



# STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

March 13, 1992

Avelino S.B. Rosales, M.D.  
23 White Drive  
Cedarhurst, N. Y. 11516-2607

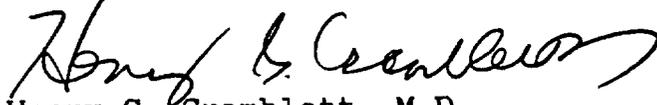
Dear Doctor Rosales:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on March 11, 1992, including Motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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 within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

  
Henry G. Cramblett, M.D.  
Secretary

HGC:em

Enclosures

CERTIFIED MAIL RECEIPT NO. P 741 123 641  
RETURN RECEIPT REQUESTED

*Mailed 3/16/92*



# STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

## CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board; and an excerpt of Minutes of the State Medical Board, meeting in regular session on March 11, 1992, including a Motion approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Avelino S.B. Rosales, 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)

  
\_\_\_\_\_  
Henry G. Cramblett, M.D.  
Secretary

3/16/92

\_\_\_\_\_  
Date



# STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

★

★

AVELINO S. B. ROSALES, M.D.

★

## ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 11th day of March, 1992.

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

It is hereby ORDERED that the application of Avelino S. B. Rosales, M.D., to practice medicine or surgery in Ohio is hereby GRANTED, provided that Dr. Rosales meets all other requirements for licensure in Ohio and timely submits upon request any appropriate updates to his April, 1991, application.

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

  
Henry G. Gramblett, M.D.  
Secretary

(SEAL)

3/16/92

\_\_\_\_\_  
Date

REPORT AND RECOMMENDATION  
IN THE MATTER OF AVELINO S. B. ROSALES, M.D.

The Matter of Avelino S. B. Rosales, M.D., came on for hearing before me, Wanita J. Sage, Esq., Hearing Examiner for the State Medical Board of Ohio, on January 9, 1992.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

- A. By letter of October 9, 1991 (State's Exhibit #1), the State Medical Board notified Avelino S. B. Rosales, M.D., that it proposed to refuse to register or to take disciplinary action against his certificate to practice medicine and surgery in Ohio. Dr. Rosales submitted an application for medical licensure to the State Medical Board of Ohio on or about April 30, 1991. The Board alleged that, on or about June 11, 1987, the Kentucky State Board of Medical Licensure denied Dr. Rosales' application for medical licensure in that state, based upon findings that he had permitted an unlicensed physician to perform histories and physicals on his patients at St. John's Episcopal Hospital in Far Rockaway, New York, and that such acts had resulted in St. John's Hospital suspending his staff privileges for three years. Such acts, conduct, and/or omissions were alleged to constitute "the limitation, revocation or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that would also have been a violation of this chapter, except for nonpayment of fees", as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, to wit: Section 4731.22(B)(20), Ohio Revised Code, "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of..." Section 4731.41, Ohio Revised Code, "Practice of medicine or surgery without a certificate," and/or Section 4731.22(B)(12), Ohio Revised Code, "commission of an act that constitutes a misdemeanor in this state...if the act was committed in the course of practice" (violation of Section 4731.41, Ohio Revised Code; pursuant to Section 2923.03, Ohio Revised Code, a person who aids or abets another in the commission of an offense is guilty of that offense as if he were a principal offender). Dr. Rosales was advised of his right to request a hearing in this Matter.

STATE MEDICAL BOARD

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- B. By letter received by the State Medical Board on November 12, 1991 (State's Exhibit #2), Dr. Rosales requested a hearing.

II. Appearances

- A. On behalf of the State of Ohio: Lee I. Fisher, Attorney General, by Lisa A. Sotos, Assistant Attorney General
- B. Dr. Rosales did not appear.

III. Testimony Heard

No witnesses were presented.

IV. Exhibits Examined

In addition to State's Exhibits #1 and #2, noted above, the following exhibits were identified by the State and admitted into evidence in this Matter:

- A. State's Exhibit #3: November 13, 1991, letter to Dr. Rosales from the State Medical Board, advising that a hearing initially set for November 26, 1991, was postponed pursuant to Section 119.09, Ohio Revised Code.
- B. State's Exhibit #4: November 19, 1991, letter to Dr. Rosales from the State Medical Board, scheduling the hearing for January 9, 1992.
- C. State's Exhibit #5: December 17, 1991, notice of the appearance of Lisa A. Sotos, Assistant Attorney General, as counsel for the State.
- D. State's Exhibit #6: State's December 17, 1991, request for List of witnesses and documents.
- E. State's Exhibit #7: Dr. Rosales' request for application forms, received by the State Medical Board on January 22, 1991, and application for medical licensure, received by the State Medical Board on April 30, 1991.
- F. State's Exhibit #8: Certified copy of the Kentucky State Board of Medical Licensure's June 11, 1987, Order denying Dr. Rosales' application for medical licensure.

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- G. State's Exhibit #9: December 30, 1991, letter from Linda Foy, Risk Manager, St. John's Episcopal Hospital, Far Rockaway, New York, enclosing certified copies of a March 13, 1984, request for corrective action regarding Dr. Rosales and a July 17, 1984, report of an Ad Hoc Committee of the Medical Executive Committee of St. John's Episcopal Hospital with regard to Dr. Rosales.
- H. State's Exhibit #10: Faxed copy of an August 2, 1984, letter to Dr. Rosales, notifying him that the Medical Executive Committee of St. John's Episcopal Hospital recommended that his summary suspension remain in effect for three years, with subsequent reinstatement of medical staff privileges subject to a two-year probationary period.

#### FINDINGS OF FACT

1. On or about April 30, 1991, Avelino S. B. Rosales, M.D., submitted an application for medical licensure to the State Medical Board of Ohio. Dr. Rosales fully disclosed the suspension of his privileges at St. John's Episcopal Hospital, Far Rockaway, New York, for a period of three years, and the denial of his application for licensure in Kentucky based upon that action.

These facts are established by State's Exhibit #7.

In March, 1984, the Administrator of St. John's Episcopal Hospital requested the president of the Hospital board to take corrective action with regard to Dr. Rosales and another physician. The Administrator alleged that these physicians had permitted an unlicensed practitioner to perform histories and physicals on hospital patients, and had countersigned that practitioner's notations in the medical records. The matter was referred to an Ad Hoc Committee of the Hospital's Medical Executive Committee. In July, 1984, the Ad Hoc Committee reported that there was "adequate evidence" that an unauthorized person had written histories and physical examinations, and that there was "lesser but probable evidence" that the unauthorized person had done physical examinations. The Committee recommended that Dr. Rosales' suspension be terminated on December 31, 1984, with full reinstatement of privileges.

Apparently, the Ad Hoc Committee's recommendation was rejected. By letter of August 2, 1984, Dr. Rosales was notified of the Medical Executive Committee's recommendation that his summary

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suspension remain in effect for three years, at which time his medical staff privileges would be reinstated subject to a two-year probationary period.

These facts are established by State's Exhibits #9 and #10.

3. Dr. Rosales, in the written explanation submitted with his application for Ohio licensure, stated that the unauthorized person had not examined patients, but had merely transcribed notes dictated by the physician.

These facts are established by State's Exhibit #7.

4. By Order of June 11, 1987, the Kentucky State Board of Medical Licensure denied Dr. Rosales' application for medical licensure in that state. According to its Order, the Kentucky Board's action was based upon its findings that Dr. Rosales had permitted an unlicensed physician to perform histories and physicals on Dr. Rosales' patients at St. John's Episcopal Hospital, and that such acts had resulted in that hospital's suspending Dr. Rosales' staff privileges for a period of three years. The Kentucky Order recites that these findings were based upon that Board's "having considered the application for medical licensure filed by Avelino B. Rosales, M.D., on March 9, 1987, and otherwise being sufficiently advised...." It does not indicate that Dr. Rosales was afforded either a hearing or an opportunity for hearing before the Kentucky Board.

These facts are established by State's Exhibit #8.

5. Dr. Rosales is now a member in good standing of the medical staff at St. John's Episcopal Hospital.

This fact is established by State's Exhibit #9.

#### CONCLUSIONS

1. As set forth in Finding of Fact #4, above, the Kentucky licensing authority refused to license Dr. Rosales in June, 1987, based upon its findings that he had permitted an unlicensed physician to perform histories and physicals on his patients at St. John's Episcopal Hospital, resulting in the suspension of his hospital staff privileges for three years. Such acts, conduct, and/or omissions constitute "the limitation, revocation or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority,

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DEPARTMENT OF HEALTH

or the imposition of probation by that authority, for an action that would also have been a violation of this chapter, except for nonpayment of fees", as that clause is used in Section 4731.22(B)(22), Ohio Revised Code. Permitting an unlicensed physician to perform histories and physicals on patients would constitute "assisting in or abetting" the unlawful practice of medicine in violation of Section 4731.22(B)(20), to wit: Section 4731.41, Ohio Revised Code. Section 4731.22(B)(20) prohibits a physician from "assisting in or abetting the violation of...any provisions of this chapter..."; Section 4731.41 prohibits the practice of medicine or surgery without a certificate. It is noted that, even though the Kentucky Board's Order Denying Licensure does not specifically identify the source of the information upon which its findings concerning Dr. Rosales' actions were based, the actions stated as the basis for Kentucky's denial of licensure do constitute actions that would also have been violations of Ohio law.

2. Further, Kentucky's denial of Dr. Rosales' licensure application also constitutes violation of Section 4731.22(B)(22), Ohio Revised Code, to wit: Section 4731.22(B)(12), Ohio Revised Code, "commission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice." Pursuant to Section 4731.99, Ohio Revised Code, practice of medicine or surgery without a certificate in violation of Section 4731.41, Ohio Revised Code, constitutes a misdemeanor. Pursuant to Section 2923.03, Ohio Revised Code, a person who aids or abets another in the commission of an offense is guilty of that offense as if he were a principal offender. Thus, Dr. Rosales' aiding or abetting the unlicensed practice of medicine or surgery would also constitute commission of an act that constitutes a misdemeanor in this state, and such act was committed in the course of practice.

\* \* \* \* \*

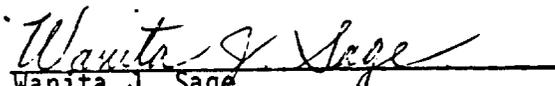
The evidence presented is sufficient to support the above Conclusions of Law, as the reasons stated by Kentucky for denying Dr. Rosales' licensure application would constitute violations under Ohio law. However, this Board may wish to consider in mitigation that the Hospital's Ad Hoc Committee was apparently the only body that actually took testimony and evidence regarding this 1984 incident. That Committee reported that, while there was "adequate evidence" that Dr. Rosales had permitted an unlicensed practitioner to write

histories and physicals, there was "lesser but probable evidence" that such practitioner did physical examinations. The hospital administration rejected the Committee's recommendation of a lesser sanction, and imposed a three-year suspension of Dr. Rosales' hospital privileges. At any rate, the problem has been dealt with by the hospital. Since 1984, Dr. Rosales has served his term of suspension and probation, and is currently a member in good standing of the medical staff of that same hospital. In 1987, when Dr. Rosales' application for licensure was denied by the Kentucky Board, Dr. Rosales was still serving his three-year suspension of hospital privileges. While this Board certainly cannot condone the inappropriate conduct of Dr. Rosales in 1984, there is no indication that he has since committed offenses. Further sanction or monitoring of Dr. Rosales' practice at this point in time would not seem productive.

PROPOSED ORDER

It is hereby ORDERED that the application of Avelino S. B. Rosales, M.D., to practice medicine or surgery in Ohio is hereby GRANTED, provided that Dr. Rosales meets all other requirements for licensure in Ohio and timely submits upon request any appropriate updates to his April, 1991, application.

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

  
Wanita J. Sage  
Attorney Hearing Examiner

STATE MEDICAL BOARD  
02 JUN 27 PM 2:46



# STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

## EXCERPT FROM THE MINUTES OF MARCH 11, 1992

### REPORTS AND RECOMMENDATIONS

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

Dr. Gretter asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and order, and any objections filed in the matters of Robert J. Eastway, Jr., D.O.; James G. Gianakopoulos, M.D.; William J. Strandwitz, III, M.T.; Chester J. Janecki, Jr., M.D.; Marian Korosec, M.D., N.E. Ohio Emergency Affiliates; Laurel Matthews-Price, M.D.; and Avelino S. B. Rosales, M.D. A roll call was taken:

ROLL CALL:	Dr. Cramblett	- abstain
	Mr. Albert	- aye
	Dr. Stephens	- aye
	Mr. Jost	- abstain
	Dr. Garg	- aye
	Dr. Kaplansky	- aye
	Dr. Heidt	- aye
	Dr. Hom	- aye
	Dr. Agresta	- aye
	Dr. Gretter	- aye

Dr. Hom indicated that she did not review the record in the matter of William J. Strandwitz, III, M.T., and would therefore abstain from voting in that case.

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

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All Assistant Attorneys General and all Enforcement Coordinators left the meeting at this time.

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### REPORT AND RECOMMENDATION IN THE MATTER OF AVELINO S. B. ROSALES, M.D.

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DR. O'DAY MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED FINDINGS OF FACT,



# STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

EXCERPT FROM THE MINUTES OF MARCH 11, 1992  
IN THE MATTER OF AVELINO S. B. ROSALES, M.D.

Page 2

CONCLUSIONS, AND ORDER IN THE MATTER OF AVELINO S. B. ROSALES, M.D. DR. HEIDT  
SECONDED THE MOTION.

.....

A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. O'Day	- aye
	Mr. Albert	- aye
	Dr. Stephens	- aye
	Mr. Jost	- abstain
	Dr. Garg	- aye
	Dr. Kaplansky	- aye
	Dr. Heidt	- aye
	Dr. Hom	- aye
	Dr. Agresta	- aye

The motion carried.



# **STATE MEDICAL BOARD OF OHIO**

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

October 9, 1991

Avelino S.B. Rosales, M.D.  
23 White Drive  
Cedarhurst, NY 11516-2607

Dear Doctor Rosales:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, 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) On or about April 30, 1991, you submitted an application for medical licensure to the State Medical Board of Ohio.
- (2) On or about June 11, 1987, the Commonwealth of Kentucky State Board of Medical Licensure issued an Order Denying Licensure in regard to your application for medical licensure in that state, upon finding that you permitted an unlicensed physician to perform histories and physicals on your patients at St. John's Episcopal Hospital in Far Rockaway, New York and that such action resulted in St. John's Hospital suspending your staff privileges for a period of three (3) years. A copy of the Order Denying Licensure is attached hereto and fully incorporated herein.

Your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively constitute "the limitation, revocation or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that would also have been a violation of this chapter, except for nonpayment of fees," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, to wit: Section 4731.22(B)(20), Ohio Revised Code, to wit: Section 4731.41, Ohio Revised Code, Practice of medicine or surgery without a certificate.

October 9, 1991

Avelino S.B. Rosales, M.D.  
Page 2

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively constitute "the limitation, revocation or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that would also have been a violation of this chapter, except for nonpayment of fees," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, to wit: Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 4731.41, Ohio Revised Code, Practice of medicine or surgery without a certificate. Pursuant to Section 2923.03, Ohio Revised Code, a person who aids or abets another in the commission of an offense is guilty of that offense as if he were a principal offender.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty (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, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,

  
Henry G. Cramblett, M.D.  
Secretary

HGC:jmb  
Enclosures:

CERTIFIED MAIL #P 055 328 561  
RETURN RECEIPT REQUESTED

COMMONWEALTH OF KENTUCKY  
STATE BOARD OF MEDICAL LICENSURE

IN RE: THE APPLICATION OF AVELINO B. ROSALES, M.D. TO PRACTICE  
MEDICINE IN THE COMMONWEALTH OF KENTUCKY

STATE MEDICAL BOARD  
OF OHIO  
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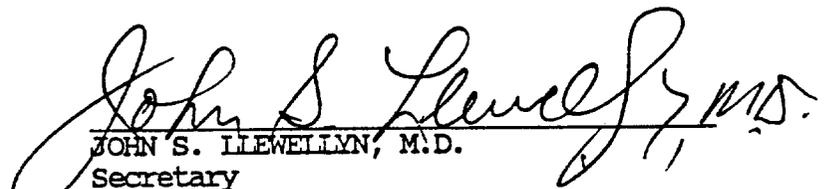
ORDER DENYING LICENSURE

Comes now the Kentucky Board of Medical Licensure, having considered the application for medical licensure filed by Avelino B. Rosales, M.D. on March 9, 1987, and otherwise being sufficiently advised, hereby FINDS that Dr. Rosales permitted an unlicensed physician to perform histories and physicals on his patients at St. John's Episcopal Hospital, Far Rockaway, New York. This action resulted in St. John's Episcopal Hospital suspending Dr. Rosales staff privileges for a period of three (3) years.

The above-referenced information constitutes a violation of KRS 311.595 (19). Accordingly, pursuant to KRS 311.595, sufficient grounds exist for the denial of Dr. Rosales' application.

WHEREFORE, the application for medical licensure filed by Avelino Rosales, M.D. is DENIED and no medical license shall be issued by this Board.

So ORDERED this 11th day of June, 1987.

  
JOHN S. LEWELLYN, M.D.  
Secretary  
Kentucky Board of Medical Licensure

offender. A charge of complicity may be stated in terms of this section, or in terms of the principal offense.

**HISTORY:** 134 v H 511 (Eff 1-1-74); 141 v H 338. Eff 9-17-86.

Not analogous to former RC § 2923.03 (GC § 12819-3; 115 v 189; Bureau of Code Revision, 10-1-53; 129 v 420), repealed 134 v H 511, § 2. Eff 1-1-74.

**Committee Comment to H 511**

In essence, this section codifies existing case law with respect to "aiding and abetting." Under the section, an accomplice is one who solicits, procures, or conspires with another to commit an offense, aids or abets its commission, or causes an innocent or irresponsible person to commit the offense.

It is unnecessary that the principal offender be convicted before an accomplice can be convicted. An offense must actually be committed, however, before a person may be convicted as an accomplice. The single exception to this rule permits conviction as an accomplice in an attempt to commit an offense. A person accused of complicity may defend on the ground that prior to an attempt or the commission of the offense, he quit his part in it, under circumstances showing that he completely and voluntarily gave up his criminal purpose.

Accomplices are liable to prosecution and punishment as principal offenders. For example, an accomplice to aggravated murder is liable to the death penalty the same as the actual murderer.

In charging complicity, the accused may be charged specifically as an accomplice under this section, or he may be charged simply as a joint offender in the offense committed.

**Cross-References to Related Sections**

- Affirmative defense, RC § 2901.05.
- Aider or abettor not to benefit by death, RC § 2105.19.
- Culpable mental states, RC § 2901.22.

**Comparative Legislation**

- Complicity:
  - CA—Penal Code § 663
  - FL—Stat Ann § 777.03
  - IN—Code § 35-41-2-4
  - KY—Rev Stat Ann §§ 506.080-506.100
  - MI—Comp Laws Ann § 750.157a
  - PA—CSA tit 18 § 903

**Text Discussion**

- Complicity. 1 Ohio Crim. Prac. & Pro. §§ 30.4, 51.3b
- Elements of offense. 1 Ohio Crim. Prac. & Pro. §§ 62.11, 62.12
- Merger and multiple counts. 1 Ohio Crim. Prac. & Pro. § 59.1

**Forms**

- Complicity. 4 OJI § 523.03
- Statutory charge. 2A Ohio Crim. Prac. & Pro. 8.116

**Research Aids**

- Corroboration:
  - O-Jur3d: Crim L § 1269
  - Am-Jur2d: Consp §§ 40-48
- Participation in or procurement of crime:
  - O-Jur3d: Crim L §§ 73-85
  - Am-Jur2d: Consp §§ 7-9

**ALR**

- Acquittal of principal, or his conviction of lesser degree of offense, as affecting prosecution of accessory, or aider and abettor. 9 ALR4th 972.
- Conspiracy to induce breach of contract. 26 ALR2d 1284.
- Criminal liability of person as aider and abettor, or other participant, for assault and similar offenses by excessive or improper punishment inflicted on child by parent, teacher, or one in loco parentis. 89 ALR2d 458.
- Criminal responsibility, as principal or accessory, of one, other than driver at time of accident, under "hit-and-run" statute. 62 ALR2d 1130.
- Criminal responsibility of one who furnishes instrumentality of a kind ordinarily used for legitimate purposes, with knowledge that it is to be used by another for criminal purposes. 108 ALR 331.
- Necessity of alleging specific facts or means in charging one as accessory before or after the facts. 116 ALR 1104.
- Offense of aiding and abetting illegal possession of drugs or narcotics. 47 ALR3d 1239.
- Propriety of specific jury instructions as to credibility of accomplices. 4 ALR3d 351.
- Prosecutrix in incest case as accomplice or victim. 74 ALR2d 705.
- Receiver of stolen goods as accomplice of thief for purposes of corroboration. 74 ALR3d 560.
- Thief as accomplice of one charged with receiving stolen property, or vice versa, within rule requiring cautionary instruction. 53 ALR2d 817.
- Who other than actor is liable for manslaughter. 95 ALR2d 175.

**Law Review**

- Criminal law—constitutional law—death penalty—evidence— intent of an aider and abettor to commit felony murder may be presumed from a conspiracy to commit the accompanying felony—*State v. Lockett*. 49 OS2d 48 (1976). Case note. 46 CinLRev 630 (1977).

**CASE NOTES AND OAG**

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- (1980) An accomplice's testimony is not corroborated, under RC § 2923.03(D), by a witness who relates what the accomplice told him: *State ex rel. Brown v. Diehl*. 64 OS2d 179, 18 OO3d 400, 414 NE2d 410.
- (1980) An instruction concerning complicity under RC § 2923.03 was proper where there is ample circumstan-

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4. (1975) Action is not criminally punishable as an attempt to commit a particular crime unless the accused had the intent to commit that crime: *State v. Curry*, 43 OS2d 66, 72 OO2d 37, 330 NE2d 720.

5. (1976) In a prosecution for theft, where the defendant raises both the complete defense of lack of intent and the partial defense of failure to exert control over the allegedly stolen property, the court should charge the jury on both theft and attempted theft, since acceptance of the partial defense is compatible with a conviction of attempted theft: *State v. Fann*, 2 OO3d 87 (App).

6. (1979) An offense of soliciting under RC § 2907.24 necessarily constitutes an attempt to commit an offense of prostitution under RC § 2907.25, and therefore there can be no such offense as attempted soliciting under the general attempt statute, RC § 2923.02: *State v. Anderson*, 62 OMisc 1, 16 OO3d 185, 404 NE2d 176 (MC).

7. (1981) Attempted murder, under RC §§ 2903.02 and 2923.02, is a specific intent crime, for which evidence of voluntary intoxication may be taken in order to show defendant was thereby precluded from forming the necessary "purpose" to commit murder (*Nichols v. State*, 8 OS 435, followed): *State v. Fox*, 68 OS2d 53, 22 OO3d 259, 428 NE2d 410.

8. (1981) Attempted theft by threat, as defined in RC §§ 2913.02(A)(4) and 2923.02(A), may be a lesser included offense of robbery as defined in RC § 2911.02(A) since (1) it is a crime of a lesser degree than robbery; (2) the greater offense of robbery cannot be committed without attempted theft by threat also having been committed; and (3) attempted theft by threat consists entirely of some, but not all, the elements of robbery: *State v. Gates*, 2 OApp3d 485, 2 OBR 611, 442 NE2d 1321.

9. (1983) Renunciation of criminal purpose is not voluntary if it is motivated, in whole or in part, by circumstances, not present or apparent at the inception of the actor's course of conduct, which increase the probability of detection or apprehension or which make more difficult the accomplishment of the criminal purpose: *State v. Arnold*, 9 OMisc2d 14, 9 OBR 434, 459 NE2d 631 (MC).

10. (1986) Defendant's municipal court conviction after a no contest plea of traffic violations of reckless operation of a motor vehicle, of speeding, and of fleeing and eluding a police officer was not a double jeopardy bar to a subsequent conviction for attempted murder based on defendant's narrow miss of a police officer at the roadblock that ended the chase: *Henry v. McFaul*, 791 F2d 48 (6th Cir.).

11. (1986) Where there was conflicting testimony at trial as to whether the defendant's intoxication had been so debilitating that it had precluded him from forming the requisite "intent" to kill, his habeas corpus petition must be dismissed: *Strickland v. Marshall*, 632 FSupp 590 (S.D.).

#### [CONSTRUING PRIOR LAW]

1. An attempt to commit criminal offense requires that intent to commit offense be present and that there be some concomitant act or movement toward execution of the purpose, but it is not necessary that the act, if attempt relates to commission of felony, be last proximate act prior to consummation of felony intended to be perpetrated: *State v. Farmer*, 156 OS 214, 46 OO 97, 102 NE2d 11.

2. Where an indictment charges the offense of rape with consent under GC § 12414 (former RC § 2905.03, carnal knowledge of female under sixteen), it is error for the court to refuse to charge that if the evidence fails to show that the defendant is guilty of the completed offense the defendant

may be convicted of an attempt to commit the offense: *State v. Baltimore*, 90 OS 196, 107 NE 334.

3. Under an indictment charging accused with having committed rape, it is proper to find him guilty of an attempt to commit rape, although the indictment contains no charge of attempt to commit the offense: *State v. Hardin*, 31 OLA 587 (App).

[§ 2923.02.1] § 2923.021 Repealed.  
134 v H 511, § 2 [125 v S 62(125)]. Eff 1-1-74.

This section concerned sale or possession of switch or spring knife.

#### § 2923.03 Complicity.

(A) No person, acting with the kind of culpability required for the commission of an offense, shall do any of the following:

(1) Solicit or procure another to commit the offense;

(2) Aid or abet another in committing the offense;

(3) Conspire with another to commit the offense in violation of section 2923.01 of the Revised Code;

(4) Cause an innocent or irresponsible person to commit the offense.

(B) It is no defense to a charge under this section that no person with whom the accused was in complicity has been convicted as a principal offender.

(C) No person shall be convicted of complicity under this section unless an offense is actually committed, but a person may be convicted of complicity in an attempt to commit an offense in violation of section 2923.02 of the Revised Code.

(D) If an alleged accomplice of the defendant testifies against the defendant in a case in which the defendant is charged with complicity in the commission of or an attempt to commit an offense, an attempt to commit an offense, or an offense, the court, when it charges the jury, shall state substantially the following:

"The testimony of an accomplice does not become inadmissible because of his complicity, moral turpitude, or self-interest, but the admitted or claimed complicity of a witness may affect his credibility and make his testimony subject to grave suspicion, and require that it be weighed with great caution.

It is for you, as jurors, in the light of all the facts presented to you from the witness stand, to evaluate such testimony and to determine its quality and worth or its lack of quality and worth."

(E) It is an affirmative defense to a charge under this section that, prior to the commission of or attempt to commit the offense, the actor terminated his complicity, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

(F) Whoever violates this section is guilty of complicity in the commission of an offense, and shall be prosecuted and punished as if he were a principal