

# State Medical Board of Ohio

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Executive Director

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August 12, 2009

Zuhayr T. Madhun, M.D.  
8585 Sunview Drive  
Broadview Heights, OH 44147

RE: Case No. 08-CRF-141

Dear Doctor Madhun:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Paul Stehura, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on August 12, 2009, 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

A handwritten signature in black ink, appearing to read "Lance A. Talmage, M.D.", is written over the typed name.

Lance A. Talmage, M.D.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3936 3184 0316  
RETURN RECEIPT REQUESTED

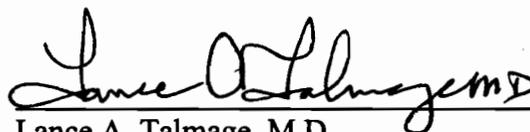
Cc: Jay Milano, Esq.  
CERTIFIED MAIL NO. 91 7108 2133 3936 3184 0323  
RETURN RECEIPT REQUESTED

*Mailed 8.14.09*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Paul Stehura, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on August 12, 2009, 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 Zuhayr T. Madhun, M.D., Case No. 08-CRF-141, 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)

August 12, 2009

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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CASE NO. 08-CRF-141

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ZUHAYR T. MADHUN, M.D.

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on August 12, 2009.

Upon the Report and Recommendation of Paul Stehura, 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:

1. **REVOCATION, STAYED; SUSPENSION:** The certificate of Zuhayr T. Madhun, M.D., to practice medicine and surgery in the State of Ohio shall be REVOKED. Such revocation is STAYED, and Dr. Madhun's certificate shall be SUSPENDED for an indefinite period of time, but not less than 180 days.
2. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Madhun's certificate to practice medicine and surgery in Ohio until all of the following have been met:
  - a. **Application for Reinstatement or Restoration:** Dr. Madhun shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  - b. **Professional Ethics Course(s):** At the time he submits his application for reinstatement or restoration, Dr. Madhun shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific

content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.

In addition, at the time Dr. Madhun submits the documentation of successful completion of the course or courses dealing with professional ethics, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

- c. **Personal Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Madhun shall provide acceptable documentation of successful completion of a course or courses dealing with personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.

In addition, at the time Dr. Madhun submits the documentation of successful completion of the course or courses dealing with personal ethics, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future

- d. **Additional Evidence of Fitness to Resume Practice:** In the event that Dr. Madhun 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 of the Revised Code to require additional evidence of his fitness to resume practice.

3. **PROBATION:** Upon reinstatement or restoration, Dr. Madhun's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:

- a. **Obey the Law:** Dr. Madhun shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.



This requirement shall continue until Dr. Madhun receives from the Board written notification of his successful completion of probation as set forth in paragraph 4, above.

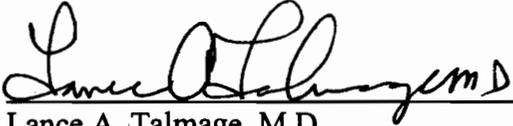
- b. **Required Reporting To Other State Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Madhun shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Dr. Madhun further agrees to provide a copy of this Order 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.

This requirement shall continue until Dr. Madhun receives from the Board written notification of his successful completion of probation as set forth in paragraph 4, above.

- c. **Documentation that the Required Reporting Has Been Performed:** Dr. Madhun shall provide the Board with **one** of the following documents as proof of each required notification within 30 days of the date of each notification required above: (1) the return receipt of certified mail within 30 days of receiving that return receipt, (2) an acknowledgment of delivery bearing the original ink signature of the person to whom a copy of the Board Order was hand delivered, (3) the original facsimile generated report confirming successful transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was emailed.

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

(SEAL)

  
Lance A. Talmage, M.D.  
Secretary

August 12, 2009

Date

2009 JUN 29 P 1:33

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

**In the Matter of**

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**Case No. 08-CRF-141**

**Zuhayr T. Madhun, M.D.**

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**Hearing Examiner Stehura**

**Respondent.**

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**REPORT AND RECOMMENDATION**

Basis for Hearing

By letter dated December 10, 2008, the State Medical Board of Ohio [Board] notified Zuhayr T. Madhun, M.D. [Respondent], that it proposed to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate his certificate to practice medicine and surgery, or to reprimand or place him on probation based on allegations that Respondent: (1) engaged in sexual contact on at least three separate occasions between January 2004 and June 2004 with Patient 1, whom Respondent treated in his practice from late 1998 through October 2004; and (2) falsely stated in a February 2006 interview that he did not engage in a sexual relationship with Patient 1, but admitted in a subsequent interview, with his attorney present, that he did have a sexual relationship with Patient 1. (State's Exhibit [St. Ex.] 1A)

The Board's notice letter stated that Respondent's acts, conduct, and/or omissions constituted "violation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule," as that language is used in Section 4731.22(B)(18), Ohio Revised Code [R.C.], to wit: Principles I, II, and IV of the American Medical Association's Principles of Medical Ethics. The Board notice letter further alleged that Respondent's acts, conduct, and/or omissions as alleged in item (2) above, individually and collectively constituted "[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 \* \* \* 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 language is used in R.C. 4731.22(B)(5) and further constituted a "failure to cooperate in an investigation conducted by the board under division (F) of this section," as that language is used in R.C. 4731.22(B)(34).

The Board advised Respondent of his right to request a hearing and received a written request for hearing on or about January 5, 2009. (St. Ex. 1B)

Appearances

Richard Cordray, Attorney General, by Melinda Snyder Osgood, Assistant Attorney General, on behalf of the State of Ohio.

Jay Milano, Esq., on behalf of Respondent, Dr. Madhun.

Hearing Date: April 9, 2009

### **SUMMARY OF EVIDENCE**

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

#### **Background**

1. Zuhayr T. Madhun, M.D., has been licensed by the Board to practice medicine and surgery in Ohio since at least 1992. Other than the present matter, there has been no disciplinary action taken or pursued by the Board against Dr. Madhun nor has his license ever been limited or restricted. (St. Ex. 3)
2. Dr. Madhun was employed at University Hospitals in Cleveland from 1992 until 2001. Thereafter, he entered private practice with Anne Carrol, M.D., in the Cleveland area for less than one year and then began his current solo practice, which he currently operates. Dr. Madhun has two offices in the Cleveland area. His primary areas of practice are “diabetes and endocrinology.” He stated that his practice focuses on three big issues: diabetes and pregnancy, thyroid cancer, and diabetes in general. (Transcript [Tr.] at 25-28)

#### **Patient 1**

3. Patient 1 was a married female patient who was diagnosed with Type 1 Diabetes Mellitus in 1997 by a colleague of Dr. Madhun at University Hospitals. The colleague referred Patient 1 to Dr. Madhun in 1997 due to Patient 1's desire to become pregnant despite her diabetes. Dr. Madhun saw Patient 1 on a quarterly basis and successfully controlled Patient 1's diabetes through a successful first pregnancy. Dr. Madhun developed “a cordial relationship and friendship” with Patient 1 during that period. (Tr. at 25-28; St. Ex. 2)
4. Patient 1 remained Dr. Madhun's patient once he began his private practice in 2001. Dr. Madhun again saw Patient 1 on a quarterly basis and was able to control her diabetes successfully through her second pregnancy. During her pregnancies, Patient 1 had office visits with Dr. Madhun on a biweekly basis, on average. (St. Ex. 2; Tr. at 30)
5. In December 2003, Patient 1 had an office visit with Dr. Madhun to discuss her deteriorating glycemic control despite insulin pump therapy. Dr. Madhun testified that, despite possible long-term complications, Patient 1's condition would “be taken care of” and was “temporary.” In that office visit, Dr. Madhun stated that he and Patient 1 hugged “and got close to each other” and that he gave Patient 1 a kiss. (Tr. at 34-36; St. Ex. 2)

6. After the December 2003 office visit, Dr. Madhun and Patient 1 began emailing one another. In December 2003, Patient 1 also gave Dr. Madhun an “expensive collection of flowers” for a Christmas and New Year’s gift. (St. Ex. 2)

*Email Correspondence*

7. Following the December 2003 office visit, Dr. Madhun and Patient 1 began emailing one another on a regular basis regarding both her condition/treatment and personal exchanges. Dr. Madhun used his personal email account for these exchanges. (St. Ex. 6; Tr. at 23)

8. In an email dated December 11, 2003, Patient 1 stated in part:

I regret that it has taken me five years since we first met, to show you that I’m a real person. I have wanted you to know \* \* \*. But where is the line between professional and personal relationship?

You are my hero and don’t forget I love you. Will you ever kiss me again?  
That was a surprise I’m not sure that I understand.

(St. Ex. 6 at 1)

9. Dr. Madhun testified that, following Patient 1’s December 11, 2003 email, he was surprised by Patient 1 saying that she loved him, and he realized that Patient 1 had possibly had personal feelings for him for some period of time. (Tr. at 38)

10. In January 2004, Dr. Madhun and Patient 1 had a sexual encounter, as described below. Following the emails in December 2003 and January 2004, and the first sexual encounter in January 2004, the emails between Dr. Madhun and Patient 1 became increasingly more personal and contained statements about possibly making arrangements to meet outside of Dr. Madhun’s office. Such emails included the following statements by Patient 1:

- February 9, 2004: “I can’t wait to be with you, I am aroused more than last time \* \* \*.”
- February 11, 2004: “Where do you want to meet? I can hardly wait to see you.”
- February 17, 2004: “I still adore you and want to be next to you, I wonder how you feel and miss you!”
- March 12, 2004: “I love you . . . We will figure out how to be together.”
- March 13, 2004: “I love you and miss you dearly”
- March 14, 2004: “I want to figure out how and when we can meet, when I get back from Florida. Friday afternoon good for you? \* \* \* I will always be yours, don’t forget it!”
- March 22, 2004: “My passion for you is strong and will last until we can be together \*\*\* I miss you !!! And want you to be mine again.”

- March 23, 2004: “I am practicing being patient, so we can continue our love affair, somehow somehow \* \* \*.”
- April 14, 2004: “Our love affair means so much to me, I want you to know I am yours more than ever. You are in my thoughts and dreams, in my heart and in songs, I only wish you were in my arms and in my bed \* \* \*. And more in my life. It will happen!”

(St. Ex. 6 at 5, 8, 9, 22-23, 25, 36, 49) The emails also included the following from Dr. Madhun:

- February 19, 2004: “I will call you in am \* \* \* I need u.”
- March 6, 2004: “I miss you again and again.”
- March 27, 2004: “Yes. I am interested \* \* \* in you and in our relationship \* \* \*.”
- April 8, 2004: “I just want to say I am all yours \* \* \*.”
- July 26, 2004: “\* \* \* Why do women know how to express themselves better than men \* \* \* I could not say it better. \* \* \* I share the feelings. \* \* \* I love you \* \* \*.”

(St. Ex. 6 at 12, 14, 39, 48, 97)

#### *Sexual Activity Between Dr. Madhun and Patient 1*

11. Between January 2004 and June 2004, Dr. Madhun and Patient 1 met a total of three times and engaged in sexual contact, including sexual intercourse. These three meetings were mutually arranged and each took place outside Dr. Madhun’s office, at hotels in and around the Cleveland area. The first meeting took place in January 2004 and the last in June 2004. The exact date of the third meeting is uncertain. Dr. Madhun admitted to a fourth meeting with Patient 1 at a local restaurant but denies that any sexual activity took place at that meeting. (Tr. at 39-40; St. Exs. 2 & 3 at Response 9)
12. Dr. Madhun acknowledged that his sexual contact with Patient 1, while she was still his patient, constituted sexual misconduct under the American Medical Association’s Principles of Medical Ethics (St. Ex. 1A) and that it was unethical. However, he stated that he did not believe that the physician-patient relationship with Patient 1 was harmed as a result of their personal and sexual relationship. (Tr. at 69-71)

#### *Termination of Physician-Patient Relationship and Subsequent Relationship*

13. Dr. Madhun testified that Patient 1’s last office visit with him was on June 8, 2004. (Tr. at 97; St. Ex. 3, p.10) In possible contradiction of that statement, Dr. Madhun advised in a written statement to the Board dated March 23, 2006, that he had last seen Patient 1 in his office in September 2004. Between June 8, 2004 and October 11, 2004, Patient 1 had appointments with others in Dr. Madhun’s office, such as the diabetes nurse educator, regarding diabetes care. (Tr. at 97; St. Ex. 2)

14. Beginning in June 2004, there were one or more discussions between Patient 1 and Dr. Madhun about Patient 1's finding another physician. During that time period, Dr. Madhun gave Patient 1 the names of at least two other physicians for her to consider. Patient 1 did not choose another physician until October 2004. Dr. Madhun alleges that the physician-patient relationship with Patient 1 terminated on the last date he saw her in his office in June 2004. (Tr. at 66, 96; St. Ex. 3 at Response 13(b))
15. Dr. Madhun stated at the hearing that he had told Patient 1 in an email that they needed to end their personal relationship. When asked to specifically identify that email, Dr. Madhun noted an email to Patient 1 on May 18, 2004, in which he wrote that "it will be a good idea for [Patient 1] to change doctors." Dr. Madhun acknowledged, however, that his sexual relationship with Patient 1 continued at least until June 2004. (St. Ex. 6 at 63; Tr. at 46-51)
16. In October 2004, Patient 1 wrote and delivered to Dr. Madhun an undated letter in which she stated that "[t]he time has come for our relationship to end." Patient 1 wrote that she intended "to devote [her]self 110%" in good faith to being "the best, decent, honorable, and loving wife that [she] can be." She further wrote that Dr. Madhun had meant a lot to her as a doctor and friend. She requested that Dr. Madhun not contact her "in any way in the future." (St. Ex. 4)
17. Patient 1 wrote and delivered a second letter to Dr. Madhun dated October 11, 2004, in which she stated that her husband had forced her to write the first letter because he had found all of her previous emails and phone records regarding Dr. Madhun and gave her the choice of a "divorce or a complete break with Dr. Madhun." She stated that she chose to stay with her husband. She apologized for ruining "their chances to be together" and stated that her husband felt that Dr. Madhun "took advantage of [her], and preyed upon [her] vulnerabilities," although she did not agree with her husband. (St. Ex. 5)
18. Dr. Madhun complied with Patient 1's October 2004 request not to contact her again. Via a letter dated October 11, 2004, Patient 1 requested that Dr. Madhun send her complete medical file to a new physician in the Cleveland area, and Dr. Madhun's office complied with this request. (St. Ex. 7)

#### **Interviews with Board Investigator**

19. On February 22, 2006, Board Investigator Brenda Harrison arrived unannounced at Dr. Madhun's office and asked questions about his relationship with Patient 1. Dr. Madhun testified that, at this meeting, he told the Board Investigator that he wished to have his attorney present for the interview. He further testified that, in his discussion with the investigator, he denied having any sexual relationship with Patient 1 until he had an opportunity to meet with this attorney. (Tr. at 32-33)
20. A meeting with Dr. Madhun and his attorney was promptly arranged. On March 15, 2006, Ms. Harrison met with Dr. Madhun in the office of Jay Milano, Dr. Madhun's attorney. In that

interview, Dr. Madhun admitted to engaging in sexual activity, including sexual intercourse, with Patient 1 between the period January 2004 to June 2004, when Patient 1 was a patient of Dr. Madhun's. In October 2008, Dr. Madhun confirmed to the Board in written responses to interrogatories that there had been at least three occurrences of sexual activity with Patient 1 between January and June 2004. (St. Ex. 3, Response no. 9)

21. At the March 15, 2006 interview, Ms. Harrison requested that Dr. Madhun prepare a written statement about his professional and personal relationship with Patient 1, including his sexual activity with Patient 1. Dr. Madhun prepared and submitted a statement dated March 23, 2006, and submitted it to the Board. (St. Ex. 2)

***Testimony of Isaam Diab, M.D.***

22. Isaam Diab, M.D., testified that he is a rheumatologist and has practiced on the west side of Cleveland for the past 18 years. He is in a practice group of approximately 45 primary-care physicians and 45 to 50 multi-specialty physicians. He stated that he has known Dr. Madhun for the last 15 years through patient referrals and consultations, and that Dr. Madhun shares office space with his group. (Tr. at 107-108)
23. Dr. Diab prefaced his testimony by stating that he is aware of Dr. Madhun's admitted sexual contact with Patient 1 and that he (Dr. Diab) does not condone this conduct and "absolutely" believes that Dr. Madhun's conduct was wrong and unethical. (Tr. at 108-109)
24. Dr. Diab described Dr. Madhun's practice as a "big endocrinology practice" in which he works in multiple hospitals in the Cleveland area consulting on many of Dr. Diab's diabetic patients. He stated that he found Dr. Madhun to be an "excellent physician" who is dedicated to his practice and patients. Dr. Diab testified that Dr. Madhun's practice is unique due to the "continuity of care and treatment" and "continuous contact" that Dr. Madhun must have with his diabetes patients. Dr. Diab further stated that there is a "lack of trained endocrinologists on the [west] side of Cleveland" and that the diabetic patients of his group "will suffer \* \* \* gravely" and "are the loser[s]" if Dr. Madhun is removed from practice as a result of this situation. (Tr. 109-115)
25. Finally, Dr. Diab stated that he would be willing to act as a mentor or give guidance to Dr. Madhun if such were required by the Board as part of Dr. Madhun's sanction. (Tr. at 114)

***Testimony of Raymond E. Stachurski<sup>1</sup>***

26. Raymond E. Stachurski is a 53-year-old male who has been a patient of Dr. Madhun since he was placed on a liver-transplant list in 2000. Mr. Stachurski testified that he has since received

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<sup>1</sup>After his right to confidentiality was explained, this patient of Dr. Madhun waived his confidentiality right and requested that his named be used in these proceedings.

a liver transplant and remains under the care of Dr. Madhun. He stated that he has office visits with Dr. Madhun every 90 days and that Dr. Madhun is in contact with him about once every two weeks to monitor his blood levels and make insulin adjustments. He stated that he must use large amounts of insulin due to his condition, but is “very insulin intolerant.” He stated that Dr. Madhun must closely monitor him because “if [his insulin levels] get out of whack, there’s a very good possibility that [he] may not survive.” (Tr. at 121-123)

27. Mr. Stachurski further stated that, of the five doctors that he currently sees, Dr. Madhun “is, by far, the most attentive to [his] needs” and “one of the better doctors [he] ever met.” He stated that Dr. Madhun has a unique concern for and dedication to his patients, and he has at times gotten phone calls from Dr. Madhun on Sundays and late in the evening to discuss his condition or to make insulin adjustments. (Tr. 123-126)
28. Mr. Stachurski stated that, if Dr. Madhun were removed from the practice of medicine for any period of time, Mr. Stachurski is not sure that another physician could take over his care and control his condition without harm to his health. He testified that Dr. Madhun’s removal from practice may affect whether he lives or dies. (Tr. at 125)

#### **Testimony of Anne M. Carrol, M.D.**

29. Anne M. Carrol, M.D. testified that she is a sole practitioner with a general internal-medicine practice in Beachwood, Ohio. She stated that she first met Dr. Madhun when they did their residencies together approximately 20 years ago at Case Western Reserve University and that they briefly shared office space in 2003 or 2004. They also currently refer patients to one another. (Tr. at 131-132, 139-140)
30. Dr. Carrol described Dr. Madhun as “a superb physician” to whom she and other area physicians have referred patients with high-risk pregnancies due to diabetic complications. She stated that she is not aware of another endocrinologist in the Cleveland area to whom she could refer these patients. She also stated that there would be a unique burden on patients if Dr. Madhun were removed from his practice for any period of time. (Tr. at 133-139)
31. Dr. Carrol stated that she would be willing to serve as a mentor to Dr. Madhun or otherwise monitor his practice if that is required by the Board. (Tr. at 139)

#### **Additional Testimony by Dr. Madhun**

32. Dr. Madhun testified that due to the proliferation of lawsuits involving OB/GYN’s and the high-risk nature of diabetes during pregnancy, most OB/GYN’s have been referring pregnant patients with diabetes to endocrinologists such as himself. He further stated that there is a severe shortage of endocrinologists in the Cleveland area who accept diabetic pregnancy referrals. He stated that there is probably only one other endocrinologist on the west side of Cleveland who takes these referrals and that he is the only one on the east side who will take them. In the context of this testimony, Dr. Madhun also emphasized the constant need to

closely monitor diabetic, pregnant patients, particularly in the last trimester. Dr. Madhun also cited a shortage of physicians in the Cleveland area who specialize in treating thyroid cancer, with three others on the west side of Cleveland and three on the east side of Cleveland. (Tr. at 71-80)

33. Dr. Madhun testified that, in lieu of any license suspension for him in this matter, that the Board consider permitting him to continue his practice without compensation. He proposes this alternative so that his patients, especially the diabetic pregnant patients, may continue to receive needed medical treatments in the face of a shortage of other endocrinologists in the area to treat them. His proposal further requests that during any such period: his office staff be paid; office overhead expenses be paid; and the portion of medical fees which previously was paid to him as compensation would be paid to charity. He further stated that he would be willing to complete any specific education regarding dealing with patients or accept supervision by another physician if either is required by the Board. (Tr. at 80-85)

### **FINDINGS OF FACT**

1. During late 1998 and continuing through into October 2004, Zuhayr T. Madhun, M.D., in the course of his medical practice, treated Patient 1 (as identified in a confidential patient key admitted under seal) for Type 1 Diabetes Mellitus. Despite his ongoing physician-patient relationship with Patient 1, Dr. Madhun engaged in sexual contact with Patient 1 on at least three separate occasions between January 2004 and June 2004, inclusive.

At the hearing and in his interrogatory responses to the Board, Dr. Madhun contended that the physician-patient relationship terminated on June 8, 2004, Patient 1's last office visit in which she saw Dr. Madhun. Despite that contention, there was no formal termination of the physician-patient relationship at that point, and, despite Dr. Madhun's suggestion that Patient 1 find another physician, Patient 1 continued to have appointments with staff in Dr. Madhun's office and did not terminate the physician-patient relationship until October 2004.

2. During an unannounced interview with a Board Investigator on February 22, 2006, Dr. Madhun requested to have an attorney present for the interview, and stated that, until he had an opportunity to meet with his attorney, he denied having any sexual relationship with Patient 1. During a second interview with a Board Investigator on March 15, 2006, at which Dr. Madhun's attorney was present, Dr. Madhun admitted to engaging in sexual activity with Patient 1, including sexual intercourse on three occasions between January 2004 and June 2004, inclusive, when Patient 1 was his patient. Dr. Madhun subsequently confirmed such activity with Patient 1 in a written statement to the Board dated March 23, 2006, and in interrogatory responses to the Board dated October 8, 2008.

## CONCLUSIONS OF LAW

1. R.C. 4731.22, in pertinent parts, states as follows:

\* \* \*

(B) The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

\* \* \*

(18) Subject to section 4731.226 of the Revised Code, violation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule.

\* \* \*

2. The American Medical Association's (AMA's) Principles of Medical Ethics in effect for 2004-2005, in pertinent part, state as follows:

### **Sexual Misconduct in the Practice of Medicine**

Sexual contact that occurs concurrent with the patient-physician relationship constitutes sexual misconduct. Sexual or romantic interactions between physicians and patients detract from the goals of the physician-patient relationship, may exploit the vulnerability of the patient, may obscure the physician's objective judgment concerning the patient's health care, and ultimately may be detrimental to the patient's well-being.

If a physician has reason to believe that non-sexual contact with a patient may be perceived as or may lead to sexual contact, then he or she should avoid the non-sexual contact. At a minimum, a physician's ethical duties include terminating the physician-patient relationship before initiating a dating, romantic, or sexual relationship with a patient.

\* \* \*

3. The undisputed sexual contact that occurred between Dr. Madhun and Patient 1 while she was a patient, as set forth in Finding of Fact 1 above, clearly constitutes a violation of the AMA's Principles of Medical Ethics in effect during the period in which Dr. Madhun engaged in these

activities. Indeed, Dr. Madhun conceded that his conduct was unethical and in violation of the AMA's Principles of Medical Ethics.

His violation of these provisions constitutes a "violation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule," as that language is used in R.C. 4731.22(B)(18).

4. Dr. Madhun's denial to the Board Investigator in the February 2006 interview that he had a sexual relationship with Patient 1 while she was his patient, as set forth in Finding of Fact 2 above, does constitute "[m]aking a false, fraudulent, deceptive, or misleading statement \* \* \* in relation to the practice of medicine and surgery, osteopathic medicine and surgery \* \* \*" as that language is used in R.C. 4731.22(B)(5).

Dr. Madhun's denial to the Board Investigator in the February 2006 interview that he had a sexual relationship with Patient 1 while she was his patient, as set forth in Finding of Fact 2 above, also constitutes a "failure to cooperate in an investigation conducted by the board under division (F) of this section," as that language is used in R.C. 4731.22(B)(34).

It is noted that Dr. Madhun's violations of these provisions are mitigated by the facts that his original denial was in conjunction with his request to have counsel present at the interview and that, within a short time following his original denial, he did in fact provide an admission to the Board of his sexual relationship with Patient 1, with the assistance of counsel, and he cooperated in good faith with all aspects of the Board's pursuit of administrative charges since that admission.

### **Rationale for the Proposed Order**

It is undisputed that Dr. Madhun engaged in sexual contact, including three separate incidents of sexual intercourse over a six-month period, with Patient 1 while she was his patient. As noted, Dr. Madhun has admitted that such conduct constituted sexual misconduct under the AMA's Principles of Medical Ethics and was unethical. At least one reason for the prohibition against sexual contact between a physician and patient is that the sexual contact may exploit the vulnerability of the patient. Such is present in the instant matter as evidenced by Patient 1's initial email to Dr. Madhun in which she stated, "You are my hero and don't forget I love you." Indeed, a patient's feelings toward his/her physician can be confusing as a result of the care and treatment provided.

Dr. Madhun's personal relationship with and sexual contact involving Patient 1 was not an isolated incident but instead involved three separate incidents of sexual contact over a several-month period with a patient he knew was married. The duration of the contact should have permitted time for Dr. Madhun to reflect on the impropriety of such activity with one of his patients. Accordingly, despite his assertions of the scarcity of endocrinologists in the Cleveland area, this Hearing Examiner feels that some suspension of his certificate is warranted.

Regarding Dr. Madhun's false or misleading statements to the Board Investigator and his failure to cooperate in the investigation of this matter, this Hearing Examiner agrees that Dr. Madhun did deny his sexual relationship with Patient 1 in the initial interview in February 2006. The evidence suggests, however, that this denial was done in conjunction with his request to have counsel present during the interview. Indeed, in a follow-up interview conducted a few weeks later with his counsel present, Dr. Madhun freely admitted the existence of his sexual relationship with Patient 1 and provided specific details thereof. Further, since that point the evidence suggests that he fully cooperated with the investigation, including but not limited to, providing a written statement to the Board Investigator and responses to Board interrogatories. The Board should take into account such mitigating factors with respect to the second violation.

With regard to the appropriate sanction, the Hearing Examiner notes that this case has similarities to the *Matter of Macheret* (December 2008), in which the Board ordered a one-year suspension. Here, however, the Hearing Examiner has recommended only a six-month suspension due to the evidence regarding the potential extreme hardship for patients.

### **PROPOSED ORDER**

It is hereby ORDERED that:

1. **REVOCAION, STAYED; SUSPENSION;** The certificate of Zuhayr T. Madhun, M.D., to practice medicine and surgery in the State of Ohio shall be REVOKED. Such revocation is STAYED, and Dr. Madhun's certificate shall be SUSPENDED for an indefinite period of time, but not less than 180 days.
2. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Madhun's certificate to practice medicine and surgery in Ohio until all of the following have been met:
  - a. **Application for Reinstatement or Restoration:** Dr. Madhun shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  - b. **Professional Ethics Course(s):** At the time he submits his application for reinstatement or restoration, Dr. Madhun shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.

In addition, at the time Dr. Madhun submits the documentation of successful completion of the course or courses dealing with professional ethics, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

- c. **Personal Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Madhun shall provide acceptable documentation of successful completion of a course or courses dealing with personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.

In addition, at the time Dr. Madhun submits the documentation of successful completion of the course or courses dealing with personal ethics, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future

- d. **Additional Evidence of Fitness to Resume Practice:** In the event that Dr. Madhun 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 of the Revised Code to require additional evidence of his fitness to resume practice.

3. **PROBATION:** Upon reinstatement or restoration, Dr. Madhun's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:

- a. **Obey the Law:** Dr. Madhun shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
- b. **Quarterly Declarations:** Dr. Madhun 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 the first day of the third month following the month in which Dr. Madhun'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.
- c. **Personal Appearances:** Dr. Madhun 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. Madhun's certificate is restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances must occur every six months thereafter, and/or as otherwise requested 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.

- d. **Violation of Terms of Probation:** If Dr. Madhun violates the terms of his probation 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 permanent revocation of his certificate.
4. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Madhun's certificate will be fully restored.
5. **REQUIRED REPORTING AND DOCUMENTATION OF REPORTING:**
  - a. **Required Reporting to Employers and Hospitals:** Within 30 days of the effective date of this Order, Dr. Madhun shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services (including but not limited to third party payors) or is receiving training, and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Madhun shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he/she applies for or obtains privileges or appointments. In the event that Dr. Madhun provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within 30 days of the effective date of this Order, Dr. Madhun 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. Madhun receives from the Board written notification of his successful completion of probation as set forth in paragraph 4, above.

- b. **Required Reporting To Other State Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Madhun shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Dr. Madhun further agrees to provide a copy of this Order 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.

This requirement shall continue until Dr. Madhun receives from the Board written notification of his successful completion of probation as set forth in paragraph 4, above.

- c. **Documentation that the Required Reporting Has Been Performed:** Dr. Madhun shall provide the Board with **one** of the following documents as proof of each required notification within 30 days of the date of each notification required above: (1) the return receipt of certified mail within 30 days of receiving that return receipt, (2) an acknowledgment of delivery bearing the original ink signature of the person to whom a copy of the Board Order was hand delivered, (3) the original facsimile generated report confirming successful transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Board Order to the person or entity to whom a copy of the Board Order was emailed.

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

Respectfully submitted,

*Paul Stehura / by*  
Paul Stehura  
Hearing Examiner *Paul Stehura*



**State Medical Board of Ohio**  
30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.  
Executive Director

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**Memorandum**

TO: BOARD MEMBERS  
FROM: Paul Stehura, Hearing Examiner  
RE: Zuhayr T. Madhun, M.D.  
Case No. 08-CRF-141  
DATE: June 29, 2009

Please find enclosed copies of the transcript, exhibits, and Report and Recommendation concerning the adjudication hearing of Zuhayr T. Madhun, M.D., which occurred on April 9, 2009.

This matter is scheduled for consideration at the August 12, 2009, Board meeting.

The allegations contained in the Board's notice of opportunity for hearing concern the following issues: Ethics violation (sexual misconduct), false statement, failure to cooperate in investigation.

The following sections of the Disciplinary Guidelines were considered in drafting the Proposed Order in this matter. Please note, however, that the Disciplinary Guidelines do not limit any sanction that the Board may impose, and that the range of sanctions available in this matter extends from dismissal to permanent revocation.

Further note that this matter includes a violation for which there is no applicable Disciplinary Guideline.

**II.B: SEXUAL MISCONDUCT WITHIN PRACTICE.**

- The minimum penalty for section II.B is: Stayed revocation; indefinite suspension, min. 1 year, with conditions for reinstatement; subsequent probation as appropriate.
- The maximum penalty for section II.B is: Permanent revocation of certificate or permanent denial of application.

**III.E: PUBLISHING A FALSE, DECEPTIVE, OR MISLEADING STATEMENT.**

- The minimum penalty for section III.E is: Reprimand.
- The maximum penalty for section III.E is: Permanent revocation of certificate or permanent denial of application.

Matter of Zuhayr T. Madhun, M.D.  
Case No. 08-CRF-141  
June 29, 2009

Page 2

The Proposed Order is outside the penalties delineated for one or more of the Disciplinary Guidelines noted above.

enclosures

# State Medical Board of Ohio

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

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## EXCERPT FROM THE DRAFT MINUTES OF AUGUST 12, 2009

### REPORTS AND RECOMMENDATIONS, MOTIONS FOR RECONSIDERATION & PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Madia announced that the Board would now consider the Reports and Recommendations, the Motion for Reconsideration and the Proposed Findings And Proposed Order appearing on its agenda.

Dr. Madia asked whether each member of the Board had received, read and considered the hearing record; the Findings of Fact, Conclusions of Law and Proposed Orders, and any objections filed in the matters of George Jamil-Elias Boutros, M.D.; Matthew Reid Harris, D.O.; and Zuhayr T. Madhun, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

Dr. Madia 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.

.....

ZUHAYR T. MADHUN, M.D.

.....

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. STEHURA'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF ZUHAYR T. MADHUN, M.D. MR. HAIRSTON SECONDED THE MOTION.**

.....

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

ROLL CALL:	Mr. Albert	- abstain
	Dr. Varyani	- aye
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

The motion 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

December 10, 2008

Case number: 08-CRF- 141

Zuhayr T. Madhun, M.D.  
8585 Sunview Dr.  
Broadview Heights, OH 44147

Dear Doctor Madhun:

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) From in or during late 1998, through in or during October 2004, in the course of your practice, you treated Patient 1, as identified on the attached confidential Patient Key, for the diagnosis of Type 1 Diabetes Mellitus. [The confidential Patient Key is to be withheld from public disclosure.] Despite your ongoing physician-patient relationship with Patient 1, you engaged in sexual contact with Patient 1 on at least three separate occasions between January 2004 and June 2004.
- (2) In an interview with a Board Investigator on or about February 22, 2006, you falsely stated that you did not engage in a sexual relationship with Patient 1. After further discussion, you again denied that a sexual relationship took place and abruptly ended the interview. In a subsequent interview at your attorney's office, on or about March 15, 2006, you admitted that you had a sexual relationship with Patient 1.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) through (2) above, individually and/or collectively, constitute "[v]iolation of any provision of a code of ethics of the American medical association, the American osteopathic association, the

*Mailed 12-11-08*

American podiatric medical association, or any other national professional organizations that the board specifies by rule,” as that clause is used in Section 4731.22(B)(18), Ohio Revised Code, to wit: Principles I, II, and IV of the American Medical Association’s Principles of Medical Ethics, copies of selected portions of which are attached hereto and incorporated herein.

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, 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 acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute “[f]ailure to cooperate in an investigation conducted by the board under division (F) of this section,” as that clause is used in Section 4731.22(B)(34), 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.

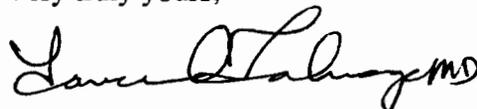
In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate 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,

A handwritten signature in black ink, appearing to read "Lance A. Talmage MD". The signature is fluid and cursive, with the "MD" clearly visible at the end.

Lance A. Talmage, M.D.  
Secretary

LAT/AMM/flb  
Enclosures

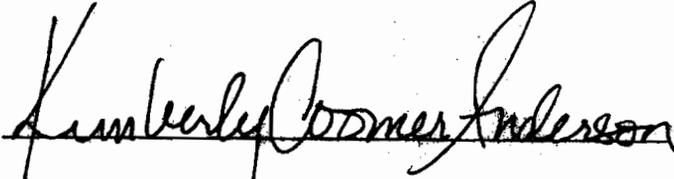
CERTIFIED MAIL #91 7108 2133 3934 3683 8242  
RETURN RECEIPT REQUESTED

cc: Jay Milano, Esq.  
Milano Weiser Attorneys & Counselors at Law, LPA  
2639 Wooster Road  
Cleveland, Ohio 44116

CERTIFIED MAIL #91 7108 2133 3934 3683 8259  
RETURN RECEIPT REQUESTED

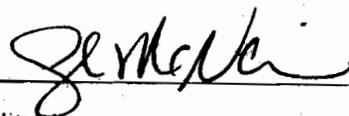
**CERTIFICATION OF COPIES OF OFFICIAL RECORDS**

The undersigned, Kimberly Coomer Anderson, states that she has the job title of Assistant Executive Director of Investigations, Compliance, and Enforcement, at the State Medical Board of Ohio [Board], and that as such, she certifies that the accompanying eight pages of photostatic copies represent an accurate and true copy of selected excerpts from the original documents of the American Medical Association's Principles of Medical Ethics Current Opinions with Annotations, 2004-2005 Edition, which are obtained and kept on file by the Board pursuant to Section 4731.22(B)(18), Ohio Revised Code.

  
Signature of Affiant

Sworn to before me and signed in my presence this 4<sup>th</sup> day of December, 2008.





Notary Public  
Agency at Law  
Notary Public, State of Ohio  
Commission Has No Expiration  
2008 47.03 R.C.

American Medical Association  
Physicians dedicated to the health of America



**Council on Ethical and Judicial Affairs**

# Code of Medical Ethics

Current Opinions with Annotations 2004–2005 Edition



# Principles of Medical Ethics

## Preamble

The medical profession has long subscribed to a body of ethical statements developed primarily for the benefit of the patient. As a member of this profession, a physician must recognize responsibility to patients first and foremost, as well as to society, to other health professionals, and to self. The following Principles adopted by the American Medical Association are not laws, but standards of conduct which define the essentials of honorable behavior for the physician.

- I. A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights.
- II. A physician shall uphold the standards of professionalism, be honest in all professional interactions, and strive to report physicians deficient in character or competence, or engaging in fraud or deception, to appropriate entities.
- III. A physician shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient.
- IV. A physician shall respect the rights of patients, colleagues, and other health professionals, and shall safeguard patient confidences and privacy within the constraints of the law.
- V. A physician shall continue to study, apply, and advance scientific knowledge, maintain a commitment to medical education, make relevant information available to patients, colleagues, and the public, obtain consultation, and use the talents of other health professionals when indicated.
- VI. A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical care.
- VII. A physician shall recognize a responsibility to participate in activities contributing to the improvement of the community and the betterment of public health.
- VIII. A physician shall, while caring for a patient, regard responsibility to the patient as paramount.
- IX. A physician shall support access to medical care for all people.

Adopted June 1957; revised June 1980; revised June 2001.

health care program will not subsidize the drug, physicians should help patients by identifying alternative forms of financial assistance, such as those available through pharmaceutical companies' assistance programs. (III)

Issued June 1996 based on the report "Managed Care Cost Containment Involving Prescription Drugs," adopted June 1995 (*Food and Drug Law Journal*. 1998; 53: 25-34); updated June 2002.

**Cal. App. 2002** State agency appealed a writ of mandamus requiring it to approve managed care plan's proposed amendment to discontinue coverage of sexual dysfunction prescription drugs. Agency based its authority to disapprove on a statute empowering it to regulate health plan prescription drug coverage. California Court of Appeals affirmed. The court held that the agency exceeded its statutory authority. References Opinion 8.135 regarding managed care drug formulary systems. *Kaiser Foundation Health Plan, Inc. v. Zingale*, 99 Cal. App. 4th 1018, 121 Cal. Rptr. 2d 741, 746.

**Journal 2000** Describes the American formulary system and the economic efficiencies that can be realized when physicians comply. Describes how the formulary system fits into and underlies health care electronic data interchange. Concludes that congressional action is needed to fully extend the formulary system to Medicaid programs in all fifty states. References Opinion 8.135. Buckles, *Electronic Formulary Management and Medicaid: Maximizing Economic Efficiency and Quality of Care in the Age of Electronic Prescribing*, 11 U. Fla. J. L. & Pub. Pol'y 179, 182-83 (2000).

**Journal 1999** Discusses the need for physicians to advocate on behalf of patients' rights in the context of health care delivery. Evaluates the nature and scope of the physician's role as advocate, noting that physicians cannot be expected to engage in attorney-like advocacy. Quotes Principles IV and VI, Fundamental Elements (2), (4), and (6) [now Opinion 10.01], Patient Responsibilities 5 [now Opinion 10.02], and Opinions 2.03, 2.07, 2.09, 2.16, 2.19, 3.06, 4.01, 4.04, 6.01, 7.02, 8.02, 8.03, 8.13, 8.132, 9.06, 9.07, and 9.131. Cites Opinions 5.05, 5.09, 7.01, 8.135, and 9.02. Sage, *Physicians as Advocates*, 35 *Hous. L. Rev.* 1529, 1537, 1541, 1542, 1552-53, 1554, 1556, 1557, 1559, 1561-62, 1564, 1571, 1574, 1576, 1580 (1999).

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- 8.137 The previous Opinion 8.137, "Restrictions on Disclosure in Managed Care Contracts," issued June 1997, was deleted in June 2000 and combined with Opinion 8.053, "Restrictions on Disclosure in Managed Care Contracts."

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### **Sexual Misconduct in the Practice of Medicine**

Sexual contact that occurs concurrent with the patient-physician relationship constitutes sexual misconduct. Sexual or romantic interactions between physicians and patients detract from the goals of the physician-patient relationship, may exploit the vulnerability of the patient, may obscure the physician's objective judgment concerning the patient's health care, and ultimately may be detrimental to the patient's well-being.

If a physician has reason to believe that non-sexual contact with a patient may be perceived as or may lead to sexual contact, then he or she should avoid the non-sexual contact. At a minimum, a physician's ethical duties include terminating the physician-patient relationship before initiating a dating, romantic, or sexual relationship with a patient.

Sexual or romantic relationships between a physician and a former patient may be unduly influenced by the previous physician-patient relationship. Sexual or romantic relationships with former patients are unethical if the

physician uses or exploits trust, knowledge, emotions, or influence derived from the previous professional relationship. (I, II, IV)

Issued December 1989.

Updated March 1992 based on the report "Sexual Misconduct in the Practice of Medicine," adopted December 1990 (JAMA. 1991; 266: 2741-45).

**S. D. N.Y. 1999** Physician brought a 42 U.S.C. § 1983 claim seeking to enjoin the State Board from revoking his license to practice medicine. The charges against the physician included allegations of engaging in sexual relations with patients. The Board quoted Opinion 8.14 as a basis for its conclusion that engaging in sexual relations with patients is an ethical violation. The court held that, in order to enjoin the Board, the physician had to show a substantial likelihood of success on the merits. Further, the court found that abstention was appropriate because the physician's case was pending administrative appeal. Finally, the court held that the statute that prohibited the stay of a license revocation pending appeal complied with due process. *Selkin v. State Board for Professional Medical Conduct*, 63 F. Supp. 2d 397, 399-400.

**Cal. 1995** Patient sued ultrasound technician, who sexually assaulted her, and hospital for professional negligence, battery, and intentional and negligent infliction of emotional distress. In differentiating between the physician-patient relationship and the technician-patient relationship, the court cited AMA Council on Ethical and Judicial Affairs, Sexual Misconduct in the Practice of Medicine, 266 JAMA 2741 (1991) [now Opinion 8.14]. Finding that the technician's acts did not arise from any events or conditions of his employment, the court held that the hospital was not liable under respondeat superior. *Lisa M. v. Henry Mayo Newhall Memorial Hosp.*, 12 Cal. 4th 291, 907 P.2d 358, 48 Cal. Rptr. 2d 510, 517.

**Cal. App. 1992** Physician who had sexual relationship with patient brought a mandamus action challenging discipline imposed by Medical Board. The court concluded that a sexual relationship between physician and patient was alone an insufficient basis for discipline. An expert witness, referring to Opinion 8.14, testified that it is unethical for a physician to have a sexual relationship with a patient. However, focusing on the applicable state statute, the court found the relationship must affect the functions and duties of a physician to be a basis for discipline. *Gromis v. Medical Board*, 8 Cal. App. 4th 589, 10 Cal. Rptr. 2d 452, 455 n.3, reh'g denied, 1992 Cal. App. LEXIS 1047, and review denied, 1992 Cal. LEXIS 5101.

**Md. App. 2003** Physician appealed decision upholding State Board's order to revoke his medical license for unprofessional conduct. The physician engaged in consensual sexual relationships with several of his patients at places and times other than when medical care was given. Appeals court affirmed the Board's ruling and held that the conduct occurred within the practice of medicine. Quotes Opinion 8.14. *Finucan v. Maryland State Board of Physicians Quality Assurance*, 151 Md. App. 399, 827 A.2d 176, 181-82.

**Md. App. 1992** Patient's husband sought damages from defendant psychiatrist because of the sexual relationship initiated during treatment of the patient by the defendant. Although the court held that the plaintiff in this case could not recover damages in tort for disruption of a marriage, it cited favorably Opinion 8.14 (1989) for its declaration that "sexual misconduct in the practice of medicine" is unethical. *Homer v. Long*, 90 Md. App. 1, 3 n.1, 599 A.2d 1193, 1193 n.1.

**Mass. App. 2003** Patient appealed summary judgment in suit against physician's estate for harm caused by their two-year consensual sexual affair. Once the affair began, the physician stopped treating the patient. The patient alleged malpractice, breach of fiduciary duty, intentional infliction of emotional distress, and unfair or deceptive practices. Appellate court upheld summary judgment. In analyzing the fiduciary duty claim, the court quoted Opinion 8.14. *Korper v. Weinstein*, 57 Mass. App. 433, 783 N.E.2d 877, 881, n. 9.

**N.Y. 2002** Surgical resident sexually assaulted patient while she was in recovery room. Patient sued hospital for negligence and vicarious liability. Trial court denied hospital's motion for summary judgment, but intermediate appellate court granted motion. New York Court of Appeals modified the ruling. It held that patient's vicarious liability claim failed because the misconduct was not in furtherance of hospital business or in the scope of the resident's employment. The court found, however, a sufficient basis for a negligence claim. References Opinion 8.14. *N.X. v. Cabrini Medical Center*, 97 N.Y.2d 247, 765 N.E.2d 844, 847, n.2, 739 N.Y.S.2d 348.

**N.Y. Sup. 1998** Physician was convicted of sodomizing a patient and falsifying her records. He appealed in part on grounds that the prosecutor had introduced evidence regarding his sexual relationship with another patient in violation of a pre-trial ruling. The court reversed the convictions and remanded the case for a new trial. The dissent cited Opinion 8.14, stating that the physician's sexual relationship with another patient violated ethical standards. Furthermore, the dissent argued that evidence of such a relationship was relevant to the case at hand. *People v. Griffin*, 242 A.D.2d 70, 671 N.Y.S. 2d 34, 39.

**Ohio 1991** State medical board revoked license of physician who had consensual sexual relations with his patient. The court upheld the board's ruling that this violated Principles I, II and IV. Dissenting judge, citing AMA Council on Ethical and Judicial Affairs, *Sexual Misconduct in the Practice of Medicine*, 266 JAMA 2741 [now Opinion 8.14], argued that until 1991, the AMA did not clearly deem sexual contact with a patient unethical. *Pons v. Ohio State Medical Bd.*, 66 Ohio St. 3d 619, 623, 625, 614 N.E.2d 748, 752, 753.

**Journal 2003** Highlights the inadequacies of Washington tort law with respect to holding employers of sexually exploitative therapists accountable. Concludes that courts should premise employer liability on the foreseeability of transference. References Opinion 8.14. Allen, *The Foreseeability of Transference: Extending Employer Liability Under Washington Law for Therapist Sexual Exploitation of Patients*, 78 Wash. L. Rev. 525, 531 (2003).

**Journal 2001** Explores changes in common law and statutory law that have promoted the marginalization of chastity. Considers rules governing the professions. Concludes with a legal agenda intended to help restore the social value of chastity. References Opinion 8.14. Rodes, *On Law and Chastity*, 76 Notre Dame L. Rev. 643, 675 (2001).

**Journal 2000** Evaluates consensual sexual relationships between patients and physicians. Emphasis is placed on whether, and in what situation, a sexual relationship may constitute medical malpractice. Concludes that people should learn to take responsibility for their actions and that certain limitations should be placed on recovery for malpractice. References Opinion 8.14. Puglise, "Calling Dr. Love": *The Physician-Patient Sexual Relationship as Grounds for Medical Malpractice - Society Pays While the Doctor and Patient Play*, 14 J. L. & Health 321, 324-25, 349 (2000).

**Journal 1999** Examines countertransference in professional relationships. Observes how the resulting power imbalance may give rise to the potential for sexual exploitation. Concludes by offering strategies for identifying and addressing emotional interference in the lawyer/client relationship. Cites Opinion 8.14. Silver, *Love, Hate, and Other Emotional Interference in the Lawyer/Client Relationship*, 6 Clinical L. Rev. 259, 266 (1999).

**Journal 1998** Provides policy reasons why attorney-client sexual relations should be prohibited. Urges states to codify rules precluding such conduct during representation. Explains that such rules would pass constitutional scrutiny. Cites Opinion 8.14. Awad, *Attorney-Client Sexual Relations*, 22 J. Legal. Prof. 131, 190 (1998).

**Journal 1998** Discusses types of discipline taken against physicians for sexual offenses. Points out that some physicians still may be permitted to practice medicine despite the commission of sexual misconduct. Proposes ways that might increase the chance that sex-related offenses will be reported. Quotes Opinion 8.14. Dehlendorf & Wolfe, *Physicians Disciplined for Sex-Related Offenses*, 279 JAMA. 1883 (1998).

**Journal 1997** Examines the balance needed between clinical objectivity and physician-patient bonding. Discusses personal boundaries and methods of coping with transgressions by both physicians and patients. Advocates a focus on communication with patients to allow physicians to maintain both an empathetic and objective relationship. References Opinion 8.14. Farber, Novack, & O'Brien, *Love, Boundaries, and the Physician-Patient Relationship*, 157 Arch. Intern. Med. 2291, 2292, 2293, 2294 (1997).

**Journal 1996** Discusses the ethical implications of sexual misconduct in the medical field. Examines the current civil and criminal tools used to curb physician-patient misconduct. Notes the inadequacy of physician reporting. Proposes a statutory approach to discipline physicians who abuse their fiduciary duties. Quotes Principle II. References Opinion 8.14. Note, *Sexual Conduct Within the Physician-Patient Relationship: A Statutory Framework for Disciplining this Breach of Fiduciary Duty*, 1 Widener L. Symp. J. 501, 507 (1996).

**Journal 1994** Explores the negative consequences of physician-patient sexual relationships. Suggests that sexual contact be prohibited during the physician-patient relationship and for a

Fundamental Elements (4), and Opinion 5.05. Cites Principle I and Fundamental Elements (1). Friedland, *Physician-Patient Confidentiality: Time to Re-Examine a Venerable Concept in Light of Contemporary Society and Advances in Medicine*, 15 *J. Legal Med.* 249, 257, 264, 276 (1994).

**Journal 1994** Explores the ethical issues involved in a multidisciplinary team working with children in legal proceedings. Focuses on the relationships between professionals and the conflicts that arise regarding disclosure of confidential information and forced disclosure of non-privileged information. Quotes Principles III, IV, Fundamental Elements (4) and Opinions 1.02 (1992) and 5.07 (1992) [now Opinion 5.05]. Cites Opinions 2.02. Glynn, *Multidisciplinary Representation of Children: Conflicts Over Disclosures of Client Communications*, 27 *J. Marshall L. Rev.* 617, 625, 626, 630-32, 637, 639, 643 (1994).

**Journal 1994** Discusses physician-patient confidentiality and the exception that permits breach of a patient's confidence if required by law. Argues that this is always a legitimate exception to the confidentiality rule. Quotes Principle IV and Fundamental Elements (4). McConnell, *Confidentiality and the Law*, 20 *J. Med. Ethics* 47, 47 (1994).

**Journal 1994** Reviews the evolution of the physician-patient relationship, with attention to examines the changing health care delivery environment. Quotes Preamble, Principles I, II, III, IV, V, and VI, Fundamental Elements (1) and (2), and Opinions 1.02 and 8.07 (1981) [now Opinion 8.08]. Cites Opinion 1.01. Szczygiel, *Beyond Informed Consent*, 21 *Ohio N.U.L. Rev.* 171, 217, 218, 220, 225, 226, 256 (1994).

**Journal 1994** Discusses the importance of confidentiality in the physician-patient relationship and under what circumstances patient information may be released. Examines unique considerations that apply when a physician provides medical care to a minor or an HIV-infected individual. Quotes Principle IV and Fundamental Elements (4). Weiner & Wettstein, *Confidentiality of Patient-Related Information*, 112 *Arch. Ophthalmology* 1032, 1033 (1994).

**Journal 1993** Analyzes the implications of giving patients and their families an absolute right to control medical treatment. Argues that courts should refrain from ordering physicians to treat patients when physicians believe that treatment would be ineffective. Quotes Fundamental Elements (5) [now Opinion 10.01] and Opinions 2.11 (1982) [now Opinion 2.20] and 2.18 (1986) [now Opinion 2.20]. Comment, *Beyond Autonomy: Judicial Restraint and the Legal Limits Necessary to Uphold the Hippocratic Tradition and Preserve the Ethical Integrity of the Medical Profession*, 9 *J. Contemp. Health L. & Pol'y* 451, 467, 468 (1993).

## **THE PATIENT-PHYSICIAN RELATIONSHIP**

The practice of medicine, and its embodiment in the clinical encounter between a patient and a physician, is fundamentally a moral activity that arises from the imperative to care for patients and to alleviate suffering.

A patient-physician relationship exists when a physician serves a patient's medical needs, generally by mutual consent between physician and patient (or surrogate). In some instances the agreement is implied, such as in emergency care or when physicians provide services at the request of the treating physician. In rare instances, treatment without consent may be provided under court order (see Opinion 2.065, "Court-Initiated Medical Treatments in Criminal Cases"). Nevertheless, the physician's obligations to the patient remain intact.

The relationship between patient and physician is based on trust and gives rise to physicians' ethical obligations to place patients' welfare above their own self-interest and above obligations to other groups, and to advocate for their patients' welfare.

Within the patient-physician relationship, a physician is ethically required to use sound medical judgment, holding the best interests of the patient as paramount. (I, II, VI, VIII)

Issued December 2001 based on the report "The Patient-Physician Relationship," adopted June 2001.

**Journal 2003** Highlights the legal and ethical concerns surrounding use of noncompetition clauses. Concludes that physicians should carefully evaluate these clauses given their likely enforceability. Quotes Opinions 9.02, 9.06, 10.01, and 10.015. Loeser, *The Legal, Ethical, and Practical Implications of Noncompetition Clauses: What Physicians Should Know Before They Sign*, 31 *J.L. Med. & Ethics* 283, 286, 287, 290 (2003).

**Journal 2002** Examines sports-related concussions among football players. Considers the responsibilities of team physicians. Concludes that litigation will increase without treatment guidelines for concussion management. References Opinion 10.015. Hecht, *Legal and Ethical Aspects of Sports-Related Concussions: The Merrill Hoge Story*, 12 *Seton Hall J. Sport L.* 17, 42-43 (2002).

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## Gifts from Patients

Gifts that patients offer to physicians are often an expression of appreciation and gratitude or a reflection of cultural tradition, and can enhance the patient-physician relationship.

Some gifts signal psychological needs that require the physician's attention. Some patients may attempt to influence care or to secure preferential treatment through the offering of gifts or cash. Acceptance of such gifts is likely to damage the integrity of the patient-physician relationship. Physicians should make clear that gifts given to secure preferential treatment compromise their obligation to provide services in a fair manner.

There are no definitive rules to determine when a physician should or should not accept a gift. No fixed value determines the appropriateness or inappropriateness of a gift from a patient; however, the gift's value relative to the patient's or the physician's means should not be disproportionately or inappropriately large. One criterion is whether the physician would be comfortable if acceptance of the gift were known to colleagues or the public.

Physicians should be cautious if patients discuss gifts in the context of a will. Such discussions must not influence the patient's medical care.

If, after a patient's death, a physician should learn that he or she has been bequeathed a gift, the physician should consider declining the gift if the physician believes that its acceptance would present a significant hardship (financial or emotional) to the family.

The interaction of these various factors is complex and requires the physician to consider them sensitively. (I, II)

Issued December 2003 based on the report "Gifts from Patients," adopted June 2003.

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## Patient Responsibilities

It has long been recognized that successful medical care requires an ongoing collaborative effort between patients and physicians. Physician and patient are bound in a partnership that requires both individuals to take an active role in the healing process. Such a partnership does not imply that both partners have identical responsibilities or equal power. While physicians have the responsibility to provide health care services to patients to the best of their ability,

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