State Medical Board of Ohio

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July 12, 2000

Barbara C. Lohn, M.D.
115 North Circle Drive SW
North Canton, OH 44709

Dear Doctor Lohn:

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 12, 2000, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO

Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. Z 281 981 392
RETURN RECEIPT REQUESTED

cc: John R. Irwin, M.D.
CERTIFIED MAIL RECEIPT NO. Z 281 981 393
RETURN RECEIPT REQUESTED

Edward M. Janis, Esq.
CERTIFIED MAIL RECEIPT NO. Z 281 981 394
RETURN RECEIPT REQUESTED

Mailed 7/17/00

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 12, 2000, 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 Barbara C. Lohn, 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.

Anand G. Garg, M.D.
Secretary

(SEAL)

JULY 12, 2000
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

BARBARA C. LOHN, M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on July 12, 2000.

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 Barbara C. Lohn, M.D., be REPRIMANDED.

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

Anand G. Garg, M.D.
Secretary

(SEAL)

JULY 12, 2000
Date

REPORT AND RECOMMENDATION
IN THE MATTER OF BARBARA C. LOHN, M.D.

The Matter of Barbara C. Lohn, M.D., was heard by R. Gregory Porter, Attorney Hearing Examiner for the State Medical Board of Ohio, on May 2, 2000.

INTRODUCTION

I. Basis for Hearing

A. By letter dated November 17, 1999, the State Medical Board of Ohio [Board] notified Barbara C. Lohn, M.D., that it had proposed to take disciplinary action against her certificate to practice medicine and surgery in Ohio. The Board based its proposed action on one or more of the following allegations:

"(1) On or about April 28, 1999, in the Lebanon District Court, Lebanon, New Hampshire, [Dr. Lohn] pleaded no contest to and [was] found guilty of one misdemeanor count of a Computer Related Offense in violation of RSA 638:17 Computer Related Offenses.

"The acts underlying this conviction were that between July 29, 1998, and September 22, 1998, while [Dr. Lohn was] a resident in psychiatry at the Dartmouth-Hitchcock Medical Center, Lebanon, New Hampshire, [she] improperly accessed confidential medical records of three individuals who were not [her] patients.

"(2) Effective June 3, 1999, the New Hampshire Board of Medicine [New Hampshire Board] approved a Settlement Agreement reprimanding [Dr. Lohn] and requiring [her] to furnish a copy of the Settlement Agreement to any state licensing or certificating authority to which [she] may apply for licensure or certification or to any employer during the twelve month period from the effective date of the Settlement Agreement. The Settlement Agreement was based upon the same conduct as was [Dr. Lohn's] conviction, as set forth in paragraph (1) above. * * *

"(3) Effective May 6, 1999, the Vermont Board of Medical Practice [Vermont Board] approved a Stipulation and Consent Order which also publicly reprimanded [Dr. Lohn]. The Stipulation and Consent Order was based upon the same conduct as was [Dr. Lohn's] conviction, as set forth in paragraph (1) above."

The Board alleged that the judicial finding of guilt, as alleged in paragraph (1), constitutes "'[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment 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."

The Board further alleged that the New Hampshire Board Settlement Agreement, as alleged in paragraph (2), and the Vermont Board Stipulation and Consent Order, as alleged in paragraph (3), individually and collectively, constitute "'[a]ny of the following actions taken by the state agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand'; as that language is used in Section 4731.22(B)(22), Ohio Revised Code."

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

B. On December 13, 1999, Edward M. Janis, Esq., submitted a written hearing request on behalf of Dr. Lohn. (State's Exhibit 1D)

II. Appearances

A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Hanz R. Wasserburger, Assistant Attorney General.

B. On behalf of the Respondent: John R. Irwin, M.D., and Edward M. Janis, Esqs.

EVIDENCE EXAMINED

I. Testimony Heard

Presented by the Respondent

1. Barbara C. Lohn, M.D.
2. Raymond Centa
3. Robert Devies, Ph.D.
4. Anna Mae Mayer

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A-1K: Procedural exhibits.

2. State's Exhibit 2: Certified copies of documents from the State of Vermont Board of Medical Practice.

3. State's Exhibit 3: Certified copies of documents from the New Hampshire Board of Medicine.

4. State's Exhibit 4: Certified copies of documents from the Lebanon [New Hampshire] District Court, filed in the case captioned, *State of New Hampshire v. Barbara Lohn,* Case Number 99-CR-0055.

B. Presented by the Respondent

1. Respondent's Exhibit 1: Copy of the Board's November 17, 1999, notice of opportunity for hearing to Dr. Lohn, and attachments

2. Respondent's Exhibit 2: Curriculum vitae of Barbara C. Lohn, M.D.

* 3. Respondent's Exhibit 3: Copies of letters and e-mail messages. [Note: The pages of this exhibit were numbered by the Hearing Examiner after the hearing.]

* 4. Respondent's Exhibit 4: Copy of a September 21, 1998, letter from Individual 1 to Dartmouth-Hitchcock Medical Center, and related correspondence. [Note: The pages of this exhibit were numbered by the Hearing Examiner after the hearing.]

* 5. Respondent's Exhibit 5: Copies of correspondence related to Individual 1's civil claim against Dr. Lohn.

* 6. Respondent's Exhibit 6: Copies of documents relating to the State of Vermont Board of Medical Practice action against Dr. Lohn. [Note: The pages of this exhibit were numbered by the Hearing Examiner after the hearing.]

7. Respondent's Exhibit 7: Copy of an April 6, 1999, letter to the Board from George H. Ostler, Esq.

8. Respondent's Exhibit 8: Copy of excerpt from Dr. Lohn's application for Ohio licensure.

9. Respondent's Exhibit 9: Copies of documents concerning the legislative history of New Hampshire statutes relating to computer-related offenses.

10. Respondent's Exhibit 10: Copy of opinion of the 10th [Ohio] District Court of Appeals in *Davidson v. The State Medical Board of Ohio* (May 7, 1998), Franklin App. No. 97APE08-1036, unreported.

* Note: Exhibits marked with an asterisk (*) have been sealed to protect patient confidentiality.

PROCEDURAL MATTERS

The name of an individual, referred to as Individual 1 at the hearing, was redacted from pages 19 and 49 of the Hearing Transcript in order to protect patient confidentiality. The original, unredacted pages were marked by the Hearing Examiner as Board Exhibit A, were sealed to protect patient confidentiality, and will be retained as proffered material for the Board.

SUMMARY OF THE EVIDENCE

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

1. Barbara C. Lohn, M.D., testified that she obtained her Bachelor's Degree from Cleveland State University in 1979. Dr. Lohn stated that, following approximately eight years in the workforce, she returned to school. In 1994, Dr. Lohn obtained her medical degree from Case Western Reserve University School of Medicine. From 1994 to 1998, Dr. Lohn participated in a residency in psychiatry at the Dartmouth-Hitchcock Medical Center [DHMC], Lebanon, New Hampshire, and from 1998 until 1999 participated in a fellowship in geriatric psychiatry at that same institution. (Respondent's Exhibit [Resp. Ex.] 2; Hearing Transcript [Tr.] at 12-18)

   Dr. Lohn testified that she currently works for Psychological and Family Consultants, Inc. [PFC], in northeast Ohio. Dr. Lohn noted that PFC consists of "several Ph.D. psychologists [and] different counselors," and that she is the first psychiatrist that that practice has hired. Dr. Lohn testified that she was recruited to establish a geriatric psychiatry unit at Alliance Community Hospital. (Tr. at 18-19)

2. On or about April 28, 1999, in the Lebanon District Court, Lebanon, New Hampshire, Dr. Lohn pleaded nolo contendere to the misdemeanor of "Computer Related Offense." The court accepted Dr. Lohn's plea and found that "there is a factual basis for [Dr. Lohn's] plea." (State's Exhibit [St. Ex.] 4)

3. Effective May 6, 1999, Dr. Lohn entered into a Stipulation and Consent Order with the State of Vermont Board of Medical Practice [Vermont Board]. In that document, Dr. Lohn admitted that between July 29 and September 22, 1998, while a resident in psychiatry at DHMC, "she improperly accessed confidential medical information as to three individuals, who were not her patients. [Dr. Lohn] bore no clinical responsibility for these patients and had never been a treating physician for these patients." Dr. Lohn further acknowledged that she had accessed confidential medical information on multiple occasions for three individuals who she knew only socially, and for whom she had never been a treating physician. The Vermont Board publicly reprimanded Dr. Lohn for this conduct. (St. Ex. 2)

4. Effective June 3, 1999, Dr. Lohn entered into a Settlement Agreement with the New Hampshire Board of Medicine [New Hampshire Board]. In that document, Dr. Lohn admitted that, between July 29 and September 22, 1998, she had "improperly electronically accessed confidential medical information on three individuals, who were not her patients." Dr. Lohn further admitted that she "bore no clinical responsibility for these patients and had never been a treating physician for these patients." However, it was also stated in the Settlement Agreement that Dr. Lohn "has cooperated with the [New Hampshire Board] and to the best of the [New Hampshire Board's] knowledge, is not currently committing any of the conduct" previously noted. (St. Ex. 3)

   The New Hampshire Board reprimanded Dr. Lohn for this conduct. Further, the New Hampshire Board required that Dr. Lohn "furnish a copy of the Settlement Agreement to any state licensing or certificating authority to which she may apply for licensure or certification or to any employer during the twelve month period from the effective date of the Agreement." (St. Ex. 3)

5. Dr. Lohn presented testimony and evidence concerning her friendship with three women, and indicated that the collapse of those relationships had led her to commit the violations that form the basis for this hearing. Dr. Lohn's evidence concerning this issue can be summarized as follows:

   a. While Dr. Lohn was a resident at DHMC, she became friends with three women, referred to herein as Individuals 1, 2, and 3. Among other things, Dr. Lohn and the three women participated in a women's group at Aquinas House, which Dr. Lohn stated is the Catholic Student Center at Dartmouth College. The relationship between Dr. Lohn and the three women was social; Dr. Lohn never acted as a physician for Individuals 1, 2, or 3. (Tr. at 20-22, 40)

b. In the spring of 1998, during a meeting of the women's group, Individual 2 stated that a five-year-old child that lived in her apartment building had grabbed Individual 2's breast in an aggressive fashion on more than one occasion. Individuals 1 and 2 discussed the child's behavior at some length. Dr. Lohn testified that "[t]his had nothing to do with what we were talking about [in the meeting], so I said why don't we talk about that afterwards but it sounds to me like there may be some abuse going on because that's not usual for a child to do that." (Resp. Ex. 6; Tr. at 21-22)

   In a January 5, 1999, letter to the Vermont Board, Dr. Lohn stated that she had spoken to Individual 2 by telephone after the meeting. Dr. Lohn suggested to Individual 2 that she contact a child protective services agency and ask them to determine if the child's behavior warranted an investigation. Dr. Lohn offered to contact the agency herself. Sometime thereafter, Individual 2 told Dr. Lohn that she had contacted the agency and given the agency Dr. Lohn's name. Subsequently, Individuals 1 and 2 began to change their description of the child's behavior to minimize it, and eventually denied that anything had happened. (Resp. Ex. 6)

   This conflicts somewhat with Dr. Lohn's testimony at the hearing. Dr. Lohn testified that Individual 2 called her the evening of the meeting "and was quite concerned, felt that if I reported this issue, and I certainly had not done it at this point, if I reported this issue that there would be a problem for [Individual 2] and her friends." Dr. Lohn further testified that Individual 2 had been concerned that reporting the child's behavior would damage Individual 2's relationship with the child's mother. (Tr. at 21-22)

c. Dr. Lohn testified that she had thought at the time that that she may have had a professional obligation to report the child's behavior. (Tr. at 24)

d. Individuals 1 and 2 began telephoning Dr. Lohn repeatedly to ask if she had reported the child's behavior, or if Dr. Lohn planned to report it. Dr. Lohn began receiving telephone calls from Individuals 1 and 2 at odd hours, such as at midnight and 5:00 a.m. These calls focused on discouraging Dr. Lohn from reporting the child's behavior. (Tr. at 22-24)

e. Dr. Lohn testified that Individual 1 had contacted Dr. Lohn's treating psychiatrist, Dr. Barney, who was also Individual 1's treating psychiatrist. Individual 1 told Dr. Lohn that she had wanted Dr. Barney to speak to Dr. Lohn about the matter. Moreover, Dr. Lohn testified that she had received an e-mail message at work from an attending psychiatrist at DHMC. The attending psychiatrist indicated to Dr. Lohn that, based on what the attending psychiatrist had been told by Individual 2, there was no need for Dr. Lohn to report anything. Nevertheless, Dr. Lohn testified that, when she told the attending psychiatrist what Individual 2 had originally said concerning the

child's behavior, the attending psychiatrist told Dr. Lohn that that had differed from what he had been told by Individual 2. (Tr. at 24-25)

Dr. Lohn further testified that she was approached by her interim training director, Dr. Rebecca Neal. Dr. Neal told Dr. Lohn that she had been contacted by Individual 2 who had wanted Dr. Neal to speak to Dr. Lohn about the matter. Dr. Lohn testified that she "was most upset because they had contacted my training director and had—this was where I worked, this was my job." (Tr. at 26-27)

Dr. Lohn sought Dr. Neal's advice concerning the reporting issue. Dr. Lohn testified that that Dr. Neal advised Dr. Lohn to firmly refuse to discuss the issue with Individuals 1 or 2 any further. (Tr. at 26-27)

f. Dr. Lohn testified that she did not report the child's behavior because Individuals 1 and 2 changed the story and eventually denied that any untoward behavior had occurred. (Tr. at 26)

g. At the end of the 1997-1998 school year, the women's group was scheduled to meet for an annual dinner at a local restaurant. Shortly before that dinner was to take place, Dr. Lohn received a letter from Individual 1. In that letter, dated June 4, 1998, Individual 1 told Dr. Lohn, among other things, that Individual 1 did not wish to have any further contact with Dr. Lohn. Dr. Lohn testified that, as a result, she contacted Anna Mae Mayer, Associate Chaplain at Aquinas House, and told Ms. Mayer, "I was uncomfortable, I didn't want to create a scene, I wanted to honor Individual No. 1's request that I not contact her in any way, so I felt that it might be best if I not attend the dinner." However, because of further disagreements between Ms. Mayer and Individuals 1 and 3, the dinner was eventually canceled. (Resp. Ex. 3 at 1; Tr. at 27-28)

h. Dr. Lohn testified that that summer she began seeing her psychiatrist more frequently. Dr. Lohn did so because she was becoming increasingly upset about some things that were going on:

> My friends were getting letters. I was getting multiple hang-up telephone calls. The doorbell would ring very early in the morning, 5 o'clock, no one would be there. And this was very distressing because my husband traveled frequently so I was there by myself, and our condominium was a little bit off the main road. * * * I was a little bit more vigilant when I went out to my car. I would look around, make certain that there wasn't anyone there. I would have my key out so I could get into the car right away.

(Tr. at 29-30) Dr. Lohn testified that she had suspected that Individuals 1, 2, and 3 were responsible for this activity. Dr. Lohn testified that Individuals 1, 2, and 3 had

formed a group, a clique. Dr. Lohn testified that Individual 3 acted as sort of a mediator for the group, and that Individuals 1 and 2 frequently argued. Dr. Lohn further testified that Individual 3 often provided transportation for Individuals 1 and 2. (Tr. at 30, 36-37)

i. Dr. Lohn testified that the women's group began meeting at a member's home rather than at Aquinas House because Individuals 1, 2, and 3 had become very disruptive at the meetings. (Tr. at 32-33)

j. Dr. Lohn testified that she did not contact the telephone company concerning the multiple hang-up calls. Moreover, Dr. Lohn testified that she did not contact the police regarding Individuals 1, 2, and 3. Dr. Lohn stated, "I discussed [this matter] with my lawyer and he felt that there was not enough objective evidence to contact the police." (Tr. at 64-66)

k. Dr. Lohn testified:

> Sometime earlier in the summer we had gotten a new pastor at our church and he expressed some concern about Individual No. 1 who had indicated a desire to be a Eucharistic minister, and I said that—and this is based on information I got directly from Individual No. 1—that I knew she was taking medicine and I said to the priest, I think there's no reason that she could not be a minister if she was taking her medication. * * * That was an individual statement, not as a professional.

(Tr. at 35)

6. Dr. Lohn acknowledged that she had improperly accessed computer medical records maintained by DHMC for Individuals 1, 2, and 3 on four occasions. Dr. Lohn further testified that she had done so from her home computer using software provided to her by DHMC. She stated that residents had been given the software in order to access records from home during times when they were on call with junior colleagues. Dr. Lohn testified that the same information available to her was also available on computer terminals at the hospital, and was accessible by physicians, nurses, clerks, and others. Dr. Lohn stated that DHMC had a policy concerning maintaining the confidentiality of patient information. (Tr. at 36-39, 59-60)

Dr. Lohn testified that the computer records maintained by DHMC included the patient's "name, address, phone number, medical records, [and] in some cases discharge summaries or notes from doctor visits." However, Dr. Lohn further testified that psychiatric records

were not maintained on this system. (Tr. at 38)

a. Dr. Lohn testified that, on July 31, 1998, she accessed the "Patient Set - CIS" record for Individual 1. Dr. Lohn testified that the "Patient Set - CIS is merely the front sheet that had the individual's name and address." Concerning why she had done that, Dr. Lohn testified, "I was mystified as to why all these things were happening. * * * The hang-up calls, the doorbell, and I believe at that time, 7-31, was shortly after one of my friends returned from her summer break and had gotten a letter from Individual No. 1 that was distressing to both of us." (Resp. Ex. 4; Tr. at 39-40)

b. Dr. Lohn testified that, on August 1, 1998, she accessed the Patient Set - CIS, Office Notes, and Encounter Index for Individual 1. Dr. Lohn testified that the "Encounter Index is a list of appointments, and Office Notes would be a note that the doctor had entered." Dr. Lohn stated that her purpose in accessing these records was "to find out if there was anything that would explain or help me to understand why [the phone calls, etc., were] happening." Dr. Lohn further testified that she had been concerned for her own personal safety as well as that of others, primarily Ms. Mayer, because Ms. Mayer "had also been receiving letters from Individual No. 1." (Resp. Ex. 4; Tr. at 40-41)

c. Dr. Lohn testified that she again accessed the Patient Set - CIS record for Individual 1 on August 20, 1998. (Resp. Ex. 4; Tr. at 42)

d. Dr. Lohn testified that she last accessed the Patient Set - CIS and Office Notes for Individual 1 on September 22, 1998. (Resp. Ex. 4; Tr. at 42-43)

e. Dr. Lohn testified that she had also accessed the computer records for Individuals 2 and 3 at the same time she had accessed the records for Individual 1. (Resp. Ex. 6 at 17; Tr. at 47-48)

7. Dr. Lohn testified that she accessed the medical records for Individuals 1, 2, and 3 "to see if there was anything at all that could explain why they were acting the way they were." Dr. Lohn further stated, "I felt that given my profession that I should be able to deal with these individuals and I felt uncomfortable that I couldn't, that I was under so much stress." Dr. Lohn further testified that she had felt threatened by Individuals 1, 2, and 3. (Tr. at 62-70)

Dr. Lohn testified that she did not know specifically what she was looking for in the records. Dr. Lohn later testified that she was looking for any history of violence or violent tendencies, or of stalking behavior, on the part of these individuals. Dr. Lohn testified that she never found anything in the computer records that gave her insight into these individuals' conduct. (Tr. at 71, 73-75, 78-79, 83)

8. Dr. Lohn testified that she did not reveal any of the information that she accessed during these four occasions to anyone. Dr. Lohn further testified that her husband was not in the room with her when she did this, nor was anyone else. Moreover, Dr. Lohn testified that she had not revealed to anyone that she had accessed these records until confronted by her superiors at DHMC. (Tr. at 43-44)

9. By letter dated September 21, 1998, Individual 1 informed Peter M. Silberfarb, M.D., Chairman, Dartmouth-Hitchcock Psychiatric Associates, that she had been informed by the Director of Medical Records at DHMC that Dr. Lohn had accessed Individual 1's medical records. Individual 1 further wrote, "Would you please write me verbatim what Dr. Lohn states her reasons were for intruding into my medical records?" On September 22, 1998, Dr. Silberfarb replied to Individual 1 that the issue was being investigated and that he would reply to her as soon as possible. (Resp. Ex. 4 at 1, 3) (Emphasis in original)

   Dr. Lohn testified that she met with Ronald L. Green, M.D., Training Director for the psychiatry residency program at DHMC, on September 23 or 24, 1998. A that time Dr. Lohn was informed of Individual 1's complaint. Subsequently, Dr. Lohn was informed that, as punishment, she would be suspended without pay for one week in October 1998. Moreover, by letter dated September 30, 1998, Dr. Green warned Dr. Lohn that further conduct of that nature would result in Dr. Lohn being terminated from the residency program. (Resp. Ex. 4 at 5-6; Tr. at 44-45)

10. Dr. Lohn testified that Individual 1 had filed a lawsuit against her. Dr. Lohn further testified that DHMC has determined that Dr. Lohn will not be covered by its insurance for Individual 1's claim because Dr. Lohn's actions "did not occur in the course of [her] duties as a physician." (Resp. Ex. 5; Tr. at 49-50)

11. When Dr. Lohn applied for Ohio licensure, she notified the Board of the actions taken against her by DHMC, the Vermont Board, and the New Hampshire Board. (Resp. Ex. 8; Tr. at 56-57)

    Dr. Lohn testified that she understands that it was illegal, unethical, and improper for her to have accessed the computer medical records for Individuals 1, 2, and 3. Dr. Lohn further testified that she will never repeat such conduct. (Tr. at 80-81)

12. Anna Mae Mayer testified on behalf of Dr. Lohn. Ms. Mayer testified that her background includes teaching and missionary work. In addition, Ms. Mayer testified that she obtained a Master of Arts in Theology in 1992 from the Maryknoll School of Theology, Ossining, New York. Ms. Mayer further testified that she is currently an associate chaplain at the Catholic Student Center at Dartmouth College. (Tr.108-111)

    Ms. Mayer testified that she met Dr. Lohn when Dr. Lohn joined the women's group at the Catholic Student Center in 1995. Ms. Mayer further testified that she also had known

Individuals 1, 2, and 3, from their having attended Mass at the Aquinas House. Ms. Mayer stated that she had not known them very well, and that they had not attended the women's group prior to Dr. Lohn attending. (Tr. at 111-114)

13. Ms. Mayer testified that Individual 2 had told the women's group during one meeting about a child who had grabbed Individual 2's breast. Ms. Mayer further testified that Individual 2 had been reluctant to discuss the episode in detail, and that Individual 1 had initially provided the details of what had happened. Ms. Mayer noted that the group had discussed the matter for a while, and eventually Dr. Lohn told Individuals 1 and 2 that she would be willing to discuss the matter with them later after the meeting. (Tr. at 114-116)

Ms. Mayer testified that, some time later, Dr. Lohn told Ms. Mayer that she had been getting calls from Individuals 1 and 2, and that they were changing their story and "saying it really wasn't happening." Ms. Mayer further testified that Dr. Lohn had told Ms. Mayer that they had been calling Dr. Lohn often to ask her not to report the child's behavior, and that Dr. Lohn was finding these contacts to be very distressing. (Tr. at 116-117)

14. Ms. Mayer testified that, around the time these difficulties began, the women's group had been getting ready for its end of the year gathering. Ms. Mayer testified that she was aware that a conflict had developed between Dr. Lohn and Individuals 1, 2, and 3. Ms. Mayer further testified that she had received an e-mail from Individual 1 asking Ms. Mayer for a ride because Individual 1 and Individual 3 had had a disagreement. Ms. Mayer testified that she was concerned about the potential for a confrontation during the gathering, and that Ms. Mayer "was trying to get a handle on what might be going on and also trying to avoid an ugly situation in a public restaurant." (Tr. at 117-118)

Ms. Mayer testified that she had had telephone conversations with Dr. Lohn and Individual 3 concerning the situation, then called Individual 1. Ms. Mayer testified that Individual 1 first thought that Ms. Mayer had called her regarding her request for a ride. Ms. Mayer told Individual 1 that that was not the purpose of her call, but that she had instead called to find out what the problems were between Individual 1 and Dr. Lohn, and between Individuals 1 and 3. Ms. Mayer testified:

> [Individual 1] did not want to talk about that and hung up. Subsequent to that I sent an e-mail to her telling her I was sorry that she had felt the need to hang up but that I felt this was an issue that we needed to resolve, and that I suggested that it would be better if she not attend the dinner.

(Tr. at 118-122) Ms. Mayer testified that this led to further communications with Individual 1. Ms. Mayer testified that, after a particularly heated face-to-face meeting between Ms. Mayer and Individual 1, Ms. Mayer decided to cancel that year's annual gathering altogether. (Tr. at 118-122)

Ms. Mayer testified that she became afraid of Individual 1. Ms. Mayer stated, "one of the other women from the women's group called me up and told me to be careful. A couple of people did that actually. So between the tone of that meeting we had had and [a June 10, 1998, e-mail from Individual 1], yes, I was afraid." Ms. Mayer testified that, based on her own experience with Individuals 1, 2, and 3, she believes that Dr. Lohn's fear of these individuals was reasonable. (Resp. Ex. 3 at 3-4; Tr. at 122-125)

15. Raymond Centa testified on behalf of Dr. Lohn. Mr. Centa testified that he is the husband of Dr. Lohn, and that he and Dr. Lohn have been married for 12 years. (Tr. at 86-87)

Mr. Centa testified that he is a salesman, and that he travels extensively throughout the United States. Mr. Centa further testified that he is occasionally away from home for as long as two weeks at a time. (Tr. at 87-88)

Mr. Centa testified that he is familiar with Dr. Lohn's friendship with Individuals 1, 2, and 3, and the falling-out that occurred between Dr. Lohn and those three individuals. Mr. Centa testified that he first became aware of those difficulties "when Individual No. 2 was phoning [Dr. Lohn] and asking her about the situation with this young child." Mr. Centa further testified that, during times that he was home, Dr. Lohn would receive as many as two or three such calls in one evening. Moreover, Mr. Centa testified that such calls were received at odd hours, such as one o'clock and five o'clock in the morning. (Tr. at 88-90)

Mr. Centa testified that the situation escalated when Dr. Lohn received a letter from Individual 1 stating that Individual 1 wished to have no further contact with Dr. Lohn. Mr. Centa further testified that Dr. Lohn received this letter at about the same time as an "upcoming end of the year dinner was being planned, and [Dr. Lohn] was talking to [Mr. Centa] about her discomfort about what she should do." Mr. Centa stated that about the time the dinner was canceled "we started noticing a significant jump in the number of hang-up telephone calls that we got." Mr. Centa testified that he had answered "a couple of dozen at least" such calls himself. Mr. Centa further testified:

> There wasn't a pattern. It could be in the middle of a Saturday or Sunday afternoon, it could be an incident where on a Sunday morning at 5 o'clock in the morning the front doorbell rang and [Dr. Lohn] sat bolt upright in bed and scared to death and she asked me to run downstairs to find out what was going on because our condominium was pretty isolated and we were on the end of the unit and the woods were around us, and so there was some concern as to what was happening.

(Tr. at 90-92) Mr. Centa testified that he went downstairs to see who had rung, but no one was there. (Tr. at 92)

Mr. Centa testified that he was becoming worried "[b]ecause I was gone so often and [Dr. Lohn] was home alone and I didn't know what was going to happen to her. Physically she could have been threatened. I didn't know what was happening here." However, Mr. Centa further testified that he did not consider reporting these incidents to the police: "I felt that, personally, you know, I'm a pretty big guy, I can handle myself and, you know, I wasn't too concerned. I also didn't know that there was a way to prove that there was any specific person or people doing that kind of thing." (Tr. at 93)

Mr. Centa testified that he worried about Dr. Lohn when he was gone, but did not contact the police or the phone company "because [he] didn't think there was any way [he] could do that." Mr. Centa also testified that he had tried to get "Caller ID" but that that service was not available in the area. (Tr. at 96-97)

Mr. Centa testified that he and Dr. Lohn began running into Individuals 1, 2, and 3 frequently when dining out or going to church-related activities. Mr. Centa testified that he and Dr. Lohn had rarely seen Individuals 1, 2, and 3 in restaurants prior to this time. Mr. Centa further testified:

> I thought that there was some unusual reason. I don't know that I call it pursuit but it just was a coincidence that every place we were, they were. You know, we had a parish dinner every year where our pastor cooked, as an example, and [Individuals 1, 2, and 3] wouldn't be there but they showed up, and every place we would move in the room, they would kind of like gravitate to.

(Tr. at 94-95)

16. Robert Devies, Ph.D., testified on behalf of Dr. Lohn. Dr. Devies testified that he obtained his Ph.D. in clinical psychology from Kent State University. Dr. Devies further testified that he teaches at Northeastern Ohio University College of Medicine and at the Ohio University School of Osteopathic Medicine. Moreover, Dr. Devies testified that he and a partner began a private practice in 1976 "that proceeded to grow and later we became incorporated and developed a full range private practice under the corporate name of Psychological and Family Consultants [PFC] where we provide inpatient and outpatient mental health care." Dr. Devies testified that PFC's main office is in North Canton, Ohio, with a branch office in Alliance, Ohio. Dr. Devies testified that PFC consists of a professional staff of 14 including one psychiatrist, six clinical psychologists, and the rest social workers and counselors. (Tr. at 98-100)

Dr. Devies testified that, in the winter of 1998-1999, PFC entered into an agreement with Alliance Community Hospital to assist them in developing an inpatient geriatric psychiatry program. Dr. Devies testified that "[t]he agreement called for us to recruit and enter into a professional relationship with a geriatric psychiatrist, bring them into our practice and

incorporate them into the community. In exchange the hospital would guarantee certain practice development opportunities for them." (Tr. at 100-101)

Dr. Devies testified that Dr. Lohn was hired from a field of 30 or 40 candidates. Dr. Devies further testified that the hiring process had required that Dr. Lohn go through several interviews. These occurred in early 1999. Dr. Devies testified that, in March 1999, after the second interview, he received a telephone call from Dr. Lohn. Dr. Devies testified that Dr. Lohn had stated that "there was something she needed to talk with me about because it was pretty clear that we were leaning very strongly in her direction to the point of making an offer." Dr. Devies testified that he met with Dr. Lohn at Dr. Devies' offices in North Canton at Dr. Lohn's request, and she apprised him of her legal difficulties. (Tr. at 101-103)

Dr. Devies testified that "as a prospective employer [PFC] didn't want any kind of complications." Dr. Devies further testified that, after independently looking into the matter and discussing it with the CEO of Aultman Hospital, and based on Dr. Lohn's qualifications and "glowing" references, PFC extended an offer to Dr. Lohn. Dr. Devies testified that Dr. Lohn began working for PFC in August 1999. (Tr. at 103-104)

Dr. Devies testified that Dr. Lohn has done extremely well in her employment with PFC and there are plans to expand her practice to other facilities. Dr. Devies further testified:

> I have had personal conversations with nursing staffs, with medical staff members, with CEO and upper administration of every hospital that our group services, and specifically [that] Dr. Lohn services, and in the nine or ten months that she has been with us I have yet to get one complaint.
>
> * * * I have never in my life seen, after nearly 30 years of clinical practice, such a humble, ethical, knowledgeable individual with the highest integrity that I could ever hope for in a colleague, as her.

(Tr. at 104-107)

FINDINGS OF FACT

1. On or about April 28, 1999, in the Lebanon District Court, Lebanon, New Hampshire, Barbara C. Lohn, M.D., pleaded no contest to and was found guilty of one misdemeanor count of a Computer Related Offense.

   The acts underlying this conviction were that, between July 29, 1998, and September 22, 1998, while Dr. Lohn was a resident in psychiatry at the Dartmouth-Hitchcock Medical

Center, Lebanon, New Hampshire, she improperly accessed the confidential medical records of three individuals who were not her patients.

2. Effective June 3, 1999, the New Hampshire Board of Medicine approved a Settlement Agreement which reprimanded Dr. Lohn. Further, Dr. Lohn was required to furnish a copy of the Settlement Agreement to any state licensing authority to which she may apply for licensure, or to any employer, during the twelve month period from the effective date of the Settlement Agreement. The Settlement Agreement was based upon the same conduct as was Dr. Lohn's conviction, as set forth in Findings of Fact 1.

3. Effective May 6, 1999, the Vermont Board of Medical Practice approved a Stipulation and Consent Order which also publicly reprimanded Dr. Lohn. The Stipulation and Consent Order was based upon the same conduct as was Dr. Lohn's conviction, as set forth in Findings of Fact 1.

CONCLUSIONS OF LAW

1. The judicial finding of guilt of Barbara C. Lohn, 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 treatment 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.

   During closing arguments, Dr. Lohn argued, through her counsel, that her April 28, 1999, New Hampshire conviction of one misdemeanor count of a Computer Related Offense did not constitute "a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code. Dr. Lohn further argued that, for constitutional reasons, Section 4731.22(B)(11) must be narrowly construed, and that conduct committed in the course of practice "really needs to have a rational, tangible, real relationship to the practice of medicine." (Tr. at 133) Dr. Lohn argued that the New Hampshire law under which Dr. Lohn was convicted was a "computer hacking" law, and was not related to the practice of medicine. Dr. Lohn further argued that personnel at DHMC other than physicians also had access to computer medical records—personnel such as billing clerks and secretaries—therefore one did not have to be a physician to commit the offense. Finally, Dr. Lohn argued that there was never any physician/patient relationship between Dr. Lohn and Individuals 1, 2, or 3.

   Dr. Lohn's arguments are not well founded. First, very few, if any, criminal statutes specifically target the practice of medicine. Rather, it is the circumstances of the offending conduct that determine whether such conduct is committed in the course of medical practice. Second, it is irrelevant to a determination of this issue whether any non-physician personnel also had access to computer medical records at DHMC. Finally, the fact that Dr. Lohn never entered into a physician/patient relationship with Individuals 1, 2,

or 3 is not determinative of this issue. In fact, if such a relationship had existed, Dr. Lohn may have been completely justified in accessing their medical records and no crime would have been committed.

The evidence indicated that Dr. Lohn, while a resident in psychiatry, accessed the computer medical records of Individuals 1, 2, and 3, albeit from Dr. Lohn's home and outside of her working hours. According to her own testimony, Dr. Lohn did so in an attempt to gain insight into what she had viewed as threatening behavior on the part of one or more of these individuals. Dr. Lohn was looking for evidence of a history of violence or violent tendencies on the part of Individuals 1, 2, and 3. It was her inappropriate search for such medical and/or psychiatric information that formed the basis for her conviction. Accordingly, the evidence is sufficient to conclude that such conduct occurred in the course of practice.

2. The Settlement Agreement between the New Hampshire Board of Medicine and Dr. Lohn, as set forth in Findings of Fact 2, constitutes "[a]ny of the following actions taken by the state agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand"; as that language is used in Section 4731.22(B)(22), Ohio Revised Code.

3. The Stipulation and Consent Order between the Vermont Board of Medical Practice and Dr. Lohn, as set forth in Findings of Fact 3, constitutes "[a]ny of the following actions taken by the state agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand"; as that language is used in Section 4731.22(B)(22), Ohio Revised Code.

* * * * *

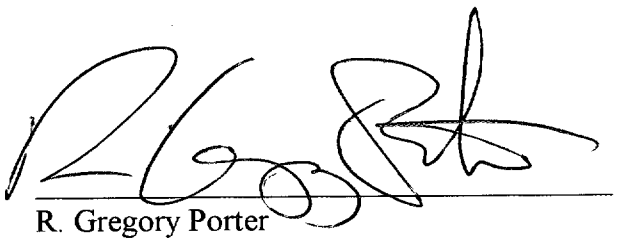
The evidence clearly indicates that Dr. Lohn acted improperly when she accessed the computer medical records for Individuals 1, 2, and 3. The evidence further indicates that Dr. Lohn was punished for this conduct by her residency program, by the medical boards of Vermont and New Hampshire, and by a New Hampshire court. Moreover, the evidence indicates that Dr. Lohn disclosed her legal difficulties to this Board when she applied for an Ohio certificate, and to her Ohio employer. Finally, the evidence indicates that Dr. Lohn is remorseful for her conduct, and it

appears very unlikely that such conduct will be repeated. Under these circumstances, measures such as suspension or removal from practice, or probationary monitoring, are unnecessary.

PROPOSED ORDER

It is hereby ORDERED that Barbara C. Lohn, M.D., be REPRIMANDED.

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

77 S. High Street, 17th Floor • Columbus, Ohio 43266-0315 • 614/ 466-3934 • Website: www.state.oh.us/med/

EXCERPT FROM THE DRAFT MINUTES OF JULY 12, 2000

REPORTS AND RECOMMENDATIONS

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

Dr. Egner 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 Marty Devitt, L.M.T.; Richard M. Donnini, D.O.; Gayl Marie Godsell-Stytz, D.O.; Barbara C. Lohn, M.D.; Trudy J. Nelson, M.D.; Clayton H. Royder, D.O.; Jonathan W. Singer, D.O.; Saravana E. Sivashanker, M.D.; and Scott Thomas Stewart, P.A. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Mr. Browning	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye
	Dr. Egner	- aye

Dr. Egner 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. Bhati	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Mr. Browning	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye
	Dr. Egner	- aye

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

Dr. Egner 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.

.....

BARBARA C. LOHN, M.D.

.....

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

.....

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

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Mr. Browning	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.

State Medical Board of Ohio

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November 17, 1999

Barbara C. Lohn, M.D.
1 College Hill
Hanover, New Hampshire 03755-3208

Dear Doctor Lohn:

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 April 28, 1999, in the Lebanon District Court, Lebanon, New Hampshire, you pleaded no contest to and were found guilty of one misdemeanor count of a Computer Related Offense in violation of RSA 638:17 Computer Related Offenses.

The acts underlying this conviction were that between July 29, 1998 and September 22, 1998, while you were a resident in psychiatry at the Dartmouth-Hitchcock Medical Center, Lebanon, New Hampshire, you improperly accessed confidential medical records of three individuals who were not your patients.

(2) Effective June 3, 1999, the New Hampshire Board of Medicine (hereinafter the "New Hampshire Board" approved a Settlement Agreement reprimanding you and requiring you to furnish a copy of the Settlement Agreement to any state licensing or certificating authority to which you may apply for licensure or certification or to any employer during the twelve month period from the effective date of the Settlement Agreement. The Settlement Agreement was based upon the same conduct as was your conviction, as set forth in paragraph (1) above. A copy of the New Hampshire Board Settlement Agreement is attached hereto and fully incorporated herein.

(3) Effective May 6, 1999, the Vermont Board of Medical Practice (hereinafter the "Vermont Board") approved a Stipulation and Consent Order which also publicly reprimanded you. The Stipulation and Consent Order was based upon the same conduct as was your conviction, as set forth in paragraph (1) above. A copy of the Vermont Board Stipulation and Order is attached hereto and fully incorporated herein.

The judicial finding of guilt as alleged in paragraph (1) above, constitutes "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment 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, the New Hampshire Board Settlement Agreement as alleged in paragraph (2) above, and the Vermont Board Stipulation and Consent Order as alleged in paragraph (3) above, individually and collectively, constitute "[a]ny of the following actions taken by the state agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and

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fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand;" as that language is used in Section 4731.22(B)(22), 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 (30) days of the time of mailing of this notice.

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

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, 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, effective March 9, 1999, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Anand G. Garg, M.D.
Secretary

AGG/jag
Enclosures

CERTIFIED MAIL # Z 233 896 483
RETURN RECEIPT REQUESTED

Before the New Hampshire
Board of Medicine
Concord, New Hampshire 03301

In The Matter Of:

Barbara C. Lohn, M.D.

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings, Barbara Lohn, M.D. ("Dr. Lohn" or "the Respondent") and the New Hampshire Board of Medicine agree to settle certain allegations of professional misconduct now pending before the Board in accordance with the following terms and conditions.

1. The parties stipulate that the Board has cause to institute a disciplinary proceeding against the Respondent pursuant to RSA 329:17, IV, and that if such a proceeding were commenced, the allegation against the Respondent would be:

A. Between July 29, 1998 and September 22, 1998, the Respondent improperly electronically accessed confidential medical information on three individuals, who were not her patients.

B. The Respondent bore no clinical responsibility for these patients and had never been a treating physician for these patients.

2. RSA 329:18-a, III, authorizes the Board to settle allegations of professional misconduct without commencing or proceeding to a disciplinary hearing.

3. The Respondent has cooperated with the Board in its investigation and to the best of the Board's knowledge, is not currently committing any of the conduct alleged above.

4. The Respondent admits and acknowledges the allegations described in paragraph 1, and that she is currently licensed to practice medicine in the State of New Hampshire.

5. The Respondent consents to the following disciplinary action by the Board:

A. The Respondent is hereby REPRIMANDED for her conduct.

B. The Respondent shall furnish a copy of the Settlement Agreement to any state licensing or certificating authority to which she may apply for licensure or certification or to any employer during the twelve month period from the effective date of the Agreement.

C. This Agreement shall bar the commencement of further disciplinary action by the Board based upon the misconduct allegations described herein; provided, however, that the Board may take any appropriate action to enforce the terms of this Agreement as provided in paragraph B; may consider the misconduct described above as evidence of a pattern of conduct in the event that similar misconduct allegations are brought against the Respondent in the future; and may consider the fact that discipline was imposed by this Agreement as a factor in determining appropriate discipline should any other misconduct allegations be proven against the Respondent in the future.

The Respondent voluntarily signs this Settlement Agreement and states that no promises or representations have been made to her other than those terms and conditions expressly stated herein.

This Agreement shall take effect on the date it is signed by a Representative of the Board.

FOR THE RESPONDENT

Dated: 5-28-99

Barbara C. Lohn MD
Barbara C. Lohn, M.D.
Respondent

STATE MEDICAL BOARD
MAY 25 A 9:30

This proceeding is hereby terminated in accordance with the binding terms and conditions set forth above.

BY ORDER OF THE BOARD

Dated: 3 Jun 1999

Authorized Representative of the
N.H. Board of Medicine

117647

STATE MEDICAL BOARD
OF OHIO
1999 OCT 25 A 9:30

STATE OF VERMONT
BOARD OF MEDICAL PRACTICE

In re: Barbara C. Lohn, M.D.	)	Docket Nos. MPC 112-1298
	)	MPC 119-1298
	)	MPC 05-0199

STIPULATION AND CONSENT ORDER

COMES NOW Barbara C. Lohn, M.D., Respondent in the above-captioned matter, and the State of Vermont, by and through Attorney General William H. Sorrell and undersigned counsel, and agree and stipulate as follows:

1. Respondent Barbara C. Lohn, M.D., holds Vermont Medical License Number 042-0009543, which was issued by the Board on September 3, 1997. Respondent's license to practice medicine in the State of Vermont was not renewed by her and expired on November 30, 1998. However, the Vermont Board of Medical Practice holds jurisdiction over Respondent and these matters pursuant to 26 V.S.A. §§ 1354, 1398 & 3 V.S.A. § 814 (d).

2. Respondent wishes to cooperate with the Board of Medical Practice and desires to resolve promptly all matters now before the Board which relate to her license to practice medicine in the State of Vermont. She acknowledges the Board's jurisdiction over each of these matters. Respondent waives any right to service of a formal specification of charges. See 26 V.S.A. § 1356. Respondent also waives her right to formal hearing before the Vermont Board of Medical Practice. See 26 V.S.A. §§ 1357-1359.

I. Background.

3. Respondent Lohn, then a resident in psychiatry at the Dartmouth-Hitchcock Medical Center (DHMC), admits that between July 29, 1998 and September 22, 1998 she

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improperly accessed confidential medical information as to three individuals, who were not her patients. Respondent bore no clinical responsibility for these patients and had never been a treating physician for these patients. Complaints were filed with the Vermont Board of Medical Practice by each of these patients regarding Respondent's improper access to their confidential medical information. The circumstances involved in each case are set forth below. Respondent has reviewed and agrees with the facts as set forth below.

Patient A.

4. Respondent accessed confidential medical information as to Patient A on July 31, August 1 (three instances), August 20, and September 22, 1998 (two instances). Respondent's access to such information was established by an "electronic record audit trail report" prepared by DHMC. Respondent knew Patient A only socially. Respondent was not then a treating physician for Patient A and never had been Patient A's treating physician in the past.

Patient B.

5. Respondent twice accessed confidential medical information as to Patient B on August 22, 1998. Respondent's access to such information was established by an "electronic record audit trail report" prepared by DHMC. Respondent knew Patient B only socially. Respondent was not then a treating physician for Patient B and never had been Patient B's treating physician in the past.

Patient C.

6. Respondent accessed confidential medical information as to Patient C on July 29 (two instances), August 20, and September 22, 1998 (two instances). Respondent's access

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to such information was established by an "electronic record audit trail report" prepared by DHMC. Respondent knew Patient C only socially. Respondent was not then a treating physician for Patient C and never had been Patient C's treating physician in the past.

II. Basis for Disciplinary Action.

7. Respondent, by executing this Stipulation and Consent Order, acknowledges and does not contest that she improperly accessed confidential medical information as to Patients A, B, and C, as set forth above, that such conduct represents a serious failure of judgment, and that such conduct by her constitutes unprofessional conduct in that it is a gross failure to use and exercise the degree of care, skill, and proficiency which is commonly exercised by the ordinary skillful, careful, and prudent physician engaged in similar practice under the same or similar conditions. See 26 V.S.A. § 1354 (7), (22), (24).

8. Respondent acknowledges and does not contest that each instance of improper access of patient information, as set forth above, constitutes an individual and alternative basis for finding that Respondent has engaged in unprofessional conduct under Vermont law and, as a result, that she is subject to disciplinary action by the Board. Respondent voluntarily acknowledges and does not contest that paragraphs 3, 4, 5, and 6, each constitute a proper basis for a finding of unprofessional conduct against her and for the taking of disciplinary action against her by the Vermont Board of Medical Practice.

9. Respondent has not previously been the subject of disciplinary action against the medical license issued to her by the Vermont Board of Medical Practice.

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III. Disciplinary Action.

10. The parties to this Stipulation and Consent Order agree that appropriate disciplinary action regarding these matters shall consist of a PUBLIC REPRIMAND of Respondent based on the above-described unprofessional conduct by her. See 26 V.S.A. § 1354 (7), (22), (24).

11. The Board acknowledges that Respondent in each case has admitted the above-described conduct regarding Patients A, B, and C in communicating with the Vermont Board of Medical Practice and has cooperated with the Board in its investigation of these matters. The Board recognizes that Dr. Lohn has been previously disciplined internally by the Dartmouth-Hitchcock Medical Center for this unprofessional conduct. The Vermont Board of Medical Practice is unaware of any further improper access by Respondent of patient records, subsequent to the date of September 22, 1998. See Paragraphs 4 and 6, supra.

12. Respondent has accepted responsibility for the above-described unprofessional conduct, which occurred while she was in training, and has expressed remorse for her actions. Respondent understands and agrees (a) that patients have the right to expect that all communications, information, and records pertaining to their medical care and treatment shall be treated with the strictest confidence; and (b) that only medical personnel or individuals involved in the patient's treatment shall have access to the patient's medical records.

13. Respondent recognizes and agrees that improper access to patient medical records and information is contrary to the above standards and constitutes serious unprofessional conduct by a physician. Moreover, Respondent recognizes and agrees that

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records and information regarding patient mental health and treatment are of a highly sensitive and private character and are deserving of the highest possible standards of confidentiality.

14. Respondent assures the Board that in the future she shall abide by all applicable legal and professional standards as to the confidentiality of patient medical records and shall eschew any unprofessional conduct in this regard. Respondent understands and agrees that in the event the Vermont Board of Medical Practice learns of any future alleged acts involving improper access by her of patient medical records and/or information or other unprofessional conduct, the Board may review the facts and circumstances of the cases described herein in determining any appropriate discipline to be imposed.

15. Respondent agrees to meet with the Board or a panel of the Board, upon their request, to discuss the circumstances involved in these complaints, the subject of patient confidentiality, and applicable legal and professional standards in this regard.

16. Any failure to comply with any of the terms of this Stipulation and Consent Order shall constitute unprofessional conduct pursuant to 26 V.S.A. § 1354(25) and may subject Respondent to further disciplinary action.

17. Respondent understands that this Stipulation and Consent Order are a matter of public record, will become a part of Respondent's licensing file, and may be reported to other authorities. This Stipulation and Consent Order is conditioned on acceptance by the Vermont Board of Medical Practice. If the Board rejects any part of this Stipulation and Consent Order, the entire agreement shall be considered void.

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Dated at Montpelier, Vermont this 3rd day of May 1999.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: James S. Arisman
JAMES S. ARISMAN
Special Assistant Attorney General

Dated at Hanover, NH this 3rd day of May 1999.

by: Barbara C. Lohn MD
BARBARA C. LOHN, M.D.
Respondent

FOREGOING, AS TO BARBARA C. LOHN, M.D., APPROVED AND ORDERED.
VERMONT BOARD OF MEDICAL PRACTICE:

John E. Mazuzan Jr.

DATED: May 5, 1999

ENTERED AND EFFECTIVE: May 6, 1999

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