

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

FILED COURT  
COMMON PLEAS COURT  
FRANKLIN COUNTY, OHIO  
2010 MAR 29 AM 10:35  
CLERK OF COURTS-CV

Emad S. Atalla, MD,  
Appellant,

:  
:

Case No. 09CV-05-7750

v.

:

The State Medical Board of Ohio,  
Appellee.

:

Judge Fais

APPELLANT'S NOTICE OF VOLUNTARY DISMISSAL

Now comes Appellant, by and through counsel of record, and gives notice of voluntary dismissal of this administrative appeal under RC 119.

Respectfully submitted,

KEVIN P. BYERS CO., L.P.A.

*KP Byers*

Kevin P. Byers 0040253  
529 East Town Street, Suite 200  
Columbus, Ohio 43215  
614.228.6283 Fax 228.6425  
Kevin@KPByersLaw.com

Attorney for Emad S. Atalla, MD

Certificate of Service

I certify that a true copy of the foregoing document was deposited in first class U.S. Mail this 23rd day of March, 2010, addressed to Assistant Attorney General Barbara Pfeiffer, Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3428.

*KP Byers*

Kevin P. Byers

①

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2010 MAR -4 PM 3:24  
CLERK OF COURTS

Emad S. Atalla, M.D., :  
Appellant, :  
vs. : Case No. 09 CV 7750  
State Medical Board of Ohio, : Judge FAIS  
Appellee. :

**ORDER REACTIVATING CASE AND AMENDING BRIEFING SCHEDULE**

**&**

**DECISION AND ENTRY DENYING APPELLEE'S MOTION TO DISMISS,**  
**FILED MAY 29, 2009**

Rendered this 4<sup>th</sup> day of March, 2010.

**FAIS, J.**

On May 29, 2009, Appellee State Medical Board of Ohio ("Appellee") filed a Motion to Dismiss for Lack of Jurisdiction, therein requesting this Court to dismiss Appellant Emad S. Atalla, M.D.'s ("Appellant"), appeal for lack of subject matter jurisdiction pursuant to R.C. 12(B)(2) and R.C. Section 119.12 for failure to set forth the grounds of the appeal.

On July 9, 2009, this Court *sua sponte* placed this case on inactive status pending the ruling by the Ohio Supreme Court on a Motion for Reconsideration in *Medcorp, Inc. v. Ohio Dept. of Job & Family Servs.*, Slip Opinion No. 2009-Ohio-2058. The Court ordered the parties to notify this Court upon release of a decision in the *Medcorp* case.

Appellee notified this Court on January 8, 2010, of the ruling by the Ohio Supreme Court in *Medcorp*, wherein the Court granted in part the Motion for Reconsideration and

stated as follows: "The holding in *Medcorp I* shall apply only to cases filed on and after June 15, 2009, the date on which the opinion in *Medcorp I* was published in the Ohio Official Reports advance sheets." Id. at ¶4. The instant appeal was filed on May 22, 2009; thus, the holding in *Medcorp I* is not applicable.

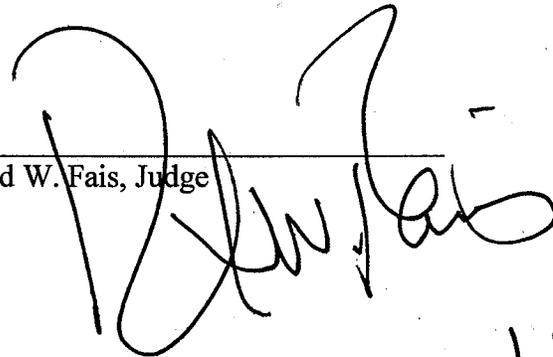
Based upon the foregoing, this case is hereby **REINSTATED** to the Court's active docket. Accordingly, the briefing schedule shall be amended as follows:

Dispositive Motions	April 2, 2010
Filing of Appellant's Brief	April 30, 2010
Filing of Appellee's Brief	May 14, 2010
Filing of Appellant's Reply Brief and Non-Oral Hearing Date	May 21, 2010

Further, Defendant's Motion to Dismiss is hereby **DENIED**.

**IT IS SO ORDERED.**

David W. Fais, Judge



3-4-10



Copies to:

Kevin P. Byers, Esq.  
107 South High Street, Suite 400  
Columbus, Ohio 43215  
Counsel for Appellant

Barbara J. Pfeiffer, Esq.  
Assistant Attorney General  
Health & Human Services Section  
30 E. Broad Street, 26<sup>th</sup> Floor  
Columbus, Ohio 43215-3400  
Counsel for Appellee

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

Emad S. Atalla, M.D., :  
Appellant, :  
-vs. : Case No. 09 CV 7750  
State Medical Board of Ohio, : Judge FAIS  
Appellee. :

FILED COURT  
CLERK OF COURTS  
2009 JUL -9 PM 1:30

**SUA SPONTE ORDER PLACING CASE ON INACTIVE STATUS  
PENDING RULING BY OHIO SUPREME COURT**

Rendered this 9<sup>th</sup> day of July, 2009.

**FAIS, J.**

On May 29, 2009, Appellee State Medical Board of Ohio ("Appellee") filed a Motion to Dismiss for Lack of Jurisdiction, therein requesting this Court to dismiss Appellant Emad S. Atalla, M.D.'s ("Appellant"), appeal for lack of subject matter jurisdiction pursuant to R.C. 12(B)(2) and R.C. Section 119.12 for failure to set forth the grounds of the appeal. Appellee asserts the Ohio Supreme Court's holding in *Medcorp, Inc. v. Ohio Dept. of Job & Family Servs.*, Slip Opinion No. 2009-Ohio-2058, is controlling, where the Court found merely restating the standards of review is not sufficient to satisfy the grounds of a party's appeal in accordance with R.C. 119.12, but rather appealing parties must identify specific legal or factual errors in their notices of appeal. Appellee further notifies the Court that on May 15, 2009, Medcorp filed a Motion for Reconsideration which is currently pending before the Ohio Supreme Court. Appellee's brief in the case *sub judice* is due on or before July 31, 2009.

Based upon the foregoing, the Court, on its own motion, hereby places the instant matter on **INACTIVE STATUS**, pending a determination from the Ohio Supreme Court in the *Medcorp* case. Counsel are hereby **ORDERED** to notify this Court upon the release of a decision in *MedCorp, Inc. v. Ohio Department of Job & Family Services* regarding Medcorp's Motion for Reconsideration so that the instant case can be re-activated and proceed in accordance with that ruling.

**IT IS SO ORDERED.**



---

David W. Fais, Judge

Copies to:

Kevin P. Byers, Esq.  
107 South High Street, Suite 400  
Columbus, Ohio 43215  
Counsel for Appellant

Barbara J. Pfeiffer, Esq.  
Assistant Attorney General  
Health & Human Services Section  
30 E. Broad Street, 26<sup>th</sup> Floor  
Columbus, Ohio 43215-3400  
Counsel for Appellee

7-9-09



IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

Emad S. Atalla, MD,  
c/o 107 South High Street, Suite 400  
Columbus, Ohio 43215  
Appellant,

v.

State Medical Board of Ohio,  
77 South High St., 17th Floor  
Columbus, Ohio 43266-0315  
Appellee.

CASE NO. \_\_\_\_\_

JUDGE \_\_\_\_\_

Appeal from the State Medical Board of Ohio

---

APPELLANT'S NOTICE OF APPEAL

---

Pursuant to RC 119.12, notice is hereby given that Appellant, Emad S. Atalla, MD, appeals the order of the State Medical Board dated May 13, 2009, and mailed May 15, 2009, (copy attached as *Exhibit A*.) The Medical Board order is not supported by the necessary quantum of reliable, probative and substantial evidence nor is it in accordance with law.

Respectfully submitted,

KEVIN P. BYERS CO., L.P.A.

*KP Byers*

Kevin P. Byers 0040253  
The 107 Building  
107 South High Street, Suite 400  
Columbus, Ohio 43215  
614.228.6283 Fax 228.6425

Attorney for Emad S. Atalla, MD

2009 MAY 22 A 8:59

STATE MEDICAL BOARD

Certificate of Service

I certify that the original of the foregoing document was hand-filed this 22nd day of May, 2009, at the State Medical Board, 30 East Broad Street, 3rd Floor, Columbus, Ohio 43215 with a copy filed this same date in the Court of Common Pleas of Franklin County in accord with RC §119.12 and Ohio caselaw<sup>1</sup>, with a courtesy copy mailed to Assistant Attorney Barbara J. Pfeiffer, Health & Human Services Section, 30 East Broad Street, 26<sup>th</sup> Floor, Columbus, Ohio 43215-3426.

KPB/RS  
Kevin P. Byers

STATE MEDICAL BOARD  
MAY 22 A 9 11

<sup>1</sup> Stultz v. Oh. Dept. of Admin. Svcs. 10<sup>th</sup> Dist. No. 04AP-602, 2005-Ohio-200

# State Medical Board of Ohio

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



Richard A. Whitehouse, Esq.  
Executive Director

(614) 466-3934  
med.ohio.gov

May 13, 2009

Emad S. Atalla, M.D.  
226 Candlewood Place  
St. Mary's, OH 45885

RE: Case No. 08-CRF-021

Dear Doctor Atalla:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Gretchen L. Petrucci, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on May 13, 2009, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of an original Notice of Appeal with the State Medical Board of Ohio and a copy of the Notice of Appeal with the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

A handwritten signature in black ink that reads "Lance A. Talmage M.D." in a cursive style.

Lance A. Talmage, M.D.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3936 3066 4098  
RETURN RECEIPT REQUESTED

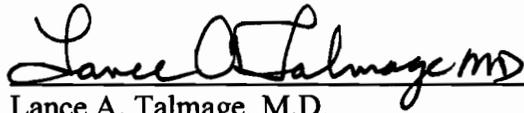
Cc: Kevin P. Byers, Esq.  
CERTIFIED MAIL NO. 91 7108 2133 3936 3066 4104  
RETURN RECEIPT REQUESTED

*Mailed 5-15-09*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Gretchen L. Petrucci, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on May 13, 2009, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Emad S. Atalla, M.D., Case No. 08-CRF-021, as it appears in the Journal of the State Medical Board of Ohio.

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

  
\_\_\_\_\_  
Lance A. Talmage, M.D.  
Secretary

(SEAL)

May 13, 2009  
\_\_\_\_\_  
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

\*

\*

CASE NO. 08-CRF-021

\*

EMAD S. ATALLA, M.D.

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on May 13, 2009.

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

It is hereby ORDERED that:

- A. **REPRIMAND:** Emad S. Atalla, M.D., is REPRIMANDED.
- B. **PROBATION:** The certificate of Dr. Atalla to practice medicine and surgery in the Ohio shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least nine months:
  1. **Obey the Law:** Dr. Atalla shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
  2. **Declarations of Compliance:** Dr. Atalla shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. **Personal Appearances:** Dr. Atalla shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, or as otherwise directed by the Board. Subsequent personal appearances must occur every six months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
4. **Personal and/or Professional Ethics Course or Courses:** Before the end of the probation, or as otherwise approved by the Board, Dr. Atalla shall provide acceptable documentation of successful completion of a course or courses dealing with personal and/or professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

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

5. **Termination of Probation:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Atalla's certificate will be fully restored.

**C. REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER**

1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. Atalla shall provide a copy of this Order to all employers or entities with which he is under contract to provide health-care services (including but not limited to third-party payors), or is receiving training, and the chief of staff at each hospital or health-care center where he has privileges or appointments.

In the event that Dr. Atalla provides any health-care services or health-care direction or medical oversight to any emergency

medical services organization or emergency medical services provider, Dr. Atalla shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

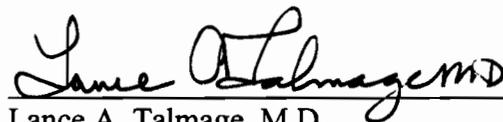
2. **Required Reporting to Other Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Atalla shall provide a copy of this Order to the proper licensing authority of any State or jurisdiction in which he currently holds any professional license, as well as any federal agency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

Dr. Atalla further shall provide a copy of this Order at the time of application to the proper licensing authority of any State or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue until Dr. Atalla receives from the Board written notification of the successful completion of the probation.

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

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

(SEAL)

  
Lance A. Talmage, M.D.  
Secretary

May 13, 2009  
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

2009 FEB 25 P 3 18

In the Matter of \*

Emad S. Atalla, M.D., \*

Respondent. \*

Case Number 08-CRF-021

Hearing Examiner Petrucci

**REPORT AND RECOMMENDATION**

Basis for Hearing

By letter dated March 12, 2008, the State Medical Board of Ohio [Board] notified Emad S. Atalla, M.D., that it intended to determine whether to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board's action was based on the allegation that, in February 2005, Dr. Atalla submitted an application to renew his Ohio certificate, and stated that the information was true, but it contained false information or omitted a material fact. The Board further alleged that Dr. Atalla's acts, conduct, and/or omissions constitute: "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery \* \* \* or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as set forth in Section 4731.22(B)(5), Ohio Revised Code. (State's Exhibit 1A)

On April 9, 2008, Dr. Atalla requested a hearing. (State's Exhibit 1B)

Appearances

Richard Cordray, Attorney General, by Barbara J. Pfeiffer, Assistant Attorney General, on behalf of the State of Ohio.

Kevin P. Byers, Esq., on behalf of Dr. Atalla.

Hearing Date: December 12, 2008

**SUMMARY OF THE EVIDENCE**

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

**Background**

1. Emad S. Atalla, M.D., was born in Egypt. He obtained a medical degree from the Cairo University School of Medicine in 1991. Dr. Atalla came to the United States in 1992, and completed an anesthesiology residency at the Cleveland Clinic in Cleveland, Ohio, between

1994 and 1998. He practiced medicine in Egypt for two years and then returned to Cleveland in 2000, and worked at the Cleveland Clinic until mid-2003. Since late 2003, Dr. Atalla has worked as an anesthesiologist at the Joint Township District Memorial Hospital in St. Mary's, Ohio. (Hearing Transcript [Tr.] at 19-22; Respondent's Exhibit [Resp. Ex.] E)

2. Dr. Atalla holds an active medical license in Ohio, which he first obtained in March 1996. Dr. Atalla is board-certified by the American Board of Anesthesiology. (Tr. at 23; Ohio E-License Center, State of Ohio, February 23, 2009 <<https://license.ohio.gov/lookup>>)

#### **Dr. Atalla's Criminal Conviction, 2003-2004**

3. The parties agreed upon the following stipulations of fact:
  - In 2003, Dr. Atalla was charged with a criminal offense in the Cuyahoga Falls Municipal Court. Dr. Atalla was convicted of that offense, following a jury trial in August 2003.
  - Dr. Atalla appealed, and the Ninth District Court of Appeals reversed the conviction on the basis of ineffective assistance of counsel. Also, the appellate court remanded the case to the Cuyahoga Falls Municipal Court.
  - In September 2004, Dr. Atalla entered a plea of no contest to the offense of disorderly conduct. The Cuyahoga Falls Municipal Court found him guilty of disorderly conduct and sentenced him.

(Tr. at 8-9)

4. The documentation and testimony reflects that Dr. Atalla was involved in a confrontation with his daughter's nanny in April 2003. At the time, he and his first ex-wife were involved in a child-custody dispute. Dr. Atalla was charged in the Cuyahoga Falls Municipal Court in April 2003 with domestic violence, a misdemeanor of the first degree, in violation of Section 2919.25, Ohio Revised Code. Following this 2003 conviction and the Court of Appeals' reversal and remand, the charge was amended to disorderly conduct, a misdemeanor of the fourth degree, in violation of Section 2917.11, Ohio Revised Code. (State's Exhibits [St. Exs.] 2, 3, 5; Tr. at 27-28, 41)
5. Following Dr. Atalla's plea of no contest to disorderly conduct in September 2004, Dr. Atalla was sentenced, among other things, to 30 days incarceration, with 27 days suspended and with credit given for three days already served. He was placed on probation for six months, required to attend anger-management classes, and fined \$250 with \$50 suspended. Dr. Atalla explained at hearing that he had carried out the sentence associated with the 2003 conviction, and he did not have to take further action to fulfill the 2004 sentence. (St. Ex. 3; Tr. at 47-48)

### **The Impact of the Criminal Charges and Conviction**

6. Dr. Atalla explained that the criminal charges and the August 2003 conviction of domestic violence (which was later overturned) had a number of significant impacts upon his life. First, he explained that the 2003 domestic violence case caused him to lose custody of his daughter, increased the disputes with his first ex-wife, and required more activity with an attorney and the domestic relations court. (Tr. at 29-31)

Second, Dr. Atalla testified that domestic violence is a misdemeanor for which one may be deported and, on October 3, 2004, the government had attempted to arrest him and deport him. He explained that he had applied for new visas, and, after the Immigration and Naturalization Service denied him a visitor visa but granted him a working visa, he had filed a case in federal court to “straighten out” his immigration status. The litigation took several years. He explained that, as a result, he had additional dealings with an immigration attorney, the Immigration and Naturalization Service, and federal court. (Tr. at 32-33, 39; see also Resp. Ex. E)

Third, Dr. Atalla noted that the domestic violence conviction impacted his employment in 2003. Dr. Atalla testified that the Cleveland Clinic chose not to renew his employment contract in 2003. He noted that he was unemployed for a few months, but became employed at the Joint Township District Memorial Hospital in late 2003. (Tr. at 33, 60-61; see also Resp. Ex. E)

7. Dr. Atalla explained that, also as part of these various issues, he had had to travel a great deal to Akron and Cleveland, Ohio, to discuss the custody and immigration issues with attorneys, the courts, and government agencies. (Tr. at 34, 59)

### **Dr. Atalla’s 2005 Renewal Application and His Subsequent Admissions**

8. On February 22, 2005, Dr. Atalla completed an application to renew his Ohio certificate. In submitting that application, Dr. Atalla verified that all of the information posted therein was correct, and verified that he had understood that “submitting a false, fraudulent, or forged statement or document or omitting a material fact in obtaining licensure may be grounds for disciplinary action” against his Ohio certificate. Also in submitting that application, Dr. Atalla swore or affirmed, under penalty of law, that the information provided therein was complete and correct, and that he had complied with all criteria for applying online. (St. Ex. 7 at 3, 5)

In the renewal application, Question 1 under the “Discipline” section asked whether, since January 2003 when Dr. Atalla had last applied to renew his Ohio certificate, he had been found guilty of, or pled guilty or no contest to, or received treatment or intervention in lieu of conviction of, a misdemeanor or felony. Dr. Atalla answered “No.” (St. Ex. 6; St. Ex. 7 at 4)

9. Dr. Atalla testified that, based upon information he had received from his criminal attorney in 2004, he had thought his no contest plea would not harm his career or immigration status. He

explained that he had considered the disorderly conduct to be a minor misdemeanor. (Tr. at 28, 36)

10. Dr. Atalla admitted at hearing that, in 2005, he knew that the correct answer to that question was “Yes,” and that his answer was inappropriate. He explained that he had reviewed the Board’s rules and regulations in mid-2003, and had found that the Board disciplines for felonies, for misdemeanors within the course of practice, and for misdemeanors involving moral turpitude. Dr. Atalla stated that, with that information, he had thought in 2005 that his disorderly conduct conviction was not a crime or offense for which the Board would discipline and, therefore he had decided to answer “No” to Question 1. (Tr. at 37, 40-41, 43, 49, 60-62)
11. During the hearing, Dr. Atalla explained the reasons for which he chose to answer Question 1 incorrectly. He stated the following:
  - “I responded no because I was afraid of any more investigations or legal investigations in my life because I thought I had much more than I could handle with all this custody, immigration and being on call every other day.” (Tr. at 38)
  - “I thought [the Medical Board] would hire an investigator and they would investigate or -- investigate to go through the whole case including interviewing my ex-wife and the victim and everyone and interviewing me. And I would have to hire an attorney to protect my interests.” (Tr. at 39-40)
  - “At that time, I was very committed to my work, being on call every other day and a little bit more than that. And I had to take a few days off, especially in the months of February and March, to go to immigration in Cleveland and to go to the custody case in Akron.  
  
“And I was afraid I wouldn’t have any more time off for an investigation. So my fear of that investigation and the time off, I covered my eyes and let me make this mistake.” (Tr. at 54-55)

(See also Tr. at 49-50) Dr. Atalla noted that he had not consulted with an attorney at that time. (Tr. at 58)

### **Supporting Testimony and Letters**

12. Dr. Atalla presented the testimony of two colleagues. Sabri Barsoum, M.D., has known Dr. Atalla for 12 years.<sup>1</sup> Dr. Barsoum stated that Dr. Atalla is an honest person, and the inaccuracy on his certificate renewal form was during a difficult, stressful time for him.

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<sup>1</sup>Dr. Barsoum was a resident in the Cleveland Clinic’s anesthesiology program at the same time as Dr. Atalla. Details of Dr. Barsoum’s education and training are set forth in the transcript. (Tr. at 64-65)

Dr. Barsoum thought that Dr. Atalla's answer was due to his fear of losing his job. Dr. Barsoum further testified that he has never had an occasion to question Dr. Atalla's integrity or moral standing. Also, Dr. Barsoum stated that Dr. Atalla provides superb care to his patients. (Tr. at 65, 67-68, 71-74, 78)

Katherine Bachman, M.D., has known Dr. Atalla since 2005.<sup>2</sup> She testified that she has worked with Dr. Atalla on many occasions in the hospital operating room. She stated that she believes Dr. Atalla has high integrity, and she has the "utmost confidence in him as a physician." She further testified that she had understood that Dr. Atalla had wrongly answered a question on his renewal application, but thought he had not done so knowingly. (Tr. at 81-82, 85, 88-89)

13. Dr. Atalla also presented two letters of support. The State did not have an opportunity to question the authors.

Kevin W. Harlan is the President and Chief Executive Officer of Joint Township District Memorial Hospital. He stated that the hospital is aware of Dr. Atalla's non-disclosure and that the hospital hopes that his services to the community will continue uninterrupted because he provides much-needed services and any license suspension would strain the hospital's operations. (Resp. Ex. A)

Seeta Annam, M.D., is the Chief of Anesthesia at Joint Township District Memorial Hospital. Also, he chairs the Medical Staff Surgical Quality Committee, and is a member of the hospital's Board of Directors. He stated that Dr. Atalla has provided quality anesthesia care and is dedicated to his patients. Moreover, Dr. Annam noted that there is a critical need for anesthesiologists in the area, and he hopes that Dr. Atalla can continue to practice at the hospital. (Resp. Ex. B)

### **FINDINGS OF FACT**

1. On February 22, 2005, Emad S. Atalla, M.D., submitted to the Board an online application for renewal of his certificate to practice medicine and surgery in Ohio. In submitting that renewal application, Dr. Atalla verified that all of the information posted therein was correct, including that he had understood that submitting a false, fraudulent, or forged statement or document or omitting a material fact in obtaining licensure may be grounds for disciplinary action against his Ohio certificate. Also, under penalty of law, Dr. Atalla swore or affirmed that the information provided therein was complete and correct, and that he had complied with all criteria for applying online.
2. In the renewal application, Dr. Atalla responded "No" to Question 1 under the "Discipline" section, which asked: "At any time since signing your last application for renewal of your

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<sup>2</sup>Dr. Bachman is an obstetrician/gynecologist in St. Mary's, Ohio. Details of her education and training are set forth in the transcript. (Tr. at 80-81)

certificate: Have you been found guilty of, or pled guilty or no contest to, or received treatment in lieu of conviction of, a misdemeanor or felony?"

3. On September 16, 2004, in the Cuyahoga Falls Municipal Court, Cuyahoga Falls, Ohio, Dr. Atalla pleaded no contest to, and was found guilty of, Disorderly Conduct, a fourth degree misdemeanor, in violation of Section 2917.11, Ohio Revised Code.

### **CONCLUSION OF LAW**

Dr. Atalla's acts, conduct, and/or omissions, as set forth in the Findings of Fact, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery \* \* \* or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as set forth in Section 4731.22(B)(5), Ohio Revised Code.

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

Dr. Atalla admitted his false answer on his 2005 renewal application, and he explained why he had chosen to answer the question falsely. He expressed remorse for his actions. This single act of misconduct did not have an adverse impact on others, and did not involve treatment of patients. The Hearing Examiner believes that this transgression is unlikely to recur. Nevertheless, a reprimand and a period of probation (with quarterly declarations, personal appearances, and an ethics course or courses) are warranted.

### **PROPOSED ORDER**

It is hereby ORDERED that:

- A. **REPRIMAND:** Emad S. Atalla, M.D., is REPRIMANDED.
- B. **PROBATION:** The certificate of Dr. Atalla to practice medicine and surgery in the Ohio shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least nine months:
  1. **Obey the Law:** Dr. Atalla shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
  2. **Declarations of Compliance:** Dr. Atalla shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes

effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. **Personal Appearances:** Dr. Atalla shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, or as otherwise directed by the Board. Subsequent personal appearances must occur every six months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
4. **Personal and/or Professional Ethics Course or Courses:** Before the end of the probation, or as otherwise approved by the Board, Dr. Atalla shall provide acceptable documentation of successful completion of a course or courses dealing with personal and/or professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

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

5. **Termination of Probation:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Atalla's certificate will be fully restored.

**C. REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER**

1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. Atalla shall provide a copy of this Order to all employers or entities with which he is under contract to provide health-care services (including but not limited to third-party payors), or is receiving training, and the chief of staff at each hospital or health-care center where he has privileges or appointments.

In the event that Dr. Atalla provides any health-care services or health-care direction or medical oversight to any emergency medical services organization or emergency medical services provider, Dr. Atalla shall provide

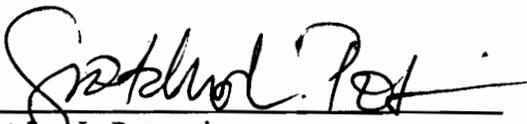
a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

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

Dr. Atalla further shall provide a copy of this Order at the time of application to the proper licensing authority of any State or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue until Dr. Atalla receives from the Board written notification of the successful completion of the probation.

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

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

  
Gretchen L. Petrucci  
Hearing Examiner

# State Medical Board of Ohio

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



Richard A. Whitehouse, Esq.  
Executive Director

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## EXCERPT FROM THE DRAFT MINUTES OF MAY 13, 2009

### REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDER

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

Dr. Madia asked whether each member of the Board had received, read and considered the hearing record; the Findings of Fact, Conclusions of Law and Proposed Orders, and any objections filed in the matters of: Emad S. Atalla, M.D.; Menna Berhane, M.D.; Randall Jay Bolar, M.D.; Ralph Arden Hugunin, M.D.; Venkanna Kanna, M.D.; Kathy Lynn Kruger, D.O.; Marietta J. Medel, M.D.; Robert L. Turton, D.O.; and Jeffrey E. White, M.D. A roll call was taken:

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

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

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

Dr. Madia noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters. They may, however, participate in the matters of Dr. Bakhshandeh and Dr. Higgs, as those cases are not disciplinary in nature and concern only the doctors' qualifications for licensure. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

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

.....

EMAD S. ATALLA, M.D.

.....

**MR. HAIRSTON MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF EMAD S. ATALLA, M.D. DR. VARYANI SECONDED THE MOTION.**

.....

A vote was taken on Mr. Hairston's motion to approve and confirm:

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

The motion carried.

# State Medical Board of Ohio

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



Richard A. Whitehouse, Esq.  
Executive Director

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med.ohio.gov

March 12, 2008

Case number: 08-CRF-021

Emad S. Atalla, M.D.  
226 Candlewood Place  
St. Mary's, Ohio 45885

Dear Doctor Atalla:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio [Board] intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) On or about February 22, 2005, you caused to be submitted to the Board an online application for renewal [2005 Renewal] of your certificate to practice medicine and surgery in Ohio. By submitting your 2005 Renewal, you verified that all information posted therein was correct, including that you understood that submitting a false, fraudulent, or forged statement or document or omitting a material fact in obtaining licensure may be grounds for disciplinary action against your license, and, under penalty of law, swore or affirmed that the information provided therein was complete and correct, and that you had complied with all criteria for applying online.

In your 2005 Renewal, you responded "No" to Question 1, which asked:

At any time since signing your last application for renewal of your certificate:

Have you been found guilty of, or pled guilty or no contest to, or received treatment in lieu of conviction of, a misdemeanor or felony?

In fact, on or about September 16, 2004, in the Cuyahoga Falls Municipal Court, Cuyahoga Falls, Ohio, you pled no contest to, and were found guilty of, Disorderly Conduct, a fourth degree misdemeanor, in violation of Section 2917.11, Ohio Revised Code.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of

*Mailed 3-13-08*

To protect and enhance the health and safety of the public through effective medical regulation

Emad S. Atalla, M.D.

Page 2

registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

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

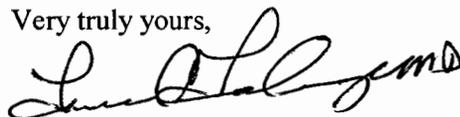
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at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

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

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.  
Secretary

LAT/KHM/flb

Enclosures

CERTIFIED MAIL #91 7108 2133 3934 3685 0107  
RETURN RECEIPT REQUESTED