusion of each CME period.

You have failed to supply to the Board documentation showing satisfactory completion of CME for the 2006-2008 CME period, beginning April 2, 2006, and ending April 1, 2008, as well as the 2008-2010 CME period, beginning

*Mailed 7-15-10*

April 2, 2008, and ending April 1, 2010. To date, you have failed to comply with the requirements of Paragraph C of the 2007 Board Order.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

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



Lance A. Talmage, M.D.  
Secretary

LAT/DSZ/flb

Enclosures

CERTIFIED MAIL #91 7108 2133 3938 3020 4896

RETURN RECEIPT REQUESTED



# State Medical Board of Ohio

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

January 10, 2007

David Allen McMaken, M.D.  
4698 Tatersall Court  
Columbus, OH 43230

Dear Doctor McMaken:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Gretchen L. Petrucci, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on January 10, 2007, 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.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 7003 0500 0002 4330 2122  
RETURN RECEIPT REQUESTED

CC: Elizabeth Y. Collis, Esq.  
CERTIFIED MAIL NO. 7003 0500 0002 4330 2146  
RETURN RECEIPT REQUESTED

*Mailed 1-12-07*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Gretchen L. Petrucci, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on January 10, 2007, 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 David Allen McMaken, 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)

January 10, 2007

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

\*

\*

DAVID ALLEN MCMAKEN, M.D.

\*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on January 10, 2007.

Upon the Report and Recommendation of Gretchen L. Petrucci, 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:** David Allen McMaken, M.D., is REPRIMANDED.
- B. **FINE:** Dr. McMaken shall pay a FINE of \$5,000 to the State Medical Board of Ohio. This fine shall be paid no later than 30 days after the effective date of this Order or as otherwise determined by the Board.
- C. **DOCUMENTATION OF CME:** Dr. McMaken shall provide acceptable documentation of satisfactory completion of the requisite hours of Continuing Medical Education for the 2006-2008 CME period, as well as the two additional CME periods thereafter. This documentation shall be due in the Board's offices within 30 days of the conclusion of each CME period, unless otherwise determined by the Board.
- D. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within 30 days of the effective date of this Order, or as otherwise determined by the Board, Dr. McMaken 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 to the Chief of Staff at each hospital where he has privileges or appointments.

Further, Dr. McMaken 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 to the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. McMaken receives from the Board written notification of the successful completion of the three CME audits required by this decision.

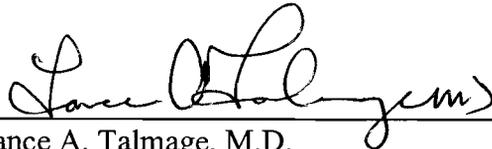
**E. REQUIRED REPORTING TO OTHER STATE LICENSING**

**AUTHORITIES:** Within 30 days of the effective date of this Order, or as otherwise determined by the Board, Dr. McMaken 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. McMaken shall also provide a copy of this Order by certified mail, return receipt requested, at the 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. McMaken shall provide this Board with a copy of the return receipt as proof of notification within 30 days of receiving that return receipt, unless otherwise determined by the Board. This requirement shall continue until Dr. McMaken receives from the Board written notification of the successful completion of the three CME audits required by this decision.

**F. VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. McMaken violates the terms of 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.

This order shall become effective immediately upon mailing of notification of approval by the Board.

(SEAL)



Lance A. Talmage, M.D.  
Secretary

January 10, 2007

Date

**REPORT AND RECOMMENDATION  
IN THE CONSOLIDATED MATTERS OF DAVID ALLEN McMAKEN, M.D.**

The Consolidated Matters of David Allen McMaken, M.D., were heard by Gretchen L. Petrucci, Hearing Examiner for the State Medical Board of Ohio, on November 3, 2006.

**INTRODUCTION**

**I. Basis for Hearing**

A. By letter dated February 8, 2006, the State Medical Board of Ohio [Board] notified David Allen McMaken, 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 on an allegation that, when Dr. McMaken applied to renew his certificate in June 2004, he certified that he had completed the requisite continuing medical education [CME] when he had not completed it. Also, the Board alleged that Dr. McMaken's lack of response to a CME audit notice rebutted the presumption under Rule 4731-1-08(A), Ohio Administrative Code, that the requisite CME had been completed and/or demonstrated that he failed to keep detailed records of CME. The Board further alleged that:

- (1) Dr. McMaken's acts, conduct and/or omissions in certifying to the Board that he had completed the statutorily required CME, when he had not, constitute "making a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; 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 used in Section 4731.22(B)(5), Ohio Revised Code.
- (2) Dr. McMaken's failure to respond to the audit notice, to obtain the requisite CME, and/or to submit documentation of same, constitutes "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of Chapter 4731 or any rule promulgated by the Board," as used in Section 4731.22(B)(20), Ohio Revised Code. The Board identified the underlying statute or administrative rule violations as Section 4731.281, Ohio Revised Code, and Rules 4731-10-02 and 4731-10-08, Ohio Administrative Code. (State's Exhibit 1A)

- B. By document filed on March 6, 2006, Dr. McMaken requested a hearing. (State's Exhibit 1B)
- C. On October 11, 2006, the Board issued a second notice of opportunity for hearing. The Board notified Dr. McMaken that it had proposed to take further disciplinary action because, allegedly, Dr. McMaken's 2004-2006 CME documentation did not demonstrate that he timely fulfilled his CME requirements. The Board further alleged that Dr. McMaken's failure to obtain the requisite CME in a timely manner constitutes "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of Chapter 4731 or any rule promulgated by the Board," as used in Section 4731.22(B)(20), Ohio Revised Code. The Board identified the underlying statute or administrative rule violation as Section 4731.281, Ohio Revised Code. (State's Exhibit 1AA)
- D. By document filed on October 13, 2006, Dr. McMaken's counsel requested a hearing on the second notice. (State's Exhibit 1BB)
- E. By entry dated October 24, 2006, the matters addressed in the February 8 and October 13, 2006, notices of opportunity for hearing were consolidated. (State's Exhibit 1DD)

## II. Appearances

- A. On behalf of the State: Jim Petro, Attorney General, by Damion M. Clifford, Assistant Attorney General.
- B. On behalf of the Respondent: Elizabeth Y. Collis, Esq.

## **EVIDENCE EXAMINED**

### I. Testimony Heard

Kay Rieve  
David Allen McMaken, M.D.

### II. Exhibits Examined

- A. Presented by the State

State's Exhibits 1A through 1DD: Procedural exhibits.<sup>1</sup>

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<sup>1</sup>No State's Exhibit 1W was marked or admitted into the record.

State's Exhibit 2: Documents maintained by the Board in relation to Dr. McMaken's 2004 certificate renewal and the April 2, 2002, through April 1, 2004, CME period audit.

State's Exhibit 3: Copy of a portion of Section 4731.281, Ohio Revised Code.

State's Exhibit 4: Copy of Rule 4731-10-02, Ohio Administrative Code, effective as of February 28, 2003.

State's Exhibit 5: Copy of Rule 4731-10-08, Ohio Administrative Code, effective as of February 28, 2003.

State's Exhibit 6: Copy of Dr. McMaken's 2006 certificate renewal application.

State's Exhibit 7: Certificate of CME participation from Johns Hopkins University School of Medicine.

State's Exhibit 8: Certificate of CME participation from The Cleveland Clinic Foundation Center for Continuing Education.

State's Exhibit 9: Twenty-four certificates of CME participation from Medscape.

State's Exhibit 10: Dr. McMaken's CME log for the period of April 2, 2004, through April 1, 2006.

B. Respondent's Exhibits

No exhibits were presented by the Respondent.

C. Board Exhibits

Board Exhibit 1: Representative copy of the certificate renewal instructions sent to Dr. McMaken in 2004.

Board Exhibit 2: Copy of Rule 4731-10-02, Ohio Administrative Code, effective as of June 8, 1998.

Board Exhibit 3: Copy of Rule 4731-10-08, Ohio Administrative Code, effective as of June 8, 1998.

### **PROCEDURAL MATTER**

At the hearing, the Hearing Examiner requested copies of three additional documents. The Hearing Examiner held the record open until November 17, 2006, in order to allow for receipt of

those additional documents. On November 3, 2006, counsel for the State provided the three requested documents to both the Hearing Examiner and counsel for the Respondent. Counsel for the Respondent reviewed those documents and indicated, on November 6, 2006, that she had no objection to inclusion of those items in the record. Accordingly, the Hearing Examiner marked the documents (which are delineated above) as Board Exhibits 1 through 3 and admitted them to the record. The hearing record closed on November 6, 2006.

## LEGAL BACKGROUND

Section 4731.281, Ohio Revised Code, identifies different time periods during which Ohio certificate holders must biennially seek to renew their certification, based upon the first letter of the certificate holder's last name. As part of that renewal process, an Ohio certificate holder is statutorily required to certify that, in the preceding two years, the person has completed 100 hours of continuing medical education [CME]. Thus, the two-year CME period likewise varies, depending upon the first letter of the certificate holder's last name. Of the required 100 hours, an Ohio certificate holder is required to complete at least 40 hours in Category 1 and attribute 60 hours to Category 2. Category 1 CME involves structured lectures or seminars that are accredited. Category 2 CME involves self-directed medical learning. (State's [St.] Exhibits [Exs.] 3-5; Board Ex. 2; Hearing Transcript [Tr.] 13, 22-23, 41-42)

Section 4731.281(A), Ohio Revised Code, envisions that CME hours will be completed before a certificate holder applies to renew a certificate. Moreover, the current version of Rule 4731-10-02(C), Ohio Administrative Code,<sup>2</sup> does not allow a certificate holder to renew or reinstate a certificate until the requisite CME hours are completed. CME undertaken after the end of the certificate renewal period may be used for purposes of fulfilling the requirements for certificate renewal (but that same CME shall not be utilized to meet the then-current CME period).

## SUMMARY OF THE EVIDENCE

1. David Allen McMaken, M.D., graduated from Wright State University School of Medicine in July 1989.<sup>3</sup> He obtained a certificate to practice medicine and surgery in Ohio in August 1990. He completed a residency program at Kettering Memorial Hospital in 2001. He practices internal medicine, with a focus on geriatric medicine. He holds no other medical licenses. (Tr. 45, 54, 56, 62)

### **Dr. McMaken's CME Hours for 2002-2004**

2. In 2004, Dr. McMaken sought to renew his Ohio certificate. The first item in the

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<sup>2</sup>The current version of Rule 4731-101-02(C), Ohio Administrative Code, became effective on February 28, 2003.

<sup>3</sup>Per the Board's licensee database. See, <https://license.ohio.gov/Lookup/SearchDetail.asp?ContactIdnt=2979040&DivisionIdnt=78&Type=L>.

instruction portion of that form stated:

TO APPLY FOR THIS RENEWAL YOU MUST COMPLETE 100 HOURS OF CONTINUING MEDICAL EDUCATION [CME] BETWEEN APRIL 2, 2002 AND APRIL 1, 2004 UNLESS YOUR REQUIREMENT IS REDUCED AS PROVIDED IN THE CME TABLE ON THE REVERSE SIDE.

Completion of CME is required by law before you are eligible for medical license renewal. During the year immediately following renewal, a random sample of doctors will be selected for audit to determine if the CME requirement has been met. It is imperative that you maintain accurate records of CME activities for purposes of possible audit. \*\*\* (Emphasis in original.)

(Board Ex. 1) Dr. McMaken filled out and signed the certificate renewal application on June 14, 2004. Above his signature, the application provided as follows:

I certify, under penalty of loss of my right to practice in the state of Ohio, that I have completed during the 2002-2004 CME period the requisite hours of continuing medical education certified by the Ohio State Medical Association and approved by the State Medical Board, and that the information provided on this application for renewal is true and correct in every respect.

(Board Ex. 1; Tr. 39-40) That CME period for Dr. McMaken ran from April 2, 2002, through April 1, 2004. For ease of reference, this CME period will be simply referred to as the 2002-2004 CME period.

3. Dr. McMaken acknowledged that, in June 2004, he had understood that he was supposed to have completed the required CME hours, but he had thought he was required to complete the hours before his certificate expired on July 1, 2004. More specifically, Dr. McMaken stated that he had believed that the CME period matched the certification period. Dr. McMaken further testified that he had intended to complete his required CME by July 1, 2004. However, he did not do so. (St. Ex. 2, at 2; Tr. 44-45, 57-59)
4. Dr. McMaken was randomly selected, among the renewing certificate holders, to document his completion of the CME requirement during the preceding period [CME audit]. The Board encountered difficulty in serving Dr. McMaken with its notice of the CME audit and of his obligation to provide appropriate documentation. Eventually, the Board personally served the CME audit notice upon Dr. McMaken in May 2005. This letter notified Dr. McMaken of the audit, required him to complete a log of his CME activities, and required him to provide documentation of the completion of at least 40 hours of Category 1 CME in the 2002-2004 CME period. (St. Ex. 2, at 10; Tr. 11-12, 14, 18-19, 24-27, 35-37, 70-67)
5. On May 26, 2005, the Board received Dr. McMaken's CME log for the 2002-2004 CME period. Dr. McMaken marked nothing for the Category 1 CME and marked "60+" hours for Category 2 CME. (St. Ex. 2, at 11-12; Tr. 14-15, 44)

6. On June 1, 2005, the Board directed Dr. McMaken to verify 40 or more hours of Category 1 CME for the 2002-2004 CME period. Dr. McMaken testified that he had completed some Category 1 CME hours but could not locate the completion certificates or other documentation and, therefore, could not prove completion of any Category 1 hours. Dr. McMaken began acquiring Category 1 CME hours, via a video program, in late December 2005. He received a certificate of completion for 52 Category 1 CME hours on May 26, 2006, 40 of which he has applied to the 2002-2004 CME period. (St. Ex. 2, at 13-14; Tr. 59, 68-69, 81-83)
7. Dr. McMaken admitted to the Board investigator who delivered the CME audit notice that he had not completed the requisite Category 1 CME hours. (Tr. 43)

**Dr. McMaken's CME Hours for 2004-2006**

8. In 2006, Dr. McMaken's Ohio certificate was again due for renewal. Dr. McMaken completed the renewal application electronically on July 19, 2006, after his certificate renewal deadline. He indicated that he had met the CME requirements. The CME period involved at this time was April 2, 2004, through April 1, 2006. (St. Ex. 6; Tr. 29, 70) For ease of reference, this CME period will be referred to as the 2004-2006 CME period.
9. The Board asked Dr. McMaken to document his CME activities for the 2004-2006 CME period. In August 2006, Dr. McMaken indicated completion of 40 hours of Category 1 CME in May and June 2006, and 60+ hours of Category 2 CME between April 2004 and March 2006. (St. Ex. 10; Tr. 31, 49, 71)

**Summary of Dr. McMaken's Documented Category 1 CME Activities between April 2002 and June 2006**

10. Dr. McMaken provided certification of the following Category 1 CME activities and allotted them as follows for the two involved CME periods:

<b>CME Period</b>	<b>CME Sponsor</b>	<b>Completion Date<sup>4</sup></b>	<b>Category 1 CME Hours</b>
2002-2004	Johns Hopkins Univ.	5/26/06	<u>40.00</u> <b>Total 40</b>

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<sup>4</sup>As noted earlier, Dr. McMaken is permitted under Rule 4731-10-02(C), Ohio Administrative Code, to apply the CME hours he completed in May through June 2006 to the 2002-2004 and 2004-2006 CME periods (the hours just cannot be double-counted).

<b>CME Period</b>	<b>CME Sponsor</b>	<b>Completion Date</b>	<b>Category 1 CME Hours</b>
2004-2006	Johns Hopkins Univ.	5/26/06	12.00
	The Cleveland Clinic Foundation	6/27/06	0.75
	Medscape	6/27/06	2.00
	Medscape	6/28/06	6.25
	Medscape	6/29/06	4.75
	Medscape	6/30/06	<u>14.25</u>
			<b>Total 40</b>

(St. Exs. 7-10; Tr. 34, 47-49)

**Dr. McMaken’s Explanation**

- Dr. McMaken testified that he had difficulty completing Category 1 CME activities for the two CME periods due to the heavy workload associated with his prior employment. During the audit periods involved in this consolidated proceeding, Dr. McMaken stated that he was a partner of Geriatric Care Consultants in Dayton, Ohio, providing medical care to patients in long-term care facilities, assisted living facilities, skilled nursing facilities and rehabilitation centers. He stated that he traveled to see his patients. He also testified that he worked long hours on Mondays through Fridays and was on-call for nearly all of the remaining hours of those days. Moreover, he stated that he was on call every other weekend, too. According to Dr. McMaken, his job was so demanding that he did not even take a vacation. (Tr. 54-56, 72-74)
- Because his workload was so exhausting, Dr. McMaken testified that he changed employment in July 2006. Now, he works for Visiting Physicians Association. He explained that he travels to geriatric patients, but only those who still reside in their homes or in assisted living facilities. Additionally, Dr. McMaken pointed out that he works shorter hours, he does not work weekends, the on-call periods are shared and the on-call periods only occur once every six months. He is confident that his new employment will allow him the time to complete CME course work. (Tr. 76-80)

**FINDINGS OF FACT**

- On his June 14, 2004, Ohio certificate renewal form, David Allen McMaken, M.D., certified that he had completed the requisite continuing medical education [CME] hours during the April 2, 2002, though April 1, 2004, CME period, as required by Section 4731.281, Ohio Revised Code.

2. In May 2005, the Board served Dr. McMaken with a CME audit notice via hand-delivery by a Board investigator. The CME audit notice directed him to complete and submit a log demonstrating that he had completed at least 100 hours of CME hours during the 2002-2004 CME period, and to provide documentation that, of those 100 hours, he had completed at least 40 hours of Category 1 CME.
3. Dr. McMaken promptly responded in writing to the hand-delivered notice. Dr. McMaken's CME log identified no hours of Category 1 CME and 60+ hours of Category 2 CME for the 2002-2004 CME period. He provided no written documentation of Category 1 CME for the 2002-2004 CME period.
4. Dr. McMaken admitted to the Board investigator who delivered the CME audit notice that he had not obtained the requisite 40 hours of Category 1 CME for the 2002-2004 CME period.
5. Dr. McMaken did not submit records of some Category 1 CME purportedly taken for the 2002-2004 CME period because he had failed to keep those records.
6. Dr. McMaken did not obtain the requisite 40 hours of Category 1 CME during the 2004-2006 CME period (April 2, 2004, through April 1, 2006). Dr. McMaken completed the requisite 40 Category 1 CME hours for the 2004-2006 CME period between May 26 and June 30, 2006.

### **CONCLUSIONS OF LAW**

1. The incorrect certification by David Allen McMaken, M.D., on his June 14, 2004, certificate renewal form as set forth in Finding of Fact 1 constitutes "making a false, fraudulent, deceptive, or misleading statement in \*\*\* securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as used in Section 4731.22(B)(5), Ohio Revised Code.
2. By not obtaining the requisite 40 hours of Category 1 CME in the 2002-2004 CME period as set forth in Findings of Fact 3 and 4, Dr. McMaken violated subsections (A) of Rules 4731-10-02 and 4731-10-08, Ohio Administrative Code, and subsection (A) of Section 4731.281, Ohio Revised Code.

By not submitting records of Category 1 CME undertaken for the 2002-2004 CME period as set forth in Finding of Fact 5, Dr. McMaken violated subsection (C) of Rule 4731-10-08, Ohio Administrative Code.

Dr. McMaken's failure to obtain the requisite CME during the 2002-2004 CME period and his failure to submit documentation of same, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of Chapter 4731 or any rule promulgated by the Board," as used in Section

4731.22(B)(20), Ohio Revised Code, to wit: Section 4731.281, Ohio Revised Code, and Rules 4731-10-02 and 4731-10-08, Ohio Administrative Code.

3. As set forth in Findings of Fact 2 and 3, Dr. McMaken responded in a timely manner to the CME audit notice for the 2002-2004 CME period and, upon that basis, did not violate Rules 4731-10-02 and 4731-10-08, Ohio Administrative Code, or Sections 4731.281 and 4731.22(B)(20), Ohio Revised Code. Nevertheless, because the Board did not previously have before it all of the information that was presented during the hearing, the Board was substantially justified in pursuing this allegation.
4. Dr. McMaken's failure to obtain the requisite CME for the 2004-2006 CME period timely, as set forth in Finding of Fact 6, constitutes "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of Chapter 4731 or any rule promulgated by the Board," as used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Section 4731.281, Ohio Revised Code.

\* \* \* \* \*

There is no dispute about the basic facts involved: Dr. McMaken did not complete his CME hours within the two CME periods as required, and he falsely reported completing his CME on the 2004 certificate renewal application. The 2004 certificate renewal form and accompanying instructions provided clear guidance as to when the CME hours had to be completed. Even if Dr. McMaken made an honest mistake and truly believed that he had until his certificate expiration date (July 1, 2004) to complete the required CME hours, the Hearing Examiner questions the veracity of his stated intention to timely obtain those additional hours. For instance, Dr. McMaken presented no evidence that he had made plans to complete the many CME hours he still needed during the roughly two weeks after he completed the 2004 certificate renewal form and his certificate expiration date. Additionally, even after receiving the CME audit notice in May 2005, Dr. McMaken did not begin to obtain the needed CME hours for the 2002-2004 CME period for several months. Nor did he complete the Category 1 hours for the 2002-2004 CME period for many months after receiving the audit notice, or focus on making sure that he would timely meet the requirements for the 2004-2006 CME period. Dr. McMaken simply disregarded his CME responsibilities.

Dr. McMaken points out that he has "caught up" on his CME requirements and he has made a change in his employment, which could help avoid similar CME issues in the future because his former employment impeded his ability to participate in CME activities. The Hearing Examiner believes that Dr. McMaken has sincerely learned about the need to: meet the CME requirements, be accurate, maintain CME documentation, and be timely. He also acknowledged that he has had to learn about finding relevant CME offerings. The "CME lesson" has likely now been learned.

The State views Dr. McMaken as a "second violator" and advocates a 90-day suspension of Dr. McMaken's certificate, a \$10,000 fine, and audits for three subsequent CME periods. The

Respondent views the allegations as one long continuous act. The Hearing Examiner disagrees with the Respondent on this point and, instead, finds that there were separate violations alleged over different time periods. Based upon the violations of Section 4731.281, Ohio Revised Code, and that statute's authority to impose a fine or civil penalty, the Hearing Examiner concludes that the fine to be assessed is:

CME violations associated with the 2002-2004 period	\$5,000
<u>CME violation associated with the 2004-2006 period</u>	<u>0<sup>5</sup></u>
Total	\$5,000

Additional sanctions, but not a civil penalty, are also appropriate for the other violations found. Upon consideration, the Hearing Examiner does not feel that a suspension is warranted in this situation, particularly since Dr. McMaken has already rectified the CME shortage<sup>6</sup> and recently began working for a new employer (a suspension might jeopardize that employment). The Hearing Examiner concludes that a reprimand is appropriate. Also, the Hearing Examiner agrees with the State that subsequent mandatory audits are needed for three CME periods, as well as reporting to employers and hospitals, and reporting to other licensing authorities.

### PROPOSED ORDER

It is hereby ORDERED that:

- A. **REPRIMAND:** David Allen McMaken, M.D., is REPRIMANDED.
- B. **FINE:** Dr. McMaken shall pay a FINE of \$5,000 to the State Medical Board of Ohio. This fine shall be paid no later than 30 days after the effective date of this Order or as otherwise determined by the Board.

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<sup>5</sup>Section 4731.281(E), Ohio Revised Code, provides as follows:

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. The board's finding shall be made pursuant to an adjudication under Chapter 119. of the [Ohio] Revised Code and by an affirmative vote of not fewer than six members. (Emphasis added.)

This statutory authority will not permit the imposition of a civil penalty for the CME violation associated with the 2004-2006 period because, at the time Dr. McMaken certified completion of his CME to renew his certificate (July 19, 2006), he had completed the requisite CME hours. He had not completed the Category 1 CME hours within the CME period, but the plain language of Section 4731.281(E), Ohio Revised Code, only allows the Board the ability to impose the civil penalty if the certified CME was not completed when certified.

<sup>6</sup>The Board has issued suspensions specifically to provide the respondents with the clear opportunity to complete their CME requirements. However, that period of time is not needed here because Dr. McMaken has completed his CME requirements for the two CME periods involved in this consolidated proceeding.

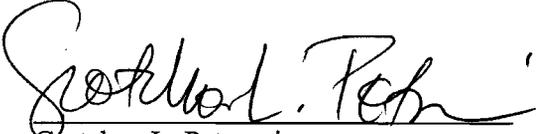
Report and Recommendation

In the Consolidated Matters of David Allen McMaken, M.D.

Page 11

- C. **DOCUMENTATION OF CME:** Dr. McMaken shall provide acceptable documentation of satisfactory completion of the requisite hours of Continuing Medical Education for the 2006-2008 CME period, as well as the two additional CME periods thereafter. This documentation shall be due in the Board's offices within 30 days of the conclusion of each CME period, unless otherwise determined by the Board.
- D. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within 30 days of the effective date of this Order, or as otherwise determined by the Board, Dr. McMaken 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 to the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. McMaken 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 to the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. McMaken receives from the Board written notification of the successful completion of the three CME audits required by this decision.
- E. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within 30 days of the effective date of this Order, or as otherwise determined by the Board, Dr. McMaken 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. McMaken shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration or restoration of any professional license. Further, Dr. McMaken shall provide this Board with a copy of the return receipt as proof of notification within 30 days of receiving that return receipt, unless otherwise determined by the Board. This requirement shall continue until Dr. McMaken receives from the Board written notification of the successful completion of the three CME audits required by this decision.
- F. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. McMaken violates the terms of 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.

This order shall become effective immediately upon mailing of notification of approval by the Board.

  
Gretchen L. Petrucci  
Hearing Examiner



# State Medical Board of Ohio

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

## EXCERPT FROM THE DRAFT MINUTES OF JANUARY 10, 2007

### REPORTS AND RECOMMENDATIONS

Dr. Robbins announced that the Board would now consider the findings and orders appearing on the Board's agenda. He 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: Azber Azher Ansar, M.D. and David Allen McMaken, M.D. A roll call was taken:

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

Dr. Robbins 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. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Robbins	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Madia	- aye

Dr. Steinbergh - aye  
Dr. Kumar - aye

Dr. Robbins 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. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

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

.....

Dr. Talmage left the meeting during the previous discussion.

DAVID ALLEN MCKAMEN, M.D.

.....

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER IN THE MATTER OF DAVID ALLEN MCKAMEN, M.D. DR. VARYANI SECONDED THE MOTION.**

.....

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

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

The motion carried.



# State Medical Board of Ohio

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

October 11, 2006

David Allen McMaken, M.D.  
4698 Tatersall Court  
Columbus, OH 43230

Dear Doctor McMaken:

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) On or about February 8, 2006, the Board issued a Notice of Opportunity for Hearing to you based upon allegations including that you had not completed the requisite hours of Continuing Medical Education [CME] as required by Section 4731.281, Ohio Revised Code, during the CME period of April 2, 2002 – April 1, 2004.
- (2) Your next CME period during which you needed to complete 100 hours of CME (forty hours of which had to be Category I) was April 2, 2004 – April 1, 2006. On July 12, 2006, your attorney provided documentation of 80 Category I CME credit hours and a statement from you in which you acknowledged having completed “60 hours of Category II during the past 2 years in self-directed reading of journals ...” However, the Category I CME documentation demonstrates that you did not timely fulfill your CME requirements for the April 2, 2004 – April 1, 2006 CME period. The Category I CME credit hours were obtained from May 26, 2006, through June 30, 2006.

Your failure to obtain the requisite CME timely as alleged in the above paragraph (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.

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.

*Mailed 10-12-06*

David Allen McMaken, M.D.

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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,



Lance A. Talmage, M.D.  
Secretary

Enclosures

CERTIFIED MAIL #7004 2510 0006 9802 0695  
RETURN RECEIPT REQUESTED

cc: Elizabeth Y. Collis, Esq.  
1650 Lake Shore Drive  
Suite 225  
Columbus, OH 43204

CERTIFIED MAIL #7004 2510 0006 9802 0572  
RETURN RECEIPT REQUESTED



# State Medical Board of Ohio

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

February 8, 2006

David Allen McMaken, M.D.  
5972 Millshire Drive  
Apartment 2-D  
Kettering, OH 45440

Dear Doctor McMaken:

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 your renewal application for the biennial registration of your certificate to practice medicine and surgery for the July 2, 2004 – July 1, 2006 period, you certified that you had completed during the 2002 – 2004 Continuing Medical Education [CME] period (April 2, 2002 – April 1, 2004) the requisite hours of CME as required by Section 4731.281, Ohio Revised Code.
- (2) By a certified mail letter dated January 18, 2005, the Board issued a notice to you at your address of record that you were required to complete and submit a log demonstrating that you had completed at least one hundred hours of CME during the 2002 – 2004 period and to provide documentation that you had actually completed at least forty hours of Category I CME credits. This notice was returned unclaimed.

By certified mail letters mailed to alternate addresses on or about February 24, 2005, and April 14, 2005, the Board again issued notices to 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 2002 – 2004 period. The certified mail letters were returned to the Board “unclaimed.”

On May 18, 2005, a Board Investigator [Investigator] hand-delivered the CME audit notice to you. You assured the Investigator that you would promptly return the required CME audit materials within ten days. On or about May 25, 2005, you sent the Board a completed Category II log, but no documentation of any completed hours of Category I CME credits.

*Mailed 2-9-06*

On or about July 22, 2005, the Investigator again contacted you for documentation of completed hours of Category I credits, at which time you stated that you could not provide certificates of attendance and that you did not complete all of the required hours of Category I CME credits.

- (3) Your lack of response to the notice provided to you by the Investigator on or about May 18, 2005, 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.

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 you had not, in fact, done so, 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, podiatric medicine and surgery, 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.

Further, your failure to respond to the audit notice, to obtain the requisite CME, and/or to submit documentation of same, as alleged in the above paragraph (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, and Rules 4731-10-02 and 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

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.", written in a cursive style.

Lance A. Talmage, M.D.  
Secretary

Enclosures

CERTIFIED MAIL #7000 0600 0024 5143 7377  
RETURN RECEIPT REQUESTED