State Medical Board of Ohio

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

July 9, 2003

Ayman M. Kader, M.D.
10 Foundryville Road
Berwick, PA 18603

Dear Doctor Kader:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 9, 2003, 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 a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage MD

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 7000 0600 0024 5148 4517
RETURN RECEIPT REQUESTED

Third Mailing 10/29/03
Second mailing 8/27/03
Mailed 7/15/03

Second mailing: 830 Weschler Avenue
Erie, PA 16502-1056
CERTIFIED MAIL NO. 7000 0600 0024 5150 9999
RETURN RECEIPT REQUESTED

Third mailing: 830 Weschler Avenue
Erie, PA 16502-1056
CERTIFIED MAIL NO. 7000 0600 0024 5150 9630
RETURN RECEIPT REQUESTED

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 9, 2003, 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 Ayman M. Kader, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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

Lance A. Talmage, M.D.
Secretary

(SEAL)

July 9, 2003
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

AYMAN M. KADER, M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on July 9, 2003.

Upon the Report and Recommendation of R. Gregory Porter, 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 Ayman M. Kader, 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 notification of approval by the Board.

Lance A. Talmage, M.D.
Secretary

(SEAL)

July 9, 2003
Date

STATE MEDICAL BOARD
OF OHIO

2003 MAY 20 P 3:01

REPORT AND RECOMMENDATION
IN THE MATTER OF AYMAN M. KADER, M.D.

The Matter of Ayman M. Kader, M.D., was heard by R. Gregory Porter, Attorney Hearing Examiner for the State Medical Board of Ohio, on May 1, 2003.

INTRODUCTION

I. Basis for Hearing

A. By letter dated February 12, 2003, the State Medical Board of Ohio [Board] notified Ayman M. Kader, M.D., that, pursuant to Section 3719.121(C), Ohio Revised Code, the Board had immediately suspended his certificate to practice medicine and surgery in the State of Ohio. The Board based its action on a report from the Prosecuting Attorney of Tuscarawas County, Ohio, that, on or about February 6, 2003, Dr. Kader had been found guilty by the Tuscarawas County Court of Common Pleas of five felony counts of Trafficking in Drugs, in violation of Section 2925.03, Ohio Revised Code; and five felony counts of Illegal Processing of Drug Documents, in violation of Section 2925.23, Ohio Revised Code. The Board further notified Dr. Kader that continued practice after the suspension would be considered practicing medicine without a certificate in violation of Section 4731.41, Ohio Revised Code.

In addition, the Board notified Dr. Kader that it had proposed to take disciplinary action against his certificate. The Board based its proposed action, in part, on the allegations pertaining to Dr. Kader's felony convictions. The Board further alleged that, on or about May 2, 2002, in the Tuscarawas County Court of Common Pleas, Dr. Kader had been found guilty of misdemeanor Medicaid Fraud in violation of Section 2913.40(B), Ohio Revised Code. Moreover, the Board alleged that, in an application for renewal of his certificate to practice medicine and surgery in Ohio, signed by Dr. Kader on or about May 9, 2002, Dr. Kader failed to apprise the Board of the following:

- A March 2001, Indictment in which Dr. Kader was charged with seventeen counts of Trafficking in Drugs, in violation of Section 2925.03, Ohio Revised Code; seventeen counts of Illegal Processing of Drug Documents, in violation of Section 2925.23, Ohio Revised Code; and one count of Medicaid fraud in violation of Section 2913.40(B), Ohio Revised Code;

- Dr. Kader's May 2, 2002, conviction for misdemeanor Medicaid Fraud; and/or

- An action taken by Twin City Hospital in Dennison, Ohio, against Dr. Kader's clinical privileges.

Moreover, the Board alleged that Dr. Kader's conduct and/or the judicial findings of guilt constitute "'[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony,' as that clause is used in Section 4731.22(B)(9), Ohio Revised Code[;] '[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice,' as that clause is used in Section 4731.22(B)(11), Ohio Revised Code[; and/or] '[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, podiatry, 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."

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

B. By document received by the Board on March 6, 2003, Dr. Kader requested a hearing. (State's Exhibit 1B)

II. Appearances

A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Mark A. Michael, Assistant Attorney General.

B. On behalf of the Respondent: Dr. Kader, having previously been advised of his right to be represented by counsel, appeared on his own behalf. (See Procedural Matters, below.)

EVIDENCE EXAMINED

I. Testimony Heard

Ayman M. Kader, M.D. (See Procedural Matters, below.)

II. Exhibits Examined

A. State's Exhibits 1A through 1G: Procedural exhibits.

B. State's Exhibit 2: Certified copy of Dr. Kader's May 9, 2002, application for renewal of his Ohio certificate.

C. State's Exhibit 3: Certified copies of documents filed in the Tuscarawas County [Ohio] Court of Common Pleas in *State of Ohio v. Ayman M. Kader,* Case No. 2001 CR 03 0087. (Note: The Attorney Hearing Examiner redacted a Social Security number from this document post-hearing.)

D. State's Exhibit 3A: Copy of page 19 of the Indictment included in State's Exhibit 3, which includes the page number that is missing from the larger exhibit.

E. State's Exhibit 4: Certified copy of an April 23, 2003, letter to Board staff from Frederick J. Makowski, Chief Executive Officer, The Twin City Hospital Corporation, Dennison, Ohio.

PROCEDURAL MATTERS

Immediately prior to the hearing in this matter, and during the hearing itself, Dr. Kader informed the Attorney Hearing Examiner of Dr. Kader's belief that his hearing was to take place before medical personnel on the Board. Dr. Kader expressed displeasure when informed that his hearing would instead take place before the Attorney Hearing Examiner, and asserted that he should be able to speak to his fellow physicians on the Board.

The Attorney Hearing Examiner attempted to explain the Board's hearing process to Dr. Kader. The Attorney Hearing Examiner further explained to Dr. Kader that he would have an opportunity to address the Board members in person when the Board considered the Report and Recommendation. Moreover, the Attorney Hearing Examiner explained to Dr. Kader that he had a right to file written objections to the Report and Recommendation.

Furthermore, the Attorney Hearing Examiner informed Dr. Kader that, if he chose to appear before the Board, he would not be permitted to retry the matter, but only to briefly address the issues raised in the Report and Recommendation. Therefore, the Attorney Hearing Examiner explained to Dr. Kader that, if he wanted to present a defense, the hearing would be the time to do so. Nevertheless, Dr. Kader expressed a lack of desire to participate in the Board's hearing process.

Instead, the Attorney Hearing Examiner permitted Dr. Kader to make an opening statement, under oath, at the outset of the hearing. Following his opening statement, Dr. Kader was visibly upset, declined to further participate in the hearing, and left the room. (Note that the State was not given an opportunity to cross-examine Dr. Kader concerning his opening statement.) See Hearing Transcript at pages 4 through 25.

SUMMARY OF THE EVIDENCE

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

1. On March 20, 2001, an Indictment was filed in the Tuscarawas County [Ohio] Court of Common Pleas in *State of Ohio v. Ayman M. Kader,* Case No. 2001 CR 03 0087. In the Indictment, the Tuscarawas County Grand Jury charged Ayman M. Kader, M.D., with seventeen counts of Trafficking in Drugs, in violation of Section 2925.03, Ohio Revised Code; seventeen counts of Illegal Processing of Drug Documents, in violation of Section 2925.23(B), Ohio Revised Code; and one count of Medicaid Fraud, in violation of Section 2913.40(B), Ohio Revised Code. (State's Exhibit [St. Ex.] 3 at 1-19; St. Ex. 3A)

2. On or about April 24, 2002, The Twin City Hospital Corporation in Dennison, Ohio, revoked Dr. Kader's clinical privileges. By letter dated April 23, 2003, Frederick J. Makowski, Chief Executive Officer, The Twin City Hospital Corporation, informed the Board that Dr. Kader's clinical privileges at Twin City Hospital had been revoked because Dr. Kader had failed to adhere to commonly followed standards in the care of a patient, had failed to satisfy the Medical Executive Committee's requirement of a process to show remedial education and monitoring, and had failed to respond to the Medical Executive Committee's requirement of documentation to that effect. (St. Ex. 4)

3. In April 2002, a jury trial was held in *State v. Kader.* At the close of the evidence, the State moved for and was granted a dismissal of Count Seven, Trafficking in Drugs; and Count Twenty-four, Illegal Processing of Drug Documents. Moreover, the State moved for and was granted an amendment to Count Thirty-five, Medicaid Fraud, amending that count from a felony of the fifth degree to a misdemeanor of the first degree. (St. Ex. 27-28)

   Following deliberations, the jury reached a verdict only with regard to Amended Count Thirty-five, Medicaid Fraud, and found Dr. Kader guilty of that charge. The jury was unable to reach a verdict with regard to any of the other counts. On May 2, 2002, the court accepted the jury's verdict of guilty on the Medicaid Fraud conviction and scheduled the matter for sentencing. The court further ordered a mistrial concerning the other counts. (St. Ex. 3 at 27-29)

4. On May 9, 2002, Dr. Kader signed and submitted to the Board an application for renewal of his certificate to practice medicine and surgery in Ohio. By signing that application, Dr. Kader certified, "under penalty of loss of [his] right to practice in the State of Ohio, * * * that the information provided on this application for renewal is true and correct in

every respect." Nevertheless, on his renewal application, Dr. Kader responded, "No," to the questions:

> At any time since signing your last application for renewal of your certificate:
>
> > 1.) Have you 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?
> >
> > * * *
> >
> > 4.) Has any board, bureau, department, agency, or other body, including those in Ohio, **other than this board**, filed any charges, allegations or complaints against you?
> >
> > * * *
> >
> > 6.) Have you had any clinical privilieges or other similar institutional authority suspended, restricted or revoked for reasons **other than failure to maintain records on a timely basis or to attend staff meetings?**

(St. Ex. 2) (Emphases in original)

5. On February 6, 2003, Dr. Kader appeared in court concerning the remaining charges in the Indictment. At that time, the State moved to amend the Indictment to reflect five counts of Trafficking in Drugs, felonies of the fifth degree, as set forth in Counts One through Five of the Indictment; and five counts of Illegal Processing of Drug Documents, felonies of the fifth degree, a set forth in Counts 18 through 22 of the Indictment. The court granted the State's motion, and Dr. Kader pleaded No Contest to the Indictment as amended. The court found Dr. Kader guilty. (St. Ex. 3 at 20-26)

   The court sentenced Dr. Kader to six months of incarceration based upon Dr. Kader's previous conviction for Medicaid Fraud, and suspended that sentence in favor of three years probation. The court further sentenced Dr. Kader to three years probation for the remaining ten felony counts. The terms of probation included payment of restitution of $256.00 to the Auditor of State Medicaid Fraud Division, and a $40,000 fine based upon the drug charges.[1] (St. Ex. 3 at 23-26)

[1] Note that, as part of the plea arrangement between Dr. Kader and the State, Dr. Kader had agreed to a fine based upon sixteen counts of Trafficking in Drugs. Dr. Kader further acknowledged that the amount of $40,000 exceeded the statutory fine for the counts to which he pleaded guilty. (See State's Exhibit 3 at 21-22)

6. In his opening statement, Dr. Kader offered the following in his defense:

   a. Concerning his criminal convictions in general, Dr. Kader stated that, until those charges were made, he had never been charged with anything at any time in his life. Dr. Kader further stated that he has never pleaded guilty to any charge. Moreover, Dr. Kader stated that it is not his fault that the court had found him guilty, and that that had occurred because his attorney had given him bad advice, and had assured Dr. Kader that it "would not affect [his medical] license in any way." (Hearing Transcript [Tr.] at 19)

   b. Concerning his conviction for one count of misdemeanor Medicaid Fraud, Dr. Kader stated:

      > Not only the State investigated my charts, but also the FBI investigated my Medicare billing, and nothing wrong was found. They give you a why, only this allegation of $256 fraud that I committed in Medicare. The matter is ridiculous when the Medicaid owes me over $10,000 they refuse to pay based on their allegation. Even before I was found [guilty], Medicaid refused to pay me my money that I saw and they will find that I didn't do anything wrong with it. That tell[s] you why the State decided to do such a thing and ruin [my career].

      (Tr. at 23-24)

   c. Concerning his convictions for the drug violations, Dr. Kader stated that the charges had resulted from an investigation that had lasted from August 9, 1999, until July 26, 2000. Dr. Kader further stated:

      > They didn't find anything between these two dates or the time they alleged that I was investigated. They never tried to shut my office down. They never said, oh, let's shut him down, he's doing something bad.
      >
      > [All of the evidence concerning Dr. Kader's prescribing had been obtained by undercover agents.] They were people who came to the office assuming [a] name that's not their own and talking about cases that they don't have. And I had to act on what they tell me.

      (Tr. at 19-20) Moreover, Dr. Kader stated that nobody "bothered to call" Dr. Kader to inform him that what he was doing was illegal. Finally, Dr. Kader stated:

      > [T]he whole case that they're building against me is I wrote five or six prescription[s] of Adipex, a diet medicine, a diet suppressant. That's all. The whole thing is based on this. That's what I did. And look what that

> got me in. I'm a criminal. They've got me jail—a suspended jail sentence. That will give you an idea that their intention is not justice.
>
> And I would like to mention for everybody that this medicine is being sold and prescribed over—on the Internet, like any other medicine without any control or any regard, and that's what they think—they tried not to make me talk about this issue in the courts. Why, I don't know. Anybody with Internet access can just get them on the Web on this address: www.diet-phentermine-pills.com, and order with overnight delivery is granted just with a click on the [mouse].
>
> I would like to mention also that all [this] evidence that they presented does not have any, any truth to it. And the only way that they got this started is by cooperation of my lawyers who give me bad advice.
>
> * * *
>
> You have to ask also, is the State investigating all doctors that prescribe this medicine? I doubt it. In my area, I know for sure that a lot of doctors prescribe this medicine. Now we go back to the motive of the State from investigating just me.
>
> I came here to talk to medical personnel who would understand me better, but I didn't find any of them in this hearing.
>
> Also, I would like to mention a fact, that during the investigation they took approximately over 100 charts from my office and all they could come up with is—the only thing that's wrong they could come up with is these five prescriptions that I wrote to one of their undercover agents.
>
> I leave this fact to you to decide what was the motive in—of the State to do such a thing, to ruin the life of an honest doctor, to write five prescriptions or six prescriptions of Adipex.

(Tr. at 22-23)

d. Dr. Kader stated that Twin City Hospital took action against his privileges as a result of prejudice. Dr. Kader further testified, "[Twin City Hospital] took this action as soon as I left the hospital to work somewhere else because of the discrimination, the open discrimination that I faced in that hospital." (Tr. at 18-19)

e. Dr. Kader denied that he had made any false statement on his renewal application. (Tr. at 18)

f. Dr. Kader stated that he had come to the hearing to plead his case with the medical personnel on the Board, because he has been denied justice by the state legal system. (Tr. at 19) Dr. Kader indicated that he had believed that he would be addressing medical personnel at the hearing:

> I came here to talk to medical personnel, doctors who are like me who understand what medicine is about and when it is prescribed and if it is really prescribed in the right way, but I also was denied this. I don't know for what purpose.
>
> I ask the medical personnel [on] the Board of medicine to give me a chance to talk to them as I don't wish to talk with lawmen anymore because I was not given any justice and I was given wrong advice to plead no contest and [treated] like a criminal afterwards.

(Tr. at 24-25)

FINDINGS OF FACT

1. On February 6, 2003, in the Court of Common Pleas of Tuscarawas County, Ohio, Ayman M. Kader, M.D., was found guilty of five counts of Trafficking in Drugs, in violation of Section 2925.03, Ohio Revised Code, felonies of the fifth degree; and five counts of Illegal Processing of Drug Documents, in violation of Section 2925.23, Ohio Revised Code, felonies of the fifth degree.

2.a. On May 2, 2002, in the Court of Common Pleas of Tuscarawas County, Ohio, Dr. Kader was found guilty of Medicaid Fraud, in violation of Section 2913.40(B), Ohio Revised Code, a misdemeanor of the first degree.

2.b. Despite the above-mentioned conviction for Medicaid Fraud, on or about May 9, 2002, when Dr. Kader completed his application for renewal of his certificate to practice medicine or surgery, he answered, "No," to question 1 which asks, "At any time since signing your last application for renewal of your certificate: * * * [h]ave 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 March 20, 2001, an Indictment was filed in the Court of Common Pleas of Tuscarawas County, Ohio. In the Indictment, the Tuscarawas County Grand Jury charged Dr. Kader with seventeen counts of Trafficking in Drugs, in violation of Section 2925.03, Ohio Revised Code; seventeen counts of Illegal Processing of Drug Documents, in violation of Section 2925.23(B), Ohio Revised Code; and one count of Medicaid Fraud, in violation of Section 2913.40(B), Ohio Revised Code.

Despite the above-mentioned Indictment, on or about May 9, 2002, when Dr. Kader completed his application for renewal of his certificate to practice medicine or surgery, he answered, "No," to question 4 which asks "At any time since signing your last application for renewal of your certificate: * * * [h]as any board, bureau, department, agency, or other body, including those in Ohio, other than this board, filed any charges, allegations or complaints against you?"

4. On or about April 24, 2002, The Twin City Hospital in Dennison, Ohio, revoked Dr. Kader's clinical privileges because Dr. Kader had failed to adhere to commonly followed standards in the care of a patient, had failed to satisfy the Medical Executive Committee's requirement of a process to show remedial education and monitoring, and had failed to respond to the Medical Executive Committee's requirement of documentation to that effect.

   Despite the above-mentioned revocation of his clinical privileges, on or about May 9, 2002, when Dr. Kader completed his application for renewal of his certificate to practice medicine or surgery, he answered, "No," to question 6 which asks "At any time since signing your last application for renewal of your certificate: * * * [h]ave you had any clinical privileges or other similar institutional authority suspended, restricted or revoked for reasons other than failure to maintain records on a timely basis or to attend staff meetings?"

CONCLUSIONS OF LAW

1. The judicial finding of guilt of Ayman M. Kader, M.D., as set forth in Findings of Fact 1, constitutes "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

2. The judicial finding of guilt of Dr. Kader, as set forth in Findings of Fact 2.a, constitutes "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

3. The conduct of Dr. Kader, as set forth in Findings of Fact 2.a and 2.b, constitutes "[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, podiatry, 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.

4. The conduct of Dr. Kader with regard to the answers that he gave on his application for renewal of his certificate to practice medicine and surgery in Ohio, as set forth in Findings of Fact 3 and 4, constitutes "[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, podiatry, or a limited branch of

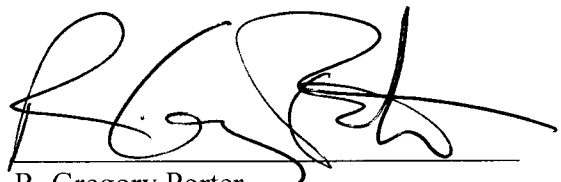
medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Ayman M. Kader, 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 notification of approval by the Board.



R. Gregory Porter
Attorney Hearing Examiner

State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF JULY 9, 2003

REPORTS AND RECOMMENDATIONS

Mr. Browning announced that the Board would now consider the findings and orders appearing on the Board's agenda. He asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Brett Bolton, D.O.; Ayman M. Kader, M.D.; Terrence Francis Mccoy, M.D.; and Paramjit Singh, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Mr. Browning	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Mr. Browning	- aye

Mr. Browning 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.

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

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

.....

AYMAN M. KADER, M.D.

.....

DR. TALMAGE MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF AYMAN M. KADER, M.D. DR. BHATI SECONDED THE MOTION.

.....

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain

The motion carried.

State Medical Board of Ohio

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NOTICE OF IMMEDIATE SUSPENSION
AND
OPPORTUNITY FOR HEARING

February 12, 2003

Ayman M. Kader, M.D.
10 Foundaryville Road
Berwick, PA 18603

Dear Doctor Kader:

In accordance with Sections 2929.24 and/or 3719.12, Ohio Revised Code, the Office of the Prosecuting Attorney of Tuscarawas County, Ohio, reported that on or about February 6, 2003, in the Court of Common Pleas of Tuscarawas County, Ohio, you were found guilty of five felony counts of Trafficking in Drugs, in violation of Section 2925.03, Ohio Revised Code, and five felony counts of Illegal Processing of Drug Documents, in violation of Section 2925.23, Ohio Revised Code.

Therefore, pursuant to Section 3719.121(C), Ohio Revised Code, you are hereby notified that your license to practice medicine and surgery in the State of Ohio is immediately suspended. Continued practice after this suspension shall be considered practicing medicine without a certificate in violation of Section 4731.41, Ohio Revised Code.

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

(1) On or about February 6, 2003, in the Court of Common Pleas of Tuscarawas County, Ohio, you were found guilty of five felony counts of Trafficking in Drugs, in violation of Section 2925.03, Ohio Revised Code, and five felony counts of Illegal Processing of Drug Documents, in violation of Section 2925.23, Ohio Revised Code. Copies of the Indictment and Judgment Entry on Change of Plea and Sentencing are attached hereto and incorporated herein.

Mailed 2-13-03

(2)(a) On or about May 2, 2002, in the Court of Common Pleas of Tuscarawas County, Ohio, you were found guilty of misdemeanor Medicaid fraud, in violation of Section 2913.40(B), Ohio Revised Code. Copies of the Indictment and Judgment Entry are attached hereto and incorporated herein.

(b) Despite the above-mentioned conviction for Medicaid fraud, when you completed your application for renewal of your certificate to practice medicine or surgery on or about May 9, 2002, you answered "No" to Question 1 which asks "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?"

(3) In or about March 2001, during the 2001 January term of the Tuscarawas County Court of Common Pleas, you were indicted by the Tuscarawas County Grand Jury on 17 counts of Trafficking in Drugs, in violation of Section 2925.03, Ohio Revised Code; 17 counts of Illegal Processing of Drug Documents, in violation of Section 2925.23, Ohio Revised Code; and one count of Medicaid fraud in violation of Section 2913.40(B), Ohio Revised Code. A copy of the Indictment is attached hereto and incorporated herein.

Despite the above-mentioned indictment, when you completed your application for renewal of your certificate to practice medicine or surgery on or about May 9, 2002, you answered "No" to Question 4 which asks "At any time since signing your last application for renewal of your certificate, has any board, bureau, department, agency, or other body, including those in Ohio, other than this board, filed any charges, allegations or complaints against you?"

(4) On or about April 24, 2002, Twin City Hospital, in Dennison, Ohio, permanently revoked your clinical privileges because you failed to adhere to commonly followed standards in the care of a patient, failed to satisfy the Medical Executive Committee's requirement of a process to show education and monitoring, and failed to respond to the Medical Executive Committee's requirement of documentation to that effect.

Despite the above-mentioned revocation of your clinical privileges, when you completed your application for renewal of your certificate to practice medicine or surgery on or about May 9, 2002, you answered "No" to Question 6 which asks "At any time since signing your last application for renewal of your certificate, have you had any clinical privileges or other similar institutional authority suspended, restricted or revoked for reasons

other than failure to maintain records on a timely basis or to attend staff meetings?"

The judicial finding of guilt as alleged in paragraph (1) above, 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 for, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

Further, the judicial finding of guilt as alleged in paragraph (2)(a) above constitute, "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (2), (3) and (4) 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, podiatry, 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.

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 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,

Anand G. Garg, M.D.
Secretary

AGG/blt
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5148 0557
RETURN RECEIPT REQUESTED

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2003 FEB 10 A 9:44

ROCKNE W. CLARKE
CLERK OF COURTS

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

THE STATE OF OHIO	*	**CASE NO. 2001 CR 03 0087**
PLAINTIFF,	*	**JUDGE THOMAKOS**
v.	*	
AYMAN M. KADER	*	**JUDGMENT ENTRY ON**
DOB: 7-20-54	*	**CHANGE OF PLEA AND**
SSN: [redacted]	*	**SENTENCING**
DEFENDANT.	*	

****

This matter came on for hearing on this 6th day of February, 2003. Present in Court was the defendant, Ayman M. Kader, represented by Attorneys David Betras, Joseph Rafidi, and Heidi Hanni. The State of Ohio was represented by Assistant County Prosecutors David Hipp and Michael Ernest.

Counsel for the defendant indicated that the prior Motions to Suppress are **withdrawn** and that the defendant **waives** his right to appeal the suppression issues.

In exchange for the defendant's plea, the State of Ohio moved the Court to amend the Indictment to reflect **Five Counts Trafficking in Drugs**, as contained in **Counts One through Five** of the Indictment, violations of Section 2925.03 of the Ohio Revised Code, felonies of the fifth degree; and **Five Counts Illegal Processing of Drug Documents**, as contained in **Counts Eighteen through Twenty-two** of the Indictment, violations of Section 2925.23(B) of the Ohio Revised Code, felonies of the fifth degree.

In addition, the State acknowledged it would not oppose all Counts being considered a continuing course of conduct for expungement purposes. The State also agreed not to oppose a properly filed motion for expungement, if the defendant is otherwise eligible.

Counsel for the defendant indicated that the defendant was prepared to change his plea to No Contest to the amended Indictment, under the authority of North Carolina vs. Alford (1970), 400 U.S. 25.

The Court then made certain inquiries of the defendant and conducted a dialogue with the defendant concerning his waiver of his constitutional rights as contained in a written Acknowledgment of No Contest Plea, which Acknowledgment is hereby incorporated by reference as if fully rewritten herein. Said Acknowledgment indicates that the Court is not bound by the representations between the State of Ohio and defense counsel. However, the defendant was aware, prior to changing his plea, that the Court considered the purposes and principles of sentencing and determined that community control sanctions and a fine would be the appropriate sentence in this case.

The Court calculated the fine in the amount of $40,000.00 during pretrial discussions based upon the original remaining sixteen (16) Counts of Trafficking in Drugs, as felonies of the fifth degree. Upon discussion with the defendant, defense counsel represented to the Court the defendant's ability to pay.

The defendant indicated in open Court that he was basing his change of plea upon the amendment to the Indictment, the State's representations concerning expungement, and the Court's intention to impose community control sanctions and a fine. The defendant acknowledged that the selected fine of $40,000.00 exceeds the statutory fine for the ten (10) Counts to which he would plead. The defendant **waived** his right to appeal the fine, in open Court.

The Court, being satisfied that the defendant voluntarily and intelligently desired to change his plea to No Contest to the amended Indictment, hereby grants the State's motion referred to above and permits the defendant to change his plea to an Alford plea of No Contest to the amended Indictment, **Five Counts Trafficking in Drugs** and **Five Counts Illegal Processing of Drug Documents**, violations of Sections 2925.03 and 2925.23(B) of the Ohio Revised Code, felonies of the fifth degree.

The defendant then entered the plea of No Contest to the amended Indictment, under the authority of North Carolina vs. Alford.

Counsel for the defendant waived presentation of evidence by the State of Ohio.

The Court then made a finding that the defendant was **guilty** of the offenses charged in the amended Indictment, said offenses violations of Sections 2925.03 and 2925.23(B) of the Ohio Revised Code.

The defendant waived preparation of a Presentence Investigation Report and the Court proceeded immediately to sentencing.

The Court has considered the record and oral statements presented, as well as the principles and purposes of sentencing under Ohio Revised Code Section 2929.11, and has balanced the seriousness and recidivism factors under Ohio Revised Code Section 2929.12. The Court inquired of the defendant whether he had anything to say prior to pronouncement of sentence. The defendant made a brief statement on his behalf.

The Court finds that the defendant has been convicted of **One Count Medicaid Fraud**, a violation of Section 2913.40(B) of the Ohio Revised Code, **a misdemeanor of the first degree**, pursuant to the Judgment Entry filed herein on the 3rd day of May, 2002, which Judgment Entry is incorporated by reference as if fully rewritten herein.

The Court further finds that the defendant is hereby convicted of **Five Counts Trafficking in Drugs**, violations of Revised Code Section 2925.03, **felonies of the fifth degree**; and **Five Counts Illegal Processing of Drugs Documents**, violations of Revised Code Section 2925.23(B), **felonies of the fifth degree**.

On considering the factors in Section 2929.12 and the presumptions in Section 2929.13(D) of the Revised Code, the Court further finds for the reasons stated on the record that:

1. The offender held a position of trust and the offenses were related to that trust;
2. The offender's professional occupation facilitated the offenses;
3. The offender's position of trust obligated the offender to prevent the offenses; and
4. That the offender has no known adjudications of delinquency and no known prior criminal history.

The applicable factors under Revised Code Section 2929.12 indicating that recidivism is less likely outweigh those indicating that recidivism is more likely. The factors under Revised Code Section 2929.12 increasing seriousness outweigh those decreasing seriousness. The Court finds that the offender is amenable to available community control sanctions and that a prison term is not consistent with the purposes and principles of sentencing.

It is **ORDERED** that a **six (6) month** term of local incarceration is imposed for One Count Medicaid Fraud, a violation of Section 2913.40(B) of the Ohio Revised Code, a misdemeanor of the first degree, to be **suspended** in favor of **three (3) years** of Probation.

It is further **ORDERED** that the defendant is sentenced to **three (3) years** of Community Control for the remaining felony Counts, with the first year being intensive supervision through the Community Corrections Program. The defendant shall follow all rules and instructions given by the Community Corrections Program. Further, for the remaining term of supervision,

the defendant shall be subject to the general supervision and control of the Adult Probation Department under any terms and conditions that they deem appropriate, including that the defendant shall be prohibited from leaving the State without permission of the Court or the Adult Probation Department. The defendant shall abide by all laws including, but not limited to, the laws related to firearms and dangerous ordnance. The terms of supervision shall run **concurrent** to each other.

The Court further imposes specific conditions as follows:

1. That the defendant follow all rules of community control as previously established by this Court;

2. That the defendant pay all Court costs assessed in this matter;

3. That the defendant not consume alcohol or drugs, or enter into establishments whose primary source of business is the sale of alcoholic beverages;

4. That the defendant repay restitution in the amount of **$256.00** to the **Office of Auditor of State - Medicaid Fraud Division, Attn: Marty Meeks, 88 East Broad Street - P.O. Box 1140, Columbus, Ohio 43216-1140**;

5. That the defendant serve **120 days** local incarceration, which will be suspended pending a timely payment of the fine imposed. If the fine is not paid within sixty (60) days, the supervising officer shall **immediately** impose the local incarceration;

6. That the defendant reside in Tuscarawas County. The defendant's supervision may be transferred to another jurisdiction **after** the fine is paid;

7. That the defendant receive a **six (6) month** license suspension from February 6, 2003 to August 6, 2003. The defendant shall granted driving privileges for purposes of going to and from employment; reporting to and from his supervising officer; and going to and from scheduled visitations with his son; and

8. That the defendant successfully complete **one (1) year** of Intensive Supervision with the Community Corrections Program.

The defendant agreed to the above terms and conditions in open Court.

The Court will impose **eleven (11) month consecutive** sentences in the appropriate State Penal Institution of the Ohio Department of Rehabilitation and Correction if the Community Control Sanctions imposed above are violated. The Court does not select the shortest term because it would demean the seriousness of the offenses and does not adequately protect the public. Consecutive terms are necessary to protect the public and punish the offender, not disproportionate to the conduct and to the danger the offender poses, and the harm is so great that a single term does not adequately reflect the seriousness of the conduct.

The defendant is hereby advised that the Court may at any time revoke Community Control Sanctions for cause, modify the conditions of Community Control, or reduce or extend the period of Community Control. The defendant is subject to arrest for cause and without warrant by Probation Officers or by law enforcement officers for violation of said defendant's Community Control Sanctions. While on Community Control for a felony, said defendant does not have the right to vote, to hold public office, or to sit on juries. When the term of Community Control has been terminated, these rights may be restored to the defendant. A violation of one or more of the above Rules of Community Control will cause the revocation of Community Control Sanctions.

The defendant was advised in open Court of the possible terms of post-release control and the possible penalties for violation of post-release control.

It is **ORDERED** that a **fine** is imposed in the amount of **$40,000.00**. This fine is ordered in addition to the costs and restitution ordered herein.

It is **ORDERED** that the fine shall be paid **within sixty (60) days** of the date of sentencing. Further, the fine will be paid through the office of the Clerk of Courts.

It is **ORDERED** that the Clerk of Courts shall disburse the fine as follows:

1. **$2,000.00** to the **Ohio Pharmacy Board, 77 South High Street - 17th Floor, Columbus, Ohio 43266-0320** for payment of expert witness fees incurred in this matter regarding Dr. Ted Parran;

2. **$19,000.00** to the **Tuscarawas County Alcohol and Addiction Program, 897 East Iron Avenue, Dover, Ohio 44622**; and

3. **$19,000.00** to the **Harbor House Program, P.O. Box 435, New Philadelphia, Ohio 44663.**

The defendant shall be entitled to **-0- days** jail credit toward state penal incarceration.

The defendant is **ORDERED** to pay Court costs in this matter.

It is further **ORDERED** that any and all Court costs, fines and restitution in this matter be paid through the Office of the Tuscarawas County Clerk of Courts. The fine is to be paid first and restitution shall be paid prior to Court costs.

IT IS SO ORDERED.

JUDGE ELIZABETH LEHIGH THOMAKOS

Dated: Feb 7, 2003

I the undersigned Clerk of Courts hereby certify this to be a true and correct copy of the original filed in the Common Pleas Court of Tuscarawas County, Ohio.
Rockne W. Clarke
Clerk of Court, Tuscarawas County
By: _____ Deputy Clerk

cc: **David Hipp**, Assistant Prosecuting Attorney
Michael Ernest, Assistant Prosecuting Attorney
David Betras, Esq.
Joseph Rafidi, Esq.
Heidi Hanni, Esq.
Defendant, 2421 East High Avenue, New Philadelphia, Ohio 44663
Probation
Kory Halter, Community Corrections
OBMV
Ohio Medical Board, 77 South High Street - 17th Floor, Columbus, Ohio 43266-0320
Pennsylvania Board of Medicine,
P.O. Box 2649, Harrisburg, Pennsylvania 17105-2649
Harbor House Program, P.O. Box 435, New Philadelphia, Ohio 44663
Tuscarawas County Alcohol and Addiction Program,
897 East Iron Avenue, Dover, Ohio 44622

ELT:mdt

Indictment for
SEVENTEEN COUNTS TRAFFICKING IN DRUGS
SEVENTEEN COUNTS ILLEGAL PROCESSING OF DRUG DOCUMENTS
ONE COUNT MEDICAID FRAUD

Rev. Code, Secs. 2939.20..22; 2941.06..49

The State of Ohio, Tuscarawas County, ss. COURT OF COMMON PLEAS

Of the Term of January in the Year of our Lord Two Thousand One.

The Jurors of the Grand Jury of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that on or about the 9th day of August, 1999, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did knowingly sell or offer to sell a Schedule IV controlled substance, Phentermine (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.03 of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT TWO

On or about the 20th day of August, 1999, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did knowingly sell or

offer to sell a Schedule IV controlled substance, Phentermine (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.03 of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT THREE

On or about the 3rd day of September, 1999, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did knowingly sell or offer to sell a Schedule IV controlled substance, Phentermine (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.03 of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT FOUR

On or about the 4th day of October, 1999, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did knowingly sell or offer to sell a Schedule IV controlled substance, Phentermine (Adipex-P), such conduct

not being in accordance with R.C. chapters 3719, 4715, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.03 of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT FIVE

On or about the 4th day of November, 1999, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did knowingly sell or offer to sell a Schedule IV controlled substance, Phentermine (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.03 of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT SIX

On or about the 3rd day of December, 1999, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did knowingly sell or offer to sell a Schedule IV controlled substance, Phentermine (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical

condition, contrary to and in violation of Section 2925.03 of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT SEVEN

On or about the 4th day of January, 2000, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did knowingly sell or offer to sell a Schedule IV controlled substance, Phentermine (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.03 of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT EIGHT

On or about the 4th day of January, 2000, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did knowingly sell or offer to sell a Schedule IV controlled substance, Phentermine (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.03 of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT NINE

On or about the 11th day of February, 2000, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did knowingly sell or offer to sell a Schedule IV controlled substance, Phentermine (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.03 of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT TEN

On or about the 25th day of February, 2000, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did knowingly sell or offer to sell a Schedule IV controlled substance, Phentermine (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.03 of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT ELEVEN

On or about the 7th day of March, 2000, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did knowingly sell or offer to sell a Schedule IV controlled substance, Phentermine (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.03 of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT TWELVE

On or about the 10th day of March, 2000, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did knowingly sell or offer to sell a Schedule IV controlled substance, Phentermine (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.03 of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT THIRTEEN

On or about the 7th day of April, 2000, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did knowingly sell or offer to sell a Schedule IV controlled substance, Phentermine (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.03 of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT FOURTEEN

On or about the 10th day of April, 2000, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did knowingly sell or offer to sell a Schedule IV controlled substance, Phentermine (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.03 of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT FIFTEEN

On or about the 24th day of April, 2000, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did knowingly sell or offer to sell a Schedule IV controlled substance, Phentermine (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.03 of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT SIXTEEN

On or about the 9th day of May, 2000, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did knowingly sell or offer to sell a Schedule IV controlled substance, Phentermine (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.03 of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT SEVENTEEN

As a continuing course of conduct from January 1, 1999, through November 9, 2000, at Tuscarawas County, Ohio, one **AYMAN M. KADER**, a licensed health professional, did knowingly sell or offer to sell Schedule III, IV and V controlled substances, in addition to those sales set forth in counts one through sixteen, such conduct not being in accordance with R.C. chapters 3719, 4715, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.03 of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT EIGHTEEN

On or about the 9th day of August, 1999, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did intentionally make, utter and sell a false prescription for a Schedule IV controlled substance (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4725, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.23(B) of the Ohio

Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT NINETEEN

On or about the 20th day of August, 1999, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did intentionally make, utter and sell a false prescription for a Schedule IV controlled substance (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4725, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.23(B) of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT TWENTY

On or about the 3rd day of September, 1999, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did intentionally make, utter and sell a false prescription for a Schedule IV controlled substance (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4725, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona

fide treatment of a medical condition, contrary to and in violation of Section 2925.23(B) of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT TWENTY-ONE

On or about the 4th day of October, 1999, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did intentionally make, utter and sell a false prescription for a Schedule IV controlled substance (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4725, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.23(B) of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT TWENTY-TWO

On or about the 4th day of November, 1999, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did intentionally make, utter and sell a false prescription for a Schedule IV controlled substance (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715,

4725, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.23(B) of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT TWENTY-THREE

On or about the 3rd day of December, 1999, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did intentionally make, utter and sell a false prescription for a Schedule IV controlled substance (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4725, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.23(B) of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT TWENTY-FOUR

On or about the 4th day of January, 2000, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did intentionally make, utter and sell a false prescription for a Schedule IV controlled substance (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4725, 4729,

4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.23(B) of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT TWENTY-FIVE

On or about the 4th day of January, 2000, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did intentionally make, utter and sell a false prescription for a Schedule IV controlled substance (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4725, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.23(B) of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT TWENTY-SIX

On or about the 11th day of February, 2000, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did intentionally make, utter and sell a false prescription for a Schedule IV controlled substance

(Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4725, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.23(B) of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT TWENTY-SEVEN

On or about the 25th day of February, 2000, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did intentionally make, utter and sell a false prescription for a Schedule IV controlled substance (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4725, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.23(B) of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT TWENTY-EIGHT

On or about the 7th day of March, 2000, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did intentionally make, utter and sell a false prescription for a Schedule IV controlled substance (Adipex-P),

such conduct not being in accordance with R.C. chapters 3719, 4715, 4725, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.23(B) of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT TWENTY-NINE

On or about the 10th day of March, 2000, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did intentionally make, utter and sell a false prescription for a Schedule IV controlled substance (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4725, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.23(B) of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT THIRTY

On or about the 7th day of April, 2000, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did intentionally make, utter and sell a false prescription for a Schedule IV controlled substance (Adipex-P),

such conduct not being in accordance with R.C. chapters 3719, 4715, 4725, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.23(B) of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT THIRTY-ONE

On or about the 10th day of April, 2000, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did intentionally make, utter and sell a false prescription for a Schedule IV controlled substance (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4725, 4729, 4731 or 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.23(B) of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT THIRTY-TWO

On or about the 24th day of April, 2000, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did intentionally make, utter and sell a false prescription for a Schedule IV controlled substance (Adipex-P),

such conduct not being in accordance with R.C. chapters 3719, 4715, 4725, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.23(B) of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT THIRTY-THREE

On or about the 9th day of May, 2000, at the County of Tuscarawas, State of Ohio, one **AYMAN M. KADER,** a licensed health professional, did intentionally make, utter and sell a false prescription for a Schedule IV controlled substance (Adipex-P), such conduct not being in accordance with R.C. chapters 3719, 4715, 4725, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.23(B) of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT THIRTY-FOUR

As a continuing course of conduct from January 1, 1999 through November 9, 2000, at Tuscarawas County, Ohio, one **AYMAN M. KADER,** did intentionally make, utter and sell false prescriptions for Schedule III, IV and V controlled substances, in

addition to those set forth in Counts 18 through 33, such conduct not being in accordance with R.C. chapters 3719, 4715, 4725, 4729, 4731, 4741 or R.C. Section 4723.56, and not being for use in a bona fide treatment of a medical condition, contrary to and in violation of Section 2925.23(B) of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

COUNT THIRTY-FIVE

As a continuing course of conduct from January 1, 1999 through November 9, 2000, at Tuscarawas County, Ohio, one **AYMAN M. KADER,** did knowingly make or cause to be made false or misleading statements or misrepresentations for use in obtaining reimbursement from the Ohio medical assistance program (Medicaid), in an amount greater than $500.00, contrary to and in violation of Section 2913.40(B) of the Ohio Revised Code and against the peace and dignity of the State of Ohio, a felony of the fifth degree.

Assistant Prosecuting Attorney

Foreperson of the Grand Jury

Endorsed: A true bill.

DCH/km

I the undersigned Clerk of Courts hereby certify this to be a true and correct copy of the original filed in the Common Pleas Court of Tuscarawas County, Ohio

Rockne W. Clarke
Clerk of Court, Tuscarawas County
By _____
Deputy Clerk

RECEIVED

MAY 07 2002

TUSC. CO. PROS. ATTY.
BY

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COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

2002 MAY -3 A 11: 10

ROCKNE W. CLARKE
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO
GENERAL TRIAL DIVISION

STATE OF OHIO	:	
Plaintiff,	:	Case Number: 2001 CR 03 0087
	:	
	:	Judge Elizabeth Lehigh Thomakos
vs.	:	
	:	
AYMAN KADER	:	**JUDGMENT ENTRY**
	:	
Defendant.	:	

This matter came on for Trial on the 22ND day of April, 2002, the Defendant being represented in Court by Attorneys Peter Cahoon and Attorney Christine Royer and the State of Ohio being represented by Assistant Prosecutor David Hipp and Assistant Attorney General Maria Limbert.

Thereupon, twelve individuals were duly impaneled and sworn as jurors, and one individual was duly impaneled and sworn as an alternate juror. On April 23, 2002, the Court excused one juror due to medical reasons and seated the alternate juror on the panel.

Thereafter, opening statements were made by the State of Ohio and the Defendant. The State of Ohio produced evidence, and witness testimony. The court recessed April 25 through 29, 2002. The State presented further witness testimony, then rested. The Defendant presented no evidence and rested. The Court considered, and overruled, Defendant's Motion for Acquittal.

Prior to closing argument, the Court also granted the State's Motions to Dismiss Counts Seven and Twenty-four and to Modify Count Thirty-five. Count Thirty-five was modified to reflect a charge for Medicaid Fraud, in violation of Ohio Revised Code §2913.40(B), a misdemeanor of the first degree.

On May 1, 2002, Court reconvened for the closing arguments of counsel and presentation of instructions to the jury. The jury then retired in the presence of the bailiff for deliberation.

On May 2, 2002, the jury returned to open Court in the presence of bailiff, the Defendant and the Attorneys and reported to the Court that it was unable to reach an agreement on a verdict for certain counts. The jury following further instructions by the Court and discussion among themselves, reported that further deliberation would not resolve the issues.

The Court released the jury from further deliberation and reviewed the verdict forms. The verdict forms for Counts One through Thirty-four, except the dismissed Counts Seven and Twenty-four, were unsigned.

The jury returned their verdict form for Count Thirty-five signed by all twelve jurors finding the Defendant **guilty** of **One Count Medicaid Fraud**, a misdemeanor of the first degree, as charged in the Indictment.

The Court did not poll the jury. Thereafter, the jury was dismissed and the Defendant's bond was continued pending a Sentencing Hearing.

It is **ORDERED** that the Defendant is hereby convicted of **One Count Medicaid Fraud**, a misdemeanor of the first degree, as charged in the Indictment.

It is further **ORDERED** that Counts Seven and Twenty-four shall be **dismissed.**

It is further **ORDERED** that an **Order of Mistrial** shall be entered in this matter with respect to Counts One through Thirty-four, except the dismissed Counts Seven and Twenty-four.

It is further **ORDERED** that this matter shall come before the Court for **Sentencing** on **Monday, June 3, 2002, at 10:30 a.m.**, for One Count Medicaid Fraud.

It is further **ORDERED** that this matter shall come before the Court for **Jury Trial** on **Monday, September 9, 2002, at 1:00 a.m.**

IT IS SO ORDERED.

Judge Elizabeth Lehigh Thomakos

Dated: May 2, 2002

cc: David Hipp, Assistant Prosecuting Attorney
Assistant Attorney General Maria Limbert
Peter Cahoon, Esq., and Christine Royer, Esq.
Defendant
Court Administrator

I the undersigned Clerk of Courts hereby certify this to be a true and correct copy of the original filed in the Common Pleas Court of Tuscarawas County, Ohio

Rockne W. Clarke
Clerk of Court, Tuscarawas County
By _____ Deputy Clerk

ELT:pc