

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

MIGUEL A. MARRERO, M.D.,

Appellant,

vs.

STATE MEDICAL BOARD OF OHIO

Appellee

CASE NO. 06CVF-02-2115

JUDGE PFEIFFER

TERMINATION NO. 10
BY KG

DECISION AND JUDGMENT ENTRY
AFFIRMING THE ORDER OF THE OHIO STATE MEDICAL BOARD
AND
NOTICE TO CLERK

Rendered this 12TH day of July, 2006

FILED COURT
COMMON PLEAS, OHIO
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CLERK OF COURTS

PFEIFFER, J.

This case is before the Court on an appeal pursuant to R.C. 119.12. The relevant facts and procedural history are as follows.

On April 13, 2005, the State Medical Board (the "Board") issued a Notice of Opportunity for Hearing (the "Notice") to Appellant Miguel A. Marrero, M.D. The Notice stated that the Board intended to determine whether to take disciplinary action under R.C. 4731.22(B)(22) based on an Order issued by the Pennsylvania Board of Medicine (the "Pennsylvania Board").

Appellant requested a hearing, which was conducted on November 21, 2005 before a Hearing Examiner. The Hearing Examiner issued a Report and Recommendation concluding that the Pennsylvania Board Order constituted a basis for disciplinary action under R.C. 4731.22(B)(22) and recommending permanent revocation of Appellant's medical license.

On January 11, 2006, the Board issued its Order revoking Appellant's medical license, but staying the revocation and suspending the license for an indefinite time, not less than one year, with conditions for reinstatement. The Order was mailed to Appellant on February 9, 2006. Appellant filed this appeal on February 14, 2006.

On January 26, 2005, the Pennsylvania Board issued its Order placing Appellants' Pennsylvania medical license on probation for three years, imposing a civil penalty of \$10,000, and ordering Appellant to take a course on physician/patient boundaries. (St. Ex. 3). The Pennsylvania Board found Appellant "guilty of immoral and unprofessional conduct in his professional relationship with ST and KT, who were his patients." (St. Ex. 3, p. 13).

The Pennsylvania Board's Findings of Fact included the following. In 1995, ST and KT, husband and wife, consulted Appellant regarding fertility issues. While a patient of Appellant, KT became employed as his office manager. Appellant treated ST for fertility issues until April, 1998. In 1999, Appellant engaged in a sexual relationship with KT, while KT was his patient and employee. In 1999 and 2000, Appellant engaged in a continuous course of unprofessional and harassing conduct wherein he sent e-mails, messages, and photographs to the home of KT and ST, including romantic overtures to KT and a picture of Appellant and KT holding hands. On December 3, 1999, Appellant telephoned ST at home and left a message he and KT were having an affair. On the same day, Appellant sent KT a letter that he claimed terminated the physician/patient relationship. In June of 2000, KT left her husband and remained in the employ of Appellant. On January 23, 2001, in custody/support hearings with respect to the children of KT and ST, Appellant testified that his affair with KT commenced in August, 1999.

At all relevant times, Appellant continued to provide medical treatment to KT. (St. Ex. 3 at pgs. 9-12). Appellant continued to write prescriptions for KT in 2001 and 2002. (St. Ex. 3, p. 19, 20).

The Pennsylvania Board's Hearing Examiner noted that in the 2001 custody/support hearing, Dr. Marrero testified that the affair with KT began in August, 1999, and that in the December 3, 1999 voice mail to ST, Appellant stated that he and KT had been having an affair. However, before the Pennsylvania Board, Appellant testified that the sexual relationship with KT did not begin until July, 2000 (after he claimed to have terminated the physician/patient relationship). The Pennsylvania Hearing Examiner stated as follows:

Respondent and KT are not found to have provided credible testimony. Motive and conflicting evidence belies the reliability of their testimony and contravenes documentary evidence proffered by the Commonwealth. The documentary evidence speaks for itself. Respondent admitted to having an affair with KT in one venue, yet denies so in a venue with differing impact and consequence. Respondent left a phone voicemail message stating that he was having an affair prior to the claimed termination of the doctor patient relationship. (St. Ex. 3, p. 21).

As noted, pursuant to Appellant's request, an administrative hearing was held in this matter before a Hearing Examiner on November 21, 2005. At the hearing, the State introduced a certified copy of the Pennsylvania Board's Order. (Tr. 13). The State did not call any witnesses.

Appellant's evidence at the hearing included his testimony and that of KT. KT testified that she married Appellant in September, 2005, and continues to be his office manager. (Tr. 15-17). KT stated that Appellant last saw her as a patient in 1999, but has continued to prescribe medications for her. (Tr. 17, 32-42, 49). She stated that in December, 1999, Appellant gave her a letter formally terminating the physician/patient

relationship. She stated that on the same day, Appellant left a voice message for her husband stating that she and Appellant had been having an affair for most of the past year. (Tr. at 43-44). She stated that at a 2001 hearing regarding her children, Appellant testified that the affair started in August, 1999. (Tr. at 31-32). She testified that her sexual relationship with Appellant began in July 2000. (Tr. at 23).

Appellant testified that he left the December, 1999 voice message for KT's husband stating that Appellant and KT had been having an affair out of anger and that it was not true. (Tr. 74-75). He stated that he did testify in a support/custody hearing that the affair began in August, 1999, and that he so testified on advice of counsel. (Tr. 71-74, 89-90). In this proceeding, Appellant testified that the sexual relationship began in 2000. He testified that he formally terminated the physician/patient relationship with KT in December, 1999, but acknowledged that he continued to write prescriptions for KT in 2000 and 2001. (Tr. 62-65).

On December 16, 2005, the Hearing Examiner issued a Report reviewing the evidence in detail. The Hearing Examiner found that the Pennsylvania Board's Order constituted a basis for disciplinary action pursuant to R.C. 4731.22(B)(22). The Hearing Examiner stated:

The evidence is undisputed that Dr. Marrero engaged in inappropriate and unprofessional behavior with KT and ST, a husband and wife, who were his patients. Not only did Dr. Marrero engage in sexual activity with KT, but he also harassed both KT and ST in their home by sending e-mail messages, leaving telephone messages, and sending pictures of himself and a picture of himself holding hands with KT. Dr. Marrero's conduct is even more troublesome because, even at hearing, he failed to demonstrate any remorsefulness for his behavior or any awareness of its inappropriateness. Moreover, he provided testimony under oath that was wholly incredible; for example, Dr. Marrero's testimony about the attorney's advice to him during the course of KT's custody hearing was preposterous. Accordingly, Dr. Marrero's failure to appreciate the

offensiveness of his conduct, coupled with his willingness to lie, even under oath, demonstrates that the Board can not be assured that his practice of medicine and surgery in this state would not present an unacceptable risk of harm to the citizens of Ohio.

On January 11, 2006, the matter came before the Board. After hearing a presentation by Appellant and his counsel, the Board deliberated. On the same date, the Board issued its Order finding that discipline was appropriate under R.C. 4731.22 (B)(22). The Order revoked Appellant's medical license, but stayed the revocation and suspended the license for an indefinite time, not less than one year, with conditions for reinstatement.

When considering an appeal from a medical board's order, a common pleas court must uphold the order if it is supported by reliable, probative, and substantial evidence, and is in accordance with law. R.C. 119.12. Pons v. Ohio State Med. Bd. (1993), 66 Ohio St.3d 619, 621; Landefeld v. State Med. Bd. (2000), Tenth Appellate District No. 99AP-612, 2000 Ohio App. LEXIS 2556.

The Ohio Supreme Court has recognized that the General Assembly granted the medical board a broad measure of discretion. Arlen v. State (1980), 61 Ohio St.2d 168, 174. In Farrand v. State Med. Bd. (1949), 151 Ohio St. 222, 224, the court stated:

... The purpose of the General Assembly in providing for administrative hearings in particular fields was to facilitate such matters by placing the decision on facts with boards or commissions composed of men equipped with the necessary knowledge and experience pertaining to a particular field. ...

"Accordingly, when courts review a medical board order, they are obligated to accord due deference to the board's interpretation of the technical and ethical requirements of the medical profession." Landefeld, supra, at pg. 9.

The Board concluded that the Pennsylvania Board Order constituted a basis for disciplinary action under R.C. 4731.22(B)(22), which provides as follows:

The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

...

(22) Any of the following actions taken by the agency responsible for regulating the practice of medicine and surgery ... in another jurisdiction, 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;

In this appeal, Appellant argues that the Board based its Order upon a conclusion that Appellant provided false testimony in the Pennsylvania and Ohio proceedings, in violation of Appellant's right to notice of the reasons for the proposed disciplinary action.

The Notice informed Appellant of the Board's intent to consider discipline based on the Pennsylvania Board's Order, expressly noting that said Order had found Appellant "guilty of immoral and unprofessional conduct in your relationship with ST and KT, who were your patients." (Notice, p. 1). The Notice included a copy of the Pennsylvania Board's Order, including the findings of the Pennsylvania Hearing Examiner.

Appellant argues that the Board based its Order not on the Pennsylvania Board's Order, but on its conclusion that Appellant made false statements in the Pennsylvania and Ohio hearings. Appellant quotes portions of the Hearing Examiner's Report and Recommendation and the Board's deliberations where concerns are expressed that Appellant had provided testimony in the Pennsylvania and Ohio proceedings that was not credible.

With respect to the failure to provide credible testimony in the Pennsylvania proceeding, the Notice informed Appellant that the Board was considering discipline based on the Pennsylvania Board's Order and included a copy of said Order and the findings of the Pennsylvania Hearing Examiner. The Pennsylvania Hearing Examiner's findings specifically stated that "Respondent and KT are not found to have provided credible testimony." (St. Ex. 3, p. 21). Accordingly, Appellant had notice that the grounds for the Pennsylvania Order and the discipline in this case included the failure to provide credible testimony in the Pennsylvania proceeding.

With respect to the failure to provide credible testimony in the Ohio proceeding, it is Appellant, not the State, who presented this testimony. The only evidence presented by the State was a certified copy of the Pennsylvania Board's Order. Appellant elected to present his testimony in his defense. As the finder of fact, the Board was entitled to consider, and not required to accept, the credibility of the testimony Appellant chose to present. Appellant cannot be heard to complain that he did not have sufficient advance notice that the Board would consider the credibility of the testimony he chose to present.

For these reasons, the Court concludes that Appellant had sufficient notice of the reasons for the Board's proposed disciplinary action.

The second issue raised by Appellant is a challenge to the Board's requirement of a personal ethics course as a condition of reinstatement. Appellant argues that the Board does not have jurisdiction to require a course in personal, rather than professional, ethics. Appellant also argues that the condition is not supported by the evidence.

The Board's authority to impose conditions for reinstatement flows from R.C. 4731.22(K), which states, in pertinent part:

Any action taken by the board under division (B) of this section resulting in a suspension from practice shall be accompanied by a written statement of the conditions under which the individual's certificate to practice may be reinstated. The board shall adopt rules governing conditions to be imposed for reinstatement.

Ohio Admin. Code 4731-13-16 provides that conditions on reinstatement "may include but are not limited to" "additional education or training" and "participation in counseling programs."

In In re Eastway (1994), 95 Ohio App.3d 516, 521, the court held that conditions on reinstatement "must be in accordance with adopted rules and supported by reliable, probative and substantial evidence so as not to be arbitrary or capricious and, therefore, contrary to law." In that case, the court held that the Board had authority to impose conditions including drug and alcohol rehabilitation and psychiatric counseling, but that the conditions were not supported by the evidence, which showed that the physician's drug problem had been alleviated and he had complied with all treatment recommendations.

The Court concludes that a personal ethics course constitutes "additional education or training" that the Board is authorized to require as a condition of reinstatement under Ohio Admin. Code 4731-13-16 and R.C. 4731.22(K).

The Court also concludes that this condition on reinstatement is supported by reliable, probative and substantial evidence, given the finding by the Pennsylvania Board that Appellant engaged in "immoral and unprofessional conduct" and the findings by both the Pennsylvania and Ohio Boards that Appellant gave testimony in those proceedings that was not credible.

Finally, Appellant argues that the sanctions imposed by the Board are too harsh compared to other cases. Once a violation is established, the penalty, if legal, is entirely within the province of the Board. In Henry's Café v. Board of Liquor Control (1959), 170 Ohio St. 233, the Court held, at paragraph three of the syllabus:

On such appeal, the Court of Common Pleas has no authority to modify a penalty that the agency was authorized to and did impose, on the ground that the agency abused its discretion.

See also Hale v. Ohio State Veterinary Medical Board (1988), 47 Ohio App.3d 167 (if the penalty is within the range of choices for the infraction, the court must affirm the order even if the penalty is viewed as too harsh). This rule applies to state medical board cases. In King v. State Medical Board (1999), Tenth Appellate District, No. 98AP-570, 1999 Ohio App. LEXIS 201, the Court stated: "the common pleas court, in concluding the board's order is supported by reliable, probative and substantial evidence, is precluded from interfering with or modifying the penalty imposed if such penalty is authorized." (Id., p. 4).

For the foregoing reasons, the Court finds that the Board's Order is supported by reliable, probative, and substantial evidence and is in accordance with law. Accordingly, the Board's Order is hereby AFFIRMED. This is a final, appealable Order. Costs to Appellant. Pursuant to Civil Rule 58, the Clerk of Court shall serve upon all parties notice of this judgment and its date of entry.

IT IS SO ORDERED.


BEVERLY Y. PFEIFFER, JUDGE

Copies to:
Terri-Lynne B. Smiles, Counsel for Appellant
Barbara Pfeiffer, Counsel for Appellee

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

MIGUEL A. MARRERO, M.D. :
Appellant : Case No. 06CVF-02115
v. : JUDGE PFEIFFER
STATE MEDICAL BOARD OF OHIO :
Appellee. :

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AGREED ORDER

Upon agreement of Appellant, Appellant Miguel A. Marrero, M.D.'s not to seek reinstatement of his license to practice medicine in the State of Ohio during the pendency of this appeal, the Motion to Stay the Order dated January 11, 2006, which suspended Appellant's Ohio medical license, is hereby GRANTED and the January 11, 2006 Order of the State Medical Board of Ohio is hereby stayed pending appeal. The health, safety and welfare of the public will not be threatened by the suspension of the Medical Board's Order.

It is so ordered.

 3-13-06

Judge

cc: Barbara Pfeiffer, Esq.
Terri-Lynne B. Smiles, Esq.

MAR - 1 2006

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

MIGUEL A. MARRERO, M.D.
80 Emerson Lane, Suites 1301-1302
Bridgeville, PA 15017

2006 FEB 14 P 3: 03

06CVF02-02115

Appellant,

Case No. _____

vs.

JUDGE _____

STATE MEDICAL BOARD OF OHIO
77 South High Street, 16th floor
Columbus, Ohio 43215-6127

Appellee

NOTICE OF APPEAL

Appellant, Miguel A. Marrero, M.D., pursuant to Ohio Revised Code §119.12 hereby appeals the final decision of the Ohio State Medical Board ("Appellee") to suspend his license to practice medicine in Ohio in its Adjudication Order (attached hereto) issued on January 11, 2006, and mailed to Appellant on February 9, 2006.

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CLERK OF COURTS - CV

Appellant asserts that the decision of the Ohio State Medical Board is not supported by reliable, probative and substantial evidence and is not in accordance with law.

Respectfully submitted,



Terri-Lynne B. Smiles (#0034481)
Collis, Smiles & Collis, LLC
1650 Lake Shore Drive, Suite 225
Columbus, Ohio 43204
(614) 486-3909; Fax (614) 486-2129
Attorney for Appellant

MAR - 1 2006

Certificate of Service

I certify that the *Notice of Appeal* was served upon Appellee, Ohio State Medical Board, 77 S. High Street, 17th Floor, Columbus, Ohio 43215 by hand delivery this 14th day of February, 2006 and upon and counsel for Appellee, Barbara Pfeiffer, Assistant Attorney General, Office of the Ohio Attorney General, Health and Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215 by regular U.S. mail postage prepaid on this 14th day of February, 2006.



Terri-Lymne B. Smiles (#0034481)

STATE MEDICAL BOARD
OF OHIO
2006 FEB 14 P 3 10



State Medical Board of Ohio

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

January 11, 2006

Miguel Angel Marrero, M.D.
1606 Franklin Fields Drive
Sewickley, PA 15143

Dear Dr. Marrero:

Please find enclosed certified copies of the Entry of Order; CORRECTED Certification; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on January 11, 2006, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage
Lance A. Talmage, M.D. *RW*
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 7003 0500 0002 4329 8357
RETURN RECEIPT REQUESTED

Cc: Terri-Lynne Smiles, Esq.
CERTIFIED MAIL NO. 7003 0500 0002 4329 8340
RETURN RECEIPT REQUESTED

Mailed 3/15/06

CORRECTED CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on January 11, 2006, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Miguel Angel Marrero, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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

(SEAL)

Lance A. Talmage RW
Lance A. Talmage, M.D.
Secretary

January 11, 2006
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

MIGUEL ANGEL MARRERO, M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on January 11, 2006.

Upon the Report and Recommendation of Sharon W. Murphy, 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 modification, approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Miguel Angel Marrero, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Marrero's certificate shall be SUSPENDED for an indefinite period of time, but not less than one year.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Marrero's certificate to practice medicine and surgery until all of the following conditions have been met:
 1. **Application for Reinstatement or Restoration:** Dr. Marrero shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
 2. **Professional Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Marrero shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the

course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

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

3. **Personal Ethics Course**: At the time he submits his application for reinstatement or restoration, Dr. Marrero shall provide acceptable documentation of successful completion of a course or courses dealing with personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

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

4. **Certification of Compliance with the Order of the Pennsylvania State Board of Medicine**: At the time he submits his application for reinstatement or restoration, Dr. Marrero shall submit to the Board certification from the Pennsylvania State Board of Medicine [Pennsylvania Board], dated no earlier than sixty days prior to Dr. Marrero's application for reinstatement or restoration, that Dr. Marrero has maintained full compliance with the Order of the Pennsylvania Board.

5. **Additional Evidence of Fitness To Resume Practice**: In the event that Dr. Marrero has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.

- C. **PROBATION**: Upon reinstatement or restoration, Dr. Marrero's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:

1. **Obey the Law**: Dr. Marrero shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in the state in which he is practicing, and all terms and conditions imposed by the Pennsylvania Board.
 2. **Quarterly Declarations**: Dr. Marrero shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
 3. **Appearances**: Dr. Marrero shall appear in person for quarterly interviews before the Board or its designated representative during the third month following the month in which his certificate is restored or reinstated or as otherwise directed by the Board. Dr. Marrero shall also appear upon his request for termination of the probationary period, and/or as otherwise requested by the Board.
 4. **Violation of Probation; Discretionary Sanction Imposed**: If Dr. Marrero violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- D. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Marrero's certificate will be fully restored.
- E. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS**: Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Marrero shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Marrero shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Marrero receives from the Board written notification of his successful completion of probation pursuant to Paragraph D, above.
- F. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES**: Within thirty days of the effective date of this Order, or as

otherwise determined by the Board, Dr. Marrero shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license.

Dr. Marrero shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Marrero shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determine by the Board. This requirement shall continue until Dr. Marrero receives from the Board written notification of his successful completion of probation pursuant to Paragraph D, above.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon mailing of notification of approval by the Board.

(SEAL)



Lance A. Talmage, M.D.
Secretary

January 11, 2006

Date

STATE MEDICAL BOARD
OF OHIO

2005 DEC 16 A 10: 52

**REPORT AND RECOMMENDATION
IN THE MATTER OF MIGUEL ANGEL MARRERO, M.D.**

The Matter of Miguel Angel Marrero, M.D., was heard by Sharon W. Murphy, Hearing Examiner for the State Medical Board of Ohio, on November 21, 2005.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated April 13, 2005, the State Medical Board of Ohio [Board] notified Miguel Angel Marrero, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in this state. The Board based its proposed action on an action taken by the Pennsylvania State Board of Medicine [Pennsylvania Board] against Dr. Marrero's certificate to practice in the State of Pennsylvania. Moreover, the Board alleged that the action taken by the Pennsylvania Board against Dr. Marrero's certificate to practice in that state constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, 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 clause is used in Section 4731.22(B)(22), Ohio Revised Code." Accordingly, the Board advised Dr. Marrero of his right to request a hearing in this matter. (State's Exhibit 1A)
- B. On June 3, 2005, the Board received a written hearing request submitted by William H. Maruca, Esq., on behalf of Dr. Marrero. (State's Exhibit 1B)

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Barbara Pfeiffer, Assistant Attorney General.
- B. On behalf of the Respondent: Terri-Lynne Smiles, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

Presented by the Respondent

1. Patient KT
2. Miguel Angel Marrero, M.D.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A-1K Procedural exhibits.
2. State's Exhibit 2: Certified document regarding Dr. Marrero's licensure status in the State of Ohio.
3. State's Exhibit 3: Certified copy of a Final Adjudication and Order pertaining to Dr. Marrero maintained by the State Board of Medicine of the Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs.

B. Presented by the Respondent

Respondent's Exhibit A: Dr. Marrero's curriculum vitae.

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. Miguel Angel Marrero, M.D., started his undergraduate education at the University of Puerto Rico, and completed it at Michigan State University in 1980. In 1986, Dr. Marrero obtained a medical degree from the Case Western Reserve University School of Medicine in Cleveland, Ohio. Thereafter, he completed an internship at the New York University Medical Center, Department of Obstetrics and Gynecology, in New York City. In 1990, Dr. Marrero completed a residency in obstetrics and gynecology at the Indiana University Medical Center. In 1992, he completed a fellowship at the Mayo Clinic Graduate School of Medicine, Department of Obstetrics and Gynecology, in reproductive endocrinology and fertility. Dr. Marrero is certified by the American Board

of Obstetrics and Gynecology. He is licensed in Florida, Massachusetts, Minnesota, New Jersey, New York, Ohio, Pennsylvania, and Puerto Rico. (Hearing Transcript [Tr.] at 54-56; Respondent's Exhibit [Resp. Ex.] A)

From 1992 through 1993, Dr. Marrero was an Assistant Professor of Obstetrics and Gynecology at the Medical College of Pennsylvania, Allegheny General Hospital. For the following three years, Dr. Marrero was associated with the Western Pennsylvania Hospital, Department of Obstetrics and Gynecology. In 1996, he started a private practice in obstetrics and gynecology, although he discontinued the practice of obstetrics in 2000. Since 2000, he has also served as an Adjunct Clinical Assistant Professor at the Duquesne University School of Health Sciences. He currently practices in a private practice in Bridgeville, Pennsylvania. (Tr. at 53-54; Resp. Ex. A)

2. On July 1, 2004, Dr. Marrero's certificate to practice medicine and surgery in Ohio was suspended, by operation of law, for non-payment of renewal fees. His certificate has not been reinstated. (State's Exhibit [St. Ex.] 2)
3. On July 10, 2003, the Pennsylvania State Board of Medicine [Pennsylvania Board] issued an Order to Show Cause alleging that Dr. Marrero had engaged in unprofessional conduct in the treatment of a patient. A hearing was held on January 12, 2004. (St. Ex. 3 at 8) Subsequently, the Pennsylvania Board hearing examiner made Findings of Fact, which included the following:
 - a. In 1995, ST and KT, husband and wife, consulted Dr. Marrero regarding fertility issues.
 - b. In 1996, while still a patient of Dr. Marrero, KT became Dr. Marrero's office manager.
 - c. In 1999, Dr. Marrero engaged in a sexual relationship with KT even though both he and KT were married and living with their respective spouses.
 - d. In September 1999, Dr. Marrero and KT traveled to Toronto together, saw Phantom of the Opera, saw the Skyport, and shopped for toys for KT's children.
 - e. On September 11, 1999, in an effort to persuade KT to remain employed as his office manager, Dr. Marrero increased her annual salary from approximately \$37,000 to \$52,000.
 - f. On October 13, 1999, KT told Dr. Marrero that she was having trouble at home and that her husband desired that KT sever all ties with Dr. Marrero.

- g. During the course of 1999, Dr. Marrero engaged in a continuous course of unprofessional and harassing conduct wherein he would send e-mails and other messages to KT professing his deep affection and love for her, as well as sending photographs of himself to KT.
- h. From August 1999 through January 2000, Dr. Marrero repeatedly contacted the home of KT and ST and made romantic overtures toward KT, professing his love for her by letters, e-mails, and phone calls.
- i. Since KT and ST shared an e-mail address and an answering machine, all of Dr. Marrero's romantic overtures were accessible to and received by ST as well as KT.
- j. On October 24, 1999, KT advised Dr. Marrero that she would be resigning from her position as office manager, effective November 5, 1999.
- k. In an effort to persuade KT to remain in his employment, Dr. Marrero offered to increase KT's salary to \$104,000 in return for KT working approximately four days per week. KT advised Dr. Marrero that she would not accept his offer.
- l. By letter dated December 3, 1999, Dr. Marrero advised KT that, if she were to leave his care, the only physicians who could treat her problems resided in Florida, Oregon, Tennessee, or Wisconsin.
- m. Throughout 1999, Dr. Marrero sent voice mails and e-mails to ST, including a photograph of KT and Dr. Marrero holding hands. On December 3, 1999, Dr. Marrero telephoned ST at home and left a message advising ST that Dr. Marrero and KT were having an affair.
- n. In June 2000, KT left her husband and remained in the employ of Dr. Marrero.
- o. On January 23, 2001, during support hearings in Pennsylvania courts with respect to the children of KT and ST, Dr. Marrero admitted under oath that his affair with KT had commenced in August 1999 and that his sexual relationship with KT had continued since that time.
- p. Since November 1999, Dr. Marrero has continued to provide care and treatment to KT, including but not limited to treating her for reproductive issues, endocrinology, infertility and endometriosis surgery, as well as prescribing various medications, without maintaining medical records regarding such care.

- q. Dr. Marrero has an outstanding reputation in the medical community for his competency as an imminent obstetrician and gynecologist specializing in fertility and reproduction.

(St. Ex. 3 at 9-12)

In the Conclusions of Law, the Pennsylvania Board hearing examiner found that Dr. Marrero was “guilty of immoral and unprofessional conduct in his professional relationship with ST and KT, who were his patients.” The Pennsylvania Board hearing examiner also found that Dr. Marrero had failed to maintain proper medical records regarding his treatment of KT. (St. Ex. 3 at 13)

In discussion, the Pennsylvania Board hearing examiner noted that both Dr. Marrero and KT had provided testimony during the course of the hearing that was not credible. In fact, the Pennsylvania Board hearing examiner noted that Dr. Marrero had submitted conflicting testimony while under oath in two different forums. (St. Ex. 3 at 21) The Pennsylvania Board hearing examiner issued an Order proposing a stayed suspension, probation of three years, and a civil penalty of \$4,000.00. (St. Ex. 3 at 23)

On January 26, 2005, the Pennsylvania Board affirmed the Order of the hearing examiner and placed Dr. Marrero’s certificate on probation for three years. However, the Pennsylvania Board increased the civil penalty from \$4,000 to \$10,000. In addition, the Pennsylvania Board ordered that Dr. Marrero complete a course on physician-patient boundaries within twelve months. Finally, in considering the matter, the Pennsylvania Board found it to be mitigating that KT was also an employee. (St. Ex. 3 at 4-5)

4. KT testified at hearing on behalf of Dr. Marrero. KT testified that she is now Dr. Marrero’s wife and continues to serve as his office manager. KT testified regarding the events that led to the Pennsylvania Board action. (Tr. at 15-17) More specifically, KT testified that:
 - a. KT started seeing Dr. Marrero as a patient in 1992, and started working in Dr. Marrero’s office in January 1997. (Tr. at 16-17)
 - b. KT last saw Dr. Marrero as a patient in June 1999. KT acknowledged that there had been no discussion at that time regarding the end of the physician-patient relationship; nor did she see a new physician at that time. Moreover, KT admitted that Dr. Marrero had continued to prescribe medications for her after June 1999. KT provided somewhat confusing and inconsistent testimony regarding the dates and circumstances under which Dr. Marrero prescribed these medications. (Tr. at 17, 32-42, 49)
 - c. In June or July 1999, Dr. Marrero and his family were vacationing in Italy. While Dr. Marrero was out of the country, Dr. Marrero’s office staff resigned. KT was the

- only staff member remaining. KT and Dr. Marrero communicated frequently by telephone and e-mail during this time. (Tr. at 18-20, 26-29) At this point, Dr. Marrero offered to increase KT's salary. KT testified that Dr. Marrero had offered the additional money because she was the only employee left in the office. KT accepted the increase in salary. (Tr. at 20, 30)
- d. KT's relationship with her husband, ST, had been deteriorating at that time. (Tr. at 22-23)
 - e. KT's father died in August 1999. Dr. Marrero attended the funeral and kissed KT on the cheek. KT testified that it had not been a romantic kiss. (Tr. at 47-49)
 - f. In September 1999, Dr. Marrero and KT attended the annual meeting of the Society for Assisted Reproductive Medicine in Toronto, Canada. KT and Dr. Marrero traveled separately. Nevertheless, they attended some functions together. KT further testified that this was the first time she had attended a professional function with Dr. Marrero. (Tr. at 20-21, 30-31)
 - g. KT testified that Dr. Marrero had given her a letter in December 1999 officially terminating the physician-patient relationship. KT testified that he had given her the letter because they had had an argument, although she could not recall what that argument had entailed. (Tr. at 42-43) Later, however, KT testified that they had not had an argument but may have had a disagreement about office business. (Tr. at 45)
 - h. On the same day during which Dr. Marrero had given KT the letter terminating their physician-patient relationship, he also left a voice message for ST stating that Dr. Marrero had been having an affair with KT for most of the past year. (Tr. at 43-44) Dr. Marrero told KT that he had left the message because he had "lost his temper, he was upset about something." KT could not recall why Dr. Marrero had been upset at that time. When asked if they had ever discussed the telephone message, KT stated: "You know what? No. Because there were so many things going on with—once I left my husband and everything, we never—we just—it was unfortunate that Dr. Marrero left that message and it was something we chose to leave in the past." (Tr. at 45-46)
 - i. KT testified that her sexual relationship with Dr. Marrero began in July 2000. (Tr. at 23)
 - j. In 2001, Dr. Marrero testified at the custody hearing regarding KT's children. Dr. Marrero testified under oath that his sexual relationship with KT had begun in August 1999. (Tr. at 31-32) KT testified that Dr. Marrero had made this statement because her lawyer had told Dr. Marrero:

[I]f they ask you anything regarding anything with an affair or anything, you have to say August 1999 because you did give her a kiss on the cheek. He did not distinguish between a sexual affair or anything

romantic. He said that since Dr. Marrero gave me a kiss on the cheek, he should testify that that was when an affair or anything romantic started.

(Tr. at 50)

- k. KT married Dr. Marrero in September 2005. (Tr. at 23)
5. Dr. Marrero testified that he had increased KT's salary during the summer of 1999 because his office staff had resigned while he and his family were in Italy. He stated that both he and his wife had agreed to increase KT's salary because they were so dependent upon her and did not want her to resign. (Tr. at 65-69)
6. Dr. Marrero filed for a divorce from his wife in November 1999. (Tr. at 76)
7. Dr. Marrero testified that he had given KT the December 1999 letter terminating their physician-patient relationship because he and KT had had an argument. Dr. Marrero testified that he could not recall the details of the argument, but he remembered that KT was leaving the practice. He stated that he had been "severing the relationship officially," even though he had not seen her as a patient in the recent past. (Tr. at 61-62)
8. When asked why he had left a message for ST claiming that KT and Dr. Marrero had been engaged in a sexual relationship, Dr. Marrero testified:

We had a big argument. She had a big argument with me. She was upset about many things and so was I. And she quit at that point.

And I was very upset and just to—against, you know, my good judgment, I just call her husband at the time and I left this nasty message that, basically, give the idea that we been having a relationship, you know, sexual relationship for a long time when that was not really true.

And in retrospect that was kind of like me being vindictive in a way because when she left—see she was the only one who knew the billing system there. I was—I was going to be crushed financially for the next several months because by the time you hire somebody and you train them and I could not do it. Nobody in the office knew how to do that except her.

So unfortunately, I did that. Yes, I did. But that was not true.

(Tr. at 74-75) Later, however, Dr. Marrero acknowledged that, several months before that time, he had been aware that KT was planning to leave the practice. (Tr. at 84)

9. Dr. Marrero testified that KT had returned to his office in the summer of 2000, prior to the beginning of their sexual relationship. (Tr. at 92)
10. Dr. Marrero acknowledged that he had written prescriptions for KT in approximately 2001. He stated that he had done so when her treating physicians were unavailable to refill her regular medications. (Tr. at 62-65) Dr. Marrero further testified that he had not recorded these prescriptions in a medical record because he had not been KT's physician at that time. Therefore, he concluded, it would have been inappropriate to document the prescriptions in a medical record. (Tr. at 91)
11. In the present matter, Dr. Marrero testified that the sexual relationship had not begun until 2000. Dr. Marrero also testified, however, that in August 2001 he had testified during the custody and support hearing that his sexual relationship with KT had begun in August 1999. Dr. Marrero explained that he had done so on the advice of his and KT's attorney, who had told him to make that statement. (Tr. at 71-74,89-90) Dr. Marrero testified as follows:

[The attorney said], you know, they're going to ask you when the relationship started. Doesn't matter when it started. We are talking in 2001, and we already had a relationship, you know, and her husband at that time was very, very upset with her and also with me.

And he said, you know, when was the earliest that you could possibly remember that you have any relation—you know, anything with her?

I said, like, what? Like a kiss or something?

Yeah, a kiss, that will qualify.

I say, well, as far as I can remember, I know that her father die in the middle of August of 1999, and she was crying, she was you know, having a hard time at that point and I remember when I—people were lining up and they give her hugs and kisses and I gave her a hug and a kiss on the cheek. So I give her a kiss there.

He said, well, a kiss does count, so you have to say that it was in August. And that is what I said, August.

I did ask him, you know, but that is not really an affair, you know.

And he said, well, they are not defining what an affair is. So if they ever ask about that, we can, basically, straighten it out but I just want to know when the first time you had any contact with her and so that was in August.

(Tr. at 72-73)

12. KT testified that she has never heard any complaints regarding Dr. Marrero's care and treatment of patients. Moreover, she has never known Dr. Marrero to act in a professionally unethical manner or to engage in inappropriate behavior with the patient.
(Tr. at 23-24)

FINDINGS OF FACT

On January 26, 2005, the Pennsylvania State Board of Medicine [Pennsylvania Board] issued an Order placing the license of Miguel Angel Marrero, M.D., on probation for a period of three years and imposing a civil penalty of \$10,000. Further, the Pennsylvania Board ordered Dr. Marrero to complete a course on physician-patient boundaries within twelve months. The Pennsylvania Board based its order, in part, on its conclusion that Dr. Marrero had been guilty of immoral and unprofessional conduct in his relationship with ST and KT, who were his patients.

CONCLUSIONS OF LAW

The Pennsylvania Board Order regarding Miguel Angel Marrero, M.D., as described in the Findings of Fact, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, 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 clause is used in Section 4731.22(B)(22), Ohio Revised Code.

* * * * *

The evidence is undisputed that Dr. Marrero engaged in inappropriate and unprofessional behavior with KT and ST, a husband and wife, who were his patients. Not only did Dr. Marrero engage in sexual activity with KT, but he also harassed both KT and ST in their home by sending e-mail messages, leaving telephone messages, and sending pictures of himself and a picture of himself holding hands with KT. Dr. Marrero's conduct is even more troublesome because, even at hearing, he failed to demonstrate any remorsefulness for his behavior or any awareness of its inappropriateness. Moreover, he provided testimony under oath that was wholly incredible; for example, Dr. Marrero's testimony about the attorney's

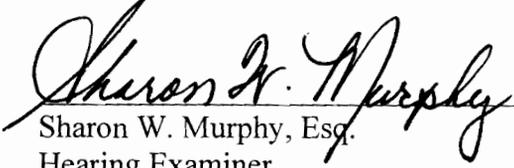
advice to him during the course of KT's custody hearing was preposterous. Accordingly, Dr. Marrero's failure to appreciate the offensiveness of his conduct, coupled with his willingness to lie, even under oath, demonstrates that Board can not be assured that his practice of medicine and surgery in this state would not present an unacceptable risk of harm to the citizens of Ohio.

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Miguel Angel Marrero, M.D., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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


Sharon W. Murphy, Esq.
Hearing Examiner

EXCERPT FROM THE DRAFT MINUTES OF JANUARY 11, 2006

REPORTS AND RECOMMENDATIONS

Dr. Robbins 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 records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Rashid Ayyub, M.D.; Robert S. Coleman, Jr., M.D.; and Miguel Angel Marrero, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Robbins	- aye

Dr. Robbins 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. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye

Dr. Saxena - aye
Dr. Steinbergh - aye
Dr. Robbins - aye

Dr. Robbins 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. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

Dr. Robbins 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.

.....
MIGUEL ANGEL MARRERO, M.D.

Dr. Robbins directed the Board's attention to the matter of Miguel Angel Marrero, M.D. He advised that objections were filed to Hearing Examiner Murphy's Report and Recommendation and were previously distributed to Board members.

Dr. Robbins continued that a request to address the Board has been timely filed on behalf of Dr. Marrero. Five minutes would be allowed for that address.

Dr. Marrero was accompanied by his attorney, Terri-Lynne Smiles.

Ms. Smiles advised that she knows that the Board really wants to hear Dr. Marrero and what he has to say, but she wants to make a few points first. She noted that this is a bootstrap action from Pennsylvania. The Pennsylvania Board did not suspend Dr. Marrero at all. It imposed a fine, with no time out of practice. In light of that, as well as in light of this Board's history of the way it has handled similar cases, the recommendation of permanent revocation is inappropriate. It really should not apply in this case. This is not a situation that is anywhere near the severest call for that sort of penalty.

Ms. Smiles stated that the second point she wants to make is that the Pennsylvania report read a bit like a script for a soap opera. She asked that the Board look at the actual operative facts in this case: Dr. Marrero did not see KT, his current wife, as a patient after June 1999. Beyond that, if you construe all of the evidence in the worst possible way for Dr. Marrero, what you come up with is that they did not begin to have an affair until sometime after that point, perhaps August 1999. Dr. Marrero and KT, who are the ones who ought to know, have consistently maintained throughout this and through Pennsylvania

proceedings that they did not begin their relationship until the middle of 2000. Ms. Smiles asked that the Board keep those facts in mind as it considers this matter.

Dr. Marrero stated that his wife is with him today. Dr. Marrero apologized for his personal life coming before the Board today. He thanked the Board for the opportunity to address it. Dr. Marrero stated that he doesn't contest the fact that the Pennsylvania State Medical Board took an action against his medical license in Pennsylvania; however, that action is currently on appeal in the Pennsylvania court system. A final adjudication order has not been entered in this specific case. Dr. Marrero stated that he also understands that the fact that the Pennsylvania Board has acted gives the Ohio Board the ability to discipline him.

Dr. Marrero asked that the Board use its discretion in this matter. He has never taken advantage of his role as a physician to influence any patients for his own personal goals. He has never had sexual relationships with any patients. He did not exert any undue influence over KT for her to become romantically involved with him. Their marriage this past year is a testament to that. Dr. Marrero stated that he appreciates that close, personal relationships can cloud a physician's mind and judgment. That is why he does not provide medical treatment for KT, and has not since their romantic relationship began. He has renewed three prescriptions for her when her regular physicians were not available, but that was only on an emergency basis and has not been an ongoing pattern.

Dr. Marrero stated that he does contest many of the facts and conclusions of the Pennsylvania matter that have been adopted by the Hearing Examiner in this matter. The effect is to create an impression of him as an unethical, playboy physician. Dr. Marrero stated that he deeply regrets that his actions would lead to this interpretation. Dr. Marrero asked that the Board look beyond that mistaken impression and see who he really is: A human being, person, who is deeply committed to his family, his patients and his profession. He asked that the Board take this into consideration in deciding this matter.

Dr. Marrero stated that he would be happy to answer any questions Board members might have.

Dr. Robbins asked whether the Assistant Attorney General wished to respond.

Ms. Pfeiffer stated that she appreciates Dr. Marrero's and Ms. Smiles' comments about this case not being the more traditional case where you have an extremely vulnerable patient, or a history of many patients being taken advantage of. Dr. Marrero has, in fact, married the patient who allowed herself to be identified. She wasn't trying to keep herself confidential, and is with him today. Ms. Pfeiffer stated that it is all those factors that, to her, make her wonder why he and his wife came in and why they weren't honest with this Board about their relationship. She stated that the most troubling aspect of this case is what she believes to be the lack of credibility of both Dr. Marrero and KT.

Ms. Pfeiffer stated that she would like to quote a little bit from some of the evidence. A few sentences of the Pennsylvania adjudication order are pretty compelling:

(Dr. Marrero) and KT are not found to have provided credible testimony. Motive and conflicting evidence belies the reliability of their testimony and contravenes documentary evidence proffered by the Commonwealth. The documentary evidence speaks for itself. (Dr. Marrero) admitted to having an affair with KT in one venue,...

Ms. Pfeiffer stated that that venue was in a Domestic Relations Court, after their relationship had begun. Dr. Marrero testified that the affair began in August 1999 and that the sexual relationship was ongoing. She continued reading:

yet denies so in a venue with differing impact (i.e., the Medical Board in Pennsylvania) and consequence. (Dr. Marrero) left a phone voicemail message stating that he was having an affair with KT prior to the claimed termination of the doctor patient relationship.

Ms. Pfeiffer stated that she would like to focus on the last couple of months of 1999 and what the evidence showed. The testimony was clear that near the end of 1999 both Dr. Marrero, who was married with four children of his own, and KT, who was married with four children of her own, were simultaneously experiencing marital difficulties. Ms. Pfeiffer stated that she is sure that the decision to leave their marriages was one to which they gave a lot of thought. In September 1999, KT accompanied Dr. Marrero, for the first time, to a conference in Toronto. They acknowledge going to dinner together; they acknowledge there was a picture taken of them with their hands together. In October 1999, KT tells Dr. Marrero that she is going to resign. Dr. Marrero also testified that sometime in October or November 1999, KT came to him and told him that her husband wants her to terminate her employment and cut all ties with him. Dr. Marrero acknowledges that in his testimony. Dr. Marrero stated that he doesn't remember what he said to her, and he didn't know why her husband wanted her to terminate the relationship. Ms. Pfeiffer stated that this lends to the non-credibility of their testimony.

Ms. Pfeiffer continued that in November 1999 Dr. Marrero filed for divorce. Shortly thereafter, on December 3, KT and Dr. Marrero had a big argument. KT quit and Dr. Marrero left a nasty message for her husband, the gist of it saying that they've been having an ongoing affair for the past year.

Ms. Pfeiffer stated that one thing she would like to point out about that is that, in the testimony, Dr. Marrero said that he left this message for KT's husband for the reason that he was upset that she was leaving. Ms. Pfeiffer said that Dr. Marrero's attorney asked why he left the message for KT's husband. Dr. Marrero responded:

Yeah, I remember that. We had a big argument. She had a big argument with me. She was upset about many things and so was I. And she quit at that point.

And I was very upset and just to – against, you know, my good judgment, I just call her husband at the time and I left this nasty message that, basically, give the idea that we have been having a relationship, you know, sexual relationship for a long time when that

was not really true.

And in retrospect that was kind of like me being vindictive in a way because when she left – see, she was the only one who knew the billing system there. I was – I was going to be crushed financially...

Ms. Pfeiffer stated that, basically, Dr. Marrero is saying that he left this message because he was upset because KT was going to leave. KT's testimony before the Hearing Examiner, however, was a bit different on this issue. When asked whether she ever heard the message, KT responded that she did. She was able to say what the contents of the message were, and she recognized Dr. Marrero's voice. When asked what her reason had been for resigning in December 1999, KT responded that she and Dr. Marrero had argued, that Dr. Marrero told her that he left the message, and so she resigned. When asked whether KT was saying that she knew that Dr. Marrero left the message before she resigned, KT responded that she did. Ms. Pfeiffer stated that this is another example of the lack of credibility of these two witnesses. Ms. Pfeiffer suggested that things weren't going well, Dr. Marrero finally filed for divorce in November, KT's husband is trying to pull her back into that family relationship, and things blew up. She stated that she thinks that that's what culminated in December 1999.

Ms. Pfeiffer stated that she also thinks that the testimony is clear that KT was still in a physician/patient relationship with Dr. Marrero at this time. He did, by her own testimony, prescribe three medications subsequent to June 1999. Ms. Pfeiffer stated that she's unsure what the "emergency" nature was for KT's acne prescription. KT's own testimony was that Dr. Marrero did issue three prescriptions: Prozac, birth control, and an acne medication. She commented that KT testified that each of these had to be refilled over the weekend. Ms. Pfeiffer commented that KT worked in the doctor's office and should know when her medications were about to expire or run out. You plan ahead and get those prescriptions filled. Ms. Pfeiffer stated that this just goes to the lack of credibility of these two witnesses.

Ms. Pfeiffer stated that she's deeply troubled by the fact that Dr. Marrero didn't come in and acknowledge what happened, take responsibility and take their lumps.

MR. BROWNING MOVED TO APPROVE AND CONFIRM MS. MURPHY'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER IN THE MATTER OF MIGUEL ANGEL MARRERO, M.D. DR. KUMAR SECONDED THE MOTION.

Dr. Robbins stated that he would now entertain discussion in the above matter.

Dr. Egner stated that when Ms. Smiles stated that this case reads like a soap opera, she disagrees; she stated that she believes a soap opera would be easier to follow. Dr. Egner stated that she read every bit of testimony, everything in this case, and she still doesn't have a clear idea of exactly what happened and what went on. You can only conjecture. Dr. Egner stated that she thinks that there's a reason why the Board doesn't have a clear idea of what went on and when things happened, and that's because Dr. Marrero and KT have lied. They've lied about details of their relationship, their physician/patient

relationship, and the prescriptions that were written for so long, she doesn't know where the truth is. Since Dr. Marrero is the only one about whom the Board is concerned, she will confine her comments to him.

Dr. Egner stated that there are many things that make absolutely no sense to her. Dr. Marrero completely denies a physician/patient relationship, but admits to writing prescriptions. Dr. Egner asked whether that isn't a physician/patient relationship. Yet, there is no remorse or no explanation for this, except to say that they were emergency prescriptions. Dr. Egner stated that they were not emergency prescriptions. She added that a reasonable person, a reasonable physician would not find that these were emergency prescriptions.

Dr. Egner continued that, as far as when his relationship began with KT and whether she was still a patient, the Board would have to find that she absolutely was a patient because Dr. Marrero testified to that fact, under oath, at a different court proceeding. His denial of that now shows that Dr. Marrero lies and has a significant character flaw as a physician. Dr. Egner commented that Dr. Marrero's testimony that he left a message for KT's husband, telling him that they were having an affair, because he was concerned about the billing practices in his office was the most ludicrous thing she's ever heard. No one in his or her right mind would do that or make something up like that if there wasn't some other alternative motive.

Dr. Egner stated that this whole case comes down to Dr. Marrero's character, and it's a terrible character. Is it a character that this Board wants for a physician practicing in Ohio? She doesn't think that it is. Dr. Egner stated that the Report and Recommendation is appropriate, and if the Board doesn't go with this, she hopes that it goes with something that is significant.

Dr. Steinbergh stated that she doesn't really disagree with Dr. Egner. Her interpretation of this case was very similar. It was very confusing because there was a lot of dishonesty. Dr. Marrero was a very unprofessional physician. Regardless of the timing of the affair or any of these other circumstances, Dr. Marrero has demonstrated that he's very unprofessional in his behavior. Dr. Steinbergh stated that what concerned her also about this physician/patient relationship is that Dr. Marrero not only had a relationship with KT, he had a relationship with her husband as well, in the sense that Dr. Marrero was an infertility physician, dealing with them as a couple, dealing with their discussions with regard to their infertility, and treatment for their infertility. Dr. Steinbergh stated that Dr. Marrero violated the family relationship, which went beyond the fact that she was an obstetric or gynecologic patient. Dr. Steinbergh stated that this offended her a great deal.

Dr. Steinbergh continued that she would also disagree with a comment that was made in Dr. Marrero's objections. Ms. Smiles gives examples of what she feels are more egregious cases of sexual boundary issues. In the case of Dr. Heyd, Ms. Smiles indicates that the Board suspended Dr. Heyd for 60 days for having sex with a patient. Ms. Smiles states in the objections that, "(a)fter breaking off the affair, Dr. Heyd diagnosed her pregnancy and coerced her into having an abortion." Dr. Steinbergh stated that she does not believe that that was the opinion of the Medical Board. Dr. Steinbergh stated that she was offended by that language in the objections, because she suspects that this case will be appealed and that language might be misleading to a court. The Board did not find what Ms. Smiles alleged.

Dr. Steinbergh stated that she was very discouraged by this case, but did not feel that it rose to the level of permanent revocation. She stated that she would like to offer an alternative order. Dr. Steinbergh stated that her proposal is to suspend Dr. Marrero's certificate for an indefinite period of time and that conditions for reinstatement or restoration of his license would require some of the usual things: reapplication; demonstration of unrestricted license in the state of Pennsylvania; besides the course required by Pennsylvania, he must complete a course in both personal and professional ethics; demonstrate additional evidence of fitness to return to practice if he has not been engaged in the active practice of medicine for a period in excess of two years prior to application; and the usual requirements of reporting to other state licensing authorities, employers and hospitals. Dr. Steinbergh stated that she would ask that the Order become effective immediately upon mailing.

Dr. Robbins asked whether Dr. Steinbergh is recommending a stayed revocation.

Dr. Steinbergh stated that she is not. She would not disagree with the use of the term "stayed permanent revocation."

Dr. Egner asked whether Dr. Steinbergh is suggesting a minimum period of time for the suspension.

Dr. Steinbergh stated that she's not. She stated that she would simply suspend Dr. Marrero until he gets done with Pennsylvania and he has an unrestricted license there. Other conditions would be that he would take these other courses and meet the other standards.

Dr. Buchan noted that Dr. Marrero has approximately two years of probation in Pennsylvania. That would essentially restrict Dr. Marrero's ability to gain Ohio licensure for two years.

Dr. Steinbergh stated that that is correct. She noted that Pennsylvania is different from Ohio in that they fine. Ohio does not have fining authority, so its Board Orders may seem somewhat more severe. She added that she believes that Dr. Marrero has served one year of the two-year probationary term in Pennsylvania.

Dr. Kumar stated that he would concur with Dr. Steinbergh's suggestion, although he would like a stayed permanent revocation in place. He sees this case as being a lot more egregious, with Dr. Marrero's being untruthful in his testimony.

DR. STEINBERGH MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF MIGUEL ANGEL MARRERO, M.D., BY SUBSTITUTING THE FOLLOWING:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Miguel Angel Marrero, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Marrero's certificate shall be SUSPENDED for an indefinite period of time.

B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Marrero's certificate to practice medicine and surgery until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration:** Dr. Marrero shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Obey the Law:** Dr. Marrero shall obey all federal, state, and local laws, all rules governing the practice of medicine and surgery in the state in which he is practicing, and all terms of probation imposed by the Pennsylvania State Board of Medicine.
3. **Evidence of Unrestricted Licensure in Specific State:** At the time he submits his application for reinstatement or restoration, Dr. Marrero shall provide the Board with acceptable documentation evidencing his full and unrestricted licensure in the State of Pennsylvania.
4. **Professional Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Marrero shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

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

5. **Personal Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Marrero shall provide acceptable documentation of successful completion of a course or courses dealing with personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

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

6. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Marrero has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.

C. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Marrero shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Marrero shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Marrero's certificate to practice medicine and surgery in the State of Ohio is fully restored.

D. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Marrero shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Marrero shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Marrero shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board. This requirement shall continue until Dr. Marrero's certificate to practice medicine and surgery in the State of Ohio is fully restored.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of notification of approval by the Board.

DR. KUMAR SECONDED THE MOTION.

Dr. Kumar referred to paragraph B.3. of the proposed amendment, noting that it requires Dr. Marrero to present evidence of unrestricted licensure in a specific state. He noted that "probation" may not be considered as a restricted license.

Ms. Thompson stated that it would be.

Dr. Kumar stated that he would prefer to say that Dr. Marrero's license will remain suspended as long as he's on probation in Pennsylvania.

Ms. Thompson stated that the language in the proposed alternative is broader. She added that the language, "full and unrestricted licensure" would be generally understood.

Dr. Steinbergh stated that she believes all the states would use that language.

Ms. Thompson stated that it seems clear to her that "full and unrestricted" would mean that the license is not on probation either. She suggested that the Board might add the phrase, "and in good standing." Ms. Thompson stated that the Board does have an Attorney General's opinion that says that "in good standing" means that the licensee can't be on probation.

Dr. Kumar agreed to the addition of that phrase.

Dr. Egner stated that she doesn't like Ohio's Order being based upon his license status in another state. She stated that she feels that way in all of the bootstrap cases. The Board looks at these cases in relationship to what Ohio's laws are and what this Board's criteria are for an Ohio physician. She stated that she would rather that the Board have an order that is consistent with what Ohio Board members think his actions deem appropriate. If the Board thinks that Dr. Marrero deserves disciplinary action, then it should give disciplinary action based upon what the Board knows and based on what is in accordance with Ohio's laws and rules, and not subject to what Pennsylvania may or may not do.

Dr. Steinbergh stated that she understands that. The reason she proposed this order is because she believes it's an appropriate order for him. The Board has, in other cases, done orders similar to this where once this Board knows that that person has fulfilled the consent agreement or order in another state, the Board feels that that has been sufficient. Her personal opinion is that this is sufficient in this case. That's why she brought it to the Board. Dr. Steinbergh stated that she thinks that her proposal covers the bases. If she can see that Dr. Marrero has done some ethics courses, has taken sexual boundary issue course in Pennsylvania, she thinks his time out is enough. She doesn't feel that this Board needs to do anything further.

Dr. Davidson stated that she thinks she's much more in Dr. Egner's camp for a couple of reasons. She's also uncomfortable putting this back in Pennsylvania's camp. It would make this Board's order hinge upon whatever happens in Pennsylvania after the appeal goes through. Dr. Davidson stated that this Board

should make its decision based upon what the laws in Ohio are. She also thinks to have an order with the ultimate sanction, permanent revocation, even though it's stayed, with no other punishment in it, such as suspension time, is not something this Board has done. She stated that that feels strange to her.

Dr. Davidson added that, quite frankly, she doesn't feel that Dr. Marrero is acknowledging any wrongdoing at all. She stated that that might be consistent with his appeal and his court position, but she didn't feel that he acknowledged it in his presentation today. Because of that she doesn't think that sending him to a course has much point. He might get something out of it, but she's doubtful. Dr. Davidson stated that she has a feeling that punishment might get his attention. Dr. Davidson stated that she is more supportive of the Board Order as written.

Dr. Kumar stated that he understands the points that Dr. Egner and Dr. Davidson have made. He stated that he would be comfortable modifying the proposed amendment to eliminate B.3., and to impose a definite one-year suspension.

Dr. Steinbergh asked that there be a vote on her amendment. She stated that she does want to include the requirement that Dr. Marrero appear before this Board to request his release. She noted that her proposal doesn't include the usual personal appearances. She would like to add the requirement to make a personal appearance when he requests restoration.

A vote was taken on Dr. Steinbergh's motion to amend:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- nay
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Buchan	- nay
	Dr. Kumar	- nay
	Mr. Browning	- nay
	Ms. Sloan	- nay
	Dr. Davidson	- nay
	Dr. Saxena	- nay
	Dr. Steinbergh	- aye

The motion failed.

Dr. Buchan stated that he is in favor of a sanction less than permanent revocation.

**DR. BUCHAN MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF
DR. MARRERO BY SUBSTITUTING THE FOLLOWING:**

A. PERMANENT REVOCATION, STAYED; SUSPENSION: The certificate of

Miguel Angel Marrero, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Marrero's certificate shall be SUSPENDED for an indefinite period of time, but not less than twelve months.

B. CONDITIONS FOR REINSTATEMENT OR RESTORATION: The Board shall not consider reinstatement or restoration of Dr. Marrero's certificate to practice medicine and surgery until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration:** Dr. Marrero shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Obey the Law:** Dr. Marrero shall obey all federal, state, and local laws, all rules governing the practice of medicine and surgery in the state in which he is practicing, and all terms of probation imposed by the Pennsylvania State Board of Medicine.
3. **Professional Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Marrero shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

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

4. **Personal Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Marrero shall provide acceptable documentation of successful completion of a course or courses dealing with personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

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

5. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Marrero has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.

E. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Marrero shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Marrero shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Marrero's certificate to practice medicine and surgery in the State of Ohio is fully restored.

F. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Marrero shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Marrero shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration or restoration of any professional license. Further, Dr. Marrero shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board. This requirement shall continue until Dr. Marrero's certificate to practice medicine and surgery in the State of Ohio is fully restored.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of notification of approval by the Board.

DR. KUMAR SECONDED THE MOTION.

Dr. Steinbergh suggested adding the usual probationary terms, requiring appearances before the Board.

Dr. Buchan agreed.

Mr. Browning at this time stated that he agrees conceptually that permanent revocation is too harsh a penalty. He added that his sense of the Board is that legitimate concerns have been raised in Pennsylvania and that Ohio has not been given the level of candor that it should receive in this case. The proposal, as a practical matter, just cut the penalty in half. The odds are that the Pennsylvania judgment will stand and Dr. Marrero will be out a couple of years. Dr. Steinbergh's previous motion linked Ohio's penalty to Pennsylvania's. Twelve months would be half of what would otherwise have stood had Dr. Steinbergh's proposal been supported.

Mr. Browning stated that he agrees that a separate independent judgment on the part of Ohio makes sense, but he would suggest that the Board stay at 24 months of suspension rather than cutting it to 12 because of the significance of the case and the fact that he came in and didn't give the Board the unvarnished truth.

Dr. Davidson stated that Pennsylvania's order imposed a two-year probation, not a suspension.

Mr. Browning agreed but the practical matter is the same. He still would have been suspended in Ohio for two years under Dr. Steinbergh's proposal.

Dr. Steinbergh suggested that the Board table this matter to allow staff to work with Board members to draw up an appropriate order and bring it back to the Board to read.

Dr. Buchan stated that he thinks that the Board has some consensus. He suggested moving this forward with the proposed one-year suspension, and the reporting to the Secretary and Supervising Member.

Dr. Buchan was asked to clarify his motion.

Dr. Buchan stated that he is proposing stayed permanent revocation, twelve months suspension, and the conditions as follows in Dr. Steinbergh's amendment with the elimination of her paragraph B.3. He stated that there will be monitoring, but no probation. He wants the standard language that would require Dr. Marrero to appear before the Board upon his request for reinstatement or restoration. He again stated that there is no probationary term. Dr. Buchan stated that he doesn't think probationary terms would be necessary as long as Dr. Marrero complies with the conditions for reinstatement. No monitoring is necessary.

A vote was taken on Dr. Buchan's motion:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- nay
	Dr. Talmage	- abstain

Dr. Varyani	- nay
Dr. Buchan	- aye
Dr. Kumar	- aye
Mr. Browning	- nay
Ms. Sloan	- aye
Dr. Davidson	- nay
Dr. Saxena	- aye
Dr. Steinbergh	- nay

The motion failed.

Dr. Egner stated that she thinks that there needs to be more discussion. She doesn't know how some Board members feel, and whether their "nay" vote means that they want it to be more lenient or stricter. If the Board is going to write a new Order, it needs a better consensus of how Board members feel.

Dr. Varyani stated that there are too many things going on here. He added that he's in agreement with a lot of them, but they're not balancing out at this time and it's causing a lot of confusion. He stated that the Board needs a stayed permanent revocation, with 24 months suspension, and personal appearances and all that are fine. The Board needs a little time.

Dr. Buchan stated that it seems to be a time issue now, and a couple of members have indicated that a 24-month suspension is more reasonable.

Dr. Kumar stated that it appears that nobody disagrees with a stayed permanent revocation. He will go with either a one-year or two-year suspension. What is missing are probationary terms. He would be comfortable with a one-year suspension, two years' probation, with the standard probationary terms. This would get Dr. Marrero's into Ohio's monitoring system for three years. Dr. Kumar stated that he believes the missing piece before was the probationary period.

Ms. Sloan stated that she could agree with that.

DR. KUMAR MOVED TO AMEND THE PROPOSED ORDER TO SUBSTITUTE AN ORDER INCLUDING A STAYED PERMANENT REVOCATION, INDEFINITE SUSPENSION FOR A MINIMUM OF ONE YEAR, CONDITIONS FOR REINSTATEMENT, PROBATIONARY PERIOD FOR TWO YEARS AND STANDARD PROBATIONARY TERMS LANGUAGE. DR. SAXENA SECONDED THE MOTION.

Dr. Steinbergh stated that she opposes the length of this suspension. She indicated that she feels strongly about the statements she made earlier.

A vote was taken on Dr. Kumar's motion:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- nay
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- nay
	Dr. Robbins	- aye

The motion carried.

DR. BUCHAN MOVED TO APPROVE AND CONFIRM MS. MURPHY’S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF MIGUEL ANGEL MARRERO, M.D. DR. VARYANI SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- nay
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- nay
	Dr. Robbins	- aye

The motion carried.

Following the meeting the Board drafted the following amended order, per Board motion:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Miguel Angel Marrero, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Marrero’s certificate shall be SUSPENDED for an indefinite period of time, but not less than one year.

B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Marrero's certificate to practice medicine and surgery until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration:** Dr. Marrero shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Professional Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Marrero shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

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

3. **Personal Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Marrero shall provide acceptable documentation of successful completion of a course or courses dealing with personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

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

4. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Marrero has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the

Revised Code to require additional evidence of his fitness to resume practice.

- C. **PROBATIONARY CONDITIONS:** Upon reinstatement or restoration, Dr. Marrero's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:
1. **Obey the Law:** Dr. Marrero shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in the state in which he is practicing, and all terms and conditions imposed by the Pennsylvania Board.
 2. **Quarterly Declarations:** Dr. Marrero shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Order becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
 3. **Appearances:** Dr. Marrero shall appear in person for quarterly interviews before the Board or its designated representative during the third month following the month in which his certificate is restored or reinstated or as otherwise directed by the Board. Dr. Marrero shall also appear upon his request for termination of the probationary period, and/or as otherwise requested by the Board.
 4. **Violation of Probation; Discretionary Sanction Imposed:** If Dr. Marrero violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Marrero's certificate will be fully restored.
- E. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Marrero shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Marrero shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the

Chief of Staff at each hospital where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Marrero receives from the Board written notification of his successful completion of probation pursuant to Paragraph D, above.

F. REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:

Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Marrero shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Marrero shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Marrero shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board. This requirement shall continue until Dr. Marrero receives from the Board written notification of his successful completion of probation pursuant to Paragraph D, above.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon mailing of notification of approval by the Board.



State Medical Board of Ohio

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

April 13, 2005

Miguel Angel Marrero, M.D.
2024 Teal Trace
Pittsburgh, Pennsylvania 15237

Dear Doctor Marrero:

In accordance with R.C. Chapter 119., 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 you or place you on probation for one or more of the following reasons:

- (1) On or about July 1, 2004, your State Medical Board of Ohio certificate to practice medicine and surgery was suspended, by operation of law, for non-payment of renewal fees, and has not been reinstated.
- (2) On or about January 26, 2005, the Pennsylvania State Board of Medicine (Pennsylvania Board) issued a Final Adjudication and Order placing your license on probation for a period of three years and imposing a civil penalty of \$10,000. Further, you were ordered to complete a course on physician/patient boundaries within 12 months.

The Pennsylvania Board Conclusions of Law included that you were guilty of immoral and unprofessional conduct in your relationship with ST and KT, who were your patients.

A copy of the Pennsylvania Board Final Adjudication and Order is attached hereto and incorporated herein.

The Pennsylvania Board Final Adjudication and Order, as alleged in paragraph two (2) above, constitutes “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, 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 clause is used in R.C. 4731.22(B)(22).

MAILED 4-14-05
SECOND MAILING 5-3-05

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

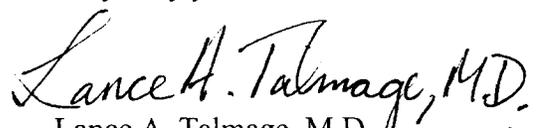
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,


Lance A. Talmage, M.D.
Secretary 

LAT/cw
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5149 5667
RETURN RECEIPT REQUESTED

Miguel Angel Marrero, M.D.
Page 3

Second mailing: 80 Emerson Lane, Suite 13001-1302
Bridgeville, PA 15017
CERTIFIED MAIL NO. 7002 2410 0002 3141 4021
RETURN RECEIPT REQUESTED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

PROTHONOTARY
OHIO STATE MEDICAL BOARD
MAR 07 2005
Dep. Sec. of State

BEFORE THE STATE BOARD OF MEDICINE

COMMONWEALTH OF PENNSYLVANIA
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

v.

MIGUEL A. MARRERO, M.D.
LICENSE NO. MD-046545-L
Respondent

DOCKET NO. 0943-49-03
FILE NO. 01-49-03351

FINAL ADJUDICATION AND ORDER

BASIL L. MERENDA, COMMISSIONER
BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS

CHARLES D. HUMMER, JR., M.D., CHAIRMAN
STATE BOARD OF MEDICINE

2601 North Third Street
P.O. Box 2649
Harrisburg, PA 17105-2649

SIH

TRUE AND CORRECT COPY
CERTIFIED FROM THE RECORD
THIS 28 DAY OF Feb. AD. 04

Reanna S. Walton
PROTHONOTARY

HISTORY

This case comes before the State Board of Medicine (Board) on an Application for Review (Application) filed by the Commonwealth on November 5, 2004, and Application filed by Respondent on or about November 16, 2004 from the Adjudication and Order of a Board hearing examiner dated October 28, 2004. The Commonwealth's Application seeks the Board's review of the of the sanction imposed against Respondent by Order of the hearing examiner which imposed a sanction of a three (3) year suspension, which was stayed in lieu of probation, and a civil penalty of \$4,000 against Respondent for: having an affair with a patient who was also his office manager; engaging in immoral or unprofessional conduct; and, failure to maintain proper medical records. The Respondent's Application seeks a review of several Findings of Fact and a Conclusion of Law found by the Board hearing examiner, and seeks a review of the sanction imposed against Respondent.¹ The prior history of this matter is fully discussed in the hearing examiner's Adjudication and Order (appended as Attachment "A").

¹ Respondent filed a Motion for Stay of the hearing examiner's Order on December 15, 2005. The Motion for Stay is deemed denied under the General Rules of Administrative Policy and Procedure (GRAPP) 1 Pa. Code § 35.180.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION

Pursuant to the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§35.1 et seq., when an application for review of a hearing examiner's decision is filed, the Board reviews the evidence and, if deemed advisable by the Board, hear argument and additional evidence. It is the Board's duty and obligation to make a final decision and issue the same with the findings of fact on which it is based.

It is consistent with the Board's responsibility and its authority to adopt the findings of fact and conclusions of law of its hearing examiner if it determines that they are complete and are supported by the evidence and the law. The Board, although agreeing with the findings of fact and conclusions of law of its hearing examiner, believes that the Order issued by the hearing examiner in this case is insufficient. Accordingly, the hearing examiner's findings of fact, conclusions of law and discussion are hereby adopted by the Board and incorporated by reference. However, the Board has determined that the sanction set forth by the hearing examiner is not appropriate

The hearing examiner's proposed sanction consisted of a civil penalty of \$4,000 and ordering a three (3) year suspension of Respondent's license, which suspension was stayed in lieu of probation. As noted in the hearing examiner's Adjudication and Order of October 28, 2004, the Respondent provided conflicting testimony between a previous judicial tribunal and the hearing in the instant matter. The hearing examiner considered the circumstances under which the conflicting testimony was presented and the purposes of the hearings. Further, testimonial and documentary evidence provided by the Commonwealth in addition to Respondent's own testimony, undermines the position taken here by Respondent that he did not have an affair with a patient; that he did not have a physician/patient relationship with the

patient's spouse; and that he did not engage in a course of unprofessional conduct toward the patient and her spouse.

It is apparent to the Board that the Respondent failed to recognize the boundaries between a medical doctor and a patient. The fact that the patient in this matter was also an employee, ameliorated the potential for a suspension or revocation of licensure to practice medicine of the Respondent. The Board also recognizes that the Respondent and the patient are engaged to be married. In view of the seriousness of the unprofessional conduct of the Respondent, the following order shall issue:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs

v.

Miguel A. Marrero, M.D.,
Respondent .

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Docket No. 0943-49-03
File No. 01-49-03351

ORDER

AND NOW, this 26th day of January, 2005, the State Board of Medicine hereby affirms the Adjudication and Order of the hearing examiner placing Respondent's license on probation in lieu of suspension, and imposing a civil penalty, but modifies such penalty to **\$10,000**. The State Board of Medicine hereby also Orders that Respondent complete a course on physician/patient boundaries within a period of 12 months from the date of this Order. The probationary terms and conditions as set forth by the hearing examiner are to remain in effect.

This Order shall take effect immediately.

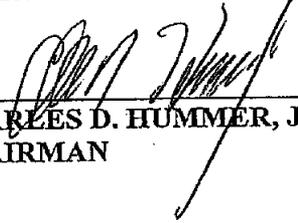
BY ORDER:

BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS



BASIL L. MERENDA
COMMISSIONER

STATE BOARD OF MEDICINE


CHARLES D. HUMMER, JR., M.D.
CHAIRMAN

Respondent's Attorney:

Stanton D. Levinson, Esquire
1715 Gulf Tower
Pittsburgh, PA 15219

Hearing Examiner:

C. Michael Weaver, Esquire

Prosecuting Attorney:

Anita P. Shekletski, Esquire
P.O. Box 2649
Harrisburg, PA 17105-2649

Board Counsel:

Sabina I. Howell, Esquire
P.O. Box 2649
Harrisburg, PA 17105-2649

Date of Mailing:

January 26, 2005

PROTHONOTARY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
STATE BOARD OF MEDICINE

2004 OCT 28 AM 10:13

Department of State

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs

v.

Miguel A. Marrero, M.D.,
Respondent

Docket No. 0943-49-03
File No. 01-49-03351

ADJUDICATION AND ORDER

C. Michael Weaver, Esquire
Hearing Examiner

Commonwealth of Pennsylvania
GOVERNOR'S OFFICE OF GENERAL COUNSEL
Department of State
P.O. Box 2649
Harrisburg, PA 17105-2649
(717) 772-2686

10-28-04

Attachment A

HISTORY

This matter comes before the hearing examiner for the State Board of Medicine (Board) on an order to show cause (OSC) filed July 10, 2003 alleging that Miguel A. Marrero, M.D. (Respondent) is subject to disciplinary action under section 41 of the Medical Practice Act of 1985 (Act), Act of December 20, 1985, P.L. 457, No. 112, *as amended*, at 63 P.S. §422.1 *et seq.* by engaging in unprofessional conduct in the treatment of a patient.

Respondent filed an answer to the OSC on August 8, 2003, denying any violation of the Act and requesting a hearing. A formal administrative hearing was scheduled for October 28, 2003. After a Motion for Continuance and Transfer was granted, a new hearing was scheduled for January 12, 2004 in Pittsburgh before hearing examiner C. Michael Weaver. Anita Schekletski, Esquire represented the Commonwealth. Respondent and his attorney, Stanton D. Levenson, Esquire, were also present at the hearing. Both parties waived the filing of post-hearing briefs and the matter was closed on February 5, 2004 with the filing of the hearing transcript.

FINDINGS OF FACT

1. Respondent holds a license to practice medicine and surgery in the Commonwealth of Pennsylvania, license no. MD-046545-L. (Board records)

2. Respondent's license is active through December 31, 2004, and may be renewed thereafter upon the filing of the appropriate documentation and payment of the necessary fees. (Board records)

3. At all times pertinent to the factual allegations, Respondent held a license to practice medicine and surgery in the Commonwealth of Pennsylvania. (Board records)

4. Respondent's last known address on file with the Board is 50 Emerson Lane, Suites 1301-1302, Bridgeville, PA 15017. (Board records)

5. On July 22, 1995, KT and ST, husband and wife, came under the care of Respondent, an obstetrician and gynecologist specializing in fertility issues. (Commonwealth Exhibits C-2, C-3)

6. In 1996, while still a patient of Respondent, KT became employed as Respondent's office manager. (N.T. 17)

7. Respondent continued to treat ST with respect to fertility issues until April 1998. (Commonwealth Exhibits C-3, C-4; N.T. 18-20)

8. At all times relevant herein, Respondent has continued to treat KT. (Commonwealth Exhibit C-3)

9. In 1999, while KT was still a patient and employee of Respondent and while both were married and living with their respective spouses, Respondent engaged in a sexual relationship with KT. (Commonwealth Exhibit C-5)

10. In September 1999, Respondent and KT traveled to Toronto together and, while in

Toronto, saw Phantom of The Opera, the Skyport, and shopped for toys for KT's children.
(Commonwealth Exhibit C-3; N.T. 24, 101)

11. On September 11, 1999, Respondent, in an effort to persuade KT to remain employed as his office manager, Respondent increased her annual salary from approximately \$37,000 to \$52,000. (Commonwealth Exhibit C-10)

12. On October 13, 1999, KT expressed concerns and trouble she was having at home with her husband and ST's desire that KT leave Respondent's care and employment and sever ties with Respondent. (N.T. 99)

13. During the course of 1999, Respondent engaged in a continuous course of unprofessional and harassing conduct wherein he would send emails and other messages to KT professing his deep affection and love for her, as well as sending photographs of himself to KT. (N.T. 21)

14. From August 1999 through January 2000, despite being advised by KT that she wanted to work on her marriage, Respondent continuously and repeatedly contacted the "T" family and made romantic overtures toward KT, professing his love for her by letters, emails and phone calls. (Commonwealth Exhibits C-12, C-13, C-15, C-17)

15. In 1999 and all times relevant herein, the "T" family had one email mailbox and one answering machine; therefore, Respondent's romantic overtures were accessible to and in fact received by ST as well. (N.T. 21)

16. By letter dated October 24, 1999, KT advised Respondent that she would be resigning from her position as office manager effective November 5, 1999. (Commonwealth Exhibit C-6)

17. By letter dated October 25, 1999, Respondent, in an effort to persuade KT to remain in his employ, offered her a salary of \$104,000 per year based upon approximately four work days

per week. (Commonwealth Exhibit C-7)

18. By letter dated October 27, 1999, Respondent wrote to KT and advised her that the new salary of \$104,000 per year would become her permanent salary for the calendar year 2000. (Commonwealth Exhibit C-8; N.T. 22)

19. By letter dated October 29, 1999 KT advised Respondent she could not accept his counter-proposal. (Commonwealth Exhibit C-9)

20. By letter dated October 29, 1999, Respondent asked KT to reconsider her decision and to at least remain employed with him until November 30, 1999. (Commonwealth Exhibit C-10)

21. By a second letter dated October 29, 1999, Respondent wrote to KT and, as an additional incentive for her to remain in his employ, offered her the difference in her salary between \$104,000 per year and her current salary of \$52,000 per year which would be deposited into a money account which she would have access to whenever she needed it. (Commonwealth Exhibit C-11)

22. By letter dated December 3, 1999, Respondent advised KT that if she were to leave his care, the only physician who could treat her reproductive/endocrinology and infertility issues was Dr. Stephen Orry of Margate, Florida, and that the only physicians who could treat her for her endometriosis surgery were located Oregon, Tennessee or Wisconsin. (N.T. 136-137)

23. Throughout 1999, Respondent sent voicemails and emails to KT's husband, ST, including a photograph in December 1999 of KT and Respondent holding hands. (Commonwealth Exhibit C-12; N.T. 29)

24. On December 3, 1999, despite the fact that KT had been attempting to resign her position with Respondent and work on her marriage, Respondent telephoned ST at home and left a message advising him that he and KT were having an affair. (Commonwealth Exhibit C-13)

25. On December 6, 1999, Respondent provided KT with a bonus check in the amount of

\$5,516.68 in an effort to convince her to remain in Respondent's employ against ST's wishes.
(Commonwealth Exhibit C-16; N.T. 36)

26. In December 1999, contacts by Respondent to the "T" family home increased in frequency and were all focused on harassing ST and dismantling his marriage to KT.
(Commonwealth Exhibit C-17; N.T. 36-37)

27. In June 2000, KT left her husband and remains in the employ of Respondent.
(Commonwealth Exhibit C-1; N.T. 96, 111)

28. On January 23, 2001, in support hearings conducted before the Court of Common Pleas of Allegheny County with respect to KT and ST, Respondent admitted under oath that his affair with KT commenced in August 1999 and that his sexual relationship with KT is ongoing.
(Commonwealth Exhibit C-5)

29. Since November 17, 1999, Respondent has continued to provide care and treatment to KT, including but not limited to treating her for reproductive issues, endocrinology, infertility and endometriosis surgery, as well as prescribing various medications, including the caution legend drugs Prozac (and/or Fluoxetine Hydrochloride), Ortho-Cept, Retin-A, Compazine (and/or Prochlorperazine) and Ibuprofen, but has failed to maintain medical records regarding the care and treatment rendered to KT. (N.T. 111, 139-141)

30. Respondent has an outstanding reputation in the medical community for his competency as an imminent obstetrician and gynecologist specializing in fertility and reproduction.
(N.T. 67-81)

31. Respondent was served with all pleadings, orders and notices filed of record in this matter. (Docket No. 0943-49-03)

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. (Findings of Fact, Nos. 1-4)
2. Respondent has been afforded reasonable notice of the charges against him and an opportunity to be heard in this proceeding, in accordance with the Administrative Agency Law, 2 Pa.C.S. §504. (Findings of Fact, No. 31)
3. Respondent is subject to disciplinary action pursuant to the Act at 63 P.S. §422.41(8) in that Respondent is guilty of immoral and unprofessional conduct in his professional relationship with ST and KT, who were his patients. (Findings of Fact, Nos. 5-28)
4. Respondent is subject to disciplinary action pursuant to the Act at 63 P.S. §422.41(6) in that Respondent violated a Board regulation found at 49 Pa. Code §16.95 in that Respondent failed to maintain proper medical records for KT. (Findings of Fact, No. 29)

DISCUSSION

Respondent is charged with violations of Section 41 of the MPA, 63 P.S. § 422.41, which provides in pertinent part as follows:

§ 422.41. Reasons for refusal, revocation, suspension or other corrective actions against a licensee or certificate holder

The board shall have authority to impose disciplinary or corrective measures on a board-regulated practitioner for any or all of the following reasons:

* * *

(6) Violating a lawful regulation promulgated by the board or violating a lawful order of the board previously entered by the board in a disciplinary proceeding.

* * *

(8) Being guilty of immoral or unprofessional conduct. Unprofessional conduct shall include departure from or failing to conform to an ethical or quality standard of the profession. In proceedings based on this paragraph, actual injury to a patient need not be established.

Respondent is also charged with violations of the Board's regulations at 49 Pa. Code §16.95(a), which provides in pertinent part as follows:

§ 16.95 Medical records

(a) A physician shall maintain medical records for patients which accurately, legibly and completely reflect the evaluation and treatment of the patient.

* * *

The Commonwealth charged Respondent with unprofessional conduct in that Respondent's treatment of Patients KT and ST departed from or failed to conform to a quality standard of the profession. The charges against Respondent arose from allegations that Respondent, while KT's

physician, began a sexual relationship with her and prescribed medications for both ST and KT (husband and wife), while failing to keep proper medical records with respect to the care and treatment of KT.

In support of its allegations, the Commonwealth first called ST, who was the husband of patient KT. They were married in 1982, and soon after wanted to begin a family. By 1992 or 1993, they were having difficulty conceiving, so they sought the treatment of Respondent. Respondent is an obstetrician/gynecologist with a specialty in fertility issues. Respondent performed various tests on both KT and ST, including semen analysis of ST in order to determine if he was the reason they could not conceive. Respondent treated KT for a micro melanoma and endometriosis, the latter resulted in surgery performed by another physician. The result of Respondent's care was KT and ST having four children between 1993 and 1996.

While in the process of having their third child, Respondent offered KT a job as his office manager, which she accepted. ST continued to visit Respondent's office as a patient. On April 26, 1998, Respondent wrote a prescription for Noroxin for him to treat a urinary tract infection. KT continued working for Respondent.

ST began noticing multiple emails and phone messages for his wife from Respondent while Respondent was vacationing in Italy. ST did not read the emails as he felt they were work related and none of his concern.

In September 1999, Respondent and KT attended a medical conference together in Toronto. Respondent left a message for KT three days before the conference telling her that she was required to attend the conference. ST did not feel this was proper considering their youngest child was only seven months old. KT attended the conference.

In October 1999, KT sent Respondent a letter of resignation. A short time after, ST found

letters from Respondent to KT offering her a pay increase from \$52,000 to \$104,000 to stay at his office. KT was hired in 1997 at a salary of \$22,000, then given a raise in early October 1999 to \$36,000.

ST testified that he asked his wife to resign from her job in order to help save their marriage because KT admitted to him that she and Respondent kissed while in Toronto. He called Respondent and asked him to let his wife alone. Respondent stated that it was her decision to whom she wished to be with. KT resigned in December 1999, after which Respondent sent a photograph via email to ST showing Respondent and KT holding hands during their Toronto trip. ST also received a voicemail from Respondent on December 3, 1999 admitting to an affair between Respondent and KT. Respondent stated that if he wanted any of the "gory details" of their relationship, he could call him. Respondent also stated that their relationship began in August 1999 and that his "sweet darling was not that innocent." Another letter sent by Respondent December 3 stated that he could no longer be her physician and recommended physicians in Florida, Oregon, Tennessee and Wisconsin that could treat her.

In January 2000, KT and ST attended marriage counseling to try to save their marriage. On January 21, 2000, KT met ST with a hickey on her neck. KT admitted to him that she saw Respondent that morning. ST checked his phone bills and noted multiple calls from his house to Respondent's cell phone. In June of 2000, KT and ST separated and divorced in 2003. KT and Respondent are now engaged and plan to marry. ST brought this action against Respondent because he does not want Respondent destroying another family.

On cross-examination, ST stated that he filed the complaint against Respondent on June 25, 2001, which was approximately one year after he separated from KT. Part of the basis of his complaint was that Respondent was having an affair with KT while she was a patient of his. ST

stated that he believed their doctor/patient relationship ended on December 3, 1999. ST began suspecting an affair in September 1999, which was confirmed when KT admitted to kissing and having sex with Respondent on different occasions. He stated that he waited until June 2001 to file the complaint because he was not sure he had enough evidence against Respondent. It was not until a child support hearing held on January 23, 2001, where Respondent admitted under oath that his relationship with KT began in August 1999, that ST knew he had the evidence he needed. ST testified that he moved back in with KT in January 2000 in order to attempt to salvage their marriage, but the attempt was unsuccessful due to KT meeting ST with a hickey on her neck given to her by Respondent.

In Respondent's defense, he called six character witnesses. The first was Beverly Jaramillo, a doctor who has known and worked with Respondent for 14 years. She stated that she currently refers patients to him and that he has an excellent reputation in the medical community. Douglas Mackey, also a doctor, stated that he has known Respondent since 1993 and currently refers patients to him. He stated that Respondent's reputation in the medical community is that of an ethical practitioner. The third character witness was Deborah Lenhart, a doctor that has known Respondent for seven years. She was a patient of Respondent's in 1997 through 1998 and that Respondent's reputation throughout the medical community is impeccable.

The next character witness was Pearl Harris, a surgical technician that has known Respondent for 20 years. She stated that she worked with Respondent on various occasions and that many people that work in the medical field confide in Respondent because of his expertise in fertility. Many physicians recommend Respondent to their patients if they have fertility issues. She testified that Respondent has the reputation of being an ethical practitioner in the medical field. The next character witness was Audrey Wright, a reproductive endocrine consultant in sales that met Respondent 5

years ago. She stated that Respondent is held in very high esteem in the medical community and has a reputation for being an ethical practitioner. The final character witness called was Maryanne Susick, a teacher that has known Respondent for over six years. She is currently a patient of Respondent's and feels that he has an excellent reputation as a highly professional doctor that she trusts explicitly.

The next witness called by Respondent was KT. She first came in contact with Respondent when she and her husband approached him for treatment of possible fertility issues in August 1992. She testified that she is currently employed as Respondent's office manager, which she began January 27, 1997. She had prior experience as a medical office manager when she worked for Dr. Regime Varma until June 1996. She stated that she was working for Respondent in August 1999 when he took his family to Italy. During that vacation, all of his employees decided to quit. She contacted Respondent to inform him of what happened. They communicated via telephone and email about the situation. When she left his employ in December 1999, Respondent had hired and trained five additional employees. She returned to work for Respondent in July 2000.

KT felt that her marriage was having difficulties at the time she began working for Respondent. She and ST were living in different states. She had three children at the time and was not working. They were not speaking to each other and, when he did speak, he was trying to control her. ST would not allow her to go anywhere and he had to know her daily routine in order to check up on her. ST was working in Delaware at that time and commuting back to Pittsburgh on weekends. By the time ST moved back to Pittsburgh permanently, KT had been working for Respondent for six months.

KT traveled to Toronto with Respondent in September 1999 for a medical conference where she attended courses offered for office managers. She and Respondent did not travel together to

Toronto, nor did they stay in the same room. They went out to dinner on one occasion, after which they saw "Phantom of The Opera." They went shopping, but when they arrived at the mall, they shopped separately. KT testified that the doctor/patient relationship she had with Respondent ended on December 3, 1999 after an argument she had with Respondent. She told Respondent that she did not want to stay employed at his office. Respondent told her that he was going to leave a message for her husband stating that he had feelings for her. At that time, she had not had any type of sexual relationship with Respondent. She testified that she did not see Respondent in January 2000 and Respondent did not give her a hickey. The next time she spoke with Respondent was when she called Respondent in February 2002 because she felt bad about the way things had ended.

On cross-examination, KT stated that she first met Respondent as her fertility specialist. Her husband often accompanied her to the appointments. She was a patient of Respondent's for all of the births of her children, the last child born in January 1999. KT testified that she was aware that Respondent was going to leave a voicemail for ST that stated they had sex together while on their trip to Toronto. She also testified that, in her opinion, Respondent ceased being her physician in December 1999. However, Respondent continued to write prescriptions for her in 2001 and 2002. Finally, KT stated that she currently works for Respondent and, if something would happen to his license, she would be unemployed.

The last witness to testify was Respondent. He stated that KT became a patient of his in 1992, but ST was never a patient of his. ST did occasionally accompany his wife to her appointments, but he never prescribed any medications for him. The medication he did prescribe for ST, Noroxin, was in conjunction with the treatment of his patient KT. He testified that it is routine practice for OB-GYNs to prescribe antibiotics for a male partner of a female patient. Whenever a female patient is being treated for possible infertility, it is necessary to analyze her partner's sperm to ensure that he is

able to impregnate her. Respondent did order a sperm sample to be taken of ST, which was done at the hospital and analyzed by the hospital lab.

In August 1999, it was crucial for Respondent to get KT to remain as an employee of his office in light of the other members of his staff resigning. He offered her increased sums of money to motivate her to stay. Respondent discussed the pay increase with his wife at the time, who agreed that it was necessary. He has since divorced his wife and is engaged to KT. Respondent testified that he did not have a sexual relationship with KT prior to December 3, 1999 when he ended their physician/patient relationship. Their romantic relationship did not begin until June 2000. The phone message he left for ST on December 3, 1999 was the result of anger he felt. He stated that the things he said on that message were not true and that his sexual relationship with KT did not begin until July 2000.

On cross-examination, Respondent recalled testifying under oath at a support hearing for KT in January 2001. He also recalled prescribing Compazine to KT in September 1999. Respondent also prescribed medication for KT in 2001 and 2002. Among the medications he prescribed for her was Prozac. Respondent stated that KT terminated her employment with him in December 1999, after which Respondent sent her a letter recommending physicians from different parts of the country that were qualified to treat her. Respondent justified these recommendations by stating that he was merely recommending the best physicians in the country for treating KT's condition. She was more than welcome to see physicians in Pittsburgh. Finally, Respondent testified that he did order the semen analysis of ST, which is standard practice for an obstetrician dealing with fertility issues. He kept the results of the analyses in KT medical records.

The Commonwealth met its burden of proof on all four counts by a preponderance of the evidence. Respondent's treatment of both KT and ST fell below the standard of care in the medical

profession. Both Respondent and KT provided testimony that conflicted with testimony given at KT's support hearing as to when their relationship began. Respondent also admitted to prescribing medications for KT as recently as 2002.

Respondent and KT are not found to have provided credible testimony. Motive and conflicting evidence belies the reliability of their testimony and contravenes documentary evidence proffered by the Commonwealth. The documentary evidence speaks for itself. Respondent admitted to having an affair with KT in one venue, yet denies so in a venue with differing impact and consequence. Respondent left a phone voicemail message stating that he was having an affair with KT prior to the claimed termination of the doctor patient relationship.

Also, Respondent did fail to accurately annotate all of the care given to KT in her medical records. Specifically, since November 17, 1999, Respondent continued to provide care and treatment to KT, including but not limited to treating her for reproductive issues, endocrinology, infertility and endometriosis surgery, which were properly charted. However, Respondent prescribed various medications, including the caution legend drugs Prozac (and/or Fluoxetine Hydrochloride), Ortho-Cept, Retin-A, Compazine (and/or Prochlorperazine) and Ibuprofen, for which he failed to maintain proper medical records.

The Board is charged with protecting the citizens of the Commonwealth by licensing qualified medical physicians in Pennsylvania and sanctioning their continued practice in Pennsylvania. Therefore, this tribunal must consider what action best fulfills that obligation as applied to the facts of this case. Respondent has a long and distinguished career in the medical profession, having contributed time and energy through his medical practice as well as to professional associations. Respondent has a professional record without blemish.

It is noted that the improper conduct did not occur until several years into the doctor-patient

relationship when KT began working as Respondent's office manager. The question arises as to whether Respondent had an affair with his office manager, who was also a patient. This tribunal believes so. Respondent's involvement occurred from the relationship with KT as a result of their relationship as doctor-employee. The relationship only began after KT worked several years as his office manager, though Respondent had also been treating KT as a patient for a number of years. Respondent and KT are presently engaged to be married. However, this does not negate the violative conduct of Respondent, but does mitigate the penalty.

Concerning ST, the hearing examiner believes that a doctor-patient relationship did arise from the treatment given to ST. ST was given multiple prescriptions and ordered to submit to lab tests by Respondent. A doctor-patient relationship was established by these acts.

The Commonwealth's prosecuting attorney recommended that Respondent either be given a period of active suspension or have his license revoked. Given the totality of the facts and evidence presented, the hearing examiner believes that a civil penalty and a suspension with a probationary period are appropriate under the circumstances and will protect the patient community.

Accordingly, based upon the above findings of fact, conclusions of law and discussion, the following order shall issue.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania, :
Bureau of Professional and :
Occupational Affairs :
v. :
Miguel A. Marrero, M.D., :
Respondent :

Docket No. 0943-49-03
File No. 01-49-03351

ORDER

NOW, this 28th day of October, 2004, upon consideration of the findings of fact, conclusions of law and discussion, it is hereby **ORDERED** that Respondent, **Miguel A. Marrero, M.D.**, license no. MD-046545-L, is assessed a civil penalty of **\$4,000.00**, payable to the Commonwealth of Pennsylvania by certified check, attorney's check or U.S. Postal Service money order within 30 days of the effective date of this Order, and mailed to State Board of Medicine, Attn: Board Counsel, P.O. Box 2649, Harrisburg, PA 17105-2649.

It is **FURTHER ORDERED** that Respondent's license be **SUSPENDED** for no less than **THREE YEARS**, with said suspension **STAYED** in lieu of **PROBATION**, subject to the following terms and conditions:

GENERAL

1. Respondent shall abide by and obey all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions and all rules and regulations and laws pertaining to the practice of the profession in this Commonwealth or any other state

or jurisdiction in which Respondent holds a license to practice the profession. Summary traffic violations shall not constitute a violation of this Order.

2. Respondent shall at all times cooperate with the Bureau of Professional and Occupational Affairs and its agents and employees in the monitoring, supervision and investigation of Respondent's compliance with the terms and conditions of this Order, including requests for, and causing to be submitted at Respondent's expense, written reports, records and verifications of actions that may be required by the Bureau of Professional and Occupational Affairs.

3. Respondent shall not falsify, misrepresent or make material omission of any information submitted pursuant to this Order.

4. Respondent shall notify the Bureau of Professional and Occupational Affairs, in writing, within five (5) days of the filing of any criminal charges against Respondent, the initiation of any legal action pertaining to Respondent's practice of the profession, the initiation, action, restriction or limitation relating to Respondent by a professional licensing authority of any state or jurisdiction or the Drug Enforcement Agency of the United States Department of Justice, or any other investigation, action, restriction or limitation relating to Respondent's privileges to practice the profession.

5. Respondent shall notify the Bureau of Professional and Occupational Affairs by telephone within 48 hours and in writing within five (5) days of any change of Respondent's home address, phone number, employment status, employer and/or change in practice.

VIOLATION OF THIS ORDER

6. Notification of a violation of the terms or conditions of this Order shall result in the **IMMEDIATE VACATING** of the stay order, **TERMINATION** of the period of probation, and **ACTIVATION** of the suspension of Respondent's license(s) to practice the profession in the Commonwealth of Pennsylvania as follows:

a. The prosecuting attorney for the Commonwealth shall present to the Board's Probable Cause Screening Committee ("Committee") a Petition that indicates that Respondent has violated any terms or conditions of this Order.

b. Upon a probable cause determination by the Committee that Respondent has violated any of the terms or conditions of this Order, the Committee shall, without holding a formal hearing, issue a preliminary order vacating the stay of the within suspension, terminating this probation and activating the suspension of Respondent's license.

c. Respondent shall be notified of the Committee's preliminary order within three (3) business days of its issuance by certified mail and first class mail, postage prepaid, sent to the Respondent's last registered address on file with the Board, or by personal service if necessary.

d. Within twenty (20) days of mailing of the preliminary order, Respondent may submit a written answer to the Commonwealth's Petition and request that a formal hearing be held concerning Respondent's violation of probation, in which Respondent may seek relief from the preliminary order activating the suspension. Respondent shall mail the original answer and request for hearing to the Bureau of Professional and Occupational Affairs' Prothonotary, P.O. Box 2649,

Harrisburg, PA 17105-2649, and a copy to the prosecuting attorney for the Commonwealth, as well as all subsequent filings in the matter.

e. If the Respondent submits a timely answer and request for a formal hearing, the Board or a designated hearing examiner shall convene a formal hearing within forty-five (45) days from the date of the Prothonotary's receipt of Respondent's request for a formal hearing.

f. Respondent's submission of a timely answer and request for a hearing shall not stay the suspension of Respondent's license under the preliminary order. The suspension shall remain in effect unless the Board or the hearing examiner issues an order after the formal hearing staying the suspension again and reactivating the probation.

g. The facts and averments in this Order shall be deemed admitted and uncontested at this hearing.

h. If the Board or hearing examiner after the formal hearing makes a determination against Respondent, a final order will be issued sustaining the suspension of Respondent's license and imposing any additional disciplinary measures deemed appropriate.

i. If Respondent fails to timely file an answer and request for a hearing, the Board, upon motion of the prosecuting attorney, shall issue a final order affirming the suspension of Respondent's license.

j. If Respondent does not make a timely answer and request for a formal hearing and a final order affirming the suspension is issued, or the Board or the hearing examiner makes a determination against Respondent sustaining the

suspension of Respondent's license, after at least four years of active suspension and any additional imposed discipline, Respondent may petition the Board for reinstatement upon verification that Respondent has complied with the Board's order, abided by and obeyed all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions, and all rules and regulations pertaining to the practice of the profession in this Commonwealth.

k. Respondent's failure to fully comply with any terms of this Order may also constitute grounds for additional disciplinary action.

7. Nothing in this Order shall preclude the prosecuting attorney for the Commonwealth from filing charges or the Board from imposing disciplinary or corrective measures for violations or facts not contained in this Order.

8. After successful completion of probation, Respondent may petition the Board to reinstate Respondent's license to unrestricted, non-probationary status upon the filing of an attestation that Respondent has complied with all terms and conditions of this Order and said license shall be effective without restriction provided the Board is not in possession of any contrary information concerning Respondent's compliance with probation.

This order shall take effect (20) days from the date of mailing, shown below, unless otherwise ordered by the State Board of Medicine.

BY ORDER:



C. Michael Weaver
Hearing Examiner

For the Respondent:

Stanton D. Levinson, Esquire
1715 Gulf Tower
Pittsburgh, PA 15219

For the Commonwealth:

Anita Schekletski, Esquire
Commonwealth of Pennsylvania
GOVERNOR'S OFFICE OF GENERAL COUNSEL

Department of State
P.O. Box 2649
Harrisburg, PA 17105-2649

Date of Mailing:

October 28, 2004

NOTICE

(Medicine)

REHEARING AND/OR RECONSIDERATION BY HEARING EXAMINER

An application to the hearing examiner for rehearing or reconsideration may be filed by a party within 15 days after the mailing date of this adjudication and order. The application must be captioned "Application for Rehearing," "Application for Reconsideration," or "Application for Rehearing or Reconsideration." It must state specifically and concisely, in numbered paragraphs, the grounds relied upon in seeking rehearing or reconsideration, including any alleged error in the adjudication. If the adjudication is sought to be vacated, reversed or modified by reason of matters that have arisen since the hearing and decision, the matters relied upon by the petitioner must be set forth in the application.

APPEAL TO BOARD

An application to the State Board of Medicine for review of the hearing examiner's adjudication and order must be filed by a party within 20 days after the mailing date of this adjudication and order. The application should be captioned "Application for Review." It must state specifically and concisely, in numbered paragraphs, the grounds relied upon in seeking the Board's review of the hearing examiner's decision, including any alleged error in the adjudication. Within an application for review a party may request that the Board hear additional argument and take additional evidence.

An application to the Board to review the hearing examiner's decision may be filed irrespective of whether an application to the hearing examiner for rehearing or reconsideration is filed.

STAY OF HEARING EXAMINER'S ORDER

Neither the filing of an application for rehearing and/or reconsideration nor the filing of an application for review operates as a stay of the hearing examiner's order. To seek a stay of a hearing's examiner's order, the party must file an application for stay directed to the hearing examiner. If the hearing examiner denies the stay, an application for stay directed to the Board may then be filed.

FILING AND SERVICE

An original and three copies of all applications shall be filed with Deanna S. Walton, Prothonotary, P O Box 2649, Harrisburg, Pennsylvania 17105-2649. A copy of applications must also be served on all parties.

Applications must be received for filing by the Prothonotary within the time limits specified. The date of receipt at the office of Prothonotary, and not the date of deposit in the mail, is determinative. The filing of an application for rehearing and/or reconsideration does not extend, or in any other manner affect, the time period in which an application for review may be filed.

STATUTES AND REGULATIONS

Statutes and regulations relevant to post-hearing procedures are the Medical Practice Act of 1985 at 63 P.S. §§422.1-422.45; Section 905 of the Health Care Services Malpractice Act, 40 P.S. §1301.905; and the General Rules of Administrative Practice and Procedure at 1 Pa. Code Part II, to the extent the rules are consistent with regulations promulgated by the Board or provisions of the Medical Practice Act of 1985 or the Health Care Services Malpractice Act.

Not having an attorney will not be accepted as an excuse for failing to comply with the requirements contained in these notice provisions or relevant statutes and regulations.