

# 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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August 11, 2010

Robert Edward Barkett, Jr., M.D.  
1355 Brookpark Drive  
Mansfield, OH 44906

RE: Case No. 09-CRF-126

Dear Doctor Barkett:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Siobhan R. Clovis, Esq., Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on August 11, 2010, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

Such an appeal 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. *ew*  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3936 3070 7474  
RETURN RECEIPT REQUESTED

Cc: Elizabeth Y. Collis, Esq.  
CERTIFIED MAIL NO. 91 7108 2133 3936 3070 7481  
RETURN RECEIPT REQUESTED

*Mailed 9-1-10*

**CERTIFICATION**

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Siobhan R. Clovis, Esq., State Medical Board Attorney Hearing Examiner; and excerpt of the Minutes of the State Medical Board, meeting in regular session on August 11, 2010, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Robert Edward Barkett, Jr., M.D., Case No. 09-CRF-126, 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 MD*

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Lance A. Talmage, M.D. RW  
Secretary

(SEAL)

\_\_\_\_\_  
August 11, 2010

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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CASE NO. 09-CRF-126

ROBERT EDWARD  
BARKETT, JR., M.D.

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**ENTRY OF ORDER**

This matter came on for consideration before the State Medical Board of Ohio on August 11, 2010.

Upon the Report and Recommendation of Siobhan R. Clovis, Esq., State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the modification, approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Robert Edward Barkett, Jr., M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for a period of 60 days.
- B. **PROBATION:** Upon reinstatement or restoration, Dr. Barkett's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:
  1. **Obey the Law:** Dr. Barkett 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. Barkett 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. Barkett'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. Barkett 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. Barkett'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 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. **Tolling of Probationary Period While Out of Compliance**: In the event Dr. Barkett 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.
5. **Professional Ethics Course**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Barkett shall submit 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 course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Barkett submits the documentation of successful completion of the course(s) 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.

6. **Personal Ethics Course**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Barkett shall submit 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 course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Barkett submits the documentation of successful completion of the course(s) 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.

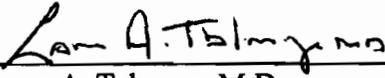
7. **Written Report of Sexual Boundaries Course:** Dr. Barkett shall submit documentation of successful completion of the course taken at Vanderbilt University on January 20-22, 2010, dealing with sexual boundaries.
- C. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Barkett's certificate will be fully restored.
- D. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Barkett 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.
- E. **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. Barkett 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 health-care center where he has privileges or appointments. Further, Dr. Barkett 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. Barkett provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider, Dr. Barkett 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. Barkett receives from the Board written notification of the successful completion of his probation.

2. **Required Reporting To Other Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Barkett 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. Also, Dr. Barkett 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. Barkett receives from the Board written notification of the successful completion of the probation.
  
3. **Required Documentation of the Reporting Required by Paragraph E:** Dr. Barkett shall provide the Board with one of the following documents as proof of each required notification within 30 days of the date of each such notification: (1) the return receipt of certified mail within 30 days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

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

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

(SEAL)

August 11, 2010  
\_\_\_\_\_  
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

STATE MEDICAL BOARD  
OF OHIO  
2010 JUL -7 AM 11:04

In the Matter of

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Case No. 09-CRF-126

Robert Edward Barkett, Jr., M.D.,

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Hearing Examiner Clovis

Respondent.

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REPORT AND RECOMMENDATION

Basis for Hearing

By letter dated October 14, 2009, the State Medical Board of Ohio [Board] notified Robert Edward Barkett, Jr., M.D., that it intended to determine whether to take disciplinary action against his certificate to practice medicine and surgery in Ohio, based on an allegation that he engaged in sexual conduct with a patient. The Board further alleged that this conduct 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: Rule 4731-26-02, Ohio Administrative Code. A violation of this rule, by operation of Rule 4731-26-03(A), Ohio Administrative Code, also violates Section 4731.22(B)(6), Ohio Revised Code, which is a “[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established.” Finally, the Board advised Dr Barkett of his right to request a hearing on this matter, and received his written hearing request on November 3, 2009. (State’s Exhibits 1A, 1B)

Appearances

Richard Cordray, Attorney General, by Karen A. Unver, Assistant Attorney General, on behalf of the State of Ohio. Elizabeth Y. Collis, Esq., on behalf of Dr. Barkett.

Hearing Date: June 1, 2010

SUMMARY OF THE EVIDENCE

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

Background Information

1. Robert Edward Barkett, Jr., M.D., graduated from Purdue University in 1986. He attained his medical degree from Thomas Jefferson Medical College in 1990. In 1993, he completed a three-year internal medicine residency at Riverside Hospital in Columbus, Ohio. Dr. Barkett is board-certified in internal medicine. Ohio is the only state in which Dr. Barkett is licensed to practice medicine. (Hearing Transcript [Tr.] at 143, 228-229).

2. In the summer of 1993, Dr. Barkett<sup>1</sup> joined the solo medical practice of his father, Robert Edward Barkett, M.D., which is located in Mansfield, Ohio. The elder Dr. Barkett practiced there for over 30 years until his retirement in 2006, at which time Dr. Barkett became solely responsible for the practice. (Tr. at 144-145).
3. Dr. Barkett testified that his father had built a “very established practice” in Mansfield, with mostly middle class and wealthy patients. He stated that the clientele is now aging, and the majority are now Medicare age. (Tr. at 144-145).
4. Dr. Barkett testified that he had initially been able to build his own patient base slowly, as his father had kept his own patients and Dr. Barkett had worked to establish his own. When his father retired and Dr. Barkett took over his father’s patients, Dr. Barkett found it overwhelming. He described the change as follows:

My volume, when I look back to it probably added about 33 percent more patients to what I was already seeing, maybe 40; 33 to 40 percent. Probably instead on average seeing between 26 and 28 patients a day, I started seeing 35 to 38 patients a day.

Even with the added difficulties with that, and the time constraints that a lot of these patients were just new -- old patients but new patients to me in the practice. Dad had been in practice by that time 41 years. There were extensive histories, and even though these were routine visits, they were quite extensive for me.

So I mean, and I started my work -- I used to start work at 9:00 in the morning, and pretty much immediately, I went to work starting at 8:00 in the morning and working a little later at night, instead of out of there by 4:30, quarter to 5:00, usually out of there by 5:30, so it went from pretty busy to crazy.

(Tr. at 145-146, 149-150).

5. Dr. Barkett has been married for over 20 years, but he is currently separated from his wife. He has three sons, ages 17, 14, and 12. He testified that he has always coached his boys’ teams, including basketball, baseball, and football. He also serves as a physician for several sporting events in his community. Dr. Barkett’s support letters from patients, colleagues, and friends demonstrate that he is quite involved in his community, and is considered a community leader. (Respondent’s Exhibits [Resp. Ex.] B through T; Tr. at 146-148).
6. At about the same time that his father retired, Dr. Barkett was also dealing with the escalating effects of his wife’s alcoholism. Dr. Barkett testified that his wife began having noticeable trouble with alcohol in the early 2000’s, after the birth of their youngest son, but that family and friends had always found ways to excuse it. In about 2004, both Dr. Barkett and his wife had extramarital affairs, and their relationship deteriorated significantly. (Tr. at 151-152, 154).

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<sup>1</sup> Unless otherwise explicitly noted, all references to “Dr. Barkett” are to Robert Edward Barkett, **Jr.**, M.D.

7. Dr. Barkett testified that his wife's alcoholism had become unmanageable by "'05, '06." She had multiple car accidents. One Sunday, after Dr. Barkett and his sons had been away for the weekend, they had come home to discover an empty house, though Dr. Barkett's wife's car had been in the driveway. After a frantic search, the family found her hidden underneath the basement stairs, with multiple bottles of liquor and pills. (Tr. at 152-153).
8. Dr. Barkett testified that, at this point, he had given his wife an ultimatum: either she get help, or they divorce. Since then, his wife has entered residential treatment at least twice. However, during one such stay, in the spring of 2008, Dr. Barkett's wife disappeared from her rehabilitation program with a man she had met there. Dr. Barkett, with the help of a private investigator, eventually discovered that the two had been "on a bender" in Youngstown. (Tr. at 153-154, 177-179).

### **Relationship with Patient 1**

9. Patient 1 is also from a prominent Mansfield family. Before she became his patient, Patient 1 and Dr. Barkett had been acquaintances through their country club, church, mutual friends, and community events. Patient 1 testified that Dr. Barkett had "always made . . . remarks, comments about my appearance and things like that . . . for years." (Tr. at 26, 30, 53-54, 125-126, 156-159).
10. Patient 1 testified that in 2004 she had decided to find a new family physician for herself and her two daughters. She said that she had wanted a younger physician, who was connected to the local Mansfield hospital. Patient 1's first appointment with Dr. Barkett was on March 5, 2004. At the hearing, Patient 1 and Dr. Barkett both described this as an appointment for Patient 1 to establish as a new patient. Her main physical issue at that time was shoulder pain. (State's Exhibit [St. Ex.] 1 at 7; Tr. at 26-27, 54, 144, 159-161).
11. On March 2, 2009, Patient 1 terminated the physician-patient relationship with Dr. Barkett by letter. Until this termination, Dr. Barkett treated Patient 1 for various physical ailments, including foot pain, hip pain, restless legs, a viral syndrome, and finger laceration that required stitches. She also sought help numerous times for insomnia and anxiety. Dr. Barkett prescribed several different medications throughout his treatment of Patient 1 in an effort to address her insomnia, anxiety, and, eventually, depression. (St. Ex. 1 at 7-19).
12. Patient 1 testified that in April 2006 she and Dr. Barkett had begun calling each other on their cell phones. Dr. Barkett testified that their phone conversations had begun after they had flirted one evening when they saw each other at a bar. Patient 1 testified that they had had sex for the first time in June 2006, at a hotel. However, Dr. Barkett testified that their first sexual encounter had not occurred until August 2006. (Tr. at 30-32, 172-173).
13. Patient 1 stated that she and Dr. Barkett had had sexual relations, including sexual intercourse, on about 25 to 35 different occasions; Dr. Barkett's testimony indicated that there had been only about 10 occasions. These meetings usually occurred on Thursday afternoons, when Dr. Barkett's office was closed. Patient 1 said that they usually met at a hotel, or at Dr. Barkett's

office. Patient 1 and Dr. Barkett both testified that they had also emailed each other often during their affair. (St. Ex. 4; Tr. at 28-29, 32-34, 59, 174, 176-188).

14. Patient 1 said that she had initially considered the relationship with Dr. Barkett to be fun and adventurous, and that she had sought “attention” from their affair. Dr. Barkett testified that he had found comfort in being with a woman who was kind and attentive to him. He also said that they had bonded because both of them had dealt with alcoholic spouses, though Patient 1 testified that her spouse has not consumed alcohol in 18 years. (Tr. at 58, 63, 103, 174-175).
15. Dr. Barkett testified that he had tried to put an end to his affair with Patient 1 during the summer of 2007 because he had been trying to work things out with his wife. He said that he had believed that Patient 1 had taken this decision “maturely and very well.” Patient 1 denied that Dr. Barkett had ever declared to her that their sexual relationship was over. (Tr. at 67-68; 176-178, 230).
16. The incident in which Dr. Barkett’s wife left a treatment facility and disappeared with a man she had met there occurred in the spring of 2008. Dr. Barkett testified that, by this time, he and Patient 1 had not “been together” in about nine months. He described his feelings about his wife’s behavior as “angry. No, I don’t know if angry can describe how I was feeling. I really thought things were getting better and . . . [a]nd so when she did that, I probably e-mailed Patient 1, and said, you know, ‘What have you been doing?’ And, you know, ‘If you would like to, we can get back together.’” (Tr. at 178-179, 181).
17. Dr. Barkett testified that he and Patient 1 had had sexual contact as a result of his email, but only once in the spring of 2008, with their next and final sexual encounter occurring in December 2008. He said that, during their meeting in the spring of 2008, he could tell that Patient 1 had been hurt by the absence of their personal relationship. He explained that they had not resumed this relationship after having sex in spring of 2008 because Patient 1’s husband had been “onto us” and because Dr. Barkett had been living through “a very public divorce.” He admitted that he had gone on dates with other women during this time period, and that he realized that this had hurt Patient 1. He said that Patient 1 had continued to call him throughout 2008 and to leave him increasingly hostile phone messages about their personal relationship. (Tr. at 179-183).
18. Dr. Barkett testified that, in late September or early October, 2008, Patient 1 had sent Dr. Barkett an email which included the text of the Board’s rule prohibiting sexual relationships with patients. Dr. Barkett construed this as a threat, and he became furious. He admitted that, in response to the email, he had left Patient 1 a voicemail message on her cell phone to the effect of, “If you’re going to try to ruin my life and go to the State Medical Board and turn me in for having a sexual relationship, I’m going to go straight to your husband and tell him about our physical relationship, and that will wreak f[uckin]g havoc on you.” (Tr. at 183-184).
19. Patient 1’s husband heard the cell phone message, and he believed it to be proof of an affair between Patient 1 and Dr. Barkett, though Patient 1 tried to explain it away. Patient 1 and her husband testified that Patient 1’s husband had heard the message in January or February 2009. After hearing Dr. Barkett’s cell phone message, Patient 1’s spouse called Dr. Barkett. Patient 1’s spouse described the phone call as follows:

I asked him, you know, basically why my wife was taking all of these antidepressants, my cabinet was full of pills and then sleeping pills, and what was going on.

And then he shared with me that he couldn't talk to me about it because of the doctor/patient confidentiality. And then I asked if he was aware that she was buying Ultram 100 pills, I think over the internet, and all of that, and then he said he was not aware, and that he will, you know, take that into consideration when he's prescribing medication in the future.

And then I proceeded to ask him about the voicemail, and asked him if he was having an affair with my wife. And he denied it. And so then I said, "Well, you know, let's talk about this hypothetically. If you're having an affair with my wife that it's over and it's done with."

And then I asked him if he understood me and was he clear, and he said yes. And so I don't -- after that, conversation, I think kind of ended at that point.

Oh, no, there was another part of which I had asked him to fire my wife as a patient and then he said he couldn't do that.

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Because of some law that a physician was unable to do so, that it was up to her to make that decision, and then I think I just said, "You need to do something", and that was it.

(Tr. at 50, 68-70, 119-120, 122-123).

20. Dr. Barkett documented this phone call in his medical records. The February 4, 2009, entry states:

[Patient 1's husband] called to give information on his wife. He states her behavior has been erratic, compulsive, emotional, and she has been getting drugs from out of the country and over the Internet. He knows she has been on Ultram but does not know the names of the other anti-anxiety type or pain medications. I told him I was aware of the medications that I have prescribed, but could not give him any other information. I recommended that he either comes in with her during her next visit, or consider looking into a rehab/drug withdrawal program for inpatient care. He may also get a second opinion from another physician. He does not think she would be amenable to this and this is all voluntary. I will take this information into consideration with any further care." Dr. Barkett testified that the conversation had also included the demand that he cease having an affair with Patient 1.

(St. Ex. 1 at 17; Tr. at 199).

21. Both Patient 1 and Dr. Barkett agreed that the final sexual encounter occurred in December 2008.<sup>2</sup> Patient 1 surreptitiously met Dr. Barkett at his office, and they drove together to the cabin where Dr. Barkett had been staying. Dr. Barkett testified that he had wanted to have a good talk with her and to end the relationship on good terms. The two had sex, which Dr. Barkett described as “almost a last-time hurrah.” Although Patient 1 seemed unwilling to describe this as a breakup session, she conceded that, at this point, they both had known that the relationship was over. (Tr. at 36-39, 64-67, 69-70, 186-188).
22. Patient 1 testified that she had become upset when she had realized during their December 2008 meeting that Dr. Barkett had been seeing other women. She said that she had wanted to be the “only one” and also that she feared that his involvement with other women increased the risks of her own affair with Dr. Barkett being discovered. (Tr. at 38, 66-67).
23. On January 5, 2009, Patient 1 visited Dr. Barkett at his office for a medical appointment about vaginal irritation. She testified that she had been concerned that Dr. Barkett had given her a sexually transmitted disease. Dr. Barkett’s office notes describe Patient 1 as “belligerent” at this meeting, but Patient 1 denied that. She admitted, however, that she had been “livid” because Dr. Barkett had seemed cold and unconcerned about her during the visit. (St. Ex. 1 at 17; Tr. at 39-40, 47, 83-84, 113).
24. Patient 1 testified that the vaginal irritation had subsequently cleared up with over-the-counter medication. (Tr. at 85-86).
25. Patient 1 described her efforts to establish a new physician-patient relationship with another physician, Dr. Ballinger, after her personal relationship with Dr. Barkett had ended. She advised that, although she had successfully made a new-patient appointment with Dr. Ballinger, he had called her after receiving her medical records from Dr. Barkett, and canceled the appointment. Patient 1 was upset by this, and began to wonder what Dr. Barkett’s records said about her. (Tr. at 43-44, 89-90, 95-97, 108-109, 111-112).
26. Patient 1 denied giving Dr. Barkett permission to transfer her medical records to Dr. Ballinger, but she conceded that attorney Brian Halligan had sent Dr. Barkett a letter demanding that he do so. Patient 1 denied having Mr. Halligan send such a letter, but Patient 1’s husband described Mr. Halligan as “our attorney” and said that he thought that Patient 1 herself had requested that such a letter be sent. Dr. Barkett testified that he had never discussed Patient 1 with Dr. Ballinger, though he had sent him Patient 1’s records in response to the letter from Mr. Halligan. Dr. Barkett, who often refers patients to Dr. Ballinger, testified that Dr. Ballinger does not always take new patients who are referred to him. (Tr. at 90-93, 130-131, 201-206 ).

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<sup>2</sup> Due to the discrepancy in the testimony about the timing of Dr. Barkett’s voicemail message to Patient 1 about wreaking havoc on her life, it is unclear whether or not this incident happened before or after that threat was made, but it seems clear that this final incident of sexual contact had occurred before Patient 1’s spouse heard the cell phone message.

27. Patient 1 eventually obtained a copy of her medical records from Dr. Barkett's office. She said that the records "devastated" her. She believed that Dr. Barkett had been writing or changing entries in an effort to build a case against her. (Tr. at 112). She disputed the following entries, in particular:

- The August 26, 2008, entry states, "Marriages [sic] stressful and husband is recovering alcoholic" . . . "Impression: 1. Anxiety depression . . . Plan: 1. Pristiq 50 mg daily and return in one month and may need counseling." (St. Ex. 1 at 16).

Patient 1 testified that this entry was inaccurate because, "we didn't discuss my marriage or the fact that my husband has not consumed alcohol in 18 years was never discussed at an office visit." She also denied that Dr. Barkett had ever recommended counseling to her. Dr. Barkett, on the other hand, testified that he had recommended counseling on several occasions, but Patient 1 had adamantly refused. (Tr. at 82, 103-105, 192-193).

- The October 14, 2008, entry states, "[Patient 1] states the Zoloft is not working. She has had increased stress in her marriage, husband is an alcoholic, and she has had her second extramarital affair that has gone bad. During her exam, she was asking me personal questions and calling me by my first name which I corrected. She continued calling me Robbie that I ignored. If this behavior continues in the future, I will discuss this with my malpractice carrier. She is drinking alcohol every evening and showed me Ultram samples that I do not know where she received these from. She has good days and bad and I really think she is probably bipolar. She is emotional, irritable, full of energy, and at times very tired and lethargic. She refused the possible diagnosis." (St. Ex. 1 at 16).

Patient 1 testified that "[w]e did not discuss that second sentence at all. I did not ask him personal questions. Everybody calls Dr. Barkett -- I saw multiple patients refer to him by his first name in his office. . . . I may have. . . . Not in front of any of his employees. I was not drinking alcohol every day nor have I ever. We didn't discuss it." She also denied that a diagnosis of bipolar had been discussed, then or ever. (Tr. at 41, 105-106.)

- The January 5, 2009, entry states, "[Patient 1] returned to the office and was in somewhat of a belligerent mood. She was not answering questions appropriately, difficult to interview, and really never got a straight answer. She would not get any lower gown [from] the nurses, although she states she is having right-sided pelvic discomfort just outside the vagina. . . . She then stated Cymbalta actually did help but the insurance would not pay for it. Paxil side effects included fatigue, irritable, emotional, short tempered, and cannot sleep. She admitted to drinking too much alcohol but states it was because of the holidays. When I asked her to have my nurses get her in a gown before I examine her, she absolutely refused and said I should be able to treat this without looking at it. She then left the office stating she will find someone else to treat it." (St. Ex. 1 at 17)

Patient 1 testified that although she was angry at this visit she was not belligerent. "I didn't raise my voice, or, you know, say anything inappropriate in front of anyone else. I mean, I was still under the impression that we weren't going to get caught." She said the

second and third sentences were false, and that she did not discuss alcohol. She also said that she did not think she had discussed whether or not she was going to find another physician. (Tr. at 84, 106-107).

- The January 13, 2009, entry states, “[Patient 1] returns for follow-up visit which is somewhat of a surprise. She just wanted to talk which we did for 20 minutes, and she did not want an exam. She states Cymbalta caused insomnia, but after review of our medical record, insomnia started on 7/05 where she tried Ambien, Lunesta, Sonata, and later on Rozerem. For her nerves, anxiety, depression, restless leg, possible bipolar, we have tried Xanax, Requip, Lyrica, Klonopin, Ultram, Sarafem, Paxil, Zoloft, Cymbalta, Pristiq which have all failed. She does not wish to see a psychiatrist/psychologist. She states her lower groin discomfort has resolved. We discussed need for subspecialty consultation but she refused. We also discussed her wishes if she would like to see another primary care physician which she stated on her last visit. It told her if she follows the boundaries of our office, I would be happy to continue care with her. If any more behavioral outbursts, she could no longer be a patient here. We will try Remeron 15 mg before bed the first week, 30 mg daily over the next two months, and return at that time or p.r.n.” This was Patient 1’s final medical appointment with Dr. Barkett. (St. Ex. 1 at 17; Tr. at 200).

Patient 1 testified that this entry was inaccurate and denied that Dr. Barkett had ever discussed boundaries with her. (Tr. at 47-48).

28. Dr. Barkett testified that he uses a Dragon software system which would not allow him to change previously submitted entries. (Tr. at 190-193, 234-239).
29. Patient 1 admitted that, even after she had submitted a letter dated April 6, 2009, to the Board about her sexual relationship with Dr. Barkett, she had continued to call Dr. Barkett and that she “may have” left voice mail messages for him, because she had wanted to talk to him on a “personal level.” She admitted that she had missed him and had hoped to talk through her feelings, though she denied wanting to continue the sexual relationship. Dr. Barkett testified that in October 2009, Patient 1 had left him a sexually suggestive voicemail late at night, but Patient 1 denied this. (Tr. at 97-102, 223).
30. Patient 1 testified that her affair with Dr. Barkett “was a huge mistake and has -- I mean, it's adversely affected not just me but my entire family. And I had to discuss this with my daughters, you know, as -- because he was their physician. It's just a nightmare.” She testified that her insomnia and anxiety were exacerbated by her affair with Dr. Barkett, but that her physical and mental health have improved since breaking off all relations with Dr. Barkett. (Tr. at 34-35, 45, 52).
31. From January 20 through 22, 2010, Dr. Barkett attended a Continuing Medical Education course at Vanderbilt University School of Medicine in “Maintaining Proper Boundaries.” A letter from the Co-Director at the Center for Professional Health at Vanderbilt University School of Medicine describes the course:

The content of our course includes components dealing with improving practice management, dealing with problem patients, and exploration of personality traits that influence boundary issues. Held in a small group format, this course works toward getting physicians to look deeply within themselves to determine how their own vulnerabilities may lead to boundary violations.

Dr. Barkett attended all sessions of the three-day course and participated fully in all of the assignments and discussions.

(Resp. Ex. A).

32. Dr. Barkett testified that the course led him to realize that, at the time of his affair with Patient 1, he was “emotionally impaired.” He further stated:

At the time, I was tired; I was vulnerable; I was sad; I was lonely, and in it we discussed how as a physician, I am always responsible for the power difference between me and a patient. . . . There is no such thing as any consensual relationship, and it is and it was -- it was my fault. . . . I made -- I made a bad decision with her, and I multiplied it several other times with her. I made a lot of unethical decisions involving Patient 1, and I can look back now and I know where my vulnerabilities were, and I just will not let that ever happen again.

(Tr. at 212-213).

33. Dr. Barkett further testified that he has made changes in response to what he learned at the course. He tries to take better care of himself and deal with stress in a healthy way. He also is very careful to maintain proper boundaries in his office, even with his staff, and to maintain a more “professional environment.” His practice is now manageable. When his father first retired, he had to spend a considerable amount of time learning about his father’s patients; now he is familiar with them. Further, he has lost patients through death or their moving away; Mansfield has suffered a significant amount of job losses. Dr. Barkett’s personal life has also improved. Although he is going through a divorce and bitter custody battle, his children are doing remarkably well and he sees them regularly. He also has a new romantic relationship that provides him with support, as well as support from friends and people in the community. (Tr. at 224-228).

#### FINDINGS OF FACT

1. On March 5, 2004, Robert Edward Barkett, Jr., M.D., undertook the medical treatment of Patient 1, who is identified on a confidential Patient Key. By letter dated March 2, 2009, Patient 1 terminated her patient-physician relationship with Dr. Barkett.
2. From August 2006 through December 2008, despite a concurrent physician-patient relationship with Patient 1, Dr. Barkett engaged in sexual conduct, including sexual intercourse, with her. Further, Dr. Barkett told Patient 1 that if she got him in trouble, he would disclose their relationship to her husband and “wreak fucking havoc on you.”

## **CONCLUSION OF LAW**

The acts, conduct, and/or omissions of Robert Edward Barkett, Jr., M.D., after December 1, 2006, as set forth in Findings of Fact 1 and 2 above, individually and/or collectively, constitute “violating or attempting to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-26-02, Ohio Administrative Code. Pursuant to Rule 4731-26-03(A), Ohio Administrative Code, a violation of Rule 4731-26-02(A), Ohio Administrative Code, also violates Section 4731.22(B)(6), Ohio Revised Code, which is “[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established.”

### **Rationale for Proposed Order**

Dr. Barkett violated a cardinal rule of the medical profession, that a physician may not mix sexual and patient relationships. Both he and Patient 1 were married, which added to the anxiety and stress this relationship ultimately caused Patient 1. And, whether Dr. Barkett’s or Patient 1’s version of events is accepted as truth, either version shows that Patient 1 suffered considerable distress as a result of this affair. Although Patient 1 expressly communicated to Dr. Barkett her willingness to participate in a sexual relationship with him, Dr. Barkett as a licensed physician had an absolute duty to refrain, and he failed to do so.

It is obvious, however, that this case does not involve a predatory situation, as seen in other cases. In addition, the evidence presents strong mitigating factors. Dr. Barkett was in an extremely vulnerable and fragile emotional state when he engaged in the misconduct with Patient 1. Not only was his family ravaged by his wife’s severe alcoholism at that time, but he also had assumed the role of primary caregiver for his three sons. Further, he was simultaneously trying to handle a dramatic increase in the number of his patients after his father retired from their practice. Moreover, in many ways, Dr. Barkett was a model family doctor, community leader, and father.

Both Dr. Barkett and Patient 1 were credible witnesses, even though they disagreed about some of the facts. Although they seemed to believe that these disputed facts were of the utmost importance, the differences were probably more a result of looking at the world through male or female eyes. However, the Hearing Examiner did discount the biased suggestion by Dr. Barkett that Patient 1 was probably bipolar when, according to his description, she experienced emotional instability after their breakup.

As a result, although it is clear Dr. Barkett will never engage in this misconduct again, a suspension of his license is warranted due to the seriousness of his violation.

## PROPOSED ORDER

It is hereby ORDERED that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Robert Edward Barkett, Jr., M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for a period of 60 days.
- B. **PROBATION:** Upon reinstatement or restoration, Dr. Barkett's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:
  1. **Obey the Law:** Dr. Barkett 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. Barkett 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. Barkett'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. Barkett 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. Barkett'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 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. **Tolling of Probationary Period While Out of Compliance:** In the event Dr. Barkett 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.
  5. **Professional Ethics Course:** Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Barkett shall submit 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 course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Barkett submits the documentation of successful completion of the course(s) 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.

6. **Personal Ethics Course**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Barkett shall submit 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 course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Barkett submits the documentation of successful completion of the course(s) 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.

- C. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Barkett's certificate will be fully restored.
- D. **VIOLATION OF THE TERMS OF THIS ORDER**: If Dr. Barkett 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.
- E. **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. Barkett 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 health-care center where he has privileges or appointments. Further, Dr. Barkett 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. Barkett provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or

emergency medical services provider, Dr. Barkett 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. Barkett receives from the Board written notification of the successful completion of his probation.

2. **Required Reporting To Other Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Barkett 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. Also, Dr. Barkett 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. Barkett receives from the Board written notification of the successful completion of the probation.
3. **Required Documentation of the Reporting Required by Paragraph E:** Dr. Barkett shall provide the Board with **one** of the following documents as proof of each required notification within 30 days of the date of each such notification: (1) the return receipt of certified mail within 30 days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

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

  
Siobhan R. Clovis  
Hearing Examiner

# State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.  
Executive Director

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## EXCERPT FROM THE DRAFT MINUTES OF AUGUST 11, 2010

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

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

Dr. Amato 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: Constance E. Ange, D.O.; Robert Edward Barkett, Jr., M.D.; Thomas Michael Bender; James A. Handley, L.M.T.; Roy William Harris, D.O.; Harold M. Jones, D.P.M.; Sarah Ann Lewis, M.D.; Christopher Allan Rice, M.D.; and Richard Joseph Sievers, II, D.O. A roll call was taken:

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

Dr. Amato 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. Amato	- aye
	Mr. Albert	- aye
	Dr. Madia	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Mr. Morris	- aye
	Dr. Ramprasad	- aye

Dr. Amato 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. Additionally, in the case of Robert Edward Barkett, Jr., M.D., Dr. Amato served as Acting Supervising Member.

Dr. Amato 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.

.....  
ROBERT EDWARD BARKETT, JR., M.D.

Dr. Amato directed the Board's attention to the matter of Robert Edward Barkett, Jr., M.D. He advised that objections were filed to Hearing Examiner Clovis' Report and Recommendation and were previously distributed to Board members.

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

Dr. Amato relinquished the chair to Dr. Suppan.

Dr. Barkett was accompanied by his attorney, Elizabeth Collis.

Ms. Collis stated that, overall, she and Dr. Barkett agree with the Hearing Examiner's summary of evidence. Specifically, Ms. Collis felt that Ms. Clovis did an excellent job reviewing the character and veracity of the witnesses. Ms. Collis also agreed with Ms. Clovis that it is obvious that this case does not involve predatory behavior seen in other cases and that the evidence presents strong mitigating information. Ms. Collis disagreed with the Proposed Order of a suspension and asked the Board to instead *impose a reprimand and stayed suspension*.

Dr. Barkett stated that he regrets that his inappropriate behavior has brought him before the Board today. Dr. Barkett hoped that the Board members can look at the facts with an open mind and determine a fair punishment for him.

Dr. Barkett stated that he is not the same man he was in 2006 when he made horrific choices both personally and professionally. Dr. Barkett stated that he battled for years with his wife's alcoholism and multiple rehabilitations, his failing marriage, taking over his father's medical practice of 41 years, and raising three young boys by himself for an extended period of time. Dr. Barkett stated that he was stressed,

unhappy, overwhelmed, and in a downward spiral.

Dr. Barkett continued that he was comforted during that time by Patient 1, whom he had known for ten years through his church, country club, and from being part of the same social circle. Dr. Barkett stated that he did not realize or give consideration to the pain he would cause others in his life, including his wife, children, parents, office staff, friends, and patients.

Dr. Barkett stated that in 2007 he realized his mistakes as a parent, husband, and physician, and started trying to make amends in his life. Dr. Barkett severed his relationship with Patient 1 in 2007 and became committed to Al-Anon, his church, and the readings of several inspirational authors.

Dr. Barkett stated that when he was confronted by a Board investigator in 2009, he fully cooperated with the entire process. Dr. Barkett stated that he has lived in Mansfield his whole life and has been a well-known physician and athlete. When the newspaper, television, and radio exposed the allegations against him, he felt that he had hit rock bottom again. Dr. Barkett stated that he was humbled, knew that God, his family, and his friends have forgiven him, and he believes he will experience a renewed life. Dr. Barkett stated that he did not take into consideration the pain, humiliation, and public embarrassment his parents, children, and office staff would have to endure due to his actions. Dr. Barkett's children suffered from vicious comments and rumors at school. Dr. Barkett noted that his staff members are the sole source of income for their families.

Dr. Barkett stated that he has used this situation as an impetus to become a better person, father, compassionate doctor, and future husband to a wonderful woman who has come into his life. Dr. Barkett stated that he spent 22 hours at Vanderbilt University on boundary issues and small group counseling, and has implemented what he learned into his daily life and medical practice. Dr. Barkett stated that he has received a great deal of support, cards, and prayers from his patients, and this gives him renewed hope.

Dr. Barkett stated that since he was 10 years old making rounds with his father, he has dreamed of becoming a physician. Dr. Barkett stated that he has taken care of multiple generations of families in Mansfield in his solo practice and knows that this is his calling. Dr. Barkett noted that Mansfield has been hit hard by loss of industry and that sixteen physicians have left in the past two years. Dr. Barkett stated that his patients are loyal and look to him for comfort and advice.

Dr. Barkett stated that, as the Hearing Examiner found no evidence of predatory behavior, he is not a threat to the public or his patients. Dr. Barkett noted that the Hearing Examiner stated it was clear the he would never engage in this conduct again, and Dr. Barkett assured the Board that this is true. Dr. Barkett asked the Board for forgiveness and stated that only time would tell if he would be able to forgive himself.

Dr. Barkett respectfully asked the Board to impose a sanction of reprimand or a stayed suspension.

Dr. Suppan asked if the Assistant Attorney General wished to respond. Mr. Wilcox replied that he did wish to respond.

Mr. Wilcox stated that this case belonged to Karen Unver, who is unable to be at the meeting today. Ms. Unver had written a statement, which Dr. Wilcox read to the Board.

In her written statement, Ms. Unver noted that Dr. Barkett has repeatedly characterized this case as involving his purely consensual personal relationship with Patient 1 during a difficult time in his life. In characterizing the case in this way, Dr. Barkett is attempting to downplay and minimize the Board's rule against engaging in sexual relationships with patients. Ms. Unver stated that the fact that Patient 1 was acquainted with Dr. Barkett a few years prior to becoming his patient does not justify his improper relationship with Patient 1.

Mr. Wilcox continued that Ms. Unver believes that Patient 1's medical record is replete with examples of poor patient care. Particularly, the office visit on October 14, 2008, illustrates the reason why sexual relationships with patients blur the practitioner's ability to objectively evaluate and treat the patient. In that note, Dr. Barkett wrote, "She has good days and bad and I really think she is probably bipolar." Dr. Barkett testified that he was basing this impression on a combination of information gathered from office appointments and his personal relationship with Patient 1. But upon questioning, Dr. Barkett only cited examples from his personal relationship, stating the Patient 1 was calling him at all hours and displaying erratic behavior.

Dr. Barkett also wrote in Patient 1's medical record, "During her exam, she was asking me personal questions and calling me by my first name, which I corrected. She continued calling me Robbie and I ignored it. If this behavior continues in the future, I will discuss this with my malpractice carrier." Dr. Barkett testified during hearing that he had just gotten back from a medical symposium put on by his insurance carrier that focused on maintaining proper boundaries with patients, and this is why he corrected Patient 1 and put the notation in the chart. Yet, two months after the symposium, Dr. Barkett took Patient 1 to a cabin and their sexual relationship continued. Dr. Barkett did not heed the warning of his insurance carrier, and this begs the question of whether he has really altered his decision-making methods in order to *keep proper professional boundaries with his patients.*

Mr. Wilcox stated that this is why a reprimand would not be appropriate in this case. Mr. Wilcox stated that a suspension and probation are necessary to send a strong message to Dr. Barkett that there are consequences for boundary violations.

**Dr. Madia moved to approve and confirm Ms. Clovis' Findings of Fact, Conclusions of Law, and Proposed Order in the Matter of Robert Edward Barkett, Jr., M.D. Dr. Steinbergh seconded the motion.**

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

Dr. Mahajan commented that the Hearing Examiner did a good job on this case. Dr. Mahajan stated that the fact the Dr. Barkett knew Patient 1 should have made him even more cautious. Dr. Mahajan noted that

Dr. Barkett had multiple encounters with Patient 1 and found the whole situation very bothersome.

Dr. Mahajan opined that a two-month suspension is too short for this case, but stated that he would go along with it. Dr. Mahajan understood that Dr. Barkett had a difficult time in his life, but stated that this was not an excuse for his actions. Dr. Mahajan also opined that a two-year probationary period was too lenient, but wished to hear the comments of his colleagues on this subject.

Dr. Steinbergh noted that the probationary terms of the Proposed Order require Dr. Barkett to take courses in personal ethics and professional ethics. Dr. Steinbergh also noted that Dr. Barkett has already taken a sexual boundaries course at Vanderbilt University on January 20-22, 2010. Dr. Steinbergh stated that she would like to amend the probationary terms to require Dr. Barkett to submit a written report of the sexual boundaries course to the Board. Dr. Steinbergh felt it is important to have written documentation that Dr. Barkett learned something in the course and how he will apply that to his practice.

Dr. Steinbergh opined that a simple reprimand in this case would be inappropriate. Dr. Steinbergh stated that regardless of Dr. Barkett's relationship with his wife, he led to the degeneration of Patient 1. Dr. Steinbergh agreed with Dr. Mahajan that it did not matter that Dr. Barkett had a social relationship with Patient 1; when Patient 1 became Dr. Barkett's patient, he had a superior relationship with her.

Dr. Steinbergh agreed with Dr. Mahajan that the suspension time of the Proposed Order is short, but would not move to amend that term in the Proposed Order.

**Dr. Steinbergh moved to amend the Proposed Order to add to the probationary terms the stipulation that Dr. Barkett be required to submit to the Board a written report of the sexual boundaries course he took at Vanderbilt University, January 20-22, 2010. Dr. Stephens seconded the motion. A vote was taken:**

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	<i>Dr. Amato</i>	- <i>abstain</i>
	Mr. Albert	- abstain
	Dr. Madia	- aye
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Mr. Morris	- aye
	Dr. Ramprasad	- aye

**Dr. Steinbergh moved to approve and confirm Ms. Clovis' Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of Robert Edward Barkett, Jr., M.D. Dr. Madia**

**seconded the motion. A vote was taken:**

ROLL CALL:

Dr. Strafford	- aye
Mr. Hairston	- aye
Dr. Stephens	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Amato	- abstain
Mr. Albert	- abstain
Dr. Madia	- aye
Dr. Talmage	- abstain
Dr. Suppan	- aye
Mr. Morris	- aye
Dr. Ramprasad	- 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

October 14, 2009

Case number: 09-CRF-126

Robert Edward Barkett, Jr., M.D.  
1355 Brookpark Drive  
Mansfield, Ohio 44906

Dear Doctor Barkett:

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 March 4, 2004, you undertook the medical treatment of Patient 1. Patient 1 is identified in the attached patient key, which is confidential and not subject to public disclosure. By letter dated on or about March 2, 2009, Patient 1 terminated her patient-physician relationship with you.
- (2) Despite your concurrent physician-patient relationship, from in or about August 2006 through in or about December 2008, you engaged in sexual conduct, including sexual intercourse, with Patient 1. Further you told Patient 1 that if she gets you in trouble, you would disclose your relationship with her to her husband and "wreak fucking havoc in her life."

Your acts, conduct, and/or omissions after December 1, 2006, as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-26-02, Ohio Administrative Code. Pursuant to Rule 4731-26-03(A), Ohio Administrative Code, a violation of Rule 4731-26-02(A), Ohio Administrative Code, also violates Section 4731.22(B)(6), Ohio Revised Code, which is "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established."

*Mailed 10.15.09*

Robert Edward Barkett, Jr., M.D.

Page 2

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/KHM/flb

Enclosures

CERTIFIED MAIL #91 7108 2133 3936 3070 4329  
RETURN RECEIPT REQUESTED