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COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
CIVIL DIVISION

2004 JUN 15 PM 12:23

MICHAEL R. ROSS, M.D.,

APPELLANT, CLERK OF COURTS :

CASE NO. 02CVF09-10028

vs. :

STATE MEDICAL BOARD OF OHIO, :

JUDGE O'NEILL

APPELLEE, :

JOURNAL ENTRY

Rendered this 14th day June, 2004.

O'Neill, D., J.

This matter came before the Court upon remand from the Tenth District Court of Appeal. Pursuant to the April 27, 2004 decision issued by the Tenth District Court of Appeals, and for the reasons stated therein, the Court hereby **AFFIRMS** the August 14, 2002 Order of the State Medical Board revoking Appellant's license to practice medicine.

IT IS SO ORDERED.


DEBORAH P. O'NEILL, JUDGE

Copies to:

Elizabeth Y. Collis, Attorney for Appellant Michael R. Ross

Rebecca Hockenberry, Attorney for Appellee State Medical Board of Ohio

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COURT OF APPEALS
FRANKLIN CO., OHIO
04 APR 27 PM 3:40
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Michael R. Ross, M.D., :
Appellant-Appellee, :
v. :
State Medical Board of Ohio, :
Appellee-Appellant. :

No. 03AP-971
(C.P.C. No. 02CVF09-10028)
(REGULAR CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the opinion of this court rendered herein on April 27, 2004, appellee-appellant, State Medical Board of Ohio's, assignment of error is sustained, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is reversed, and this cause is remanded to that court for further proceedings in accordance with law consistent with said opinion. Costs assessed against appellant-appellee, Michael R. Ross, M.D.

KLATT, J., LAZARUS, P.J., & PETREE, J.

By William A Klatt
Judge William A. Klatt

PHJ
IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

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FRANKLIN COUNTY, OHIO
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CLERK OF COURTS

Michael R. Ross, M.D.,

Appellant-Appellee,

v.

State Medical Board of Ohio,

Appellee-Appellant.

No. 03AP-971
(C.P.C. No. 02CVF09-10028)

(REGULAR CALENDAR)

O P I N I O N

Rendered on April 27, 2004

Elizabeth Y. Collis, for appellee Michael R. Ross, M.D.

Jim Petro, Attorney General, and *Rebecca K. Hockenberry*,
for appellant State Medical Board of Ohio.

APPEAL from the Franklin County Court of Common Pleas.

KLATT, J.

{¶1} Appellant, the State Medical Board of Ohio ("board"), appeals from a judgment of the Franklin County Court of Common Pleas that reversed its order revoking the medical license of appellee, Michael R. Ross, M.D. For the following reasons, we reverse the trial court's judgment and affirm the board's order.

{¶2} Appellee is licensed to practice medicine in a number of states, including North Carolina and Ohio. In December of 2001, appellee entered into a Consent Order ("order") with the North Carolina Medical Board. In that order, appellee admitted that he

provided medical services through Virtual Medical Group.com, L.L.C., ("VMG"). VMG provides medical services, including drug prescriptions, over the internet. Appellee admitted that he prescribed drugs through VMG without examining patients and without a prior patient-physician relationship. He admitted that prescribing drugs without a physical examination or a prior patient-physician relationship was unprofessional conduct within the meaning of N.C.Gen.Stat. 90-14(a)(6). Appellee also split fees with VMG and assisted VMG in the unauthorized practice of medicine, conduct he admitted was unprofessional. As a result of his admitted unprofessional conduct, the North Carolina Medical Board suspended appellee's medical license for 60 days, but stayed that suspension upon appellee's compliance with certain terms and conditions. Those terms and conditions, among other things, required appellee to refrain from prescribing drugs without physically examining patients and to refrain from splitting fees with a business organization.

{¶3} By letter dated March 14, 2002, the board notified appellee of its intention to determine whether or not to sanction appellee due to the North Carolina Medical Board's action. See R.C. 4731.22(B)(22). Following a hearing, the board's hearing officer issued a report and recommendation. In that report, the hearing officer determined that R.C. 4731.22(B)(22) authorized the board to sanction appellee based upon the action of the North Carolina Medical Board. The hearing officer recommended the permanent revocation of appellee's license to practice medicine in Ohio. The board did not follow that recommendation. Instead, the board ordered the revocation of appellee's medical license (a less severe sanction than permanent revocation).

{¶4} Appellee appealed the board's order to the Franklin County Court of Common Pleas. That court found reliable, probative, and substantial evidence to support the board's order. However, the trial court determined that the order was not in accordance with law because the board never seriously considered sanctions less severe than the revocation of appellee's medical license. Therefore, the trial court reversed the board's order and remanded the matter to the board for reconsideration of its sanction.

{¶5} The board appeals, assigning the following error:

After properly concluding that the State Medical Board of Ohio's finding that Dr. Ross violated R.C. 4731.22(B) was supported by the requisite evidence and in accordance with law, the Franklin County Court of Common Pleas erred by vacating the Board's lawfully imposed sanction.

{¶6} In an administrative appeal pursuant to R.C. 119.12, the trial court reviews an order to determine whether it is supported by reliable, probative, and substantial evidence, and is in accordance with the law. *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St.3d 83, 87; *Rossiter v. State Med. Bd. of Ohio*, 155 Ohio App.3d 689, 2004-Ohio-128, at ¶11. Reliable, probative and substantial evidence has been defined as follows:

* * * (1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) "Substantial" evidence is evidence with some weight; it must have importance and value.

Our Place, Inc. v. Ohio Liquor Control Comm. (1992), 63 Ohio St.3d 570, 571.

{¶7} On appeal to this court, the standard of review is more limited. Unlike the court of common pleas, a court of appeals does not determine the weight of the evidence. *Rossford Exempted Village School Dist. Bd. of Edn. v. State Bd. of Edn.* (1992), 63 Ohio

St.3d 705, 707. In reviewing the court of common pleas' determination that the commission's order was supported by reliable, probative, and substantial evidence, this court's role is limited to determining whether the court of common pleas abused its discretion. *Roy v. Ohio State Med. Bd.* (1992), 80 Ohio App.3d 675, 680. The term abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. However, on the question of whether the commission's order was in accordance with the law, this court's review is plenary. *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.* (1992), 63 Ohio St.3d 339, 343.

{¶8} Neither party appeals the trial court's determination that the board's order was supported by reliable, probative, and substantial evidence. The board contends the trial court erred when it determined that the board's order was not in accordance with law. We agree.

{¶9} The trial court, relying on *Brost v. Ohio State Medical Bd.* (1991), 62 Ohio St.3d 218, determined that the board's order was not in accordance with law because the board did not seriously consider a sanction less severe than revocation. However, *Brost* is distinguishable from the present case. In *Brost*, the board adopted a hearing officer's recommendation to revoke Brost's license. The hearing officer's recommendation noted that revocation was the minimum sanction that the board could impose pursuant to the board's disciplinary guidelines. The Supreme Court of Ohio reversed, noting that "[i]f, in fact, the board felt constrained to abide by the disciplinary guidelines without consideration of lesser sanctions provided in R.C. 4731.22(B), then the board's actions

were, consequently, not in accordance with law." *Id.* at 221. In *Brost*, the court was unable to conclude with any degree of certainty whether or not the board felt compelled to apply its guidelines as binding authority. *Id.* Accordingly, the Supreme Court of Ohio remanded the case to the board for reconsideration of the sanction.

{¶10} In the present case, however, there is no evidence that the board felt constrained by its disciplinary guidelines. To the contrary, the minutes of the board's meeting concerning appellee's license indicate that all members of the board affirmatively understood "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." This court has found that exact language sufficient to demonstrate the board was not constrained by its disciplinary guidelines and that the board considered the full range of available sanctions. See *Bouquett v. Ohio State Med. Bd.* (1997), 123 Ohio App.3d 466, 472-473; *Feldman v. State Med. Bd. of Ohio* (Sept. 30, 1999), Franklin App. No. 98AP-1627. Additionally, the board noted that it permanently revoked the licenses of two other physicians who had engaged in similar unprofessional conduct. Here, the board only revoked appellee's medical license, a lesser sanction than the permanent revocation recommended by the hearing officer. Given the board's acknowledgment that its disciplinary guidelines did not limit it to any sanction and its imposition of a less severe sanction than that recommended by the hearing officer, it is clear that the board did not feel constrained by its disciplinary guidelines and that it considered the full range of sanctions authorized by R.C. 4731.22(B).

{¶11} Although not addressed by the trial court, appellee also contends the board's order was not in accordance with law because R.C. 4731.22(B)(2) did not

authorize the board to take action against his Ohio medical license. That statute permits the board to sanction a physician holding an Ohio medical license when the physician's medical license has been suspended or limited by the licensing authority of another state. Appellee contends that his license was not suspended or limited for purposes of R.C. 4731.22(B)(22) because the North Carolina Medical Board stayed his suspension and imposed limitations on his medical license no different than those imposed on any other physician practicing in North Carolina. We disagree.

{¶12} The order appellee entered into with the North Carolina Medical Board suspended appellee's medical license for 60 days. Although the North Carolina Medical Board stayed the suspension, the stay of a suspension does not render the suspension a nullity. Rather, the stay simply holds the imposed sanction in abeyance subject to compliance with the stated terms and conditions. Moreover, the terms and conditions of the stay are a limitation on appellee's medical license. If appellee violates the terms and conditions of the stay, the suspension of his license would be enforced. Because appellee's medical license was suspended and limited by the North Carolina Medical Board, the board had authority pursuant to R.C. 4731.22(B)(22) to sanction appellee.

{¶13} When the board's order is supported by reliable, probative, and substantial evidence and is in accordance with law, a reviewing court may not modify a sanction authorized by statute. *Henry's Cafe, Inc. v. Ohio Bd. of Liquor Control* (1959), 170 Ohio St. 233; *Merritt v. Ohio Liquor Control Comm.*, Franklin App. No. 02AP-709, 2003-Ohio-822, at ¶34. R.C. 4731.22(B) authorizes the board to revoke appellee's Ohio medical license if his medical license in another state is suspended or limited by that state's licensing authority. R.C. 4731.22. Because the board's sanction was authorized by

statute, the trial court could not interfere with or modify the penalty imposed. *Henry's Cafe, Inc.*, supra; see, also, *DeBlanco v. Ohio State Medical Bd.* (1992), 78 Ohio App.3d 194, 202.

{¶14} In conclusion, the trial court erred when it found that the board's order was not in accordance with law. Therefore, appellant's lone assignment of error is sustained. Because the board's order was supported by reliable, probative, and substantial evidence and was in accordance with law, the trial court could not interfere with or modify the board's choice of sanctions. Accordingly, we reverse the trial court's judgment and affirm the board's order.

Judgment reversed and cause remanded.

LAZARUS, P.J., and PETREE, J., concur.

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

MICHAEL R. ROSS, M.D., :

Appellant, :

v. :

STATE MEDICAL BOARD OF OHIO, :

Appellee. :

STATE MEDICAL BOARD
OF OHIO

2003 OCT 17 P 3:23

Case No. 02CVF-09-10028

JUDGE D. O'NEILL

ORDER GRANTING MOTION FOR STAY

It is hereby ORDERED, ADJUDGED AND DECREED that the State Medical Board of Ohio's Motion For Stay is granted. The Judgment Entry reversing and remanding this matter to the State Medical Board of Ohio filed on September 17, 2003 is hereby stayed. This Stay will remain in effect while this case is on appeal.

IT IS SO ORDERED.

JUDGE D. O'Neill

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CLERK OF COURTS

NOTICE OF APPEAL TO A
COURT OF APPEALS
FROM A JUDGMENT OR
APPEALABLE ORDER

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

MICHAEL R. ROSS, M.D.,
P.O. Box 357
Hilliard, Ohio 43026

Appellant/Appellee,

v.

STATE MEDICAL BOARD OF OHIO,
77 South High Street, 16th Floor
Columbus, Ohio 43215-6127

Appellee/Appellant.

Case No. 02CVF-09-10028
NOTICE OF APPEAL

FILED
COURT OF APPEALS
FRANKLIN CO. OHIO
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CLERK OF COURTS

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Notice is hereby given that State Medical Board of Ohio, Appellee/Appellant, hereby appeals to the Court of Appeals of Franklin County, Ohio, Tenth Appellate District from the Judgment Entry entered in this action on the 17th day of September, 2003, and the corresponding Decision Reversing Order of the State Medical Board filed on September 2, 2003.

Counsel of Record for Michael R. Ross, M.D. is Elizabeth Y. Collis (0061961), Law Office of Elizabeth Y. Collis, 1560 Fishinger Road, Columbus, Ohio 43221.

Respectfully submitted,

JIM PETRO (0022096)
Attorney General

Rebecca K. Hockenberry

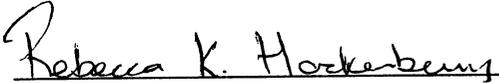
Rebecca K. Hockenberry (0074930)
Rebecca J. Albers (0059203)
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30 East Broad Street, 26th Floor
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(614) 466-8600

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COMMON PLEAS COURT
FRANKLIN CO. OHIO
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CLERK OF COURTS

Counsel for State Medical Board of Ohio

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Notice of Appeal was served via regular United States mail, postage prepaid this 29th day of September, 2003, upon Elizabeth Y. Collis, 1560 Fishinger Rd., Columbus, Ohio 43221, counsel for Michael R. Ross, M.D.



Rebecca K. Hockenberry
Assistant Attorney General

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

MICHAEL R. ROSS, M.D., :

Appellant, :

v. :

STATE MEDICAL BOARD OF OHIO, :

Appellee. :

Case No. 02CVF-09-10028

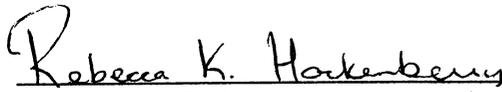
JUDGE D. O'NEILL

STATE MEDICAL BOARD OF OHIO'S MOTION FOR STAY

Pursuant to Rule 62(B) and (C) of the Rules of Civil Procedure, the Appellee/Appellant, State Medical Board of Ohio, hereby moves this Court for a Stay of the Judgment Entry of September 17, 2003, which is a final appealable order. As set forth in the attached memorandum, the Appellant, as an agency of the State of Ohio, is automatically entitled to a stay pending appeal without the posting of a bond.

Respectfully submitted,

JIM PETRO (0022096)
Attorney General


Rebecca K. Hockenberry (0074930)
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Counsel for State Medical Board of Ohio

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CLERK OF COURTS - CV

MEMORANDUM IN SUPPORT

State Medical Board of Ohio ("Board") respectfully moves the Court to stay enforcement of its judgment. The Board has filed this date a Notice of Appeal. A copy of the Notice of Appeal is attached. It would be improper at this time for the Board to reconsider its sanction until all appellate rights have been utilized. Accordingly, the Board requests that the Court's judgment be stayed pending the outcome of the appeal.

This case was before the Court for consideration of an administrative appeal filed by Appellant, Michael R. Ross, M.D. By Entry of Order dated August 14, 2002, the Board revoked Dr. Ross' certificate to practice medicine and surgery in the State of Ohio. This Court, by Decision Reversing Order of the State Medical Board filed on September 2, 2003, found that the Board's determination was supported by reliable, probative and substantive evidence. *Id.* at 6. By judgment entry dated September 17, 2003, the Court ordered this matter reversed and remanded to the Board for purposes of reconsidering the sanction imposed.

I. ARGUMENT

The State Medical Board of Ohio is entitled to a stay of execution of the September 17, 2003 judgment pending appeal. Ohio R. Civ. P. 62(B) and (C) provide:

- (B) Stay upon appeal. When an appeal is taken the appellant may obtain a stay of execution of a judgment or any proceedings to enforce a judgment by giving an adequate supersedeas bond. The bond may be given at or after the time of filing the notice of appeal. The stay is effective when the supersedeas bond is approved by the court.
- (C) Stay in favor of government. When an appeal is taken by this state or political subdivision, or administrative agency of either, or by any officer thereof acting in his representative capacity and the operation or enforcement of the judgment is stayed, no bond, obligation or other security shall be required from the appellant.

Since 1978, the Ohio Supreme Court has consistently held that the State of Ohio, its administrative agencies, and officers are entitled to an automatic stay of judgment pending appeal as a matter of right. In *State ex rel. Ocasek v. Riley* (1978), 54 Ohio St. 3d 488, 490, the Ohio Supreme Court held:

Pursuant to [Civ. R. 62], defendants-appellants are entitled to a stay of the judgment as a matter of right. The lone requirement of Civ. R. 62(B) is the giving of an adequate supersedeas bond. Civ. R. 62(C) makes this requirement unnecessary in this case, and respondent has no discretion to deny the stay.

This decision was reaffirmed and upheld by the Ohio Supreme Court in *State ex rel. State Fire Marshall v. Curl* (2000), 87 Ohio St. 3d 568, 572-73, finding that *Ocasek* should not be overruled stating: “*Ocasek* has remained the law in this state for over twenty-one years without any successful challenge to its holding, and Ohio courts have cited and relied on *Ocasek* throughout that period.” *Id.* “When an appeal is taken by a state or political subdivision, an administrative agency of either, or an officer acting in a representative capacity for either, no bond or other security is necessary to make the stay effective. Thus, no hearing is required to determine whether the state is entitled to a stay.” *Id.* at 573, citing Klein & Darling, *Civil Practice* (1997) 722, Section 62-3. “The stay is virtually automatic as to governmental agencies, which are exempt from the bond requirement.” *Id.*, citing Whiteside, *Ohio Appellate Practice* (1999), 27, Section 1.19.

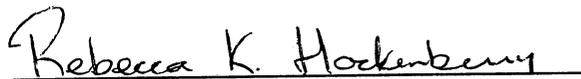
The State Medical Board is an administrative agency for the State of Ohio. Ohio Rev. Code § 4731.01. Accordingly, it is entitled to a stay of execution of judgment.

II. CONCLUSION

Based upon the foregoing, the Board is entitled to an automatic stay of the Judgment Entry of September 17, 2003, as a matter of right and without the necessity of posting a supersedeas bond. Accordingly, the Motion for Stay must be granted.

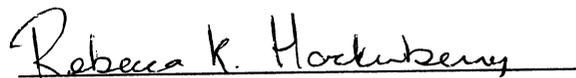
Respectfully submitted,

JIM PETRO (0022096)
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Rebecca J. Albers (0059203)
Assistant Attorney General
Health & Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3428
(614) 466-8600

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing State Medical Board of Ohio's Motion for Stay of Judgment was served via regular United States mail, postage prepaid this 29th day of September, 2003, upon Elizabeth Y. Collis, 1560 Fishinger Rd., Columbus, Ohio 43221, counsel for Michael R. Ross, M.D.


Rebecca K. Hockenberry
Assistant Attorney General

Carolina Board entered into a Consent Order intended to resolve the charges and allegations against Dr. Ross. In the Consent Order, Dr. Ross admitted that during June through October 2001, he was an independent contractor with Virtual Medical Group.com, LLC ("VMG"), and that during that time, he prescribed medication without physically examining the patients he prescribed to, and without any prior physician-patient relationship. Dr. Ross also stated that he had split fees with VMG. Dr. Ross admitted that this was a potentially dangerous practice, that he had engaged in unprofessional conduct, and that the North Carolina Board had grounds to discipline him.

The Consent Agreement concluded:

"NOW, THEREFORE, the Board enters the following Order:

1. Dr. Ross's license to practice medicine in North Carolina is **SUSPENDED** for sixty (60) days. Such suspension is **STAYED** upon the following terms and conditions:

A. Dr. Ross shall not prescribe medication for any person in North Carolina without first physically examining that person.

B. Dr. Ross shall not assist VMG or any other entity, in any manner, in the unauthorized practice of medicine.

C. Dr. Ross shall not split fees with a business corporation; that is, he shall not share fees generated from the practice of medicine with a business corporation on a percentage basis.

D. Dr. Ross shall obey all laws. Furthermore, Dr. Ross shall obey all regulations related to the practice of medicine.

E. Dr. Ross shall notify the Board in writing of any change in his residence or practice addresses within ten (10) days of the change.

F. Dr. Ross shall appear before the Board as (sic) such times as requested by the Board.

2. If Dr. Ross fails to comply with any of the terms of this Consent Order, that failure shall constitute unprofessional conduct within the meaning of N.C. Gen. Stat. § 90-14(a)(6) and shall be grounds, after any required notice and hearing, for the Board to annul, suspend, or revoke his license or to deny any application that he might make in the future or then have pending for a license. ***"

On March 13, 2002, the State Medical Board of Ohio ("Board" or "Ohio Board"), the Appellee in this action, notified Dr. Ross by letter that it intended to determine whether to take action on his medical license because of the North Carolina Consent Order. The Board alleged that the Consent Order constituted a type of action under which the Ohio Board was authorized to take disciplinary action on a doctor's certificate to practice medicine.

Dr. Ross requested a hearing on the allegations. The hearing was held on May 29, 2002 before Attorney Hearing Examiner Sharon W. Murphy. At the hearing, Dr. Ross did not deny any of the information contained in the Consent Order. He explained that he had initially been informed that the North Carolina Board acquiesced in the activities of VMG, but that he never independently verified that fact. (Transcript of May 29, 2002 Administrative Hearing (hereinafter "Tr."), at page 39.) Dr. Ross stated that he prescribed drugs, including Viagra, Zoloft, and Paxil, for patients whom he never saw in person. He testified that he also prescribed Cipro for patients during the anthrax scare in the fall of 2001. (Tr. 34-35, 47-49.) Dr. Ross said that once he learned that VMG was not authorized by the North Carolina Board, he stopped working for VMG. (Tr. 42.)

On June 24, 2002, Attorney Hearing Examiner Murphy issued a report and recommendation containing findings of fact and conclusions of law. The report and recommendation included a proposed order that Dr. Ross's certificate to practice medicine and surgery in Ohio be permanently revoked.

The matter was heard by the full Board on August 14, 2002. Prior to the hearing, Dr. Ross's counsel filed objections to the report and recommendation. Dr. Ross's counsel also made oral arguments to the Board at its August 14 meeting. The Board adopted the attorney hearing examiner's findings of fact and conclusions of law, but amended the order by deleting the word "permanent" from the description of the revocation. The amendment passed with six "yes" votes, two "no" votes, and two abstentions. The Board issued an "Entry of Order" in accordance with the amendment.

A Notice of Appeal was filed with this Court on September 11, 2002. Also on September 11, 2002, Dr. Ross moved for a stay of the revocation order pending a final decision by this Court. The motion was granted on September 12, 2002.

II. Law.

This court must affirm the order of the Board if it is supported by reliable, probative and substantial evidence and is in accordance with law. R.C. 119.12; *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 111. This standard of proof was defined by the Supreme Court of Ohio in *Our Place v. Liquor Control Comm.* (1992), 63 Ohio St. 3d 570, 571:

"(1) 'Reliable' evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) 'Probative' evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) 'Substantial' evidence is evidence with some weight; it must have importance and value." (Internal citations omitted.)

On questions of law, this Court's review is plenary. *Walker v. State Med. Bd. of Ohio* (Feb. 21, 2002), Franklin App. No. 01AP-791, unreported.

The Ohio Board's authority to impose discipline upon licensed physicians is set forth in R.C. 4731.22 (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:

(22) Any of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand ***."

III. Court's Findings and Conclusion.

The Court finds that there was reliable, probative, and substantial evidence to support the Board's determination that Dr. Ross should be

subjected to discipline. However, for reasons discussed below, the Court is not convinced that the Board's Order was in accordance with law.

The "accordance with law" phrase in the R.C. 119.12 standard of review requires the Board to exercise its discretion in conformance with R.C. 4731.22. The Supreme Court of Ohio stated in *Brost v. State Medical Bd. of Ohio* (1991), 62 Ohio St.3d 218, 221:

"[T]he General Assembly has granted the [State Medical] board a broad spectrum of sanctions from which to choose. Naturally, the General Assembly intended that the sanction selected by the board be proportionate to the prohibited act or acts committed by the doctor."

In the same case, the court held that a penalty imposed by the Board will be reversed when there is evidence that the board felt constrained to impose a particular sanction. Because the evidence in the present case established that the majority of the Board felt constrained to revoke Dr. Ross's license and failed to consider the range of discipline that it was authorized to impose against him, the Board's order cannot be affirmed. See also *Roy v. Ohio State Med. Bd.* (1992), 80 Ohio App.3d 675 (reversing and remanding Board's order because it may have followed its own internal guidelines instead of taking into account the entire range of sanctions available under the statute).

In the present matter, the minutes of the Board meeting reveal that its members never seriously considered a sanction less severe than revocation. The gist of the Board members' remarks was that because this case involved prescribing drugs over the Internet, revocation was the only choice. Notably, the Board recognized that it had revoked the licenses of two other doctors

who had prescribed drugs via the Internet. The majority of the Board brushed aside one member's observation that the prior cases involved "continuing, ongoing offenders," and that Dr. Ross's case did not. The comments of one Board member who favored revocation were summarized in the meeting minutes as follows: "[I]n the long term this could come back to haunt the Board if it doesn't do the proper thing." Read in their entirety, the minutes suggest that the majority of the Board was attempting to adopt a per se rule that it would revoke the certificate of any doctor or surgeon who prescribed drugs over the Internet. Since there was no evidence of any such rule having been adopted pursuant to requisite administrative procedures, the Board's action was improper. *Brost, supra*.

The Board's failure to seriously consider discipline short of revocation is remarkable given the procedural stance of the case when it reached the Ohio Board. In North Carolina, where charges initially arose, Dr. Ross's license was suspended for 60 days and the suspension was stayed. Thus, at no time was he prohibited from practicing medicine in that state. Dr. Ross's attorney pointed out that similar agreements were being negotiated in two other states where Dr. Ross practiced. At least one other state in which Dr. Ross is licensed was notified of the North Carolina consent order and had not taken any disciplinary action against Dr. Ross.

It is also notable that the Board failed to seriously consider the mitigating evidence. Obviously, this was a case in which Dr. Ross exercised poor judgment. However, the undisputed evidence indicated that he believed in good faith that Internet prescribing through VMG was permissible

while he was employed there; he never prescribed medicine via the Internet for acute conditions, but only for chronic, benign symptoms; he never knowingly prescribed medicine over the Internet for an Ohio patient; there was no evidence that any one of his Internet patients was ever harmed; and once Dr. Ross learned about North Carolina's disapproval of prescribing medicine over the Internet, he ceased doing so and fully cooperated with investigations into VMG.

In a recent case, the Tenth District Court of Appeals looked into attorney disciplinary cases for guidance in reviewing similar discipline imposed by the State Medical Board. *Rossiter v. Ohio State Med. Bd.*, Franklin App. No. 01AP-1252, 2002-Ohio-2017, citing *Toledo Bar Assn. v. Stichter* (1985), 17 Ohio St.3d 248, *Dayton Bar Assn. v. Prear* (1964), 175 Ohio St. 543 (noting that each case must be considered "individually upon its merits, including the mitigating circumstances involved"), *Cincinnati Bar Assn. v. Leroux* (1968), 16 Ohio St.2d 10 (commenting that "openness and remorse alone will not excuse an offense which is clearly reprehensible, but may be considered, with other mitigating circumstances, in evaluating a difficult borderline case").

Ohio Supreme Court cases addressing reciprocal discipline in the legal profession, while not binding in this matter, are instructive. Under Ohio law, it is presumed that the discipline imposed upon an attorney in another state is the proper discipline in Ohio. The attorney, however, is given an opportunity to show by clear and convincing evidence why the imposition of comparable or identical discipline is not warranted. See Gov. Bar. R. V (11)

(F) (4)(a)(ii); *Office of Disciplinary Counsel v. Meenen* (2000), 88 Ohio St.3d 268. This principle has regularly been applied by the Supreme Court: *Meenen*, supra; *Office of Disciplinary Counsel v. Graham* (1998), 81 Ohio St.3d 306; *Office of Disciplinary Counsel v. Cochrane* (1994), 71 Ohio St.3d 97; *Disciplinary Counsel v. Salling* (1994), 71 Ohio St.3d 92; *In re Nicotera* (1992), 65 Ohio St.3d 163.

While the Revised Code contains no similar presumption for reciprocal discipline in the medical profession, a red flag is raised when one state's discipline glaringly deviates from other states, as in this case. Several other states' medical regulators have considered Dr. Ross's offenses. No other state prohibited him from practicing medicine, even for a brief period. Much more explanation is needed from the majority of the Ohio Board members as to why they felt compelled to impose one of the Board's harshest sanctions.

In summary, the record reveals that the Board may have failed to consider discipline for Dr. Ross other than revocation of his certificate. There was evidence that the Board failed to impose a sanction that was proportionate with his misconduct, and failed to consider Dr. Ross's case on the merits, including relevant mitigating factors.

Given the aforementioned flaws, this Court is not convinced that the Board properly exercised its discretion and acted in accordance with law. For this reason, the Board's Order is REVERSED AND REMANDED with instructions for the Board to reconsider its sanction in a manner consistent with this Decision.

Counsel for Appellant shall prepare and submit an appropriate Judgment Entry reflecting this Decision pursuant to Local Rule 25.01.



JUDGE DEBORAH P. O'NEILL

Copies to:

Elizabeth Y. Collis, Esq.
Counsel for Appellant

Mark A. Michael, Esq.
Assistant Attorney General
Counsel for Appellee

STATE MEDICAL BOARD
OF OHIO IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

2002 SEP 20 P 3: 20

MICHAEL R. ROSS, M.D.
P.O. Box 357
Hilliard, Ohio 43026
Appellant,

:

0209109 1 1028

:

Case No. _____

:

vs.

:

JUDGE _____

STATE MEDICAL BOARD OF OHIO
77 South High Street, 16th floor
Columbus, Ohio 43215-6127
Appellee

:

:

Order

Appellant's Motion to Stay the August 14, 2002 Order of the State Medical Board
of Ohio is hereby GRANTED.


Judge

9-11-02
Date

Cc: Elizabeth Y. Collis
Counsel for Appellant

Mark Michael
Assistant Attorney General
Counsel for the State Medical Board of Ohio

STATE MEDICAL BOARD OF OHIO
02 SEP 12 AM 9:13
CLERK OF COURTS-CV

STATE MEDICAL BOARD
OF OHIO IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
2002 SEP 20 P 3: 20

STATE MEDICAL BOARD
OF OHIO
2002 SEP 11 P 11: 28

MICHAEL R. ROSS, M.D.
P.O. Box 357
Hilliard, Ohio 43026
Appellant,

Case No. 020105 10020

vs.

JUDGE ONEILL

STATE MEDICAL BOARD OF OHIO
77 South High Street, 16th floor
Columbus, Ohio 43215-6127
Appellee

NOTICE OF APPEAL

Appellant, Michael R. Ross, M.D., pursuant to Ohio Revised Code Section 119.12 hereby appeals the final decision of the Ohio State Medical Board ("Appellee") which revoked Appellant's license to practice medicine in its Adjudication Order (attached hereto) issued on August 14, 2002 and mailed to appellant on September 4, 2002.

Appellant asserts that the decision of the Ohio State Medical Board is not

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CLERK OF COMMONS COURT
FRANKLIN COUNTY OHIO

supported by reliable, probative and substantial evidence and is not in accordance with law.

Respectfully submitted,



Elizabeth Y. Collis (#0061961)
Law Office of Elizabeth Y. Collis
1560 Fishinger Road
Columbus, Ohio 43221
(614) 488-8692
f(614) 488-0270
COUNSEL FOR APPELLANT

Certificate of Service

I certify that the *Notice of Appeal* was served upon Mark Michael, Assistant Attorney General, Office of the Ohio Attorney General, Health and Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215 by regular U.S. mail, postage prepaid, and by hand delivery on September 11th, 2002.



Elizabeth Y. Collis



State Medical Board of Ohio

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

August 14, 2002

Michael R. Ross, M.D.
P. O. Box 357
Hilliard, OH 43026

Dear Doctor Ross:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, 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 14, 2002, 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 a Notice of Appeal with the State Medical Board of Ohio and 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

Anand G. Garg, M.D. /TAG
Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5146 3598
RETURN RECEIPT REQUESTED

Cc: Elizabeth Y. Collis, Esq.
CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5146 3581
RETURN RECEIPT REQUESTED

mailed 9/4/02

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on August 14, 2002, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Michael R. Ross, M.D., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.

(SEAL)

Anand G. Garg, M.D.
Anand G. Garg, M.D. /TAG
Secretary

August 14, 2002
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

MICHAEL R. ROSS, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on August 14, 2002.

Upon the Report and Recommendation of Sharon W. Murphy, 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:

The certificate of Michael R. Ross, M.D., to practice medicine and surgery in the State of Ohio shall be REVOKED.

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

(SEAL)

Anand G. Garg, M.D.
Anand G. Garg, M.D.
Secretary

August 14, 2002
Date

2002 JUN 24 P 4: 59

**REPORT AND RECOMMENDATION
IN THE MATTER OF MICHAEL R. ROSS, M.D.**

The Matter of Michael R. Ross, M.D., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio, on May 29, 2002.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated March 13, 2002, the State Medical Board of Ohio [Board] notified Michael R. Ross, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in this state. The Board based its proposed action on a Consent Order regarding Dr. Ross issued by the North Carolina Medical Board.

The Board further alleged that the North Carolina Medical Board's Consent Order constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in R.C. 4731.22(B)(22)."

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

- B. On March 19, 2002, Dr. Ross submitted a written hearing request. (State's Exhibit 1B).

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Mark A. Michael, Assistant Attorney General.
- B. On behalf of the Respondent: Elizabeth Y. Collis, Esq.

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EVIDENCE EXAMINED

I. Testimony Heard

Michael R. Ross, M.D.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A through 1K: Procedural exhibits.
2. State's Exhibit 2: Certified copies of documents regarding Dr. Ross maintained by the North Carolina Medical Board.

B. Presented by the Respondent

1. Respondent's Exhibit A: Curriculum vitae of Dr. Ross.
2. Respondent's Exhibits B-D: Letters of support written on behalf of Dr. Ross.

PROFFERED EXHIBITS

Respondent's Exhibit E and I: Copies of documents pertaining to Virtual Medical Group. (See Hearing Transcript at 108-110).

SUMMARY OF THE EVIDENCE

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

1. Michael R. Ross, M.D., obtained a doctoral degree in organic chemistry in 1981. In 1990, Dr. Ross obtained his medical degree from the University of Maryland School of Medicine. The following year, he completed a one year internship in obstetrics and gynecology [OB/GYN] at Harbor Hospital Center in Baltimore, Maryland. Thereafter, he completed one half of the second year of an OB/GYN residency program at Albert Einstein Medical Center in Philadelphia, Pennsylvania. (Hearing Transcript [Tr.] at 14-15; Respondent's Exhibit [Resp. Ex.] A).

Dr. Ross practiced for a few years doing general medicine locum tenens work in a number of states, including Ohio. In 1995, Dr. Ross completed a second internship, this time in family

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medicine at the Medical College of Ohio/St. Vincent Medical Center. Subsequently, Dr. Ross practiced for a short time. In 1997, he completed the second post-graduate year of a family medicine residency at the Medical College of Pennsylvania/Hahnemann University. Dr. Ross did not complete that residency program. (Tr. at 14-16; Resp. Ex. A).

Dr. Ross testified that he is board certified in ambulatory medicine and in general practice. Dr. Ross testified that those boards are not AMA certified, but that they are applying for AMA certification. Dr. Ross is licensed in Ohio, West Virginia, North Carolina, South Carolina, Alabama, Maryland, and Pennsylvania. (Tr. at 22).

Since 1997, Dr. Ross has held approximately twenty-two positions, many of which were locum tenens. Since December 2001, Dr. Ross has been employed as the Medical Director of United Medical Corporation which operates two clinics in Columbus, Ohio. Dr. Ross testified that the patients are “predominantly Medicaid and Medicare patients” and are “very indigent.” (Tr. at 79-80; Resp. Ex. A).

2. Effective December 20, 2001, the North Carolina Medical Board [North Carolina Board] approved a Consent Order pertaining to Dr. Ross. (State’s Exhibit [St. Ex.] 2). The North Carolina Board action was based on Dr. Ross’ admissions to the following allegations:
 - Dr. Ross was “an independent contractor [who] provided medical services through Virtual Medical Group.com, LLC [hereinafter VMG], a business corporation located in Morrisville, North Carolina, that renders medical services, including prescriptions, via the internet.”
 - “[O]n various dates in June through October 2001, Dr. Ross prescribed medications including CIPRO (ciprofloxacin hydrochloride), an antibiotic used to treat infections caused by certain microorganisms, including anthrax, and, additionally, during the same relevant time period, Dr. Ross prescribed various other medications for non-acute conditions.”
 - “Dr. Ross authorized such prescriptions for CIPRO and other medications without a physical examination of the patients and without any prior physician-patient relationship between Dr. Ross and the patients that might have permitted, depending on good medical practice, issuing a new prescription without a physical examination.”
 - “[U]pon reflection, Dr. Ross recognizes that issuing prescriptions in the name of persons whom he has never physically examined is a potentially dangerous practice.”
 - “VMG, through Dr. Ross, rendered medical care to patients in North Carolina and, thus, engaged in the unauthorized practice of medicine.”

- “Dr. Ross permitted VMG to bill patients for medical services rendered by Dr. Ross and a portion of the fees collected from such patients was used to pay Dr. Ross’ compensation, while the remainder was used to pay other expenses of VMG.”
- “[B]y prescribing medications to patients without a physical examination, in the absence of a prior physician-patient relationship, Dr. Ross engaged in unprofessional conduct, including, but not limited to, departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby * * *.”
- “[T]here [was] no evidence that Dr. Ross’ prescribing irregularities * * * caused any detrimental effect to any patient.”
- “Dr. Ross ceased his participation in all of the activities described above immediately upon learning that the above-described activities violated the standards of care and professional ethics enforced by the [North Carolina Board].”
- “Dr. Ross has given notice to VMG of his termination of his contractual relationship with VMG.”
- “Dr. Ross cooperated fully with the [North Carolina Board]’s investigation and has volunteered to cooperate in any manner with the [North Carolina Board] and other authorities in any investigation of VMG.”

(St. Ex. 2 at 2-4).

The North Carolina Board Consent Order suspended Dr. Ross’ license to practice medicine in North Carolina for sixty days and stayed the suspension, subject to terms and conditions. Those terms and conditions include the following: Dr. Ross shall not prescribe medication for any person in North Carolina without first physically examining that person; Dr. Ross shall not assist any entity in the unauthorized practice of medicine; and Dr. Ross shall not share fees generated from the practice of medicine with a business corporation on a percentage basis. (St. Ex. 2 at 5).

3. At hearing, Dr. Ross testified that he has worked in various locum tenens positions over the years. He testified that, in May 2001, he had accepted a position in Myrtle Beach, South Carolina. Dr. Ross testified that he had not been guaranteed a base salary, and he was being paid “next to nothing.” Moreover, Dr. Ross testified that, pursuant to his employment contract, his employer had been obligated to provide malpractice and health insurance, but the employer had failed to do so. Dr. Ross testified that he has certain health conditions and cannot afford to be without health insurance. Therefore, while working in South Carolina, he had needed to supplement his income to provide for himself and his family. (Tr. at 29, 55-58).

Dr. Ross testified that he had begun sending his resume to recruiters and searching nationally recognized websites which advertise employment for physicians. He had found that VMG advertised on the websites as an employer looking for physicians to work in multiple states. He stated that he had become aware of VMG a few years previously, but he could not remember the context in which he had become aware. Dr. Ross testified that he had believed that if VMG had survived a number of years, and was advertising and operating in so many states, it must be a legitimate organization. Nevertheless, Dr. Ross acknowledged that he had never contacted the North Carolina Board, any medical society, or any of his peers to inquire whether VMG was a legitimate organization. (Tr. at 29, 39-40, 59-60).

Dr. Ross testified that he had contacted VMG through their website. Dr. Ross testified that he had asked Tania Malik, a lawyer and the CEO of VMG, if it was appropriate for a physician to serve as a consultant for VMG. Dr. Ross testified that Ms. Malik had told him that VMG had operated in North Carolina for two years "with the acquiescence" of the North Carolina Board. Dr. Ross acknowledged that he had not consulted with any attorney other than the CEO of VMG before entering into negotiations with VMG. (Tr. at 29-30, 68, 94-95).

Dr. Ross testified that he had entered into a contract with VMG by which he had agreed to "consult" patients over the Internet for VMG. VMG had agreed to pay him twenty dollars for each new patient he consulted, and ten dollars for each repeat contact. (Tr. at 30, 41). Dr. Ross testified that he had made less than \$3000.00 by working for VMG. He added, however, that VMG had underpaid him, as he had treated more than 200 patients for VMG. (Tr. at 93).

4. Dr. Ross described his work for VMG. He began working for VMG in June 2001. He stated that he had treated patients from North Carolina, Virginia, and Maryland. Dr. Ross testified that VMG had sent information regarding prospective patients to him through a secure website. Dr. Ross received the patients' names, and the states in which the patients resided, as well as information regarding the patients' chief complaints, family histories, patient histories, reviews of systems, vital signs, medications, allergies, and detailed histories of the patients' presenting illnesses. When asked how the patients would know their vital signs, Dr. Ross responded that "they would go to their doctors and get it. I'd have to trust them that they were giving me the right one of course." Dr. Ross acknowledged that he had not known whether the information provided by the patients was correct. (Tr. at 29-32, 43-44, 61-62).

Dr. Ross further testified that the information he had received consisted of summaries of the information provided by the patients as compiled by VMG. Dr. Ross testified that he had neither examined nor spoken to the patients; instead, he had reviewed summaries prepared by VMG and based his clinical decisions on those summaries. Dr. Ross testified that if a patient did not provide the information necessary to make a diagnosis, Dr. Ross would

e-mail the patient to ask for additional information. After formulating a diagnosis, Dr. Ross issued prescriptions for medications electronically. (Tr. at 33, 40-41, 64).

Dr. Ross testified that he had not known whether the prescriptions were sent to the patients or to VMG. Dr. Ross testified that he had not believed that there was a conflict of interest, because he had thought the patients could get the medication anywhere they chose. Nevertheless, Dr. Ross admitted that he had not known whether VMG owned the pharmacy which distributed the medications he ordered. (Tr. at 40-41).

Dr. Ross further testified that he did not know how the patients contacted VMG. Moreover, he stated that he did not know, and had never inquired, whether the VMG website advertised specific drugs which the patients could request. Nevertheless, Dr. Ross testified that most of the patients he had treated through VMG presented asking for a specific drug. Dr. Ross explained, for example, that patients who are depressed often hear "through the grapevine" that Paxil or Zoloft works, and they want to try it. (Tr. at 37-39).

Dr. Ross testified that he had treated only patients with benign, chronic conditions, and that he had not treated acute conditions. (Tr. at 69-70). He stated that he had prescribed, among other things, Zoloft and Paxil for depression, Propecia for hair loss, and Cipro for "mail carriers." Dr. Ross testified that he had advised the "mail carriers" that they did not need Cipro; he added that they had insisted on receiving it anyway for "peace of mind." Dr. Ross admitted that he had prescribed Cipro knowing that these patients did not need it. (Tr. at 47-48, 70-71). Furthermore, Dr. Ross admitted that he had not known if, in fact, any of these patients were truly mail carriers. (Tr. at 48).

Dr. Ross testified that he had been aware that many people in the United States had been desperate to obtain Cipro after September 11, 2001. He further testified that he had been aware that physicians were being encouraged to refrain from prescribing Cipro to avoid drug resistance to the use of Cipro, and that that was an important consideration. Nevertheless, despite those considerations, Dr. Ross acknowledged that he had not even considered the possibility that the patients asking for Cipro over the Internet may have intended to sell the drug or use it in an otherwise illicit manner. (Tr. at 101-102).

Dr. Ross testified that he had not believed that physical examination was necessary before prescribing medication to patients complaining of hair loss, depression, male impotence, or possible anthrax exposure. Dr. Ross added, however, that he had advised the patients with erectile dysfunction to see a urologist, and patients complaining of depression to see a family doctor or therapist. (Tr. at 78). When asked why he would prescribe to patients who needed to see their own physicians anyway, Dr. Ross explained that these conditions were embarrassing. Nevertheless, Dr. Ross acknowledged that, if these patients had come to him in his office, he would have made sure that the patients received the care that they needed. He admitted that he had not done that with his Internet patients. (Tr. 95-96).

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5. Dr. Ross testified that he had not considered the fact that it is difficult over the Internet to determine if the patients are telling the truth. Nevertheless, Dr. Ross testified that it did not concern him because he had believed that the drugs these patients requested were not dangerous. Dr. Ross acknowledged that he had prescribed Viagra over the Internet and that, if a patient had lied about his blood pressure in order to receive a Viagra prescription, it could have resulted in serious complications for the patient. (Tr. at 34-35).

Dr. Ross testified that the tools he uses to determine if a patient is telling the truth include the physical examination and monitoring the frequency of the patient's visits. Dr. Ross acknowledged that these tools are not available to a physician in an Internet prescribing situation. (Tr. at 35-36).

6. Dr. Ross testified that he had received the patients' names, and the states in which the patients resided. Dr. Ross acknowledged, however, that, since he was treating these patients over the Internet, he could not be sure of the patients' names or the states in which they resided. Dr. Ross further acknowledged that he had never before considered that fact. (Tr. at 30-31, 43-44).

Dr. Ross also acknowledged that if a person wanted to illicitly obtain a popular drug such as Viagra, that person could log on to the VMG website numerous times under different names asking for prescriptions for the same drug. He stated that such a situation is "theoretically possible" but that he had not previously considered that possibility. Dr. Ross testified that he had never made an attempt to verify the truth of the patients' representations, although he acknowledged that a physician rendering care to patients would have such a responsibility. Dr. Ross testified that he had simply not considered it. (Tr. at 45).

When asked why he had not considered such things, Dr. Ross testified that he had been "desperate for money." He acknowledged that he had allowed his financial desperation to influence his treatment of patients, but stated that he had not thought he was doing anything wrong at the time. He acknowledged that it had been a poor decision. He further stated that he regrets his conduct and has suffered "sleepless nights" as a result of it. (Tr. at 45-47). Dr. Ross later testified, however, that he had not believed that the care he provided was below the standard of care, and that he thinks his decision to work for VMG was a bad one "because of the ramifications." (Tr. at 79).

7. Dr. Ross testified that, during a typical office visit for a new patient, Dr. Ross would review the patient's chief complaint, take a history of the present illness, take a past medical history, review all of the patient's systems, and perform a physical examination. Dr. Ross testified that he would also perform a thorough physical examination which would include examination of the ears, throat, eyes, glands, and thyroid; evaluation of the range of motion of the joints; auscultation of the heart, lungs, and abdomen; and palpation of the abdomen. Dr. Ross testified that he would also measure the patient's vital signs, and would often

order laboratory studies. Dr. Ross added that he would use the information he gained from the examination to determine a diagnosis and formulate a treatment plan. (Tr. at 23-26).

Dr. Ross further testified, however, that it is the patient's history and the patient's description of the present illness which provide the information most necessary to the physician. Dr. Ross stated that the physical examination usually only confirms what the patient told already told the physician. (Tr. at. at 24-26). Dr. Ross testified that if a physician were to take a history and not perform a physical examination, the physician would likely discover everything wrong with the patient ninety percent of the time. Dr. Ross acknowledged, however, that failure to perform a physical examination would be below the standard of care. (Tr. at 26-27).

8. Dr. Ross testified that he had believed that Internet prescribing was "the cutting edge" of medicine, although most state boards had not yet determined whether to support it. Dr. Ross further testified that he had been aware of Ohio's stance against Internet prescribing, which is why he had not served as a consultant for VMG in Ohio. (Tr. at 90, 92). Dr. Ross admitted, however, that even though he had been aware that Ohio disapproved of Internet prescribing, and that Ohio was investigating a physician on that basis, he had not looked into the reasons for Ohio's concerns. (Tr. at 101).
9. Dr. Ross stated that VMG had not paid him a "kick back" for his consultation, but paid him a flat fee for each patient consultation. He further stated that he had received the same amount whether or not he prescribed a medication. Dr. Ross testified that had not prescribed to every patient; for example, he stated that he had refused to prescribe Viagra to a twenty-year-old because a twenty-year-old should not need Viagra. Dr. Ross further testified that VMG had not penalized him when he chose not to prescribe medications to a patient; nor had VMG paid him additional fees when he did prescribe. (Tr. at 41, 65-66). Nevertheless, Dr. Ross acknowledged that the North Carolina Board had considered his arrangement with VMG to be fee-splitting. (Tr. at 42).

Dr. Ross testified that he had discontinued his association with VMG as soon as he was advised that the North Carolina Board disapproved of VMG's practices. He further stated that he had been fully cooperative with the North Carolina Board's investigation. (Tr. at 42).

10. Dr. Ross submitted letters of support written on his behalf. (Resp. Ex. B-D).

FINDINGS OF FACT

Effective December 20, 2001, a Consent Order of the North Carolina Medical Board suspended the license of Michael R. Ross, M.D., to practice medicine in North Carolina for sixty days, but stayed the suspension, subject to terms and conditions. Those terms and conditions include the

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following: Dr. Ross shall not prescribe medication for any person in North Carolina without first physically examining that person; Dr. Ross shall not assist any entity in the unauthorized practice of medicine; and Dr. Ross shall not share fees generated from the practice of medicine with a business corporation on a percentage basis.

CONCLUSIONS OF LAW

The North Carolina Medical Board Consent Order in the matter of Michael R. Ross, M.D., as set forth in the Findings of Fact, constitutes “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

* * * * *

Dr. Ross presented a number of mitigating factors for consideration by the Board. For example, Dr. Ross was cooperative during the course of the investigation by the North Carolina Medical Board. Moreover, Dr. Ross ceased treating patients over the Internet when advised that the North Carolina Medical Board disapproved of such conduct. Finally, the North Carolina Medical Board found that there was no evidence that Dr. Ross’ practices ever resulted in actual patient harm.

Nevertheless, Dr. Ross’s practice deficiencies are significant. The North Carolina Medical Board noted that Dr. Ross had “engaged in unprofessional conduct, including the failure to conform to the standards of acceptable and prevailing medical practice, or the ethics of the medical profession * * *.” Furthermore, Dr. Ross acknowledged that he had prescribed dangerous medications to these patients, despite the fact that:

- He had not known whether the information provided by the patients was correct;
- He had neither examined nor spoken to the patients; instead, he had based his clinical decisions on the summaries prepared by VMG;
- He prescribed Cipro knowing that the patients did not need it, despite the fact that there were significant reasons to use caution in prescribing Cipro;
- He prescribed Viagra over the Internet despite the fact that, if a patient had lied about his blood pressure in order to receive a Viagra prescription, it could have resulted in serious consequences for the patient;

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- He prescribed medications to patients knowing that the patients should be examined by a physician;
- Had he seen the patients in his office, he would have provided better care.

Moreover, despite his knowledge that the State of Ohio had taken a stance against Internet prescribing, and that Ohio was investigating a physician on that basis, he had not looked into the reasons for Ohio's concerns. Furthermore, Dr. Ross had not considered the fact that that it is difficult over the Internet to determine if the patients are telling the truth. He had not considered the fact that, since he was treating these patients over the Internet, he could not be sure of the patients' names or the states in which they resided. He had not considered the fact that, if a person wanted to obtain a drug such as Cipro or Viagra, that person could log on to the website numerous times under different names asking for prescriptions for the same drug.

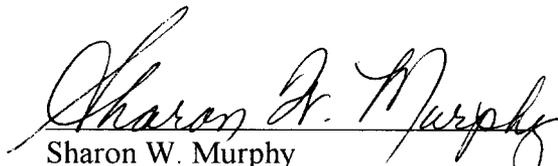
Most significantly, however, Dr. Ross testified that he had failed to consider these things, and he had provided a level of care to patients which, in retrospect, was less than what he would have provided to a patient in his office, because he had been "desperate for money." Dr. Ross allowed his financial needs to influence his treatment of patients. Such conduct suggests that permitting Dr. Ross to continue practicing medicine and surgery in Ohio presents too great a risk of public harm.

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Michael R. Ross, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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


Sharon W. Murphy
Attorney Hearing Examiner



State Medical Board of Ohio

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

EXCERPT FROM THE DRAFT MINUTES OF AUGUST 14, 2002

REPORTS AND RECOMMENDATIONS

Dr. Somani announced that the Board would now consider the findings and orders appearing on the Board's agenda.

Dr. Somani asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Lewis B. Boone, Sr., M.D.; Norman A. Floro, M.D.; Thomas L. Geraci, D.P.M.; James M. Kennen, D.O.; Michael R. Ross, M.D.; Michael R. Treister, M.D.; and Charles C. Voorhis, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Dr. Somani	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye

Dr. Agresta - aye
Dr. Garg - aye
Dr. Steinbergh - aye
Dr. Somani - aye

Dr. Somani noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

Dr. Somani stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

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

.....
MICHAEL R. ROSS, M.D.

Dr. Somani directed the Board's attention to the matter of Michael R. Ross, M.D. He advised that objections were filed to Hearing Examiner Murphy's Report and Recommendation and were previously distributed to Board members.

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

Dr. Ross was accompanied by his attorney, Elizabeth Y. Collis.

Ms. Collis stated that this is a bootstrap case from North Carolina, where Dr. Ross was initially disciplined. In North Carolina, where his actions took place, Dr. Ross was given a 60-day suspension and the entire suspension was stayed. The Hearing Examiner proposes a permanent revocation. Ms. Collis stated that that is not the appropriate sanction in this case. Ms. Collis continued that Dr. Ross did not practice in Ohio, he did not use his Ohio license. No evidence was presented at hearing that any Ohio resident was ever treated by Dr. Ross through his internet practice.

Ms. Collis stated that it is important to note that the Board has had dealings with Virtual Medical Group [VMG] in other cases. This case is unlike the case of Dr. Barrett, which this Board previously saw. In Dr. Barrett's case, he used his Ohio license, he treated Ohio Residents. That is not what Dr. Ross did. No Ohio residents were treated.

Ms. Collis stated that VMG is a very slick operation. They advertise on websites that are frequented by

physicians. After viewing their website, the average physician would think that this is a legitimate practice. When Dr. Ross applied to work with this group, and he only worked with them for three months, earning less than \$3,000, they specifically told Dr. Ross that the North Carolina Board knows of the practice and acquiesces to the practice. They also presented Dr. Ross with documentation showing that the North Carolina Board acquiesced to the practice of this group. At the time Dr. Ross worked there, VMG had physicians working in over 30 states. Dr. Ross had known for over three years that they had been in practice. These are all things that in the back of a physician's mind would say that this is a legitimate group. They're practicing all over the country. The day Dr. Ross found out from the North Carolina Board investigator that the North Carolina Board, in fact, did not condone the actions of VMG, he resigned his position. He negotiated a consent agreement with the North Carolina Board, and he completely cooperated with the North Carolina Board.

Ms. Collis stated that Dr. Ross is licensed in various states. At this point, the State of Alabama, where he is also licensed and where he did not use his license for Internet practice, has agreed to enter into a consent agreement with Dr. Ross with language similar to North Carolina's. The State of Maryland has proposed to offer a consent agreement to Dr. Ross with the same language as North Carolina's.

Ms. Collis stated that, because no action took place in Ohio, this Board should carefully review the record and make a determination in this case.

Dr. Ross stated that he has spent a good part of his career working in Ohio. He recognizes this Board's prerogative, and that of the other states to set practice guidelines in terms of appropriate care levels. Up until this point he has totally supported and complied with those guidelines. In fact, he felt he was complying with the guidelines when he accepted this employment. If he had known that he was in violation of those guidelines, he would certainly not have done what he did.

Dr. Ross stated that he had no idea at the time, based upon what he'd been told, that his actions were considered inappropriate by the North Carolina Board. When he found out, he immediately complied and was fully cooperative with the North Carolina Board, as well as with the other boards. He has not specifically heard from some of the Boards by whom he's licensed, but he has, on his own, sent out letters informing them of the Consent Order with North Carolina to give them appropriate time to respond. Dr. Ross stated that he never used his Ohio license, never treated Ohio patients, never harmed any patient where he did treat them. He only treated non-acute conditions. Dr. Ross stated that he believes that he was operating under the standard of care.

Dr. Ross stated that he believes that he has acted professionally and ethically. He has certainly been totally honest with this Board. His Ohio license was renewed in January, and he, of course, answered correctly that he had the North Carolina discipline pending at that time. As his lawyer indicated, he is negotiating consent decrees with other Boards to mirror the North Carolina decision. He asked that the Board do the same.

Dr. Somani asked whether the Assistant Attorney General wished to respond.

Mr. Michael advised that the State is in agreement with the Report and Recommendation before the Board. While Dr. Ross might state that he didn't know it was illegal in North Carolina, he did acknowledge at hearing that treating patients over the Internet was not in the best professional judgment. This is an Internet prescribing case. Dr. Ross made it quite clear that he allowed his professional judgment and patient care to lapse because of his personal financial situation. He was prescribing drugs to patients although he admitted he had no way to tell where these patients were located, or whether they were telling him the truth about their conditions. Mr. Michael spoke in support of the Report and Recommendation.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF MICHAEL R. ROSS, M.D. DR. AGRESTA SECONDED THE MOTION.

Dr. Somani stated that he would now entertain discussion in the above matter.

Dr. Steinbergh stated that by Ms. Collis' own words, VMG has a very slick operation. She added that she would like to focus on the fact that Dr. Ross acted inappropriately and failed to maintain minimum standards of care for these patients. There is no way of proving that there were no Ohio patients, but he didn't have a physician/patient relationship with those for whom he prescribed drugs. Dr. Steinbergh stated that she doesn't know why any physician would believe that he or she could prescribe for patients with whom he or she did not have a physician/patient relationship. She believes that this case rises to the level of permanent revocation, and she supports the Report and Recommendation.

Dr. Bhati agreed with Dr. Steinbergh. He noted that Dr. Ross claims that the patients weren't from Ohio, but how do they know that? The patients could have used any name or any place and been from anywhere. Yes, Dr. Ross treated only chronic conditions, but that's not a standard of care. He didn't know the patient, he didn't know the age, whether the patients were telling the truth, where the patients were from or what their conditions are. This was very inappropriate. The question is whether this reaches the level of permanent revocation. This is an Internet prescribing case and it essentially does.

Dr. Egner stated that part of the discussion concerns bootstrap cases. Does the Board look at such cases as if the offenses occurred in Ohio and what it would do if they had? Or does the Board look at such cases and say that the offenses occurred somewhere else and the physician has an Ohio license, and does the Board do something different based on what the state where the offense occurred did. Dr. Egner stated that that's a very important question, not just in this case but in all bootstrap cases. Does this matter because it was an Internet offense? She's hearing some suggesting that the offense did occur in Ohio and no one knows it. Dr. Egner stated that she would rather look at such cases as though it had occurred in Ohio. What would the Board do about it, and is permanent revocation what the Board would do? She asked for other members' opinions on whether there is a distinction as to an offense occurring in another state or it occurring in Ohio.

Dr. Talmage stated that he doesn't think that there is a distinction. If someone is willing to do something

wrong to a patient in any state, the assumption is that they will do that wrong to an Ohio patient, too. The Board has taken action against physicians' licenses based on poor practice in another state on any number of occasions.

Dr. Talmage stated that he is extremely disturbed by the ethic that someone with financial problems could skirt the ethical practice of medicine. This country is dealing right now with whether it is better to be rich and dishonest or stay honest and forgo some of the riches. Dr. Talmage stated that this is a case the Board can't excuse on the basis that Dr. Ross had financial need. It's still unethical.

Mr. Browning stated that, in addition to the ethics, he's not sure that the doctor understands the gravity of the situation from a patient care perspective. Anything could have happened in this case without the proper relationship, even for "non-acute" care. Mr. Browning stated that he's not sure that Dr. Ross understands that and the general gravity of the situation.

Mr. Browning stated that the question of whether permanent revocation is in order is an open one in his mind. He would be willing to give Dr. Ross some hope by moving a "revocation" versus permanent and see what he does in terms of proper training and practice going into the future.

Dr. Somani asked whether Mr. Browning was making a motion.

Mr. Browning stated that he's raising an issue to see whether there is any interest in pursuing it.

Dr. Agresta stated that he's listened to everyone's comments, and he has the same concerns. In response to Mr. Browning's question, he doesn't think that this does rise to the level of permanent revocation, but he does think that it rises to a high enough level that the Board needs to send a strong message out in relationship to this issue. Dr. Agresta stated that in the long term this could come back to haunt the Board if it doesn't do the proper thing.

Dr. Agresta stated that what bothers him most is that Dr. Ross would have the feeling that such practice was appropriate to treat patients without having a relationship with them or examining them. Everybody knows that's inappropriate. Common sense should tell you that. That may tell something about Dr. Ross' practice in general. Dr. Agresta stated that he is against permanent revocation, but non-permanent or stayed revocation would be more in order. He was honest enough to tell the Board what he did and should get credit for that. Dr. Agresta stated that the Order Dr. Ross got from the North Carolina Board was quite lenient.

Dr. Steinbergh stated that it's her understanding that, in regard to Internet prescribing, this case is no different from the others. The Board has accepted two permanent revocations in this state for Internet prescribing. As difficult as it is, she doesn't see this case as being different from any other case in terms of Internet prescribing and inappropriate prescribing for patients. She would not stay a revocation. Dr. Steinbergh stated that she supports the Proposed Order. The Board has permanently revoked two licenses for this exact reason, and she does see this as though he had done it in Ohio. The Board does not

have proof that an Ohio resident was not affected.

Dr. Talmage stated that, as he recalls, the previous cases involved continuing, ongoing offenders. This was not a continuing, ongoing offender. There is a slight difference.

DR. TALMAGE MOVED TO AMEND THE PROPOSED ORDER BY DELETING THE WORD "PERMANENT." DR. BHATI SECONDED THE MOTION.

Dr. Buchan stated that the Board responds to behavior from physicians whether in state or out of state. He looks at behavior in Florida as he would at behavior in his neighborhood. If it's inappropriate in Florida, it's inappropriate in Ohio, and the Board responds, regardless of where that behavior took place. He spoke in support of the proposed amendment. He added that he feels that Dr. Ross was duped. Realizing three months later that it was inappropriate, Dr. Ross quickly responded and did the right thing, but he knew better.

Dr. Steinbergh stated that she doesn't think he was duped. Each physician knows his or her responsibility to patient care. Dr. Ross just simply went down the slippery slope.

Dr. Bhati stated that that goes without saying. Dr. Ross did make a mistake. The question is whether or not the Board gives him credit for stopping when he learned that this was not appropriate practice, and going along with the investigation.

Dr. Steinbergh commented that once you're caught, you're caught. She doesn't know that anyone who is caught would continue.

Ms. Sloan stated that she also disagrees that Dr. Ross was duped. This is an intelligent person who should have known that this was not the level of care for any patient, no matter where they were. She does see that Dr. Ross was informed that this was a problem and he did cease. He also notified the other boards that an action had been taken. She would consider that and agree with the proposed amendment.

Dr. Egner questioned what a nonpermanent revocation of Dr. Ross' license would do.

Dr. Somani stated that it would allow him to apply for a license later.

Dr. Egner stated that then the Board would give it to him.

Mr. Browning stated that it wouldn't necessarily give it to him.

Dr. Somani stated that any application would have to come back to the Board to decide under what conditions a license would be issued.

Dr. Egner asked how the Board would decide that. Dr. Egner stated that this is a physician who does not

come with a stellar history. He has started out in three residency programs and never completed one. He graduated from medical school in 1990. In this day and age it's very unusual that someone has not completed a residency program and has had three attempts at it. She looks at that and thinks that this is a person whose judgment is poor. If the Board revokes his license and he comes back, will the Board really assure itself that he has good judgment and good medical judgment? She stated that she's not sure that the Board can. Even with his lack of experience, she believes that he certainly did know that Internet prescribing is the wrong thing to do.

Dr. Somani stated that if he applies, the Board would have the option to negotiate the terms for granting a license.

A vote was taken on Dr. Talmage's motion to amend:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- nay
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Agresta	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- nay

The motion carried.

DR. BHATI MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF MICHAEL R. ROSS, M.D. MR. BROWNING SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- nay
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Agresta	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.



State Medical Board of Ohio

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

March 13, 2002

Michael R. Ross, M.D.
P.O. Box 351
Hilliard, Ohio 432906

Dear Doctor Ross:

In accordance with R.C. Chapter 119., you are hereby notified that the State Medical Board of Ohio 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 or place you on probation for one or more of the following reasons:

- (1) Effective December 20, 2001, an Order of the North Carolina Medical Board (hereinafter the "North Carolina Board") suspended your license to practice medicine in North Carolina for sixty (60) days and stayed the suspension, subject to terms and conditions. Those terms and conditions are that you shall not prescribe medication for any person in North Carolina without first physically examining that person. The North Carolina Board Findings and Conclusions are more fully set forth in the Consent Order, a copy of which is attached hereto and incorporated herein.

The North Carolina Board Consent Order, as alleged in paragraph one (1) above, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in R.C. 4731.22(B)(22).

Pursuant to R.C. 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 (30) 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

Mailed 3-14-02

Michael R. Ross, M.D.

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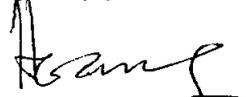
writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty (30) 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 or place you on probation.

Please note that, whether or not you request a hearing, R.C. 4731.22(L), effective March 9, 1999, 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,



Anand G. Garg, M.D.
Secretary

AGG/jag
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5140 0159
RETURN RECEIPT REQUESTED

2575 West Broad Street
Columbus, Ohio 43024

CERTIFIED MAIL # 7000 0600 0024 5140 0142
RETURN RECEIPT REQUESTED

BEFORE THE
NORTH CAROLINA MEDICAL BOARD

In re:)
)
Michael Reiff Ross, M.D.,) **CONSENT ORDER**
)
Respondent.)

This matter is before the North Carolina Medical Board (hereinafter Board) to resolve the Notice of Charges and Allegations preferred against Michael Reiff Ross, M.D. (hereinafter Dr. Ross) dated October 26, 2001. Dr. Ross admits and the Board finds and concludes, the following:

WHEREAS, Dr. Ross is a physician licensed by the Board on November 21, 1998, License No. 9801757, and

WHEREAS, during the times relevant herein, Dr. Ross was a resident of Myrtle Beach, South Carolina and, as an independent contractor, provided medical services through Virtual Medical Group.com, LLC (hereafter VMG), a business corporation located in Morrisville, North Carolina, that renders medical services, including prescriptions, via the internet, and

WHEREAS, on various dates in June through October, 2001, Dr. Ross prescribed medications, including CIPRO (ciprofloxacin hydrochloride), an antibiotic used to treat infections caused by certain microorganisms, including anthrax, and, additionally, during the same relevant time period, Dr. Ross prescribed various other medications for non-acute conditions, and

WHEREAS, Dr. Ross authorized such prescriptions for CIPRO and other medications without a physical examination of the patients and without any prior physician-patient

relationship between Dr. Ross and the patients that might have permitted, depending on good medical practice, issuing a new prescription without a physical examination, and

WHEREAS, upon reflection, Dr. Ross recognizes that issuing prescriptions in the name of persons whom he has never physically examined is a potentially dangerous practice, and

WHEREAS, during the same time periods, VMG, through Dr. Ross, rendered medical care to patients in North Carolina and, thus, engaged in the unauthorized practice of medicine, and

WHEREAS, during the same time periods, Dr. Ross permitted VMG to bill patients for medical services rendered by Dr. Ross and a portion of the fees collected from such patients was used to pay Dr. Ross's compensation, while the remainder was used to pay other expenses of VMG, and

WHEREAS, by prescribing medications to patients without a physical examination, in the absence of a prior physician-patient relationship, Dr. Ross engaged in unprofessional conduct, including, but not limited to, departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby, within the meaning of N.C. Gen. Stat. § 90-14(a)(6), and

WHEREAS, by assisting in the unauthorized practice of medicine by VMG, Dr. Ross engaged in unprofessional conduct, within the meaning of N.C. Gen. Stat. § 90-14(a)(6), and

WHEREAS, by splitting with VMG the fees he generated from practicing medicine, Dr. Ross engaged in unprofessional conduct, within the meaning of N.C. Gen. Stat. § 90-14(a)(6), and

WHEREAS, there is no evidence that Dr. Ross's prescribing irregularities, as described above, caused any detrimental effect to any patient, and

WHEREAS, Dr. Ross asserts that representatives of VMG represented to Dr. Ross, prior to his engaging in the activities described above, that the Board was aware of the activities of VMG and the physicians associated with it, such as Dr. Ross, and acquiesced in such activities, and

WHEREAS, Dr. Ross ceased his participation in all of the activities described above immediately upon learning that the above-described activities violated the standards of care and professional ethics enforced by the Board, and

WHEREAS, Dr. Ross has given notice to VMG of his termination of his contractual relationship with VMG, and

WHEREAS, Dr. Ross has cooperated fully with the Board's investigation and has volunteered to cooperate in any manner with the Board and other authorities in any investigation of VMG; and

WHEREAS, grounds exist under N.C. Gen. Stat. § 90-14(a)(6) for the Board to annul, suspend, revoke, condition, or limit Dr. Ross's license to practice medicine issued by the Board, and

WHEREAS, the Board has jurisdiction over Dr. Ross and over the subject matter of this case, and

WHEREAS, Dr. Ross acknowledges he has read this entire document and understands it, and

WHEREAS, Dr. Ross acknowledges he enters into this consent order freely and voluntarily, and

WHEREAS, Dr. Ross acknowledges is aware of his right to employ counsel in this matter and has hired an attorney to represent him, and

WHEREAS, Dr. Ross would like to resolve this case as set forth below in order to avoid the cost and uncertainty of a formal proceeding, and

WHEREAS, the Board determined it to be in the public interest to resolve this matter as set forth below;

NOW, THEREFORE, the Board enters the following Order:

1. Dr. Ross's license to practice medicine in North Carolina is **SUSPENDED** for sixty (60) days. Such suspension is **STAYED** upon the following terms and conditions:

A. Dr. Ross shall not prescribe medication for any person in North Carolina without first physically examining that person.

B. Dr. Ross shall not assist VMG or any other entity, in any manner, in the unauthorized practice of medicine.

C. Dr. Ross shall not split fees with a business corporation; that is, he shall not share fees generated from the practice of medicine with a business corporation on a percentage basis.

D. Dr. Ross shall obey all laws. Furthermore, Dr. Ross shall obey all regulations related to the practice of medicine.

E. Dr. Ross shall notify the Board in writing of any change in his residence or practice addresses within ten (10) days of the change.

F. Dr. Ross shall appear before the Board as such times as requested by the Board.

2. If Dr. Ross fails to comply with any of the terms of this Consent Order, that failure shall constitute unprofessional conduct within the meaning of N.C. Gen. Stat. § 90-14(a)(6) and shall be grounds, after any required notice and hearing, for the Board to annul, suspend, or revoke his license or to deny any application that he might make in the future or then have pending for a license.

3. Dr. Ross hereby waives any requirement under any law or rule that this Consent Order be served on him.

4. Upon execution by Dr. Ross and the Board, this Consent Order shall become a public record within the meaning of Chapter 132 of the North Carolina General Statutes and shall be subject to public inspection and dissemination pursuant to the provisions thereof. Additionally, the existence of this Consent Order will be reported to person, entities, agencies, and clearing houses, as required and permitted by law, including, but not limited to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

By order of the North Carolina Medical Board this Consent Order is effective this 20th day of December, 2001.

NORTH CAROLINA MEDICAL BOARD

By:

Walter J. Pories
Walter J. Pories, President

ATTEST:

Andrew Watry
Andrew Watry
Executive Director

Michael Reiff Ross M.D.
Michael Reiff Ross, M.D.

Sworn to and subscribed before me
this 17th day of December, 2001.

Nancy A. Shuster
Notary Public

My Commission expires: June 10, 2003



NANCY A. SHUSTER
Notary Public, State of Ohio
My Commission Expires June 10, 2003

FRANKLIN COUNTY