

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

2011 JUL 21 AM 8:10

CLERK OF COURTS

STEPHEN N. RHINEHART, :

APPELLANT, : CASE NO. 11 CV 01 1340

vs. : JUDGE RICHARD SHEWARD

STATE MEDICAL BOARD :
OF OHIO :

APPELLEE. :

TERMINATION NO. 10
BY PG 7/20/11

DECISION AND ENTRY

Rendered this 20 day of July 2011

FINAL APPEALABLE ORDER

SHEWARD, J.

This matter is before this Court pursuant to the R.C. 119.12 appeal of the appellant Stephen N. Rhinehart, from a January 12, 2011 Order of the State Medical Board of Ohio ("Board"). In its January 12, 2011 Order, the Board permanently revoked the appellant's license to practice medicine and surgery in the state of Ohio.

The Board issued a Notice of Opportunity for Hearing to the appellant on June 9, 2010. The June 9, 2010 Notice alleged that, with regard to the individuals identified on a patient key as Patients 1 through 5, the appellant: (a) prescribed a controlled substance in the name of an individual not his patient, knowing that another would use the controlled substance; (b) provided a medical record for an individual even though no bona fide physician-patient relationship existed with that individual; (c) engaged in sexual contact with a patient; (d) prescribed controlled substances to a family member under non-emergent circumstances; and (e) prescribed Methadone

for a patient's opioid withdrawal even though he was not registered as a narcotic treatment program.

See State's Exhibit 1(A). The June 9, 2010 Notice alleged the following:

"Selling, giving away, personally furnishing, prescribing, or administrative drugs for other than legal and legitimate therapeutic purposes, or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating possession, distribution, or use of any drug," as set forth in Section 4731.22(B)(3), Ohio Revised Code, "to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents" and or "21 CFR 1306.07 (2009), Administering or Dispensing of Narcotic Drugs."

Making a false, fraudulent, deceptive or misleading statement, as set forth in Section 4731.22(B)(5), Ohio Revised Code.

Commission of acts constituting felonies in Ohio, as set forth in Section 4731.22(B)(10), Ohio Revised Code. The Board identified the alleged felonious acts as Illegal Processing of Drug Documents, Forgery, and Tampering with Evidence (Sections 2925.23, 2913.31, and 2921.12, Ohio Revised Code, respectively).

Commission of an act constituting a misdemeanor in Ohio, as set forth in Section 4731.22(B)(12), Ohio Revised Code. The Board identified the alleged misdemeanor as Falsification (Section 2921.13, Ohio Revised Code).

Violating, attempting to violate, assisting in or abetting the violation of, or conspiring to violate Rule 4731-11-08, Ohio Administrative Code (Utilizing Controlled Substances for Self and Family Members) and Rule 4731-26-02, Ohio Administrative Code (Prohibitions), as set forth in Section 4731.22(B)(20), Ohio Revised Code. The Board also alleged that a violation of Rule 4731-26-02, Ohio Administrative Code (Prohibitions) also violates Section 4731.22(B)(6), Ohio Revised Code (minimal standards of care).

See State's Exhibit 1(A).

Following the appellant's request, a hearing was held on October 18 and 19, 2010. The Hearing Examiner issued a Report and Recommendation to the Board on November 23, 2010. In that Report the hearing examiner recommended to the Board that the appellant's license to practice medicine and surgery in the state of Ohio be permanently revoked. See November 23, 2010 Report and Recommendation. The appellant did not file any objections to the hearing officer's November 23, 2010 Report and Recommendation although he was given an opportunity to address the Board on January 12, 2011. The Board issued an Order on January 12, 2011 approving and confirming the

hearing examiner's Report and Recommendation and thus, permanently revoked the appellant's license to practice medicine and surgery in the state of Ohio. The appellant filed this appeal on January 28, 2011.

FINDINGS OF FACT

In her November 23, 2010 Report and Recommendation, Hearing Examiner Gretchen Petrucci made the following findings of fact:

1. Stephen Nels Rhinehart, M.D. undertook and/or purportedly undertook the care of Patients 1 through 5, as identified on the patient key.
 - a. From January 2009 to April 2010, Dr. Rhinehart undertook the care of Patient 1. At the request of Patient 1, on March 2, 2010, Dr. Rhinehart prescribed Xanax, a Schedule IV Controlled Substance, in the name of Patient 2, a friend of Patient 1. Dr. Rhinehart knew that Patient 1 would be acquiring and utilizing the Xanax.

The record is clear that Dr. Rhinehart prescribed Xanax in the name of Patient 2. Conflicting evidence was presented as to whether Dr. Rhinehart knew that Patient 1 would utilize that Xanax. *If* Dr. Rhinehart's testimony regarding the March 2, 2010 events were believed, at a minimum he should have known that Patient 1 would utilize the Xanax because Patient 1 asked him for another prescription of Xanax and both patients were supposedly together at the time of the call. However, Dr. Rhinehart's testimony that he legitimately prescribed Xanax to Patient 2 on March 2, 2010 is not credible. The preponderance of the evidence does not support his version of the events—that, unexpectedly, Patient 2 called his residence and asked specifically for a Xanax prescription, and that Dr. Rhinehart prescribed 20 pills of Xanax, in 2 mg dosage, to someone he had not examined or treated and to someone who had provided virtually no medical history. Moreover, it is noted that Patient 1's Xanax prescriptions were similar in dosage to what Dr. Rhinehart prescribed on March 2, 2010.

If Patient 1's testimony is believed, Dr. Rhinehart knew that that Patient 1 would utilize the Xanax. If Patient 2's testimony is believed, Dr. Rhinehart knew that Patient would utilize the Xanax. One consideration of the witnesses' credibility and the documentary evidence demonstrates that Dr. Rhinehart knew, at the time he prescribed Xanax in the name of Patient 2, that Patient 1 would acquire and utilize the Xanax.

- b. Patient 2 has never been treated by Dr. Rhinehart, nor prescribed controlled substances by Dr. Rhinehart for her own use. Further, Patient 2 never received the March 2, 2010 prescription for Xanax that Dr. Rhinehart purportedly wrote for Patient 2.

This finding is supported by Finding of Fact 1(a) and Patient 2's testimony. Dr. Rhinehart's testimony that Patient 2 called him, that she asked for a Xanax prescription for her own anxiety, and that he prescribed Xanax for her was not credible.

- c. In response to an investigative subpoena *duces tecum* served on Dr. Rhinehart by the Board, he provided a medical record for Patient 2, despite the fact that no bona fide physician-patient relationship with Patient 2.

This finding is supported by Findings of Fact 1(a) and 1(b), and Patient 2's testimony. Dr. Rhinehart's testimony that Patient 2 called him, that she asked for a Xanax prescription for her own anxiety, and that he prescribed Xanax for her was not credible.

- d. From December 2003 to March 2008, Dr. Rhinehart undertook the care of Patient 3. Despite his physician-patient relationship with Patient 3, between 2004 and 2007, Dr. Rhinehart had sexual contact with Patient 3, including sexual intercourse.
- e. From 2008 to 2010, Dr. Rhinehart undertook the care of Patient 4, who is also a family member. Under circumstances that were not emergent, between 2008 and 2010, Dr. Rhinehart prescribed Ativan, a Schedule IV Controlled Substance, to Patient 4 to keep that patient's anxiety under control.

2. From March 2008 to April 2010, Dr. Rhinehart undertook the care of Patient 5. ON September 12, 2008, he prescribed 180 pills of Methadone 10mg to Patient 5 for opioid withdrawal while the patient was awaiting admittance into a drug rehabilitation program, despite the fact that he is not separately registered with the Drug Enforcement Administration as a narcotic treatment program.

STANDARD OF REVIEW

R.C. § 119.12 sets forth the standard of review a common pleas court must follow when reviewing an administrative appeal. R.C. 119.12 provides in pertinent part:

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative and substantial evidence and is in accordance with law.

In *Our Place* the Ohio Supreme Court provided the following definition of reliable, probative and substantial evidence as:

(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 Comm. (1992), 63 Ohio St. 3d 570, 571.

Once the common pleas court has determined that the administrative agency's order is supported by reliable, probative and substantial evidence, the court must then determine whether the order is in accordance with law. See R.C. § 119.12. The reviewing court cannot substitute its judgment for the agency's decision where there is some evidence supporting the decision. See *Harris v. Lewis* (1982), 69 Ohio St. 2d 577, 579; see also *University of Cincinnati v. Conrad* (1980), 63 Ohio St. 2d 108.

LAW AND ANALYSIS

The appellant asserts the following "BASIS FOR APPEAL":

Was the Medical Board's decisions to permanently revoke the medical license of Stephen N. Rhinehart, M.D. based on reliable, probative and substantial evidence and in accordance with law?

The appellant's brief sets forth the following SUMMARY OF ARGUMENTS:

The revocation of Dr. Rhinehart's Medical License was based on unreliable testimony and unsubstantiated evidence.

Patient 1 is an unreliable, non-credible witness.

Conflicting evidence did not establish beyond a reasonable doubt that Dr, (sic) Rhinehart did know that Patient 1 would use the medication phoned in for Patient 2

The revocation of Dr. Rhinehart's Medical License was unjust.

The appellant has chosen to represent himself in this appeal. Ohio case law continues to hold that *pro se* civil litigants are bound by the same rules and procedures as those litigants who retain counsel. *Copeland v. Rosario*, 1998 Ohio App. LEXIS 260. They are not accorded greater rights and must accept the results of their mistakes and errors. *Kilroy v. B.H. Lakeshore* (1996), 111 Ohio App. 3d 357, 363. *Pro se* litigants are presumed to have knowledge of the law

and of correct legal procedure and are held to the same standard as all other litigants. *Meyers v. First Natl. Bank* (1981), 3 Ohio App. 3d 209.

In his "Summary of Arguments" the appellant has misstated the law. The appellant asserts that the standard is "beyond a reasonable doubt" which is the standard used in criminal cases and thus, is not applicable in a civil case involving the permanent revocation of a license to practice medicine in the state of Ohio. Moreover, the common pleas court must give due deference to the administrative resolution of evidentiary conflicts and findings of fact. For example, the court must defer to the administrative body, as the fact-finder, since the hearing examiner is the person who actually had the opportunity to observe the demeanor of the witness and weigh his/her credibility. At the hearing, Patients 1, 2, and 3 appeared and testified before the hearing examiner. Thus, the hearing examiner had the opportunity to observe their demeanor and weigh each one's credibility.

Patient 1 testified that she was a previous patient of the appellant in her teens and began treating with him again in 2009. Tr. 29-30. The appellant noted in her records that she had been in rehabilitation at least three times for abusing oxycontin. See State's Exhibit 5, at 50. The record demonstrates that between January 2009 and August 2010, the appellant wrote her several prescriptions for pain medications, including Oxycodone, Percocet, Methadone, Morphine, Opana, Hydrocodone, and Oxycontin. Tr. 34. Patient 1 admitted that she was an addict and manipulated the appellant in order to obtain prescriptions. See November 23, 2010 Report and Recommendation, at 4; see also State's Exhibit 9.

The record demonstrates that as their relationship progressed beyond a physician-patient relationship, Patient 1 stopped going to appellant's office for prescriptions. Tr. 70. Once a week, the appellant and Patient 1 would meet at either her house or his house so that he could provide her

with prescriptions for pain medication. Tr. 70. The appellant did not conduct any physical or medical exams when these visits occurred and the evidence shows that the appellant bought gifts for Patient 1 and her children. Tr. 76.

Patient 1 also testified that on one occasion she phoned the appellant and asked him to write her a prescription for Xanax using another patient's name. See November 23, 2010 Report and Recommendation, at 5; see also Tr. 89. Patient 1 explained that she had over consumed and that she needed more pain medication before it was legitimately time to re-fill her prescription. She testified that when she had her friend, Patient 2, call the appellant, he was well aware that the prescription written in the name of Patient 2 was intended for use by Patient 1.

Patient 2 testified that she was a long time family friend of Patient 1. November 23, 2010 Report and Recommendation, at 5; Tr. 97. She testified that she never received, picked up or consumed a March 2, 2010 prescription for Xanax written by the appellant in her name. Tr. 97-98. She testified that she had never been a patient of the appellant's. See November 23, 2010 Report and Recommendation. See State's Exhibit 13; Tr. 97-100.

The appellant testified that he had never met Patient 2, had never treated her, and did not have a patient history at the time that he called in the prescription. Tr. 37-38. What is most troubling is that the record demonstrates that when the Board issued a subpoena to the appellant to produce the medical record of Patient 2, he created a false record and sent it to the Board.

The appellant has not challenged the Board's findings in regard to Patients 3, 4, and 5. Clearly, there is reliable, probative and substantial evidence as to Patients 3, 4 and 5 to support the Board's January 12, 2011 Order permanently revoking the appellant's license to practice medicine and surgery in Ohio.

In regard to Patients 1 and 2, the hearing examiner had the opportunity to consider the appearance of each of these witnesses, their manner of testifying, the reasonableness of their testimony, the opportunity of each to see, hear and know the things concerning which she testified, their accuracy of memory, their frankness, intelligence, and interest and bias, if any. The hearing examiner was able to assess all these factors together with the surrounding facts and circumstances to determine that at the time that the appellant prescribed Xanax in the name of Patient 2, that Patient 1 would acquire and consume the Xanax. See November 23, 2010 Report and Recommendation, at 13. Moreover, the hearing examiner determined that the appellant's version of events regarding Patient 1 and 2 was not credible. See November 23, 2010 Report and Recommendation, at 13.

DECISION

The Board's order permanently revoking the appellant's license to practice medicine and surgery in the state of Ohio is supported by reliable, probative and substantial evidence and is in accordance with law. Accordingly, this Court hereby **AFFIRMS** the Board's January 12, 2011 Order.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

(B) Notice of filing. When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY. THIS IS A FINAL APPEALABLE ORDER. Pursuant to Civil Rule 58, the Clerk of Court shall serve upon all parties notice of this judgment and its date of entry.

It is so ordered.


JUDGE RICHARD SHEWARD

Copies to:

Stephen N. Rhinehart
581 Lancaster Pike
Circleville, Ohio
Appellant pro se

Michael DeWine, Esq.
Melinda R. Snyder, Esq.
Office of the Attorney General
Health and Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3400
Counsel for Appellee

DR. STEPHEN RHINEHART

VS.

581 Lancaster Pike
Circleville, Ohio 43113

Ohio State Medical Board
30 East Broad Street 3rd Floor
Columbus, Ohio 43215
January 28, 2011

11CVF-1 1340

Attn: Hearing Examiner and Director of Appeals
Franklin County Common Pleas Court; Civil Division
369 S. High St.
Columbus, Ohio 43215

RE: Case No. 10-CRF-072

To whom it may concern:

Pursuant to Section 119.12, Ohio Revised Code, I, Stephen Rhinehart, M.D wish to appeal the decision of the State Medical Board of Ohio made on January 12th, 2011, regarding the above referenced case.

Sincerely,

Stephen Rhinehart, M.D



COMMON PLEAS COURT
FRANKLIN CO., OHIO
2011 JAN 28 PM 4:13
CLERK OF COURTS-CV

2011 FEB 11 11:28 AM

CLERK OF COURTS

Stephen Rhinehart, M.D.
581 Lancaster Pike
Circleville, Ohio 43113
Stephen.rhinehart@valho.com

11CVF-1 1340

January 28, 2011

Franklin County Court of Common Pleas
369 South High St.
Columbus, Ohio 43215

RE: Case No. 10-CRF-072

To Whom it may concern:

Pursuant to Section 119.12, Ohio Revised Code, I, Stephen Rhinehart, M.D wish to appeal the decision of the State Medical Board of Ohio made on January 12th, 2011, regarding the above referenced case.

I, Stephen Rhinehart, believe that the decision to permanently revoke my Medical License was not supported by reliable, probative, and substantial evidence and is not in accordance with law.

Sincerely,

Stephen Rhinehart, M.D



FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2011 JAN 28 PM 4:13
CLERK OF COURTS-CV

2011 JAN 28 11:00
CLERK OF COURTS

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

January 12, 2011

Stephen Nels Rhinehart, M.D.
581 Lancaster Pike
Circleville, OH 43113

RE: Case No. 10-CRF-072

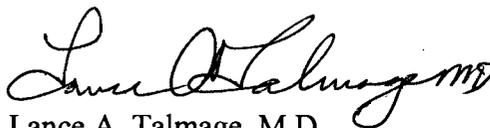
Dear Doctor Rhinehart:

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 January 12, 2011, 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 must be commenced by the filing of a Notice of Appeal with the State Medical Board and the Franklin County Court of Common Pleas. The Notice of Appeal must set forth the Order appealed from and state that the State Medical Board's Order is not supported by reliable, probative, and substantive evidence and is not in accordance with law. The Notice of Appeal may, but is not required to, set forth the specific grounds of the appeal. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO



Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

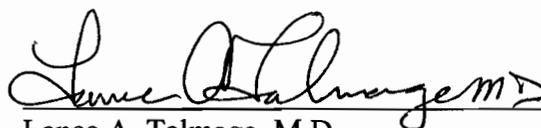
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RETURN RECEIPT REQUESTED

Mailed 1-13-11

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 January 12, 2011, 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 Stephen Nels Rhinehart, M.D., Case No. 10-CRF-072, 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)

January 12, 2011
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

CASE NO. 10-CRF-072

STEPHEN NELS RHINEHART, M.D.

*

ENTRY OF ORDER

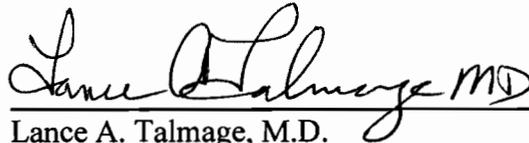
This matter came on for consideration before the State Medical Board of Ohio on January 12, 2011.

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:

The certificate of Stephen Nels Rhinehart, M.D., to practice medicine and surgery in the state of Ohio shall be PERMANENTLY REVOKED.

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



Lance A. Talmage, M.D.
Secretary

(SEAL)

January 12, 2011
Date

2010 NOV 23 AM 11:16

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of

*

Case No. 10-CRF-072

Stephen Nels Rhinehart, M.D.,

*

Hearing Examiner Petrucci

Respondent.

*

REPORT AND RECOMMENDATION

Basis for Hearing

By letter dated June 9, 2010, the State Medical Board of Ohio [Board] notified Stephen Nels Rhinehart, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action on allegations that, with regard to the individuals as identified on a patient key as Patients 1 through 5, Dr. Rhinehart: (a) prescribed a controlled substance in the name of an individual not his patient, knowing that another would use the controlled substance; (b) provided a medical record for an individual even though no bona fide physician-patient relationship existed with that individual; (c) engaged in sexual contact with a patient; (d) prescribed controlled substances to a family member under non-emergent circumstances; and (e) prescribed Methadone for a patient's opioid withdrawal even though he was not registered as a narcotic treatment program.

The Board alleged that Dr. Rhinehart's acts, conduct, and/or omissions constitute:

- "Selling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes, or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug," as set forth in Section 4731.22(B)(3), Ohio Revised Code, "to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents" and/or "21 CRF §1306.07 (2009), Administering or Dispensing of Narcotic Drugs."
- Making a false, fraudulent, deceptive or misleading statement, as set forth in Section 4731.22(B)(5), Ohio Revised Code.
- Commission of acts constituting felonies in Ohio, as set forth in Section 4731.22(B)(10), Ohio Revised Code. The Board identified the alleged felonious acts as Illegal Processing of Drug Documents, Forgery, and Tampering with Evidence (Sections 2925.23, 2913.31, and 2921.12, Ohio Revised Code, respectively).

- Commission of an act constituting a misdemeanor in Ohio, as set forth in Section 4731.22(B)(12), Ohio Revised Code. The Board identified the alleged misdemeanor as Falsification (Section 2921.13, Ohio Revised Code).
- Violating, attempting to violate, assisting in or abetting the violation of, or conspiring to violate Rule 4731-11-08, Ohio Administrative Code (Utilizing Controlled Substances for Self and Family Members) and Rule 4731-26-02, Ohio Administrative Code (Prohibitions), as set forth in Section 4731.22(B)(20), Ohio Revised Code. The Board also alleged that a violation of Rule 4731-26-02, Ohio Administrative Code (Prohibitions) also violates Section 4731.22(B)(6), Ohio Revised Code (minimal standards of care).

Accordingly, the Board advised Dr. Rhinehart of his right to request a hearing in this matter. (State's Exhibit [St. Ex.] 1A) On July 7, 2010, Dr. Rhinehart requested a hearing. (St. Ex. 1B)

Appearances at the Hearing

Richard Cordray, Attorney General, by Melinda R. Synder, Assistant Attorney General, on behalf of the State of Ohio. Dr. Rhinehart on his own behalf.

Hearing Date: October 18 and 19, 2010

SUMMARY OF THE EVIDENCE

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

Background

1. Stephen Nels Rhinehart, M.D., is a family-medicine physician. He earned a medical degree from Wright State University School of Medicine in 1994. Afterward, Dr. Rhinehart entered an internship at Riverside Methodist Hospital, which was mutually terminated following an event with a patient. In 1995 or 1996, Dr. Rhinehart entered a family-medicine residency at Ohio State University.¹ (St. Ex. 15 at 39-40; Hearing Transcript [Tr.] at 12; Ohio E-License Center, State of Ohio, October 20, 2010, <<https://license.ohio.gov/lookup>>)
2. In July 1998, Dr. Rhinehart took a position with Circleville Medical Associates, in Circleville, Ohio.² He was one of four physicians in that medical practice. Dr. Rhinehart "made a plan to get fired by showing up for work late and absenteeism." In early 2008, after nearly ten

¹The hearing record is not clear as to whether Dr. Rhinehart completed the family-medicine residency at Ohio State University.

²Circleville Medical Associates has also been known as Mount Carmel Health Care Providers and Circleville Family Health. (Tr. at 14-15; St. Ex. 7B)

years of employment, he was terminated. In February 2008, he opened his own medical practice, Brookhill Family Practice, in Circleville, where he continues to work. He has two employees who handle administrative matters. Until the Board's Notice of Opportunity for Hearing in this matter, he saw an average of 20 to 25 patients per day. As of April 2010, he held no hospital privileges or medical center privileges. (Tr. at 12-15; St. Ex. 15 at 38-39)

3. Dr. Rhinehart holds an active medical license in Ohio. He testified that he also is board-certified in family medicine. (St. Ex. 15 at 40; Tr. at 11, 14)

Patient 1

4. Patient 1 is a female born in 1983. She first saw Dr. Rhinehart when she was in her teens and while he was working at Circleville Medical Associates. She ceased her medical treatment with him for a period of time. In January 2009, she resumed medical treatment with Dr. Rhinehart. (Tr. at 29-30, 66-67, 70, 87; St. Ex. 5 at 1, 50)

5. When Patient 1 reestablished treatment with Dr. Rhinehart in January 2009, he noted that her history includes spina bifida/sciatica, bulging discs, scoliosis, chronic back pain, three automobile accidents, and rehabilitation for "oxy abuse."³ He also included the following in the January 2009 progress note:

- "Pt [with] quite a high pain med tolerance."
- "She was rehab[ed] at Talbot Hall [and] per mom's hx was up to 8-15 oxycontin at a time."⁴
- "Has constant back pain (sharp) [with] radiation down legs."

(St. Ex. 5 at 50)

6. Over the next 19 or 20 months, Patient 1 regularly visited and called Dr. Rhinehart, and he regularly prescribed her a variety of pain mediations. Beginning in 2010, Dr. Rhinehart also began to prescribe Xanax to Patient 1 for anxiety. (St. Ex. 5 at 37-58; St. Ex. 12; Tr. at 34)
7. Patient 1 and Dr. Rhinehart both acknowledged that they had more than a physician/patient relationship. Both testified that Patient 1 visited and called him at his home. Additionally, they both acknowledged that Dr. Rhinehart gave gifts to Patient 1. Moreover, both stated that Patient 1's mother had encouraged a personal/romantic relationship between them. (Tr. at 66, 76, 86-87, 124-126, 131; St. Ex. 9 at 2-3, 11)

³Dr. Rhinehart testified that Patient 1 also suffers from depression, anxiety, an abdominal hernia, chemical dependency, and likely bipolar disorder. (Tr. at 31-32)

⁴Patient 1 testified that she began abusing medications when she was 18 years old. She also stated that she received treatment for abuse of medications on three to four occasions through Talbot Hall in Columbus, Ohio, and on two occasions through the "PAARS" program in Circleville, Ohio. (Tr. at 68-69, 88)

However, their testimony differed on some points. For instance, Patient 1 stated that she had visited Dr. Rhinehart's home on 40 to 50 occasions, while Dr. Rhinehart stated it was less than 10 times. Patient 1 also described that, as time passed, she primarily saw Dr. Rhinehart at his home for her medications and did not visit his office much. He stated that she primarily visited the office for her medications, although many times she did not have a scheduled appointment. She also stated that she manipulated Dr. Rhinehart in order to obtain prescriptions. (Tr. at 34-35, 70, 78, 81-82, 86, 90-91, 124, 131-132)

8. Patient 1 prepared a written statement in March 2010. Among other things, Patient 1 wrote:

- "I started making any and every excuse as to why I was out of meds or needed more and he would make a deal for me. If I would come spend time with him he would give me anything I asked for. Being a recovered addict I got everything I could[.] Sometimes I'd tell him my rent was due or electric bill so I would get a script so I could sell a few. * * * I was addicted to them but I also was in pain so I did or said whatever to get them. He then started to fall in love with me so I used that as well[.] * * * He always tried to sleep with me all the time he would bribe me with more meds or stronger meds but no matter how hard he tried I was a much smarter hustler than him[.]" (St. Ex. 9 at 2-4)
- "When I needed a script and there was absolutely no way he could raise my meds so I could fill the script[.] he would fill Xanax in my friend's name * * * and * * * that's how I'd still get them early." (St. Ex. 9 at 7)
- "When the medical board came he would always come over that night so we could fix dates on my chart and to get our story straight."

(St. Ex. 9 at 9-10)

9. Dr. Rhinehart discharged Patient 1 in August or September 2010.⁵ He explained that he discharged her because "the medications just got overwhelming, and she was constantly calling needing refills and this or that. And was noncompliant." (Tr. at 58, 61-62, 66)

Patient 2

10. Patient 2 is a female friend of Patient 1. She has known Patient 1 and her family for many years. (Tr. at 36, 74, 95)

11. On March 2, 2010, Dr. Rhinehart called in a prescription for Xanax, in the name of Patient 2. The prescription as written and issued by the pharmacist was: Xanax, 2 mg, 20 tablets, with *one tablet* to be taken three times a day as needed. (Tr. at 36-37, 39-40; St. Ex. 13 at 4-5)

⁵It is noted that Patient 1's medical chart only reflects treatment until April 19, 2010; however, the Board received that medical record from Dr. Rhinehart by June 18, 2010. Dr. Rhinehart and Patient 1 both testified that he provided medical treatment to her beyond April 2010. (Tr. at 58, 61-62, 66; St. Ex. 4 at 2)

12. Dr. Rhinehart created a medical record of the March 2, 2010 event.⁶ (Tr. at 39, 41; St. Ex. 6)
That record, under Patient 2's name, states:

-- Had spoke [with] pt previously and she has no regular family physician – I agreed to take her on as patient and asked her to schedule an initial appt + she agreed.

-- She phoned today + c/o anxiety due to breaking up [with] boyfriend[,] anxious, had to relax, trouble [with] sleeping past week or so.

-- Told her I would phone in a few acute nerve pills but she must schedule f/u appt + likely will require an antidepressant.

-- Xanax 2 mg ¼ - ½ pill tid prn anxiety #20/ Ø RF.

-- Call office for appt next 1-2 wks.

(St. Ex. 6) Nothing else is contained Dr. Rhinehart's medical record for Patient 2.

13. Patient 2 testified that she had briefly met Dr. Rhinehart on one occasion. However, Patient 2 testified that she has never been a patient of Dr. Rhinehart, that she has never received medical treatment from him, and that she has never been prescribed a medication by him. She denied calling Dr. Rhinehart or complaining to him that she had anxiety. Moreover, Patient 2 stated that she was not present when Dr. Rhinehart called in the Xanax prescription, and she did not agree to an office visit with him. Patient 2 also stated that she did not pick up the Xanax prescription, and she and Patient 1 never exchanged medications. Furthermore, she stated that she did not consume any of the Xanax prescribed in her name. She stated that she was unaware of the March 2, 2010 Xanax prescription until a Board investigator visited her home. After that visit, Patient 2 broke off her friendship with Patient 1 and her family. (Tr. at 36, 74, 96-100, 102)
14. According to Patient 1, she asked Dr. Rhinehart for a new prescription of Xanax because she had over-consumed the prior prescription, but Dr. Rhinehart would not give her another Xanax prescription at that time. She stated that she then begged him to issue a Xanax prescription in Patient 2's name. She testified that she had called and asked Patient 2 "if she would go to the pharmacy with me, and if I could have Xanax called in her name because I was out and couldn't fill them in mine." Patient 1 also stated that she shared the Xanax with Patient 2. Additionally, Patient 1 testified that Dr. Rhinehart knew that the Xanax prescription issued to Patient 2 would be consumed in part by Patient 1. (Tr. at 73-73, 85, 89-90)
15. Dr. Rhinehart testified that, on the evening of March 2, 2010, he spoke with Patient 2 on the telephone while at his home, and Patient 2 requested a prescription for Xanax because she

⁶The State argues that this record was created after the Board had served a subpoena *duces tecum* for Dr. Rhinehart's medical records, and that this record is a fabrication to "cover up" the fact that Dr. Rhinehart had written the Xanax prescription in the name of Patient 2, knowing that it would be consumed by Patient 1. (Tr. at 165-168)

had broken up with her boyfriend. He stated that he knew Patient 2 was a friend of Patient 1. Additionally, he stated that Patients 1 and 2 were together at the time of the telephone call, and that he spoke with both of them. He stated that he had met Patient 2 prior to the call. However, Dr. Rhinehart acknowledged that he had not examined Patient 2, or obtained a full medical history. He stated that she had told him that she had taken another person's Xanax in the past and that had worked well. He further stated that he had agreed to issue a short-supply prescription for Xanax to Patient 2 if she agreed to follow-up with him at his office in the following week. He stated that he prescribed Xanax, 2 milligrams, 20 tablets, to take *one-half tablet to one tablet* three times a day. (Tr. at 36-38, 54, 128-131)

When asked why he had issued this prescription, Dr. Rhinehart stated that he does not know why, but he was probably manipulated by Patients 1 and 2. Dr. Rhinehart denies that he ever prescribed a medication intended for Patient 1 in the name of Patient 2 or a different patient. Dr. Rhinehart acknowledged that, less than a week before issuing the Xanax prescription in Patient 2's name, Patient 1 had asked for a Xanax prescription and he had refused to provide one. (Tr. at 35-36, 42, 127-128)

16. The progress notes in Patient 1's medical record and pharmacy records reflect the following Xanax prescriptions written by Dr. Rhinehart for Patient 1 around that same time period:

2/13/10: Xanax 1 mg, 20 tablets, one tablet to be taken twice a day and two tablets to be taken at bedtime, no refill (5-day supply)
2/17/10: Xanax 1 mg, 9 tablets, one tablet to be taken three times a day, no refill (3-day supply)
2/22/10: Xanax 1 mg, 20 tablets, two tablets to be taken three times a day, no refill (3.25-day supply)
2/26/10: Xanax 2 mg, 3 tablets, 1 tablet to be taken three times a day [illegible] (one-day supply)
2/27/10: Xanax 2 mg, 9 tablets, 1 tablet to be taken three times a day, no refill (3-day supply)
3/1/10: Xanax 2 mg, 12 tablets, 1 tablet to be taken three to four times a day, no refill (3-4 day supply)
3/3/10: Xanax 2 mg, 15 tablets, 1 tablet to be taken three to four times a day, no refill (3.75-5 day supply)

(St. Ex. 5 at 38-39; St. Ex. 12 at 7, 56-57)

17. As noted previously, the Board issued a subpoena *duces tecum* to Dr. Rhinehart. The April 21, 2010, the Board sought Patient 2's medical records, among other things. The Board required a response by May 12, 2010. On May 6, 2010, Dr. Rhinehart or his office made an inquiry in the Ohio Automated Rx Reporting System [OARRS] of Patient 2's prescription history. On May 11, 2010, Dr. Rhinehart provided his medical record for Patient 2, which contains only the single-page progress note summarized earlier. (St. Ex. 3; St. Ex. 16 at 3, 4)

Patient 3

18. Patient 3 is a female born in 1967. She first was treated by Dr. Rhinehart in December 2003 while he was working at Circleville Medical Associates. She does not recall that specific office visit because she was ill with pneumonia that day. Patient 3 did recall her follow-up visit with Dr. Rhinehart in January 2004. (St. Ex. 7B at 6, 18; Tr. at 16, 20, 105-106)
19. Dr. Rhinehart and Patient 3 both testified that, after Patient 3's office visit in January 2004, they spoke in his office parking lot and she gave him her telephone number. Dr. Rhinehart called her, and they began dating. Later, they lived together between approximately September 2005 and April 2007. (Tr. at 25-26, 106-107, 111, 133-134)
20. While they were dating and living together, Dr. Rhinehart prescribed and gave Patient 3 samples of various medications for depression/anxiety and difficulty sleeping. He explained that he had tried a variety of medications because she was not responsive to many medications. Dr. Rhinehart stated that, while they were dating, Patient 3 did not visit Dr. Rhinehart at his office; she saw him at his residence. Dr. Rhinehart acknowledged that Patient 3's chart at Circleville Medical Associates does not contain any notes of his prescriptions to Patient 3. (St. Ex. 15 at 8, 9, 11; Tr. at 21-22, 26-28, 53, 108)
21. Similarly, Patient 3 stated that Dr. Rhinehart prescribed medications to her during the time that they were dating and living together, and that she did not have any office appointments with him after they began dating. Moreover, Patient 3 testified that she was not going to any other doctors after they began dating because "there was no need to." In addition, Patient 3 stated that, at times, Dr. Rhinehart would take her blood pressure, but he did not conduct physical examinations prior to prescribing medications to her. (Tr. at 107-109)
22. Dr. Rhinehart and Patient 3 both stated that he stopped prescribing anxiolytics and sleep medications to her when their personal relationship ended in April 2007. (Tr. at 112-113)
23. Dr. Rhinehart admitted that he had sexual contact (namely, sexual intercourse) with Patient 3 during the time period that he provided medical treatment to her. (St. Ex. 15 at 6-8, 12-13)
24. Furthermore, Dr. Rhinehart testified that he had not realized that a sexual relationship with Patient 3 was improper. He explained that he had a dating relationship with Patient 3, which included a sexual relationship. He distinguished his relationship with Patient 3 from one in which the patient is just a sex partner. Additionally, Dr. Rhinehart stated that, during medical school and residency, he was told that it was not illegal to treat friends and family, although it was highly frowned upon. (Tr. at 52-53, 134-137) Additionally, he testified as follows:

I mean, I had no idea it was -- when it said it was illegal to see someone you're dating, and she was a patient of Dr. Shang's, so I didn't look at it as well, I'm having sex with a patient. I helped out some on the side, but wasn't thinking of her as a patient.

(Tr. at 54)

25. Dr. Rhinehart's medical record for Patient 3 from his Brookhill practice includes only a progress note from one visit on March 19, 2008, and a copy of the prescription issued on that same date. Dr. Rhinehart stated that he had consulted with Patient 3 that day and he had prescribed her medicine. (St. Ex. 7A; St. Ex. 15 at 10; Tr. at 17-18)

Patient 4

26. Patient 4 is a sibling of Dr. Rhinehart. Patient 4 suffers from diabetes, hypertension, CVA, depression and anxiety. (Tr. at 43-44)
27. Dr. Rhinehart began treating Patient 4 in 2008, after his sibling was hospitalized and had been treated with Ativan.⁷ Dr. Rhinehart stated that, for approximately two years, he has treated Patient 4, and he has repeatedly prescribed Ativan to Patient 4. Also, Dr. Rhinehart stated that Patient 4 has only had three or four office visits with Dr. Rhinehart. Dr. Rhinehart continues to treat Patient 4. (St. Ex. 15 at 24-25; Tr. at 43-45, 55)
28. Dr. Rhinehart acknowledged that he did not prescribe Ativan to Patient 4 for emergent reasons. He explained that Patient 4 will only see him because his sibling does not trust other physicians. He further stated that he was not aware that it was illegal to prescribe controlled substances to a family member under non-emergent circumstances. (Tr. at 54, 55, 137)

Patient 5

29. Patient 5 is a female born in 1992. She first saw Dr. Rhinehart in March 2008 because of anxiety and difficulty sleeping. She was 15 years old at that first visit. (St. Ex. 8 at 21)
30. A few months later, Patient 5's mother reported that Patient 5 had been to the emergency room because of a heroin addiction. (St. Ex. 8 at 15)
31. At Patient 5's next visit with Dr. Rhinehart (on September 12, 2008), his office personnel noted "out pt treatment – drug (heroin [sic]) abuser – withdrawals. Dr. Rhinehart's progress note included the following:

-- Just got out of rehab (voluntary) ran away + been on streets [primarily at] Columbus again [for the] past 2 wks.
-- Does IV drugs (heroin) 5-6 balloons [per] day which she states is a high dose ([1] balloon lasts all day = [1] dose).
-- She also [sees] a PO who doesn't feel she should be in school at present.
-- But talking [with] mother, she doesn't have any official legal charges on her such as being [a] runaway, drug abuse, or truancy. **She wants to get Rxed [with] methadone or suboxone to try + tame down her habit + so mom can keep her at home as she's a daily threat to run away from home. Did discuss [with] her + mother that I don't have a rehab license to prescribe**

⁷Ativan is an anxiety medication and a controlled substance. (St. Ex. 15 at 25; Tr. at 44-45)

addict type doses of methadone but only low dose associated [with] Rx of back + chronic pain + not able to prescribe suboxone at all.

-- I did discuss [with] mom that I can supply her [with] names of rehab physicians so she can go seek treatment.

-- **Until she's able to find rehab physicians methadone 10 mg, [to take 2 tablets three times a day] #180/ Ø RF.**

(St. Ex. 8 at 16, emphasis added; See, also, St. Ex. 14 at 2, 4-5; Tr. at 48-50)

32. Dr. Rhinehart did not prescribe methadone to Patient 5 after that visit. Moreover, he is not aware whether she obtained chemical dependency/abuse treatment after he had prescribed the methadone in September 2008.⁸ (Tr. at 138-139; St. Ex. 8 at 13, 14, 17, 18)
33. In interrogatory responses provided to the Board in April 2010, Dr. Rhinehart acknowledged that he had prescribed a narcotic drug to a narcotic-dependent person for the purpose of maintenance or detoxification treatment. Although he did not identify the specific patient, his response is remarkably similar to Patient 5's situation. He explained:

Yes, I had a high school Junior heading to rehab, she had been on a heroin binge + using regularly for some months[.] I gave her a script (given to her mother) for methadone[.] I believe for a two week time period until she got into her rehab program.

(St. Ex. 15 at 30)

34. Moreover, Dr. Rhinehart testified at hearing that he had prescribed the methadone for Patient 5's withdrawal symptoms, to "keep her from going back to the drug, cover her for that month until she gets in with a specialist and get her into rehab." Dr. Rhinehart acknowledged that he does not have a "rehab license," which would allow him to prescribe Methadone for rehabilitation purposes. (Tr. at 49-50, 138; St. Ex. 15 at 33) Furthermore, Dr. Rhinehart testified as follows regarding the Methadone prescription to Patient 5:

And she does have chronic low-back pain;⁹ not that that's initially what I prescribed it for. She had to get into rehab, and the earliest date to get in was for a one-month time period.

⁸Patient 5's medical record reflects that, when she presented next at Dr. Rhinehart's office on October 13, 2008, rehabilitation/treatment was not noted. Rather, Patient 5 requested a follow-up and a neurology referral because she had been hospitalized for viral meningitis and pseudo tumor cerebri earlier in October 2008. Also, documents related to that hospitalization do not reflect any rehabilitation/treatment at any time in the latter portion of 2008. (St. Ex. 8 at 18, 79-81) However, Patient 5's medical record reflects that Dr. Rhinehart was informed in January 2009 that she planned to go to rehab or treatment, and that in July 2009 she had been "released" from a treatment facility. (St. Ex. 8 at 14, 17)

⁹Patient 5's medical record reflects that her back pain began in October 2008, following the viral meningitis and pseudo tumor cerebri. Back pain was not noted in Patient 5's medical record as being a complaint/condition prior to Dr. Rhinehart prescribing Methadone to Patient 5 in September 2008. (St. Ex. 8 at 15, 16, 21, 63, 69, 79, 95, 103, 123)

I thought by prescribing it as a back pain lower dose – because I know a hundred milligrams and higher per day is like a rehab-type dose, so I tried to keep it at a low one.

Her mom's crying on my shoulder, and they are both telling me well, if she doesn't get something, this girl is going to be dead. I'm too nice.

The mother agreed to control the medication at home, give it as dispensed so the patient would not have it in her possession to take as an overdose potential.

And just my good nature got the best of me. And I'm in medicine to help people, not to make money and become rich. I couldn't even afford counsel for today. So I'm definitely not in a money making situation.

And I agreed to give her a one-time prescription for the Methadone until she got into the rehab facility.

(Tr. at 56-57)

Other Information

35. In his interrogatory responses, Dr. Rhinehart denied that he ever administered, prescribed and/or dispensed any controlled substance when the controlled substance, its amount or its frequency was not clinically indicated. He also stated that he had not administered, prescribed and/or dispensed any controlled substance to a person who was not a patient of his medical practice and for whom the controlled substance was not clinically indicated. (St. Ex. 15 at 22-23)
36. Dr. Rhinehart provided his records for Patients 2 and 4 to the Board in mid-May 2010. His records for Patients 1, 3 and 5 were obtained by the Board before mid-June 2010. (St. Exs. 3, 4)

STATUTES AND ADMINISTRATIVE RULES

1. 21 Code of Federal Regulations §1306.07 (Administering or Dispensing of Narcotic Drugs) states:
 - (a) A practitioner may administer or dispense directly (but not prescribe) a narcotic drug listed in any schedule to a narcotic dependent person for the purpose of maintenance or detoxification treatment, if the practitioner meets both of the following conditions:
 - (1) The practitioner is separately registered with DEA as a narcotic treatment program.
 - (2) The practitioner is in compliance with DEA regulations regarding treatment qualifications, security, records, and unsupervised use of the drugs pursuant to the Act.

2. Section 2925.23, Ohio Revised Code (Illegal Processing of Drug Documents) states in relevant part:
 - (A) No person shall knowingly make a false statement in any prescription, order, report, or record required by Chapter 3719., or 4729. of the Revised Code.
 - (B) No person shall intentionally make, utter, or sell, or knowingly possess any of the following that is a false or forged:
 - (1) Prescription;
 - (2) Uncompleted preprinted prescription blank used for writing a prescription;
 - (3) Official written order;
 - (4) License for a terminal distributor of dangerous drugs as required in section 4729.60 of the Revised Code;
 - (5) Registration certificate for a wholesale distributor of dangerous drugs as required in section 4729.60 of the Revised Code.
3. Section 2913.31, Ohio Revised Code (Forgery) states in pertinent part:
 - (A) No person, with purpose to defraud, or knowing that the person is facilitating a fraud, shall do any of the following:
 - (1) Forge any writing of another without the other person's authority;
 - (2) Forge any writing so that it purports to be genuine when it actually is spurious, or to be the act of another who did not authorize that act, or to have been executed at a time or place or with terms different from what in fact was the case, or to be a copy of an original when no such original existed;
 - (3) Utter, or possess with purpose to utter, any writing that the person knows to have been forged.
4. Section 2921.12, Ohio Revised Code (Tampering with Evidence) states in pertinent part:
 - (A) No person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall do any of the following:
 - (1) Alter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation;

- (2) Make, present, or use any record, document, or thing, knowing it to be false and with purpose to mislead a public official who is or may be engaged in such proceeding or investigation, or with purpose to corrupt the outcome of any such proceeding or investigation.

5. Section 2921.13, Ohio Revised Code (Falsification) states in pertinent part:

- (A) No person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, when any of the following applies:

* * *

- (3) The statement is made with purpose to mislead a public official in performing the public official's official function.

* * *

- (F)(1) Whoever violates division (A)(1), (2), (3) * * * of this section is guilty of falsification, a misdemeanor of the first degree.

6. Rule 4731-11-08, Ohio Administrative Code (Utilizing Controlled Substances for Self and Family Members) states in pertinent part:

- (B) Accepted and prevailing standards of care require that a physician maintain detached professional judgment when utilizing controlled substances in the treatment of family members. A physician shall utilize controlled substances when treating a family member only in an emergency situation which shall be documented in the patient's record.

- (C) For purposes of this rule, "family member" means a spouse, parent, child, sibling * * *.

7. Rule 4731-26-02, Ohio Administrative Code (Prohibitions) states in pertinent part:

Sexual behavior between a licensee and a patient is never diagnostic or therapeutic.

- (A) A licensee shall not engage in sexual misconduct with a patient, key third party, or chaperone.

8. Pursuant to Rule 4731-26-01(G)(3), Ohio Administrative Code, "sexual misconduct" includes "[s]exual conduct between a licensee and patient whether or not initiated by, consented to, or

participated in by a patient, and any conduct with a patient that is sexual or may be reasonably interpreted as sexual, including but not limited to, the following: (a) Sexual intercourse * * *.”

FINDINGS OF FACT

1. Stephen Nels Rhinehart, M.D., undertook and/or purportedly undertook the care of Patients 1 through 5, as identified on the patient key.

- a. From January 2009 to April 2010, Dr. Rhinehart undertook the care of Patient 1. At the request of Patient 1, on March 2, 2010, Dr. Rhinehart prescribed Xanax, a Schedule IV Controlled Substance, in the name of Patient 2, a friend of Patient 1. Dr. Rhinehart knew that Patient 1 would be acquiring and utilizing the Xanax.

The record is clear that Dr. Rhinehart prescribed Xanax in the name of Patient 2. Conflicting evidence was presented as to whether Dr. Rhinehart knew that Patient 1 would utilize that Xanax. *If* Dr. Rhinehart’s testimony regarding the March 2, 2010 events were believed, at a minimum he should have known that Patient 1 would utilize the Xanax because Patient 1 had asked him for another prescription of Xanax and both patients were supposedly together at the time of the telephone call. However, Dr. Rhinehart’s testimony that he legitimately prescribed Xanax to Patient 2 on March 2, 2010 is not credible. The preponderance of the evidence does not support his version of the events – that, unexpectedly, Patient 2 called his residence and asked specifically for a Xanax prescription, and that Dr. Rhinehart prescribed 20 pills of Xanax, in 2 mg dosage, to someone he had not examined or treated and to someone who had provided virtually no medical history. Moreover, it is noted that Patient 1’s Xanax prescriptions were similar in dosage to what Dr. Rhinehart prescribed on March 2, 2010.

If Patient 1’s testimony is believed, Dr. Rhinehart knew that Patient 1 would utilize the Xanax. If Patient 2’s testimony is believed, Dr. Rhinehart knew that Patient 1 would utilize the Xanax. On consideration of the witnesses’ credibility and the documentary evidence, the preponderance of the evidence demonstrates that Dr. Rhinehart knew, at the time he prescribed Xanax in the name of Patient 2, that Patient 1 would acquire and utilize the Xanax.

- b. Patient 2 has never been treated by Dr. Rhinehart, nor prescribed controlled substances by Dr. Rhinehart for her own use. Further, Patient 2 never received the March 2, 2010 prescription for Xanax that Dr. Rhinehart purportedly wrote for Patient 2.

This finding is supported by Finding of Fact 1(a) and Patient 2’s testimony. Dr. Rhinehart’s testimony that Patient 2 called him, that she asked for a Xanax

prescription for her own anxiety, and that he prescribed Xanax for her was not credible.

- c. In response to an investigative subpoena *duces tecum* served on Dr. Rhinehart by the Board, he provided a medical record for Patient 2, despite the fact that no bona fide physician-patient relationship ever existed between Dr. Rhinehart and Patient 2.

This finding is supported by Findings of Fact 1(a) and 1(b), and Patient 2's testimony. Dr. Rhinehart's testimony that Patient 2 called him, that she asked for a Xanax prescription for her own anxiety, and that he prescribed Xanax for her was not credible.

- d. From December 2003 to March 2008, Dr. Rhinehart undertook the care of Patient 3. Despite his physician-patient relationship with Patient 3, between 2004 and 2007, Dr. Rhinehart had sexual contact with Patient 3, including sexual intercourse.
 - e. From 2008 to 2010, Dr. Rhinehart undertook the care of Patient 4, who is also a family member. Under circumstances that were not emergent, between 2008 and 2010, Dr. Rhinehart prescribed Ativan, a Schedule IV Controlled Substance, to Patient 4 to keep that patient's anxiety under control.
2. From March 2008 to April 2010, Dr. Rhinehart undertook the care of Patient 5. On September 12, 2008, he prescribed 180 pills of Methadone 10 mg to Patient 5 for opioid withdrawal while the patient was awaiting admittance into a drug rehabilitation program, despite the fact that he is not separately registered with the Drug Enforcement Administration as a narcotic treatment program.

CONCLUSIONS OF LAW

1. The acts, conduct, and/or omissions of Stephen Nels Rhinehart, M.D., as set forth in Findings of Fact 1(a), (b) and (c) in relation to Patients 1 and 2, individually and/or collectively constitute: "[s]elling, giving, furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes * * *," as set forth in Section 4731.22(B)(3), Ohio Revised Code.
2. The evidence is insufficient to establish that the acts, conduct, and/or omissions of Dr. Rhinehart, as set forth in Findings of Fact 1(a), (b) and (c) in relation to Patients 1 and 2, individually and/or collectively constitute: "* * * a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug," as set forth in Section 4731.22(B)(3), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents.

A violation of this portion of subsection (B)(3) requires evidence of a conviction or intervention in lieu of conviction of a crime. There is no evidence of a conviction or intervention in lieu of conviction of any federal or state law regulating the possession, distribution, or use of any drug relative to Patients 1 and 2.

3. The evidence is insufficient to establish that the acts, conduct, and/or omissions of Dr. Rhinehart, as set forth in Findings of Fact 1(d), and (e) in relation to Patients 3 and 4, individually and/or collectively constitute: “[s]elling, giving, furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes, or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug, as set forth in Section 4731.22(B)(3), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents.
4. The acts, conduct, and/or omissions of Dr. Rhinehart, as set forth in Finding of Fact 2 in relation to Patient 5, individually and/or collectively constitute: “[s]elling, giving, furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes,” as set forth in Section 4731.22(B)(3), Ohio Revised Code.

The evidence establishes that Dr. Rhinehart prescribed Methadone to Patient 5 for the purpose of maintenance or detoxification treatment, contrary to 21 CRF §1306.07, Administering or Dispensing of Narcotic Drugs. Thus, it is concluded that Dr. Rhinehart prescribed a drug to Patient 5 “for other than legal * * * therapeutic purposes.”

5. The evidence is insufficient to establish that the acts, conduct, and/or omissions of Dr. Rhinehart, as set forth in Finding of Fact 2 in relation to Patient 5, individually and/or collectively constitute: “* * * a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,” as set forth in Section 4731.22(B)(3), Ohio Revised Code, to wit: 21 CRF §1306.07, Administering or Dispensing of Narcotic Drugs.

A violation of this portion of subsection (B)(3) requires evidence of a conviction or intervention in lieu of conviction of a crime. There is no evidence of a conviction or intervention in lieu of conviction of any federal or state law regulating the possession, distribution, or use of any drug relative to Patient 5.

6. The acts, conduct, and/or omissions of Dr. Rhinehart, as set forth in Finding of Fact 1(a) – 1(c) in relation to Patients 1 and 2, 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 of practice or certificate of registration issued by the board,” as set forth in Section 4731.22(B)(5), Ohio Revised Code.
7. The evidence is insufficient to establish that the acts, conduct, and/or omissions of Dr. Rhinehart, as set forth in Findings of Fact 1(d), and (e) in relation to Patient 3 and 4, 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 of practice or certificate of registration issued by the board,” as set forth in Section 4731.22(B)(5), Ohio Revised Code.

8. The acts, conduct, and/or omissions of Dr. Rhinehart, as set forth in Finding of Fact 1(a) – 1(c) in relation to Patients 1 and 2, individually and/or collectively constitute: “[c]ommission of an act constituting a felony in this state, regardless of the jurisdiction in which the act was committed,” as set forth in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents.
9. The evidence is insufficient to establish that the acts, conduct, and/or omissions of Dr. Rhinehart, as set forth in Findings of Fact 1(d), and (e) in relation to Patients 3 and 4, individually and/or collectively constitute: “[c]ommission of an act constituting a felony in this state, regardless of the jurisdiction in which the act was committed,” as set forth in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents.
10. The acts, conduct, and/or omissions of Dr. Rhinehart, as set forth in Finding of Fact 1(a) – 1(c) in relation to Patients 1 and 2, individually and/or collectively constitute: “[c]ommission of an act constituting a felony in this state, regardless of the jurisdiction in which the act was committed,” as set forth in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2913.31 Ohio Revised Code, Forgery.
11. The evidence is insufficient to establish that the acts, conduct, and/or omissions of Dr. Rhinehart, as set forth in Findings of Fact 1(d), and (e) in relation to Patients 3 and 4, individually and/or collectively constitute: “[c]ommission of an act constituting a felony in this state, regardless of the jurisdiction in which the act was committed,” as set forth in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2913.31 Ohio Revised Code, Forgery.
12. The acts, conduct, and/or omissions of Dr. Rhinehart, as set forth in Finding of Fact 1(c) in relation to Patient 2, individually and/or collectively constitute: “[c]ommission of an act constituting a felony in this state, regardless of the jurisdiction in which the act was committed,” as set forth in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2921.12, Ohio Revised Code, Tampering with Evidence.
13. The evidence is insufficient to establish that the acts, conduct, and/or omissions of Dr. Rhinehart, as set forth in Findings of Fact 1(a), (b), (d), and (e) in relation to Patients 1 through 4, individually and/or collectively constitute: “[c]ommission of an act constituting a felony in this state, regardless of the jurisdiction in which the act was committed,” as set forth in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2921.12, Ohio Revised Code, Tampering with Evidence.
14. The acts, conduct, and/or omissions of Dr. Rhinehart, as set forth in Finding of Fact 1(c) in relation to Patient 2, individually and/or collectively constitute: “[c]ommission of an act

constituting a misdemeanor in this state, regardless of the jurisdiction in which the act was committed,” as set forth in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 2921.13, Ohio Revised Code, Falsification.

15. The evidence is insufficient to establish that the acts, conduct, and/or omissions of Dr. Rhinehart, as set forth in Findings of Fact 1(a), (b), (d), and (e) in relation to Patients 1 through 4, individually and/or collectively constitute: “[c]ommission of an act constituting a misdemeanor in this state, regardless of the jurisdiction in which the act was committed,” as set forth in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 2921.13, Ohio Revised Code, Falsification.
16. The acts, conduct, and/or omissions of Dr. Rhinehart, as set forth in Finding of Fact 1(e) in relation to Patient 4, individually and/or collectively constitute: “[v]iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provisions of [Chapter 4731] or any rule promulgated by the board,” as set forth in Section 4731.22(B)(20), Ohio Revised Code, to wit: 4731-11-08, Ohio Administrative Code, Utilizing Controlled Substances for Self and Family Members.
17. The evidence is insufficient to establish that the acts, conduct, and/or omissions of Dr. Rhinehart, as set forth in Findings of Fact 1(a), (b), (c) and (d) in relation to Patients 1 through 3, individually and/or collectively constitute: “[v]iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provisions of [Chapter 4731] or any rule promulgated by the board,” as set forth in Section 4731.22(B)(20), Ohio Revised Code, to wit: 4731-11-08, Ohio Administrative Code, Utilizing Controlled Substances for Self and Family Members.
18. The acts, conduct, and/or omissions of Dr. Rhinehart, as set forth in Finding of Fact 1(d) in relation to Patient 3, individually and/or collectively constitute: “[v]iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provisions of [Chapter 4731] or any rule promulgated by the board,” as set forth in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-26-02, Ohio Administrative Code, Prohibitions.
19. Pursuant to Rule 4731-26-03(A)(1), Ohio Administrative Code, a violation of Rule 4731-26-02, Ohio Administrative Code (Prohibitions) also violates Section 4731.22(B)(6), Ohio Revised Code, “[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established.”
20. The evidence is insufficient to establish that the acts, conduct, and/or omissions of Dr. Rhinehart, as set forth in Findings of Fact 1(a), (b), (c) and (e) in relation to Patients 1, 2 and 4, individually and/or collectively constitute: “[v]iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provisions of [Chapter 4731] or any rule promulgated by the board,” as set forth in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-26-02, Ohio Administrative Code, Prohibitions.

Rationale for the Proposed Order

Dr. Rhinehart ignored or skirted many legal and medical requirements in his care and treatment of multiple patients. The record is replete with evidence that Dr. Rhinehart's personal relationships with Patients 1 and 3 clouded his medical judgment. For instance, he prescribed Xanax in Patient 2's name knowing that Patient 1 would utilize it. Also, he provided a medical record for Patient 2 to the Board knowing that she had not been one of his patients. In addition, he treated Patient 3 for years while dating/living with her, without conducting thorough physical examinations and without keeping medical records of such treatment. Moreover, he continually prescribed controlled substance medications to Patient 4 despite his familial relationship with that patient. With regard to Patient 5, he ignored limitations on providing Methadone to patients even though he was familiar with them. Dr. Rhinehart's professional knowledge and judgment are questionable. Although further education would improve Dr. Rhinehart's knowledge base, his professional judgment and decision-making cannot be trusted. He is no longer deserving of the privilege to practice medicine and surgery in Ohio, and in the interest of public safety, a permanent revocation is recommended.

PROPOSED ORDER

It is hereby ORDERED, that:

The certificate of Stephen Nels Rhinehart, M.D., to practice medicine and surgery in the state of Ohio shall be PERMANENTLY REVOKED.

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

(614) 466-3934
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EXCERPT FROM THE DRAFT MINUTES OF JANUARY 12, 2011

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

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

Dr. Suppan asked whether each member of the Board had received, read and considered the hearing records; the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: Anthony Joseph DiCello, M.T.; Bruce T. Faure, M.D.; Modesto Fontanez, M.D.; Kenneth James Fox, P.A., Josh Utah Hill, P.A.; Sridhar K. Iyer, M.D.; Parag Patel, M.D.; Stephen Nels Rhinehart, M.D.; and Jose Vargas, M.D. A roll call was taken:

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

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

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

Dr. Suppan noted that, in accordance with the provision in section 4731.22(F)(2), Ohio Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member. Dr. Suppan stated that all Board

members may vote on the matters of Kenneth James Fox, P.A., and Jose Vargas, M.D., as those cases are not disciplinary in nature and only involves the respondents' qualifications for licensure.

Dr. Suppan reminded all parties that no oral motions may be made during these proceedings.

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

.....
STEPHEN NELS RHINEHART, M.D., Case No. 10-CRF-072
.....

Dr. Steinbergh moved to approve and confirm Ms. Petrucci's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Stephen Nels Rhinehart, M.D. Mr. Hairston seconded the motion.

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

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

The motion carried.

State Medical Board of Ohio

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



Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

June 9, 2010

Case number: 10-CRF- 072

Stephen Nels Rhinehart, M.D.
581 Lancaster Pike
Circleville, OH 43113

Dear Doctor Rhinehart:

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) You undertook and/or purportedly undertook the care of the individuals identified as Patients 1 through 5, as identified in the attached Patient Key. (Patient Key is confidential and not subject to public disclosure).
 - (a) From in or about January 2009, to in or about April 2010, you undertook the care of Patient 1. At the request of Patient 1, on or about January 2, 2010, you prescribed Xanax, a Schedule IV Controlled Substance, in the name of Patient 2, a friend of Patient 1, knowing that Patient 1 would be acquiring and utilizing the controlled substances.
 - (b) Patient 2 has never been treated by you, nor prescribed controlled substances by you. Further, Patient 2 never received the January 2, 2010 prescription for Xanax you purportedly wrote for Patient 2.
 - (c) In response to an investigative subpoena duces tecum served upon you by the Board, you provided a medical record for Patient 2, despite that fact that no bona fide physician-patient relationship ever existed between you and Patient 2.
 - (d) From in or about December 2003, to in or about March 2008, you undertook the care of Patient 3. Despite your doctor-patient relationship

Mailed 6-10-10

with Patient 3, between in or about 2004, to in or about Spring 2008, you had sexual contact with Patient 3, including sexual intercourse.

- (e) From in or about March 2008, to in or about May 2010, you undertook the care of Patient 4, who is also a family member. Under circumstances that were not emergent, between in or about May 2008, to in or about March 2010, you prescribed Ativan, a Schedule IV Controlled Substance, to Patient 4 to keep his anxiety under control.
- (2) From in or about March 2008, to in or about April 2010, you undertook the care of Patient 5. On or about September 12, 2009, you prescribed 180 pills of 10 mg Methadone to Patient 5 for opioid withdrawal while the patient was awaiting admittance into a drug rehabilitation program, despite the fact that you are not separately registered with the Drug Enforcement Administration as a narcotic treatment program.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute “[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,” as those clauses are used in Section 4731.22(B)(3), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents.

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute “[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,” as those clauses are used in Section 4731.22(B)(3), Ohio Revised Code, to wit: 21 CFR § 1306.07 (2009), Administering or Dispensing of Narcotic Drugs.

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

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute “[c]ommission of an act that constitutes a

felony in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2913.31, Ohio Revised Code, Forgery.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2921.12, Ohio Revised Code, Tampering with Evidence.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute “[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 2921.13, Ohio Revised Code, Falsification.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-08, Ohio Administrative Code, Utilizing Controlled Substances for Self and Family Members.

Further, your acts, conduct, and/or omissions that occurred on or after November 30, 2006, as alleged in paragraph (1) above, individually and/or collectively, constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-26-02, Ohio Administrative Code, Prohibitions. Pursuant to Rule 4731-26-03(A)(1), Ohio Administrative Code, a violation of Rule 4731-26-02, Ohio Administrative Code, also violates Section 4731.22(B)(6), Ohio Revised Code, “[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established.”

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

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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

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

Lance A. Talmage, M.D.
Secretary

LAT/DSZ/flb
Enclosures

CERTIFIED MAIL # 91 7108 2133 3936 3066 6122
RETURN RECEIPT REQUESTED

**IN THE MATTER OF
RHINEHART, STEPHEN
NELS, M.D.**

10-CRF-072

**JUNE 9, 2010 NOTICE OF
OPPORTUNITY FOR
HEARING PATIENT KEY**

**SEALED TO
PROTECT PATIENT
CONFIDENTIALITY AND
MAINTAINED IN CASE
RECORD FILE.**