

# State Medical Board of Ohio

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

(614) 466-3934  
med.ohio.gov

June 12, 2013

Brenda L. Banks, M.D.  
3983 Spectacle Drive  
Columbus, OH 43230

RE: Case No. 13-CRF-001

Dear Doctor Banks:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Danielle R. Blue, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on June 12, 2013, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO



J. Craig Strafford, M.D., M.P.H.  
Secretary

JCS:jam  
Enclosures

CERTIFIED MAIL NO. 91 7199 9991 7032 2898 1051  
RETURN RECEIPT REQUESTED

Cc: John R. Irwin, Esq.  
CERTIFIED MAIL NO. 91 7199 9991 7032 2898 1068  
RETURN RECEIPT REQUESTED

*Mailed 6-13-13*

In the Matter of Brenda L. Banks, M.D.  
Page | 2

Brenda Louise Banks, M.D.  
Register No. 68801-061  
FPC Alderson  
Federal Prison Camp  
Glen Ray Road, Box A  
Alderson, WV 24910  
CERTIFIED MAIL NO. 91 7199 9991 7032 2898 1433  
RETURN RECEIPT REQUESTED

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Danielle R. Blue, Esq., State Medical Board Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on June 12, 2013, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Brenda L. Banks, M.D., Case No. 13-CRF-001, 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.



J. Craig Stafford, M.D., M.P.H.

Secretary

(SEAL)

June 12, 2013

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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\*

CASE NO. 13-CRF-001

BRENDA L. BANKS, M.D.

\*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on June 12, 2013.

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

It is hereby ORDERED that:

The certificate of Brenda L. Banks, M.D., to practice medicine and surgery in the State of Ohio is hereby PERMANENTLY REVOKED.

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



J. Craig Strafford, M.D., M.P.H.  
Secretary

(SEAL)

June 12, 2013

Date

STATE MEDICAL BOARD  
OF OHIO

2013 MAY 14 PM 3:41

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of

\*

Case No. 13-CRF-001

Brenda L. Banks, M.D.,

\*

Hearing Examiner Blue

Respondent.

\*

REPORT AND RECOMMENDATION

Basis for Hearing

By letter dated January 9, 2013, the State Medical Board of Ohio ("Board") notified Brenda L. Banks, M.D., that it had immediately suspended her certificate to practice medicine and surgery in Ohio pursuant to Ohio Revised Code Section ("R.C.") 3719.121(C) and had proposed to take other disciplinary action against her certificate. The Board based its proposed action on an allegation that Dr. Banks pleaded guilty to and has been found guilty of one felony count of Acquiring or Possessing a Controlled Substance by Deception, in violation of 21 U.S.C. §843(a)(3).

The Board alleged that Dr. Banks' acts, conduct, and/or omissions constituted:

- "Selling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug," as set forth in R.C. 4731.22(B)(3).
- "A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony," as set forth in R.C. 4731.22(B)(9).

Accordingly, the Board advised Dr. Banks of her right to request a hearing in this matter. By letter filed on February 4, 2013, Dr. Banks requested a hearing. (State's Exhibits ("St. Exs.") 1A, 1B)

Appearances:

Mike DeWine, Attorney General of Ohio, and Kyle C. Wilcox, Assistant Attorney General, for the State of Ohio. John R. Irwin, Esq., on behalf of Dr. Banks.

Hearing Date: April 5, 2013

### **SUMMARY OF THE EVIDENCE**

All evidence admitted in this matter, even if not specifically mentioned, was thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

#### **Background Information**

1. Brenda L. Banks, M.D., obtained her medical degree in 1981 from Meharry Medical College in Nashville, Tennessee. She was first licensed to practice in Ohio in 2001. Dr. Banks' license is currently inactive. Dr. Banks testified that she has not practiced medicine since November 2008. (St. Ex. 8; Hearing Transcript ("Tr.") at 38)
2. On or about November 12, 2008, the Board issued an Entry of Order ("November 2008 Order"). The November 2008 Order, among other things, permanently revoked Dr. Banks' certificate to practice medicine and surgery in Ohio, then stayed the permanent revocation, and suspended her certificate for an indefinite period of time, but not less than two years, based upon her violation of R.C. 4731.22(B)(24). The November 2008 Order also imposed conditions for reinstatement or restoration and subsequent probationary terms, conditions, and limitation for at least two years. (St. Ex. 8)

#### **Criminal Conviction**

3. In April 2012, an Information was filed in the United States District Court, Southern District of Ohio, Western Division, charging Dr. Banks with one felony count of Acquiring or Possessing a Controlled Substance by Deception, in violation of 21 U.S.C. §843(a)(3).<sup>1</sup> (St. Ex. 2)
4. On April 27, 2012, Dr. Banks entered into a plea agreement in which she pleaded guilty to the felony charged. On December 5, 2012, the court accepted her plea agreement and found Dr. Banks guilty of one count of Acquiring or Possessing a Controlled Substance by Deception, in violation of 21 U.S.C. §843(a)(3). (St. Exs. 3, 6; Tr. at 21) As part of her plea agreement, Dr. Banks acknowledged that the following was true and correct:

### **STATEMENT OF FACTS**

Beginning on or about December 2002, and continuing up to and including February 19, 2008, defendant BRENDA BANKS was employed by and represented herself as a chronic pain management doctor at the

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<sup>1</sup> 21 U.S.C. §843(a)(3) states in pertinent part:

It shall be unlawful for any person knowingly or intentionally: to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

Ohio Medical and Pain Management Clinic (“the Clinic”) in Waverly, Ohio in the Southern District of Ohio. During that time, Defendant BRENDA BANKS had a DEA registration number that allowed her to order controlled substances for the Clinic.

Between February 5, 2003, and up to and including June 13, 2007, defendant BRENDA BANKS agreed to and permitted the owners and operators of the Clinic, Nancy and Lester Sadler, to order and pay for approximately 219,860 dosage units of controlled substances through the Clinic from two different distributors. Most of the ordered dosage units were for hydrocodone. These controlled substances were ordered with the purpose of distributing the medication among themselves or to facilitate the illegal re-sale to others by clinic employees. These controlled substances were order[ed] deceptively and fraudulently through the use of fake identities at the Clinic and by misrepresenting the purpose of the orders to the distributors.

Defendant BRENDA BANKS also signed blank prescriptions and turned over possession of the blank prescriptions to others.

(St. Ex. 3; Tr. at 18-19)

5. As set forth in the Judgment Entry filed on December 5, 2012, the court sentenced Dr. Banks to 48 months in prison to be followed by supervised release for one year. (St. Ex. 6)
6. At Dr. Banks’ Sentencing Hearing on December 5, 2012, the judge made the following remarks:

Here, the original indictment alleged that Ms. Banks, a medical doctor who had a DEA license, played a crucial role in the operation of the Sadlers’ pain clinic over several years. The evidence adduced at the Sadlers’ trial confirmed Ms. Banks’ important role. By permitting the Sadlers to use her DEA license, Ms. Banks was responsible for large quantities of controlled substances, primarily hydrocodone and oxycodone, that were dispensed through the clinic. Ms. Banks prescribed these drugs to so-called “patients” of the clinic, whom she should have known were addicts and were improperly seeking access to narcotics. She should have known, but she overlooked it, ignored it, actively neglected to inquire. Without Ms. Banks’ willing participation in the Sadlers’ ongoing operation of the clinic, they would not have been able to obtain controlled substances.

\* \* \*

Similarly aggravating factors exist here. Ms. Banks worked at the Sadlers' clinic for five years. She admits that significant quantities of hydrocodone and oxycodone were fraudulently obtained and distributed using her DEA license. She admitted that she signed blank prescription forms and gave them to others to use. The government states that the pain clinic operated by Ms. Banks and the Sadlers was the primary distributor of pain medication in an area of southern Ohio that is rife with prescription drug addiction, which has resulted in community deterioration and increased crime.

It's amazing that one person could be responsible for so much destruction.

(St. Ex. 7 at 17, 19)

**Dr. Banks' Response**

7. Dr. Banks confirmed that, from 2002 through 2008, she was employed as a physician by Ohio Pain Management ("OPM") in Waverly, Ohio. (Tr. at 15)
8. Contrary to the Statement of Facts contained in her plea agreement, Dr. Banks denied that she had any knowledge that the Sadlers were ordering an excessive amount of controlled substances with her DEA number. (Tr. at 15-16) She further explained:

I wasn't lying. I see this is written in the Statement of Facts, and I do see the signature.

And I guess that particular line I didn't carefully read it, that this is how many they ordered.

I gave them permission to order nothing near this number. I did give them permission to order some, but nothing like this.

\* \* \*

This is - - I think what happened is I signed the paper and the other part of the paper, and I must have misread - - I must have overlooked or misread that number - - or that statement being listed there when I signed the last sheet.

(Tr. at 19-20, 35-36)

9. Dr. Banks denied that she willingly and knowingly participated in a scheme for 5 years with the Sadlers. However, she admitted that she "participated in obtaining a small

amount of medication \* \* \* but did not participate in a scheme, and was very surprised, actually.” (Tr. at 23) She further explained why she was surprised:

[The Sadlers] basically participated in criminal activity. I worked three days a week, sometimes four, and they had plenty of time to do a lot of different things.

Nancy Sadler and her husband owned the clinic. They could go into the clinic any time when I wasn't there, after hours, on the weekends. They could also - - and use any equipment.

They also had an office next door. So I didn't know what they were doing. Nobody around me, even if they knew, told me that they were ordering significant amounts.

(Tr. at 41)

10. In regard to pre-signing blank prescriptions and filling out fake patient files, Dr. Banks testified as follows:

Well, I don't know about fake patient files. But I did make a counter form or sheet where you could just check off.

But nothing should have been written on there until the patient came. And I found out that the members of the team were writing before the patient came.

And I actually went in on one occasion, I remember taking them and tearing up the files, and we had a big discussion about that, and they declared they would never do that again.

(Tr. at 25)

11. In regard to Judge Beckwith's statement concerning OPM's contribution to the prescription drug addiction in southern Ohio, Dr. Banks stated as follows:

I guess our clinic probably did contribute to some problems. But there were several other clinics there that were closed before our clinic was closed.

(St. Ex. 7; Tr. at 24)

12. Dr. Banks explained what she learned from this situation:

I have learned that you don't trust your employees, or the employees, to do things that are so important, especially with the DEA, that you need to do anything that's concerning the DEA.

You need to have some system where you can see everything that is done, or fix it so they cannot call the pharmacist and pretend to be me. \* \* \*  
I would be suspicious of any activity where they didn't handle the charts the way that I asked them to handle.

And I would review them, and if they weren't doing what I wanted to do, I would quit rather than stay and get in trouble.

(Tr. at 44-45)

13. Dr. Banks apologized for her conduct and asked that this Board take the following into consideration:

I'd like to say that I'm sorry, and that I take the responsibility of all that went on. And I certainly have learned my lesson, especially about having a DEA.

Anything that has to be done to or with a DEA, I would do myself, and nobody else would make any calls. If we sent something out and someone worked with me, I would have to put my signature on. If they signed something, I would have to sign it to make sure that everything was okay.

I hope I can redeem myself in the future, and I've learned much from going through this process.

(Tr. at 27)

#### **FINDING OF FACT**

On December 5, 2012, in the United States District Court for the Southern District of Ohio, Western Division, Brenda Louise Banks, M.D., pleaded guilty to and was found guilty of one count of Acquiring or Possessing a Controlled Substance by Deception, in violation of 21 U.S.C. §843(a)(3). As set forth in the Judgment Entry, Dr. Banks was sentenced to 48 months of imprisonment to be followed by supervised release for one year.

The criminal conviction arose from Dr. Banks' participation in a scheme at an Ohio pain clinic to acquire controlled substances, including approximately 219,860 unit doses of hydrocodone, for the purpose of the illegal resale to others by clinic employees. Said

controlled substances were ordered fraudulently through the use of fake identities at the clinic and by misrepresenting the purpose of the orders to distributors.

### CONCLUSIONS OF LAW

1. The plea of guilty and/or judicial finding of guilt of Brenda L. Banks, M.D., as set forth in the Finding of Fact, individually and/or collectively, constitutes a “plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony,” as set forth in R.C. 4731.22(B)(9).
2. The acts, conduct, and/or omissions of Dr. Banks, as set forth in the Finding of Fact, individually and/or collectively, constitute “[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation any federal or state law regarding the possession, distribution, or use of any drug,” as set forth in R.C. 4731.22(B)(3).

### DISCUSSION CONCERNING PROPOSED ORDER

By permitting the Sadlers to use her DEA license for 5 years, Dr. Banks is responsible for aiding and contributing to widespread prescription drug addiction in southern Ohio which resulted in community deterioration and increased crime. As stated poignantly by the judge, “[i]t’s amazing that one person could be responsible for so much destruction.” As such, Dr. Banks’ criminal conviction warrants a permanent revocation of her certificate to practice medicine and surgery in Ohio.

### PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Brenda L. Banks, M.D., to practice medicine and surgery in the State of Ohio is hereby PERMANENTLY REVOKED.

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



Danielle R. Blue, Esq.  
Hearing Examiner



# State Medical Board of Ohio

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

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med.ohio.gov

## EXCERPT FROM THE DRAFT MINUTES OF JUNE 12, 2013

### REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Steinbergh announced that the Board would now consider the Reports and Recommendations appearing on its agenda.

Dr. Steinbergh asked whether each member of the Board had received, read and considered the hearing records; the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: Brenda L. Banks, M.D.; and Anyse Storey, M.D.

A roll call was taken:

ROLL CALL:	Dr. Strafford	- aye
	Dr. Bechtel	- aye
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye
	Dr. Steinbergh	- aye
	Dr. Sethi	- aye
	Dr. Talmage	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye

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

ROLL CALL:	Dr. Strafford	- aye
	Dr. Bechtel	- aye
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye
	Dr. Steinbergh	- aye
	Dr. Sethi	- aye
	Dr. Talmage	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye

Dr. Steinbergh noted that, in accordance with the provision in section 4731.22(F)(2), Ohio Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of any disciplinary matters. In the matter before the Board today, Dr. Strafford served as Secretary and Dr. Bechtel served as Supervising Member. Also, Dr. Talmage served as

Secretary and/or Acting Supervising Member in the case of Dr. Banks.

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

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

.....  
BRENDA L. BANKS, M.D., Case No. 13-CRF-001  
.....

**Dr. Ramprasad moved to approve and confirm Ms. Blue's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Brenda L. Banks, M.D. Mr. Kenney seconded the motion.**

.....  
A vote was taken on Dr. Ramprasad's motion to approve:

ROLL CALL:	Dr. Strafford	- abstain
	Dr. Bechtel	- abstain
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye
	Dr. Steinbergh	- aye
	Dr. Sethi	- aye
	Dr. Talmage	- abstain
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye

The motion to approve carried.

# State Medical Board of Ohio

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

(614) 466-3934  
med.ohio.gov

## NOTICE OF IMMEDIATE SUSPENSION AND OPPORTUNITY FOR HEARING

January 9, 2013

Case number: 13-CRF- 001

Brenda Louise Banks, M.D.  
P.O. Box 30480  
Columbus, Ohio 43230

Dear Doctor Banks:

In accordance with Sections 2929.42 and/or 3719.12, Ohio Revised Code, the United States Attorney's Office for the Southern District of Ohio reported that on or about December 5, 2012, in the United States District Court, Southern District of Ohio, Western Division, you pled guilty to, and were found guilty of, one felony count of Acquiring or Possessing a Controlled Substance by Deception, in violation of 21 U.S.C. § 843(a)(3).

Therefore, pursuant to Section 3719.121(C), Ohio Revised Code, you are hereby notified that your license to practice medicine and surgery in the State of Ohio, which pursuant to a November 12, 2008 Order, effective on or about December 11, 2008, was permanently revoked, with said revocation stayed, and indefinitely suspended, but not less than two years, is further hereby immediately suspended.

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

- (1) On or about December 5, 2012, in the United States District Court, Southern District of Ohio, Western Division, you pled guilty to, and were found guilty of,

*Mailed 1-10-13*

one felony count of Acquiring or Possessing a Controlled Substance by Deception, in violation of 21 U.S.C. § 843(a)(3). Further, you were sentenced to 48 months of imprisonment, to be followed by supervised release for a period of one year.

The aforementioned criminal conviction arose from, *inter alia*, your participation in a scheme at an Ohio pain clinic to acquire controlled substances, including approximately 219,860 unit doses of hydrocodone, for the purpose of the illegal resale to others by clinic employees. Said controlled substances were ordered fraudulently through the use of fake identities at the clinic and by misrepresenting the purpose of the orders to distributors.

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

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitutes “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony,” as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

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

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

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

Brenda Louise Banks, M.D.  
Immediate Suspension  
Page 3

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in black ink that reads "J. Craig Strafford M.D., M.P.H." The signature is written in a cursive style.

J. Craig Strafford, M.D., M.P.H.  
Secretary

JCS/DSZ/pev  
Enclosures

CERTIFIED MAIL #91 7199 9991 7031 2767 4399  
RETURN RECEIPT REQUESTED

cc: By Personal Delivery

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

PERMANENT 18  
RN BY: 10-21-09

BRENDA L. BANKS, M.D., :  
Appellant, : CASE NO. 08 CVF 12 18046  
vs. : JUDGE SHEERAN  
THE STATE MEDICAL BOARD :  
OF OHIO : FINAL APPEALABLE ORDER  
Appellee. :

**DECISION AND ENTRY AFFIRMING THE DECEMBER 11, 2008  
ORDER OF THE STATE MEDICAL BOARD OF OHIO**

Rendered this 21<sup>st</sup> day of October, 2009

**SHEERAN, J.**

This matter is before this Court pursuant to R.C. 119.12 from a December 11, 2008 Order of the State Medical Board of Ohio ("Board") permanently revoking Appellant's medical license and staying the revocation, with an indefinite suspension to last a minimum of two years.<sup>1</sup> The Board found that Appellant violated R.C. 4731.22(B)(24) when she voluntarily surrendered her Drug Enforcement Administration ("DEA") certificate of registration after the DEA and the Waverly police department executed a search warrant at her medical office located in Waverly, Ohio.

The investigation by law enforcement revealed that Appellant's DEA registration certificate had been used to order thousands of controlled medications, over 200,000, in fact, within a span of a few years. The investigation also revealed that 40-50 patients per day would visit the clinic, which accepted only cash payments.

<sup>1</sup> The Board also imposed "Conditions For Reinstatement Or Restoration." See November 12, 2008 Board Minutes and Entry of Order.

FILED  
COMMON PLEAS COURT  
FRANKLIN CO., OHIO  
OCT 22 AM 10:12  
CLERK OF COURT

Before the Court can address the merits of this appeal, it is incumbent that it address whether it has subject matter jurisdiction to decide the case on the merits, particularly in light of the recent Ohio Supreme Court decision in *Medcorp v. Ohio Dept. of Job and Family Servs.*, Slip Opinion 2009 Ohio 2058.

## **JURISDICTION**

The issue of subject matter jurisdiction cannot be waived. It is well established that the issue of subject matter jurisdiction can be raised at any stage of the proceeding. Moreover, a court may, *sua sponte*, address the issue of jurisdiction based on its inherent power to vacate void judgments and orders. See *Total Office Products v. Dept. of Adminis. Serv.*, 2006 Ohio App. LEXIS 3230. A common pleas court has power to review proceedings of administrative agencies and officers only to the extent granted by law. The provisions of R.C. 119.12 relating to time, place and manner of filing the notice of appeal are conditions precedent to this court's subject matter jurisdiction. *Id.* at \*P11-12. R.C. 119.12 provides, in pertinent part:

Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and the grounds of the party's appeal. A copy of such notice of appeal shall also be filed by the Appellant with the court.

See R.C. 119.12

Upon a review of the record, this Court finds that the Appellant complied with the requirement set forth in R.C. 119.12 by identifying specific legal and/or factual errors in her notice of appeal. See also *Medcorp*, at ¶20.

## **FACTS AND PROCEDURAL HISTORY**

In an April 9, 2008 letter, the Board notified Appellant that it had proposed to take disciplinary action against her license to practice medicine and surgery in Ohio. The Board charged Appellant with violating R.C. 4731.22(B)(24), asserting that her act of

voluntarily surrendering her DEA registration certificate was a termination of that certificate. A violation of R.C. 4731.22(B)(24) permits the Board to take disciplinary action against a medical licensee for the "termination or suspension of a certificate of registration to prescribe drugs by the drug enforcement administration of the United States department of Justice." See R.C. 4731.22(B)(24).

The record demonstrates that on February 19, 2008, Appellant signed a voluntary surrender of her controlled substances privileges. See State's Exhibit 2, Voluntary Surrender Of Controlled Substances Privileges form dated February 19, 2008. The surrender form signed by Appellant states that she acknowledged that the reason she is surrendering her privileges is due to her "alleged failure to comply with the Federal requirements pertaining to controlled substances, and as an indication of her good faith in desiring to remedy any incorrect or unlawful practices." See State's Exhibit 2, Voluntary Surrender Of Controlled Substances Privileges form dated February 19, 2008. Also on February 19, 2008, the DEA agents and the Waverly police executed a search warrant on the premises of Appellant's medical practice located at 850 W. Emmitt Ave., Suite 5, Waverly, Ohio 45690. The Appellant's medical practice was known as "Ohio Medical and Pain Management" ("OMPM").

The search warrant was issued as a result of an investigation which revealed that Appellant's DEA registration certificate had been used to order over 200,000 controlled medications within a span of a few years. An administrative hearing was conducted by the Board on September 23, 2008. The Hearing Examiner, Siobhan Clovis, filed her Report and Recommendation on October 17, 2008. The Board rendered its order at its November 12, 2008 meeting after reviewing the entire record. The Board found that Appellant's act of surrendering her DEA registration certificate led to the immediate

termination of that registration certificate and thus, was a violation of R.C. 4731.22(B)(24).

The Board voted to permanently revoke Appellant's medical license and stay the revocation, with an indefinite suspension to last a minimum of two years. The Board's order was mailed December 11, 2008 and Appellant perfected this timely appeal. This Court denied Appellant's request for a stay. See January 21, 2009 Decision and Entry Denying Motion For Stay of Administrative Order.

### **STANDARD OF REVIEW**

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

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

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

(1) 'Reliable' evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) 'Probative' evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) 'Substantial' evidence is evidence with some weight; it must have importance and value.

*Our Place, Inc. v. Ohio Liquor Comm.* (1992), 63 Ohio St. 3d 570, 571.

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

## LAW AND ARGUMENT

Appellant sets forth the following arguments in her brief:

The Board Produced No Evidence Of a Violation Of R.C. §4731.22(B)(24).

The Board Failed To Provide Notice to Dr. Banks of the Other Bases For Disciplinary Action Against Her License, In Violation Of R.C. §119.07, and her Right to Due Process under the Ohio and U.S. Constitutions.

Appellant's first argument asserts that the Board's December 11, 2008 Order is not only contrary to law but also is not supported by substantial, reliable and probative evidence since the Board produced no evidence that Appellant violated R.C. § 4731.22(B)(24). The undisputed fact is that Appellant voluntarily surrendered her DEA controlled substance privileges on February 19, 2008. See State's Exhibit 2, Voluntary Surrender of Controlled Substances Privileges form dated February 19, 2008. The surrender form, which Appellant admitted that she signed, indicates that she was surrendering her privileges due to the "alleged failure to comply with Federal requirements pertaining to controlled substances, and as an indication of her good faith in desiring to remedy any incorrect or unlawful practices on her part." See State's Exhibit 2, Voluntary Surrender Of Controlled Substances Privileges form dated February 19, 2008; see also Tr. 47.

Appellant argues that this surrender does not constitute a violation of R.C. 4731.22(B)(24). That statute reads in pertinent part as follows:

The [state medical] 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...for one or more of the following reasons:

(24) The revocation, suspension, restriction, reduction, or termination of clinical privileges by the United States department of defense or department of veterans affairs *or the termination or suspension of a certificate of registration to prescribe drugs by the drug enforcement administration of the United States department of justice.*

(Emphasis added)

Appellant argues that she was charged specifically with her voluntary surrender of her certificate of registration, and that, since that surrender does not constitute the “termination or suspension of a certificate of registration to prescribe drugs...”, the decision below is not in accordance with law.

Appellant’s argument is ultimately without merit. While it is true that a voluntary surrender, in and of itself, may not constitute the termination or suspension, it is equally true that the surrender of the certificate of registration constitutes “...authority for the Administrator of the Drug Enforcement Administration to terminate and revoke my registration...” which was in fact precisely what happened the very next day. The acceptance of the surrender directly and proximately caused, with the knowing and written consent of Appellant, the official termination and revocation of her registration to handle controlled substances. (See Tr. 49-50). As Appellee notes in its brief, Appellant has no legal authority to terminate her own registration; that must be done by the DEA’s Administrator.

Based on the foregoing, Appellant’s first argument is without merit.

Appellant’s second argument is that the Board failed to provide her notice of other bases for disciplinary action against her license in violation of R.C. 119.07 and her constitutional right to due process. This argument assumes that the Board considered other reasons for disciplining Appellant, which is an extension of her first argument. Again, it must be noted that the hearing officer did not add charges to the sole charge filed and considered.

However, Appellant takes issue with the following conclusions set forth in the hearing examiner’s Report and Recommendation and as adopted by the Board:

Dr. Banks, who has been practicing medicine for almost 30 years, claimed that she could not have known that anything unlawful was occurring at OMPM. Her claim of innocence is unbelievable...

[S]he has nonetheless demonstrated a lack of the knowledge and medical judgment necessary to responsibly practice medicine and prescribe controlled substances...

Dr. Banks was either a willing participant in a criminal enterprise or grossly negligent in her fulfillment of the responsibilities of a physician holding a DEA certificate.

See Hearing Examiner's October 17, 2008 Report and Recommendation, p. 9.

Appellant misunderstands the use of the statements reproduced above. The Report and Recommendation of the hearing officer lists precisely one legal issue: whether the voluntary surrender fits within the meaning of R.C. 4731.22(B)(24). The "Finding of Fact" specifically relates only to Appellant's voluntary surrender of her registration. The remainder of the quoted material above addresses a different issue: the issue of the recommended sanction, which is an integral part of the hearing officer's report and recommendation.

An examination of the record in this case shows that the hearing officer's addition of the above quoted paragraphs does nothing to violate her due process rights.

It is important to note that from the beginning of the hearing process in this case, Appellant cast herself as the victim of circumstances. Specifically, she claimed that she had no idea as to how the pills were ordered or obtained, and that when the problem was discovered, she fully cooperated with the DEA throughout its investigation. See, e.g. Tr. 11-12 [opening statement]; T. 38 ["very upset" so many pills were ordered]; T. 41 ["I trusted them"]; T. 75 [no evidence about how her license was misused, who misused it, whether she should have known it was misused.].

Thus, while the hearing officer made her determination concerning whether Appellant's action in signing the Voluntary Surrender constituted a termination pursuant to R.C. 4731.22(B)(24), she was perfectly justified in explaining, or rebutting, the contention of Appellant that she was the victim in this case. This is true not only because of the defense raised by Appellant, but also because of the recommended sanction the hearing officer is required to put forth in her proposed order. The record indicates that there are a wide range of penalties available for transgressions of R.C. 4731.22(B)(24), from an indefinite suspension (minimum of 60 days) to the permanent revocation of one's license.

In other words, the hearing officer did nothing more than address the defense raised by Appellant herself. To claim that this response constituted new charges is simply and totally without merit.

Appellant's argument makes the same claim of added charges when the Board considered her appeal. However, the same defense was made by Appellant before the State Medical Board. Appellant claimed in her objections that she "had no idea and was very surprised to learn that thousands of pills had been ordered under her DEA number." (Objections to the State Medical Board, p. 2). The minutes of the State Medical Board hearing attest that this defense was repeated during Appellant's oral presentation before the Board.

[S]he believes that this case is very similar to a case of identity theft. When your credit card is stolen, when you're advised that someone unauthorized is using your card, the first thing you do is call your bank. You call your credit card company, you cancel your card. That's what Dr. Banks did in this case.

Board Minutes, November 12, 2008, p. 17985.

Appellant complains of the discussion by the Board members. That discussion began with a complete disagreement with the hearing officer's recommendation by Dr. Stephens, followed by a spirited defense not to revoke Appellant's license by Dr. Steinbergh, who concluded that she had an alternative motion to make after discussion. Dr. Egner discussed the case as a whole. Appellant asserts that this was improper; however, there is wide latitude given to remarks by the Medical Board, particularly where there is a wide range of penalties to be considered<sup>2</sup>. Dr. Egner agreed that the voluntary surrender of the DEA certificate constituted a termination.

Dr. Amato wanted to limit the discussion to whether the voluntary surrender was a termination or not. He believed it was. But from his review of the record, he saw nothing to indicate that what Appellant did rises "to a permanent revocation."

Dr. Steinbergh's motion was to approve the permanent revocation, but to stay it and suspend Appellant's certificate for two years, with conditions for obtaining re-licensure and with probationary conditions, including a practice plan, after that. On a close vote, the motion carried, and the vote on the overall motion regarding the hearing officer's report and the order, as amended, was eight in favor, one opposed, and one abstention.

The foregoing discussion contains nothing of substance to indicate to this Court that anything improper occurred that would constitute a denial of Appellant's due process rights. No additional charges were levied, and it is clear that the Board was well aware of what it was discussing. There were two issues before the Board: whether there was a violation of R.C. 4731.22(B)(24), and if so, what the sanction should be. Appellant's second argument is without merit.

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<sup>2</sup> In so discussing the case, Dr. Egner stated on the record that she was aware that this was *not* a minimum standards case. She simply wished to look at the entire picture.

Based on the foregoing, this Court finds that the Order of the State Medical Board is supported by reliable, probative and substantive evidence, and that it is in accordance with law, and is therefore AFFIRMED.

 10/21/09  
\_\_\_\_\_  
Patrick E. Sheeran, Judge

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[kwilcox@ag.state.oh.us](mailto:kwilcox@ag.state.oh.us)

IN THE FRANKLIN COUNTY COURT OF COMMON PLEAS

Brenda Louise Banks, M.D., :  
Appellant, : Case No. 08 CVF 18046  
v. : Judge Sheeran  
Ohio State Medical Board, :  
Appellee. :

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2009 JAN 21 AM 10:13  
CLERK OF COURTS

**DECISION AND ENTRY DENYING  
MOTION FOR STAY OF ADMINISTRATIVE ORDER  
(FILED DECEMBER 18, 2008)**

Sheeran, J.

Plaintiff-Appellant Brenda Banks, M.D. ("Dr. Banks") filed a Motion seeking stay of the Defendant-Appellee State Medical Board's ("the Board") November 12, 2008 order which permanently revoked her certificate to practice medicine, stayed the revocation, and suspended her certificate for an indefinite period not less than two years. The Board sanctioned Dr. Banks after finding that she violated R.C. § 4731.22(B)(24) which provides that the Board can take disciplinary action for, among other things, "[t]he termination or suspension of a certificate of registration to prescribe drugs by the drug enforcement administration of the United States department of justice."

In this case, Dr. Banks voluntarily surrendered her controlled substance privileges on February 19, 2008. The surrender form, which Dr. Banks signed, indicates that she was surrendering her privileges due to the "alleged failure to comply with Federal requirements pertaining to controlled substances, and as an indication of her good faith in desiring to remedy any incorrect or unlawful practices on her part." Dr. Banks executed the surrender form after DEA and the City of Waverly police department executed a

search warrant at her practice in Waverly, Ohio as part of an investigation which revealed that Dr. Banks' DEA Registration certificate had been used to order thousands of controlled medications, over 200,000 in fact, in a few years. Evidence indicated that 40-50 patients would visit the clinic a day and that the clinic accepted only cash payments.

While Dr. Banks maintains that the medications were ordered without her knowledge and approval, the hearing examiner found:

Even if Dr. Banks had been completely unaware of unlawful activities, she has nonetheless demonstrated a lack of the knowledge and medical judgment necessary to responsibly practice medicine and prescribe controlled substances. This is demonstrated by her unequivocal statement that she had been "fully compliant" with the DEA regulations despite evidence that, in violation of federal law, she had: (a) not had access to the drugs ordered with her DEA certificate, (b) not kept records of the drugs ordered with her certificate, and (c) not known the actual amount of drugs ordered with her certificate. Moreover, Dr. Banks displayed uncertainty about the controlled substances schedules and about the drugs she had been prescribing. Further, she admitted that all of the patients at OMPM had received "some type of controlled substance... [b]ecause that was the reason for coming." It is unacceptable for a physician to prescribe or provide controlled substances to every patient simply because it is expected or requested that she do so.

The hearing examiner ultimately concluded that, "Dr. Banks was either a willing participant in a criminal enterprise or grossly negligent in her fulfillment of the responsibilities of a physician holding a DEA certificate. Either way, she is unworthy of a license to practice medicine in Ohio."

R.C. § 119.12 provides, in pertinent part:

The filing of a notice of appeal shall not automatically operate as a suspension of the order of an agency... In the case of an appeal from the state medical board or state chiropractic board, the court may grant a suspension and fix its terms if it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order pending determination of the appeal and the health, safety, and welfare of the public will not be threatened by suspension of the order.

Dr. Banks asserts that, absent a stay, she will have to serve at least part of the suspension and perhaps even all of it before the Court renders a decision on her appeal depriving her of any meaningful review. She argues that "deprivation of such a fundamental right is an unusual hardship and preserving that right is in the public interest." Dr. Bank's argument lacks merit for a number of reasons.

The statute requires demonstration of an unusual hardship which necessarily implies a hardship beyond that imposed by the order itself. Dr. Bank's reasoning is circuitous and would result in the suspension of every order that imposed a sanction which potentially could be at an end before the Court issued a decision on appeal.

Further, administrative appeals are set on 6 month case tracks in order to expedite the Court's decision. In this Court's experience, almost all of these appeals are timely considered and decided. Therefore, the risk that Dr. Banks will have to serve more than a quarter of the proposed suspension is doubtful.

Dr. Banks' argument also ignores that there is more to her appeal than the Court's consideration of the suspension. Apart from the penalty, this Court is also considering the propriety of the Board's findings, including its finding that Dr. Banks violated R.C. § 4731.22(B)(24). Certainly, while the suspension itself is significant, Dr. Banks's also has a significant interest in seeking vindication in a matter where she insists she did nothing wrong. Erasing the specter of a finding that she "was either a willing participant in a criminal enterprise or grossly negligent in her fulfillment of the responsibilities of a physician holding a DEA certificate" seems equally as important, if not more so, than avoiding a suspension.<sup>1</sup>

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<sup>1</sup> Though it stayed it in favor of suspension, the Board actually voted to revoke Dr. Banks' license which penalty is also a direct result of the findings under appeal.

Based on all of the above, the Court finds that Dr. Banks has failed to demonstrate an unusual hardship justifying suspension of the underlying order. This finding alone necessitates a denial of Dr. Banks' Motion.

However, the Court also finds that Dr. Banks has failed to demonstrate that the welfare of the public will not be threatened by suspension of the order. Certainly, the regulation of controlled substances and the prevention of abuse of the same are in the public interest. The Board made some very disturbing findings with regard to Dr. Banks and the controlled substances ordered and/or distributed under her watch. The Court agrees with the Board that "the potential for abuse is just too great" in this case and that the Board's findings are entitled to deference.

It is Dr. Banks' burden to demonstrate that, notwithstanding the board's findings as noted above, the public welfare will not be threatened by staying her suspension. Dr. Banks' argument as to the public interest element misses the mark and requires the Court to assume that she did nothing wrong. In other words, Dr. Banks' asks the Court to find that the public welfare is better served by allowing her to practice during appeal in the face of some pretty serious findings. In so doing, the Court would be ignoring the nature of those findings and elevating the interests of Dr. Banks over those of the public.

Dr. Banks has not justified a stay pending appeal. Her Motion is therefore DENIED. It is so ORDERED.

 1/15/09  
JUDGE PATRICK E. SHEERAN

Copies to:

Kyle Wilcox  
30 E. Broad St., 26<sup>th</sup> Floor  
Columbus, OH 43215

STATE MEDICAL BOARD OF COMMON PLEAS  
OF OHIO  
FRANKLIN COUNTY, OHIO

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO

2008 DEC 18 PM 3:25

CLERK OF COURTS-CV

2008 DEC 29 P 1:09

BRENDA L. BANKS, M.D.  
P.O. Box 30480  
Gahanna, OH 43230,

Appellant,

v.

STATE MEDICAL BOARD OF OHIO  
30 East Broad Street, 3<sup>rd</sup> Floor  
Columbus, OH 43215-6127,

Appellee.

08 CV F 12 18 046

Case No. \_\_\_\_\_

Judge \_\_\_\_\_

2008 DEC 18 P 3:02

STATE MEDICAL BOARD  
OF OHIO

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NOTICE OF APPEAL

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Brenda L. Banks, M.D. ("Appellant"), pursuant to Ohio Revised Code Section 119.12, hereby appeals the final decision of the State Medical Board of Ohio ("Appellee"), which permanently revoked Appellant's medical license, but stayed the revocation and suspended her license for an indefinite period of time, but not less than two years. See Appellee's *Entry of Order*, issued on November 12, 2008 and mailed to Appellant on December 11, 2008, a copy of which is attached hereto as Exhibit "A" (the "Appellee Entry of Order").

Appellant was charged with violating R.C. 4731.22(B)(24), which permits the Medical Board to take disciplinary action against a physician's license based upon "the termination or suspension of a certificate of registration to prescribe drugs by the drug enforcement administration of the United States Department of Justice." The State has not alleged any other basis for discipline. The State alleged that the violation of R.C. 4731.22(B)(24) arose from the undisputed fact that on February 19, 2008, Appellant executed a "Voluntary Surrender of Controlled Substances Privileges," Form DEA-104, in connection with an investigation of large

quantities of controlled substances purchased by someone using her DEA registration number. The DEA never suspended or terminated Appellant's DEA registration; however, the Medical Board revoked Appellant's license for violating R.C. 4731.22(B)(24). The conclusion that Appellant violated R.C. 4731.22(B)(24) is both factually and legally incorrect. The decision of the Medical Board should be reversed, as Appellant did not violate R.C. 4731.22(B)(24).

Further, the decision of the Board is not supported by the facts in this case as the Medical Board improperly considered matters not relevant to the charges against Appellant. Although the Medical Board only charged Appellant with the alleged "termination" of her DEA registration, the hearing examiner accepted into evidence and the Medical Board relied on information far beyond that allegation to make its decision to revoke Appellant's license.

The decision of Appellee to revoke Appellant's medical license is not supported by the law or by reliable, probative or substantial evidence; therefore, the decision should be reversed by this Court.

Respectfully submitted,



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Counsel for Appellant  
Brenda L. Banks, M.D.

2008 DEC 18 P 3:02

STATE MEDICAL BOARD  
OF OHIO

2008 DEC 29 P 1:11

STATE MEDICAL BOARD  
OF OHIO

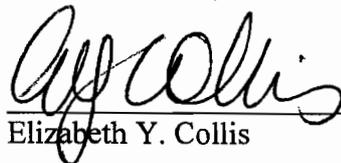
**CERTIFICATE OF SERVICE**

I certify that this *Notice of Appeal* was served via hand delivery this 18<sup>th</sup> day of December, 2008, upon the following:

Appellee, Ohio State Medical Board  
30 E. Broad Street, 3<sup>rd</sup> Floor  
Columbus, Ohio 43215

Kyle C. Wilcox, Esq.  
Assistant Attorney General  
Office of the Ohio Attorney General  
Health and Human Services Section  
30 East Broad Street, 26<sup>th</sup> Floor  
Columbus, Ohio 43215

Counsel for Appellee

  
Elizabeth Y. Collis

STATE MEDICAL BOARD  
OF OHIO  
2008 DEC 29 P 1:11

STATE MEDICAL BOARD  
OF OHIO  
2008 DEC 18 P 3:02

# State Medical Board of Ohio

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



Richard A. Whitehouse, Esq.  
Executive Director

(614) 466-3934  
med.ohio.gov

November 12, 2008

Brenda Louise Banks, M.D.  
3983 Spectacle Drive  
Columbus, OH 43230

Case No. 08-CRF-036

Dear Doctor Banks:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Siobhan R. Clovis, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 12, 2008, 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 MD*  
*RW*

Lance A. Talmage, M.D.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3934 3486 5576  
RETURN RECEIPT REQUESTED

Cc: James D. Owen, Esq.  
CERTIFIED MAIL NO. 91 7108 2133 3934 3486 5583  
RETURN RECEIPT REQUESTED

*Mailed 12-11-08*

In the Matter of Brenda Louise Banks, M.D.  
Page 2

CC: Elizabeth Y. Collis, Esq.  
Certified Mail No. 91 7108 2133 3934 3683 6149  
RETURN RECEIPT REQUESTED

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Siobhan R. Clovis, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 12, 2008, 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 Brenda Louise Banks, M.D., Case No. 08-CRF-036, as it appears in the Journal of the State Medical Board of Ohio.

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



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

November 12, 2008  
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

\*

\*

CASE NO. 08-CRF-036

BRENDA LOUISE BANKS, M.D.

\*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on November 12, 2008.

Upon the Report and Recommendation of Siobhan R. Clovis, 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 Brenda Louise Banks, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Banks' certificate shall be SUSPENDED for an indefinite period of time, but not less than two years.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Banks' certificate to practice medicine and surgery until all of the following conditions have been met:
1. **Application for Reinstatement or Restoration:** Dr. Banks shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  2. **Controlled Substances Prescribing Course(s):** At the time she submits her application for reinstatement or restoration, Dr. Banks shall provide acceptable documentation of successful completion of a course or courses dealing with the prescribing of controlled substances. 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 acquisition period(s) in which they are completed.

In addition, at the time Dr. Banks submits the documentation of successful completion of the course or courses dealing with the prescribing of controlled substances, she shall also submit to the Board a written report describing the course(s), setting forth what she learned from the course(s), and identifying with specificity how she will apply what she has learned to her practice of medicine in the future.

3. **SPEX**: Prior to submitting her application for reinstatement or restoration, Dr. Banks shall take and pass the SPEX examination or any similar written examination which the Board may deem appropriate to assess Dr. Banks' clinical competency.
4. **Evidence of Unrestricted Licensure in Other States**: At the time she submits her application for reinstatement or restoration, Dr. Banks shall provide written documentation acceptable to the Board verifying that Dr. Banks otherwise holds a full and unrestricted license to practice medicine and surgery in all states in which she is licensed at the time of application or has been in the past licensed, or that she would be entitled to such license but for the non-payment of renewal fees.

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

1. **Obey Laws in Ohio**: Dr. Banks shall obey all federal, state, and local laws; and all rules governing the practice of medicine in the state in which she is practicing.
2. **Quarterly Declarations**: Dr. Banks 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 her certificate is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
3. **Personal Appearances**: Dr. Banks shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which her certificate is restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances must occur every six months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

4. **Practice Plan**: Prior to Dr. Banks' commencement of practice in Ohio or as otherwise determined by the Board, Dr. Banks shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Banks' activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Banks shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Dr. Banks submits her practice plan, she shall also submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary or Supervising Member will give preference to a physician who practices in the same locale as Dr. Banks and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Banks and her medical practice, and shall review Dr. Banks' patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Banks and her medical practice, and on the review of Dr. Banks' patient charts. Dr. Banks shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Banks' quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Banks must immediately so notify the Board in writing. In addition, Dr. Banks shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Banks shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

5. **Ban on Prescribing, Ordering, Administering, Furnishing, or Possessing Controlled Substances; Log**: Dr. Banks shall no prescribe, write orders for, give verbal orders for, administer, personally furnish, or possess (except for her own personal use as prescribed by her treating physician for legitimate medical purposes) any controlled substances without prior Board approval.

In the event that the Board agrees at a future date to modify this Order to allow Dr. Banks to prescribe, order, administer or personally furnish controlled substances, based upon Dr. Banks' having successfully reinstated her DEA certificate, Dr. Banks shall keep a log of all controlled substances prescribed,

ordered, administered, or personally furnished. Such log shall be submitted in a format approved by the Board thirty days prior to Dr. Banks' personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Banks shall make her patient records with regard to such prescribing, administering, or personally furnishing available for review by an agent of the Board upon request.

6. **Violation of Probation; Discretionary Sanction Imposed:** If Dr. Banks violates probation in any respect, the Board, after giving her notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of her certificate.

D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Banks' certificate will be fully restored.

E. **REQUIRED REPORTING AND DOCUMENTATION OF REPORTING:**

1. **Required Reporting to Employers and Hospitals:** Within thirty days of the effective date of this Board Order, Dr. Banks shall provide a copy of this Board Order to all employers or entities with which she is under contract to provide health care services (including but not limited to third party payors) or is receiving training, and the Chief of Staff at each hospital where she has privileges or appointments. Further, Dr. Banks shall promptly provide a copy of this Board Order to all employers or entities with which she contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where she applies for or obtains privileges or appointments. In the event that Dr. Banks provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within thirty days of the effective date of this Board Order, Dr. Banks shall provide a copy of this Board Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

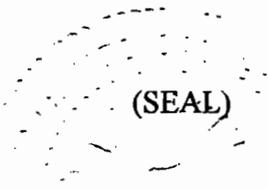
This requirement shall continue until Dr. Banks receives from the Board written notification of her successful completion of probation as set forth in paragraph D, above.

2. **Required Reporting to Other State Licensing Authorities:** Within thirty days of the effective date of this Board Order, Dr. Banks shall provide a copy of this Board Order to the proper licensing authority of any state or jurisdiction in which she currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which she currently holds any license or certificate. Dr. Banks further agrees to provide a copy of this Board Order at time of application to the proper licensing authority of any state in which she applies for any professional license or for reinstatement of any professional license.

This requirement shall continue until Dr. Banks receives from the Board written notification of her successful completion of probation as set forth in paragraph D, above.

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

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



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

November 12, 2008  
Date

**REPORT AND RECOMMENDATION  
IN THE MATTER OF BRENDA LOUISE BANKS, M.D.  
Case No. 08-CRF-036**

The Matter of Brenda Louise Banks, M.D., was heard by Siobhan R. Clovis, Hearing Examiner for the State Medical Board of Ohio, on September 23, 2008.

**INTRODUCTION**

Basis for Hearing

By letter dated April 9, 2008, the State Medical Board of Ohio [Board] notified Brenda Louise Banks, M.D., that it had proposed taking disciplinary action against her certificate to practice medicine and surgery in Ohio. The Board based its proposed action upon an allegation that, on or about February 19, 2008, Dr. Banks had executed a Voluntary Surrender of Controlled Substances Privileges to the U.S. Department of Justice - Drug Enforcement Administration [DEA], based upon her alleged failure to comply with federal requirements pertaining to controlled substances [Voluntary Surrender].

The Board alleged that the Voluntary Surrender constitutes “[t]he revocation, suspension, restriction, reduction, or termination of clinical privileges by the United States department of defense or department of veterans affairs or the termination or suspension of a certificate of registration to prescribe drugs by the drug enforcement administration of the United States department of justice,” as that clause is used in Section 4731.22(B)(24), Ohio Revised Code. The Board advised Dr. Banks of her right to request a hearing, and received her request on April 28, 2008. (State’s Exhibits 1A, 1B)

Appearances

Nancy H. Rogers, Attorney General, and Kyle C. Wilcox, Assistant Attorney General, on behalf of the State.

James D. Owen, on behalf of the Respondent, Dr. Banks.

**EVIDENCE EXAMINED**

Testimony Heard

Brenda Louise Banks, M.D.  
Agent Lewis Thomas

Exhibits Examined

State’s Exhibit 1: Procedural exhibits.

State’s Exhibit 2: Copy of a February 19, 2008 Voluntary Surrender of Controlled Substances Privileges, Form DEA-104, signed by Brenda L. Banks, M.D.

Respondent's Exhibit A: Copy of February 19, 2008, written statement from Brenda Banks, M.D., to "Louis Thomas and Valerie Mitchell with the DEA".

### **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.

#### *Background Information*

1. Brenda Louise Banks, M.D., testified that she had graduated from Southern University in Baton Rouge, Louisiana, in 1977, and from Meharry Medical College in Nashville, Tennessee, in 1981. She next completed a one-year internship at Brooke Army Medical Center in San Antonio, Texas. From there, the Army sent Dr. Banks to Fort Benning, Georgia, where she worked until 1985 as a general medical officer, primarily in the emergency room. She explained that she had served in the Army pursuant to an agreement by which the Army had paid for one year of her education for each year she had served. (Hearing Transcript [Tr.] at 17-19)
2. Dr. Banks testified that, from 1986 through 1987, she had been an internal medicine resident at King Drew Medical Center in Los Angeles, California. In 1991, she completed a general cardiology fellowship at King Drew with a rotation at St. Vincent's Hospital in downtown Los Angeles. Next, she completed one year of training in the electrophysiology cardiology laboratory in Panorma City, California, and another fellowship year of electrophysiology cardiology in Milwaukee, Wisconsin. She did not specify the dates that she had completed the electrophysiology fellowships. (Tr. at 19-20)
3. Dr. Banks testified that she had first practiced in Ohio in 2001, when she had begun to work with a cardiology group in Dayton. She testified that this engagement had been short-lived because "9-11 occurred and the - they had to downsize." She testified that she had also been very sick at this time, so she had decided to do some sort of outpatient work to "give [her]self a chance to figure out what was going on and get well." She did not state the nature of her illness. (Tr. at 20)
4. Dr. Banks testified that she had next worked for an outpatient clinic (which she did not name) in Columbus, Ohio, for about a year. In December 2002, she began to work for Ohio Medical and Pain Management in Waverly, Ohio ["OMPM"]. She ceased working at OMPM in February 2008, when she voluntarily surrendered her DEA certificate. She now works as an urgent care physician in Crestline, Ohio, at Crestline Medical Center. She usually works two eleven-hour shifts per week. She does not currently have a DEA certificate, so she cannot prescribe any controlled substances. (Tr. at 16-17, 20-21)
5. Dr. Banks testified that she has also been licensed to practice in Georgia, Virginia, Wisconsin, and California, but only her California license is active. (Tr. at 17)

*Ohio Medical and Pain Management*

6. Dr. Banks testified that she had first worked at OMPM as a locum tenens physician for several months. The owners, Nancy and Lester Sadler, then asked her to stay permanently. Dr. Banks thereafter worked at the facility as a contract physician, and was paid a weekly salary. (Tr. at 21-22)
7. Dr. Banks testified that, from December 2002 through February 2008, she had been the sole practitioner at OMPM, except for a short period of about six months, during which a male physician had worked at the facility on days that she was not there. She could not recall when he had worked at the facility, but guessed it was in "'05, '06". She also could not remember the physician's name. (Tr. at 21-23, 26-27)
8. Dr. Banks testified that OMPM had been a pain-management practice, although she had seen patients for other medical problems. She testified that, for instance, she had always checked patients for hepatitis and she had found many patients with hepatitis C. She stated that she would point those patients "in the right direction so that they could get treated." (Tr. at 25)
9. Dr. Banks testified that the average number of patients she had seen each day at OMPM had been "probably 40, but sometimes they would get up into the fifties, and it's even higher than that." She advised "that's one disagreement that I would have with the owners; that, you know, you can't have these many people. However, if people were there, I felt obligated to see them." (Tr. at 29)
10. Dr. Banks testified that all of the patients had received some type of controlled substance, because that "was the main reason for coming." She advised that all of the patients paid in cash, and received paperwork so that they could seek reimbursement from insurance. She testified that most of the patients did not have insurance. (Tr. at 29-30)
11. Dr. Banks testified that about ten people worked at the facility, other than the two owners, Nancy and Lester Sadler, who had also worked there. She said that the owners had spent a lot of time in their separate offices in a building next door to OMPM. Nancy Sadler, however, also frequently worked as a nurse or assistant with the OMPM patients. (Tr. at 21, 33-34, 39)
12. Dr. Banks testified that she had also had her own assistant, Gidget Renee Coleman, who helped Dr. Banks during patient visits. Dr. Banks said that she had trained Ms. Coleman to perform the neurological examinations. Dr. Banks did not know if Ms. Coleman had held any sort of professional license, but Dr. Banks advised that Ms. Coleman had been a paramedic or an emergency medical technician at one time. Ms. Coleman was also responsible for any contacts necessary to send consultation information to other physicians. (Tr. at 34-35)

*DEA Raid*

13. Agent Lewis Thomas testified that he is a diversion investigator with the DEA. He explained that he is assigned to investigate, detect, and prevent the diversion of controlled substances into the illegal market. He has been in his position since 1989. (Tr. at 52)
14. Agent Thomas testified that a holder of DEA controlled substances privileges is required by federal regulations to keep complete and accurate records of all controlled substances handled under his or her DEA certificate, including records of the current inventory, ordering and dispensing information, and storage information. Agent Thomas testified that there are no exceptions to these requirements, but advised that a practitioner may properly document the prescription of controlled substances solely on patient records, rather than in a separate document, if a large amount of controlled substances is not being prescribed. (Tr. at 56-57, 66)
15. Agent Thomas testified that, on February 19, 2008, he and a team of DEA agents had executed a search warrant at OMPM based on Dr. Banks' alleged involvement in overprescribing controlled substances. Agent Thomas advised that "a couple hundred thousand" pills had been ordered under Dr. Banks' DEA number. It appears from Dr. Banks' written statement to the DEA agents that over 200,000 pills had been allegedly ordered in 2006 and 2007. (Respondent's Exhibit A; Tr. at 53, 57)
16. Dr. Banks testified that, at about noon on February 19, 2008, she had been at OMPM when the DEA and the Waverly Police Department arrived at the facility. She said that DEA agents had shown her documents indicating that excessive amounts of pills had been ordered under her DEA number, and that she had been "very surprised." (Tr. at 35-37)
17. During the raid at OMPM, Agent Thomas and another investigator met with Dr. Banks and questioned her about the situation. Dr. Banks said that she had explained to the agents that she had given Nancy Sadler permission to order 250 to 500 pills per month using Dr. Banks' DEA number, with the understanding that Nancy Sadler would not place an order for more pills until all of the pills already on hand had been dispensed. (Tr. at 37-38, 42-43, 54-55)
18. Agent Thomas testified about the conversation with Dr. Banks:

[Dr. Banks] explained to me that she did not handle a lot of controlled substances, that she wrote some prescriptions, she did not keep a lot of controlled substances on hand; that she'd keep a -- order maybe a bottle or two of some controlled substances, Hydrocodone products, to keep in the office as needed, and that she didn't have any records of the controlled substances that were ordered.

She didn't know exactly where they were stored at. She told me that they were kept in a locked cabinet and that someone else in the

office ordered the controlled substances and someone else in the office received the controlled substances to the best of her knowledge and kept a record of them or kept them stored.

(Tr. at 54-56)

19. Dr. Banks testified that she had been very upset to learn how many pills had actually been ordered and that she had had no idea that so many pills were being ordered. (Tr. at 38)
20. On February 19, 2008, during her meeting with the DEA agents at OMPM, Dr. Banks executed a Voluntary Surrender of her DEA license, on a form provided to her by the DEA Agents. The form states, in pertinent part:

After being fully advised of my rights, and understanding that I am not required to surrender my controlled substances privileges, I freely execute this document and choose to take the actions described herein.

- In view of my alleged failure to comply with the Federal requirements pertaining to controlled substances, and as an indication of my good faith in desiring to remedy any incorrect or unlawful practices on my part;
- In view of my desire to terminate handling of controlled substances listed in schedule(s) \_\_\_\_\_;

I hereby voluntarily surrender my Drug Enforcement Administration Certificate of Registration, unused order forms, and all my controlled substances listed in schedule(s) II thru V [sic] as evidence of my agreement to relinquish my privilege to handle controlled substances listed in schedule(s) II thru V [sic]. Further, I agree and consent that this document shall be authority for the Administrator of the Drug Enforcement Administration to terminate and revoke my registration without an order to show cause, a hearing, or any other proceedings, (and if not all controlled substances privileges are surrendered, be issued a new registration certificate limited to schedule(s) II thru V) [sic].

I waive refund of any payments made by me in connection with my registration.

I understand that I will not be permitted to order, manufacture, distribute, possess, dispense, administer, prescribe, or engage in any other controlled substance activities whatever, until such time as I am again properly registered.

As indicated above, the form gives two choices to explain the surrender, and the first choice was selected. Dr. Banks testified at hearing that she had marked the first choice, because it was the “most reasonable one to check.” (State’s Exhibit 2; Tr. at 46-48, 62)

21. Agent Thomas testified that the termination of Dr. Banks’ DEA certificate had been effective as of February 20, 2008, when the Voluntary Surrender was documented in the DEA computer system. (Tr. at 60)
22. During her meeting with the DEA agents, Dr. Banks executed the following statement:

I did not order the amount of control substances shown to me on DEA intelligence form dated 2/18/08 Amt (2006 + 2007) [?]209 thousand dosage units. The ordering was done by the Nurse Manager Nancy Sadler who documented the names of patients given meds (controll substances). The control substances were kept in a locked safe. I did not have a key to the safe, nor did other employees We discussed ordering probably monthly. We needed ≈ 500 tablets usually. I was not aware of thousands of tablets being ordered When a patient was given meds I documented the amount in my notes.

(Respondent’s Exhibit A [punctuation and spelling as in original]; Tr. at 63-64, 67)

*Additional Testimony by Dr. Banks*

23. At hearing, Dr. Banks explained that she had given most OMPM patients prescriptions for their pain medications, but that she and Nancy Sadler had agreed to keep some drugs at the facility to dispense to patients who had already run out of their prescribed medications because “if you take pain meds on a monthly basis, you’ll have withdrawal symptoms if you all of a sudden stop it. So I agreed that we should keep some in [order] to be able to give to those people that we could pretty much prove that they were out of it because of no money or some unforeseen circumstance.” (Tr. at 42-43)
24. Dr. Banks stated that, to her knowledge, hydrocodone had been the only controlled substance that had been ordered under her DEA certificate. She also testified that the majority of prescriptions she had written were for hydrocodone, though the next most common prescriptions were for Percocet and oxycodone. She said that she had prescribed very little Oxycontin. She further advised that the clinic had distributed Motrin directly to many patients. (Tr. at 43, 45)
25. Dr. Banks was questioned at hearing about her familiarity with DEA schedules, and the drugs that she had prescribed at OMPM. She appeared uncertain regarding controlled substances:

Q. What schedule is Hydrocodone? Can you tell us?

A. Hydrocodone could be a schedule 2.

Q. And what does the schedule mean? Can you tell the Board that?

A. The schedule -- basically, a -- the schedule basically, I guess, ranks meds in terms of potency -- potency and probably the frequency at which people would use it. In other words --

Q. Is the potential for abuse factored in there?

A. I mean, there's always potential for abuse. If you go to the pharmacy and get your medication, you can go home and take it like you're supposed to or you can take it like you want to or do other things. What I'm saying by the schedule is that a 1 -- the schedule 1 drugs would include probably experimental type things, like the --

Q. Illegal street drugs?

A. Yeah. Like LSD and those kinds of things.

Q. So schedule 2 are --

A. The schedule 2 drugs would be the Percocets -- Percocet, which would be the --maybe I'm getting confused. Would be Oxycontin or Oxycodone.

Q. And Hydrocodone?

A. Hydrocodone, I think, is one step down. I think it's a 3.

Q. Earlier, you said it was a 2. Are you --

A. Yeah. I meant Hydrocodone would be one step down. It's a 3. But the schedule 2's would be Oxycodone and Percocet, which would be a form of Oxycodone. And then there's Oxycontin. All of those are schedule 2's. And then when you come down, you come down to Hydrocodone.

\* \* \*

Q. What's Hydrocodone used for? What's the active ingredient? What is it designed to do?

A. What is it designed to do? It's designed to -- for moderate - - mild to moderate pain.

Q. And is it supposed to relieve that?

A. Yeah. Relieve mild to moderate pain.

(Tr. at 44-46)

26. Dr. Banks testified that OMPM's owners had not had her permission to order so many controlled substances, but admitted that she had not overseen all of their activities. She said, "I kept up with all of this as much as I could. But while I was seeing patients, that gave them time to do a lot of things. I could not keep my eye on those two people and run the clinic." Dr. Banks testified that she had trusted that OMPM's owners would never want to do anything illegal, or "something that I would disagree with" because the owners had an incentive to have "a business that's doing well." (Tr. at 39, 42)
27. Dr. Banks admitted that she had not had access to the controlled substances ordered under her name. She advised that the drugs had first been kept in a locked cabinet, then moved to a large floor safe, about five to six feet tall, but that she had never had the key to the cabinet or the combination to the safe. She had only "occasionally" been present when the cabinet or safe had been open. She also admitted that she had not had records of the large amounts of controlled substances that had actually been ordered. (Tr. at 39-40)
28. At hearing, Dr. Banks maintained that she had been "compliant in every respect" with the DEA regulations in her practice at OMPM. She explained that, although she thought she had been fully compliant, she had felt that she needed to surrender her DEA certificate to protect the public. She said that she is currently "waiting" to get a new certificate. (Tr. at 48-50)

### LEGAL ISSUE

At hearing, counsel for Dr. Banks argued that the Voluntary Surrender does not fit within the meaning of Section 4731.22(B)(24), Ohio Revised Code, as alleged in the Board's April 9, 2008, Notice of Opportunity for Hearing, because it was a voluntary surrender by Dr. Banks herself rather than a "termination or suspension of a certificate of registration to prescribe drugs by the drug enforcement administration of the United States department of justice." (Tr. at 75-77)

This assertion is erroneous. The Voluntary Surrender states: "I agree and consent that this document shall be authority for the Administrator of the Drug Enforcement Administration to terminate and revoke my registration without an order to show cause, a hearing, or any other proceedings..." Accordingly, the Voluntary Surrender effected a termination of Dr. Banks' DEA certificate and is within the meaning of Section 4731.22(B)(24), Ohio Revised Code.

### **FINDING OF FACT**

On or about February 19, 2008, Brenda Louise Banks, M.D., executed a Voluntary Surrender of Controlled Substances Privileges to the U.S. Department of Justice - Drug Enforcement Administration, based upon her alleged failure to comply with the federal requirements pertaining to controlled substances, and as an indication to remedy any incorrect or unlawful practices on her part.

### **CONCLUSION OF LAW**

The Voluntary Surrender, as set forth above, constitutes “[t]he revocation, suspension, restriction, reduction, or termination of clinical privileges by the United States department of defense or department of veterans affairs or the termination or suspension of a certificate of registration to prescribe drugs by the drug enforcement administration of the United States department of justice,” as that clause is used in Section 4731.22(B)(24), Ohio Revised Code.

\* \* \* \* \*

The illegal trade and abuse of prescription painkillers are well known problems. Yet Dr. Banks, who has been practicing medicine for almost 30 years, claimed that she could not have known that anything unlawful was occurring at OMPM. Her claim of innocence is unbelievable. The clinic accepted cash only and every patient was provided with controlled substances or a prescription for controlled substances. Dr. Banks saw 40, 50, or even more patients each day.

Even if Dr. Banks had been completely unaware of unlawful activities, she has nonetheless demonstrated a lack of the knowledge and medical judgment necessary to responsibly practice medicine and prescribe controlled substances. This is demonstrated by her unequivocal statement that she had been “fully compliant” with the DEA regulations despite evidence that, in violation of federal law, she had: (a) not had access to the drugs ordered with her DEA certificate, (b) not kept records of the drugs ordered with her certificate, and (c) not known the actual amount of drugs ordered with her certificate. Moreover, Dr. Banks displayed uncertainty about the controlled substances schedules and about the drugs she had been prescribing. Further, she admitted that all of the patients at OMPM had received “some type of controlled substance . . . [b]ecause that was the reason for coming.” It is unacceptable for a physician to prescribe or provide controlled substances to every patient simply because it is expected or requested that she do so.

Dr. Banks was either a willing participant in a criminal enterprise or grossly negligent in her fulfillment of the responsibilities of a physician holding a DEA certificate. Either way, she is unworthy of a license to practice medicine in Ohio.

**PROPOSED ORDER**

It is hereby ORDERED that:

The certificate of Brenda Louise Banks, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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



Siobhan R. Clovis  
Hearing Examiner

STATE MEDICAL BOARD  
OF OHIO  
2008 OCT 17 A 10:34

# State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.  
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## EXCERPT FROM THE APPROVED MINUTES OF NOVEMBER 12, 2008

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

Dr. Varyani announced that the Board would now consider the Reports and Recommendations and the Proposed Findings and Proposed Order appearing on its agenda. He asked whether each member of the Board had received, read and considered the hearing record; the Findings of Fact, Conclusions of Law and Proposed Orders, and any objections filed in the matters of Maryam Bakhshandeh, M.D.; Brenda Louise Banks, M.D.; Donald E. Higgs, M.D.; Robert Wayne Miller, L.M.T.; Steven Edward Schwartz, P.A.; and Robert Nelson Wachsberger; and the Proposed Findings & Proposed Order in the consolidated matters of Lynda Lee Dean, M.T. A roll call was taken:

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

Dr. Varyani 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. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye

Dr. Mahajan - aye  
Dr. Steinbergh - aye  
Dr. Varyani - aye

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

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

.....

BRENDA LOUISE BANKS, M.D.

Dr. Varyani directed the Board's attention to the matter of Brenda Louise Banks, M.D. He advised that objections were filed to Hearing Examiner Siobhan R. Clovis' Report and Recommendation and were previously distributed to Board members.

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

Dr. Banks was accompanied by her attorney, Elizabeth Y. Collis. Ms. Collis stated that she has filed objections, but she would like to address two points. Dr. Collis stated that, in this case, the Board has only charged Dr. Banks with violating O.R.C. § 4731.22 (B)(24). Ms. Collis stated that that section specifically allows the Board to take action against a licensee if there has been a termination or a suspension of a certificate of registration to prescribe medications by the D.E.A. Ms. Collis stated that, in this case, there has not been a termination or a suspension by the D.E.A. No affirmative action has actually been taken by the D.E.A. against Dr. Banks. Ms. Collis referred to the record, noting that when Dr. Banks first met with the D.E.A. agents and the police, as part of the investigation, she voluntarily surrendered her D.E.A. certificate. In doing that, she did not admit to any type of wrongdoing, and she is not prevented from reapplying. She currently has reapplied for a new D.E.A. number and that is pending at this time.

Ms. Collis continued that, even if the Board finds under (B)(24) that Dr. Banks has violated the Board statute by surrendering her D.E.A., and that the Board does have authority to take action against her, she believes that this case is very similar to a case of identity theft. When your credit is stolen, when you're advised that someone unauthorized is using your card, the first thing you do is call your bank. You call your credit card company, you cancel your card. That's what Dr. Banks did in this case. She terminated

her D.E.A. number, she completed a police report, which was also included in the record that day, and in that she said that she never authorized anyone to use her D.E.A. number. She never knew that this was going on. She was never advised, either from the pharmacy or any other source, that her number was being illegally used. Ms. Collis stated that Dr. Banks has taken all appropriate steps. She also terminated her position with that clinic at that time. She's no longer working there. Ms. Collis stated that Dr. Banks has taken all remedial steps, based on this unauthorized use.

Ms. Collis stated that Dr. Banks is a victim in this case. Her D.E.A. number was used to purchase drugs that she did not authorize and that she did not condone. Ms. Collis stated that Dr. Banks should not permanently lose her medical license for the unlawful and unauthorized act of another. She added that if the Board does find that Dr. Banks has violated the statute, she believes that the recommendation of Ms. Clovis in this case is wholly inappropriate. Ms. Collis stated that an appropriate response for this Board would be to look to OAC Rule 4731-13-36 (G), which is "no further action." The Board can determine that there has technically been a violation; however, if all remedial measures have been taken, this Board can offer no further remedial action. Ms. Collis stated that all remedial steps have been taken. She has turned in her D.E.A.; she has terminated her relationship with this clinic; and she is not perpetuating, nor allowing anyone else to perpetuate, this unlawful use of her D.E.A.

Dr. Banks stated that this is the first time that she's been the subject of any kind of discipline. She's never lost her privileges at a hospital or a job as a physician, nor has she ever been disciplined by any state licensing board in the past. She's held five licenses. Dr. Banks stated that after serving a term in the military, she completed her internship and went on to do a residency and a fellowship. She worked prior to coming to Ohio. In 2008 she began work as a contract physician for Ohio Medical and Pain Management in Waverly, Ohio. Dr. Banks stated that, although she was not the owner of the clinic, for much of the time she worked there she was the only physician present. In this clinic, they would regularly treat patients for a variety of medical conditions. She would treat patients who suffered from chronic pain. In this clinic she did not distribute medicines to patients, but would write prescriptions that they would have to have filled by their local pharmacies. Dr. Banks advised that, while they did not regularly distribute medicines, she thought that it would be important to keep a small amount of medicine on hand for those people who were unable to purchase, to prevent any type of withdrawals. This amount was less than 500 pills. The pills were maintained in two small bottles that were secured on site in a locked safe. Dr. Banks stated that she instructed her staff and her support staff to document the amount of medication kept on site and the number of pills distributed to any one patient.

Dr. Banks stated that she was never given any indication from her staff or from the company from which the pills were ordered that there were additional pills being ordered under her D.E.A. number; however, on February 19, 2008, the Waverly police and D.E.A. agents came to her office to question her. She was advised by the police on that date that thousands of controlled substances had been ordered, using her D.E.A. number. Dr. Banks stated that she was shocked to learn this information.

Dr. Varyani advised Dr. Banks that she is running out of time. He added that the Board has already read what she is talking about. He asked that she conclude her comments, unless she has something new to say.

Dr. Banks stated that, in hindsight, she would still do the same thing that she did; i.e., surrender her D.E.A. certificate in order to prevent any other person or patient from being harmed by whomever might have stolen her D.E.A. number and ordered extra medicines. She surrendered her D.E.A. certificate to protect the public. At that time, she also quit her job there. She thought that if she surrendered her D.E.A. certificate and got a new D.E.A., she wouldn't have any more problems with that particular number appearing again in the future.

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

Mr. Wilcox stated that he fully and completely agrees with the Report and Recommendation of the Hearing Examiner in this matter. A review of this record shows a physician who was clearly either clueless about her responsibilities as a physician and a D.E.A. registration holder, or was knowingly turning a blind eye to the staggering amount of drugs being ordered and disbursed in her name. Mr. Wilcox stated that he strongly disagrees with the argument that Dr. Banks' surrender was not an action for which this Board can take action under its disciplinary statute. He stated that he concurs with the Hearing Examiner's analysis that the surrender does fit within the meaning of O.R.C. §4731.22(B)(24). He noted that the voluntary surrender form signed by Dr. Banks states:

I agree and consent that this document shall be authority for the Administration of the Drug Enforcement Administration to terminate and revoke my registration without an order to show cause, a hearing or any other proceedings.

Mr. Wilcox stated that, accordingly, the voluntary surrender effected a termination of Dr. Banks' D.E.A. certificate, and is within the meaning of O.R.C. §4731.22 (B)(24).

Mr. Wilcox stated that, as for the credit card argument that the Board has heard today, he would just state that there is testimony on the record from D.E.A. investigator, Lewis Thomas, who specifically stated in his testimony that there are certain things that you must do as a D.E.A. certificate holder. Those things include keeping a log and knowing exactly what is being ordered under your certificate. Mr. Wilcox stated that that is clear from this record, so for Dr. Banks to argue that somebody else was responsible for this is not within the confines of what Dr. Banks was required to do as a D.E.A. certificate holder. Mr. Wilcox stated that he thinks that the Hearing Examiner summed it up perfectly in the end by stating:

Dr. Banks was either a willing participant in a criminal enterprise or grossly negligent in her fulfillment of the responsibilities of a physician holding a DEA certificate. Either way, she is unworthy of a license to practice medicine in Ohio.

Mr. Wilcox stated that he concurs with that statement, and he asked that the Board adopt the recommendation before the Board today.

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. CLOVIS' FINDINGS OF**

**FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF BRENDA LOUISE BANKS, M.D. DR. MADIA SECONDED THE MOTION.**

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

Dr. Stephens stated that she fully and completely disagrees with the recommendation. She stated that something that the Board and medicine is going to have to come to terms with is the culture of pain clinics. Right or wrong, somebody goes to a pain clinic, they have pain, and they are going to get pain medicine. If they've already been through all the different steps for pain, and that hasn't worked, they're going to be on staggering amounts of pain medicine. That's just the way it is.

Dr. Stephens stated that in regards to this case, she agrees that the doctor did not have complete control, or control at all, of her prescriptions and of her license to prescribe, but she really doesn't think that this rises to the level of complete revocation of a license.

Dr. Steinbergh stated that when she approached this case, she tried to take a good look at the total picture of Dr. Banks. Dr. Steinbergh stated that the surrender of Dr. Banks' D.E.A. certificate absolutely constitutes termination of her D.E.A. certificate. When you're approached by the police, you have a right not to surrender. She surrendered and the Board has every reason to believe that that constituted termination. Dr. Steinbergh stated that there is no question in her mind that the Board has the authority to take action.

Dr. Steinbergh stated that she agrees with the concept that Dr. Banks was not in control of her D.E.A. number, but should have been. The concept that for six years a physician would work for a clinic like this and not be aware that there was purchasing of medications and so forth – this is not a case of identity fraud. Dr. Steinbergh stated that she's not going to disagree with the concept that there would be medications on hand in the clinic. She stated that she doesn't know that the Board has an issue with Dr. Banks' prescribing, as such. The Board isn't talking about minimal standards here; there are no charges against minimal standards. This is a physician who was well trained, but who made a decision many years to step away from cardiology and to go and work in an outpatient clinic, prescribing pain medications. By Dr. Banks' own admission, pretty much everybody who came there was coming for pain medication, and that's what they did. Dr. Steinbergh stated that she's sure that they did other medical care there. She noted that the patients paid in cash, and they then got a bill which they could submit to their medical insurance company if they wanted reimbursement. Dr. Steinbergh stated that Dr. Banks also got paid on a weekly basis, which indicates to her that Dr. Banks was quite aware that there were things going on there. Dr. Steinbergh noted that Dr. Banks said so in the record. Dr. Steinbergh stated that she was concerned about the number of patients who were being seen, adding that she disagrees with that. Dr. Steinbergh continued that six years later Dr. Banks is still doing the same thing, so she holds her responsible for that. Dr. Steinbergh stated that things were not real professional there.

Dr. Steinbergh stated that, in the end, when she takes a look at this and she asks whether this physician's license should be permanently revoked, she has to disagree. She agrees that Dr. Banks did these things,

that the Board had the right to take action, that Dr. Banks was not in control of her D.E.A., and that she saw volumes of patients everyday who were prescribed pain medications. Dr. Steinbergh stated that she's not going to address the pain issue because that's not what the Board is discussing today. She stated that she's not sure that she can agree with the Hearing Examiner's comment that it's "unacceptable for a physician to prescribe or provide control substances to every patient simply because it is expected or requested that she do so." Dr. Steinbergh again stated that she's not sure that she can agree with that because the Board doesn't know that. This is not a case of minimal standards. What the Board is looking at today is Dr. Banks' voluntary surrender of her D.E.A. certificate, which, in her mind, does constitute a revocation or termination of those privileges.

Dr. Steinbergh stated that she would like to hear further discussion, but she does have an alternative order to propose.

Dr. Varyani stated that two years ago he needed to keep narcotics in his practice. He stated that he has a pain management practice and an office anesthesia practice where you need narcotics. Dr. Varyani stated that he cannot order Schedule II medications by themselves just by his D.E.A. number. He has to personally sign every requisition; otherwise, the drugs are not delivered. Dr. Varyani indicated that he finds it hard to believe that drugs were being ordered without Dr. Banks' signature. If the D.E.A. license is in the physician's name, and they're ordering from a pharmacy, no matter what pharmacy you're ordering from, they require a specific form where the person whose D.E.A. number the order is going to go through has to sign. Not only the drug, but the quantity must be specified, and then the physician must affix his or her signature. Dr. Varyani stated that he's having a hard time believing that Dr. Banks was not doing that. If she was not doing that, it's a different story, but she's supposed to. Dr. Varyani stated that prior to his getting a license, he had an inspection. You have to maintain logs of every use, may it be pain clinic, may it be office, may it be surgery center, or may it be hospital. Dr. Varyani stated that he finds it very hard to believe that thousands of pills are being ordered for six years and she did not affix a signature on the orders. Dr. Varyani stated that he finds it incredulous, at least for the last two years.

Dr. Varyani stated that he agrees with the Attorney General, and with the recommendation of the Hearing Examiner.

Dr. Stephens stated that they obviously had her D.E.A. number.

Dr. Varyani stated that she would have to personally sign the quantity and the medication.

Dr. Stephens asked Dr. Varyani why he thinks that the nurse couldn't have signed it.

Dr. Varyani stated that Dr. Banks has to sign the order. He added that if someone was forging Dr. Banks' signature, that's a different story. He stated that he has a D.E.A. license being used at three facilities, and he knows exactly what is being ordered and that every month he gets a report as to how it's being accounted for, and how much is missing. That's his responsibility, if it's his D.E.A. license that is being used. He added that if you order under your name, you need to know how it's being used. That's the

physician's responsibility. Dr. Varyani again stated that he has to document exactly what is being ordered, and every month there is a huge log with thousands of pages, that he has to review with two witnesses.

Dr. Egner stated that she wants to talk about the case as a whole. She stated that there are multiple areas throughout the case that just don't make sense. She stated that this is a physician who was a general medical officer in the Army for four years. Quite a bit of experience had to have been gained during that four-year period of time. The background states that she was an internal medicine resident for a year, but then went on to do a cardiology fellowship. Dr. Egner stated that she doesn't understand how you do that, and she didn't see documentation that she completed an internal medicine residency. She practiced cardiology in Dayton, Ohio in 2001, but that job was short-lived after 9-11 because they had to downsize and let her go. Dr. Egner stated that she doesn't understand what that means. It is just part of this bigger picture of things that just don't add up. Dr. Banks then went to work in a pain clinic, when this is not her area of expertise at all. She worked for a pain clinic owned by non-medical people. She stated that all patients received controlled substances. She had an unlicensed individual whom she trained to do the neurological exams, which is inappropriate. Dr. Egner stated that she knows that this is not a minimal standards case, but she is looking at the entire picture.

Dr. Egner advised that Dr. Banks stated that she gave Nancy Sadler permission to use her D.E.A. number to order somewhere between 250 and 500 pills a month, but she further advised that she didn't have access to the records or where the drugs were stored and needed some on hand for patients if they ran out of their pain medications, in order that they not go through withdrawal. However, in 2006 and 2007, not 6,000 units were ordered, but over 200,000 units were ordered. That is a huge discrepancy. She stated that it just makes no sense. If you've given someone else the ability to use your D.E.A. number, why wouldn't you ever check on what they're doing. If you didn't give them that authority, you would know because you would have to sign for it.

Dr. Egner continued that Dr. Banks' military background, to her, is one of the most important things in this case. She stated that there is no place that has a more structured environment than the military. It is a hierarchy of rules and regulations that you file from the day you enter until the day that you leave. It makes absolutely no sense to her that Dr. Banks spent four years in the military and came out and totally disregarded all areas that have rules and regulations to them.

Dr. Egner stated that she does agree with the Hearing Examiner that Dr. Banks' voluntary surrender of her D.E.A. certificate under these circumstances did terminate her D.E.A. license and does violate Ohio law. Dr. Egner stated that she also thinks that there are too many inconsistencies and that Dr. Banks was a willing participant in this pain management practice and the total purchasing and misadministration of controlled substances. Dr. Egner stated that she can't think of any other explanation. She therefore agrees with the Proposed Order of permanent revocation.

Dr. Amato asked whether there is any way that the Board can limit its discussion to what the charges were; i.e., whether the voluntary surrender is a termination or not. Dr. Amato stated that he agrees with Dr. Egner that it was and is a termination. Dr. Amato stated that he has seen nothing in the record, however,

that rises to a permanent revocation. He agrees with Dr. Stephens that horrendous amounts of medications go through these clinics. Dr. Amato stated that he has the feeling in his heart that Dr. Banks was, perhaps, very stupid with her D.E.A. license. Perhaps she didn't keep track of her signatures. However, seeing 50 to 60 patients a day, how many times a day she signed and moved on to the next patient, and how many times a day other busy practitioners would do so. Dr. Amato commented that seeing 50 to 60 patients a day was way too many, but that's a standards issue. Dr. Amato again stated that he does not believe that this case rises to a revocable offense. He stated that he would like to see Dr. Steinbergh's alternative order.

Dr. Steinbergh stated that she developed the case pretty much the same as Dr. Egner, looking at the total picture, and she agrees with Dr. Egner's attempts to understand why a physician who has been trained the way Dr. Banks was trained comes to this point. The record doesn't give the Board this information. However, she does get the sense that at some point Dr. Banks was vulnerable because of her educational past. She maybe didn't meet the standard to continue, whether it be in cardiology or internal medicine. Dr. Banks had commented during the hearing that she had been ill at some point and she made the decision to move on. Dr. Steinbergh stated that there isn't a strong development of the record to say anything other than that. At some point, though, she made this decision. Dr. Steinbergh stated that she agrees with Dr. Egner that Dr. Banks probably wasn't necessarily trained to do pain management, but she was doing general medicine as it is known today. She worked in a pain clinic, and the Board sees what occurred. Dr. Steinbergh stated that she absolutely agrees with Dr. Egner in the sense that Dr. Banks hired and trained someone totally uncertified to do neurological exams. She stated that she hated to see that piece in there, but she had to focus on the Board's charges, and of what the Board found her guilty.

Dr. Madia stated that he totally agrees with Dr. Varyani and Dr. Egner that this was a termination. It wasn't a voluntary surrender; it sounds like a termination. Dr. Madia added that when prescribing controlled substances in outpatient clinics, it is a very strict environment. The Pharmacy Board looks over who dispenses the drugs, who signs for it, how the record is kept. If somebody says that "200,000 pills were dispensed but I was not aware of it," it is very hard for him to believe that. Dr. Madia stated that it could happen, but for six years, in the same environment, someone is dispensing all those pills, even if you're seeing 40 to 50 patients, you'd have to know. Dr. Madia stated that Dr. Banks should have known. Dr. Madia stated that he won't repeat what everyone has already said, but in this, he agrees with the Report and Recommendation.

Mr. Hairston asked what happened to the clinic. He asked whether the clinic is still functioning.

Dr. Steinbergh stated that the people who own the business probably hired someone else to do it.

Dr. Varyani stated that that's immaterial. He stated that the Board should discuss what is at hand. He stated that this is a big problem. Narcotics and the diversion of narcotics is not a simple problem. It's the biggest growing problem medicine has. He reminded Board members that two years ago a book on how to prescribe narcotics was given to all pain management people, free of charge, so that they would go by the rules.

Mr. Hairston stated that the reason he asked that question was because he wondered whether anyone was prosecuted in this case. He stated that he didn't read anything about anybody being prosecuted.

Dr. Varyani stated that he has no idea. He added that what the Board has it was it has. He stated that this case is diversion of drugs. He thinks that it's material that this not be allowed in Ohio.

Dr. Stephens indicated that there are different kinds of drug diversion. She stated that this is not diversion of drugs to go get high, or have friends get high or selling prescriptions. This is in the environment of a pain clinic, which is just a crazy environment. There has to be a distinction. She stated that she would like to hear Dr. Steinbergh's amendment.

Dr. Steinbergh agreed with Dr. Stephens, adding that she doesn't think that this is diversion of drugs. This is a charge involving the purchasing and misadministration of controlled substances. Dr. Steinbergh stated that she doesn't see this as diversion of drugs.

Dr. Varyani stated that there were 6,000 pills ordered. They had to have gone somewhere. If that's not diversion, he doesn't know what diversion is.

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

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Brenda Louise Banks, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Banks' certificate shall be SUSPENDED for an indefinite period of time, but not less than two years.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Banks' certificate to practice medicine and surgery until all of the following conditions have been met:
  1. **Application for Reinstatement or Restoration:** Dr. Banks shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  2. **Controlled Substances Prescribing Course(s):** At the time she submits her application for reinstatement or restoration, Dr. Banks shall provide acceptable documentation of successful completion of a course or courses dealing with the prescribing of controlled substances. 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. Banks submits the documentation of successful completion of the course(s) dealing with the prescribing of controlled substances, she shall also submit to the Board a written report describing the course(s), setting forth what she learned from the course(s), and identifying with specificity how she will apply what she has learned to her practice of medicine in the future.

3. **SPEX**: Prior to submitting her application for reinstatement or restoration, Dr. Banks shall take and pass the SPEX examination or any similar written examination which the Board may deem appropriate to assess Dr. Banks' clinical competency.
4. **Evidence of Unrestricted Licensure in Other States**: At the time she submits her application for reinstatement or restoration, Dr. Banks shall provide written documentation acceptable to the Board verifying that Dr. Banks otherwise holds a full and unrestricted license to practice medicine and surgery in all other states in which she is licensed at the time of application or has been in the past licensed, or that she would be entitled to such license but for the non-payment of renewal fees.

C. **PROBATIONARY CONDITIONS**: Upon reinstatement or restoration, Dr. Banks' 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. Banks shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in the state in which she is practicing.
2. **Quarterly Declarations**: Dr. Banks 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 her certificate is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
3. **Personal Appearances**: Dr. Banks shall appear in person for an interview

before the Board or its designated representative during the third month following the month in which her certificate is restored or reinstated or as otherwise directed by the Board. Subsequent personal appearances must occur every six months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

4. **Practice Plan:** Prior to Dr. Banks' commencement of practice in Ohio or as otherwise determined by the Board, Dr. Banks shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Banks' activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Banks shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Dr. Banks submits her practice plan, she shall also submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary or Supervising Member will give preference to a physician who practices in the same locale as Dr. Banks and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Banks and her medical practice, and shall review Dr. Banks' patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Banks and her medical practice, and on the review of Dr. Banks' patient charts. Dr. Banks shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Banks' quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Banks must immediately so notify the Board in writing. In addition, Dr. Banks shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Banks shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons

therefor.

5. **Ban on Prescribing, Ordering, Administering, Furnishing, or Possessing Controlled Substances; Log:** Dr. Banks shall not prescribe, write orders for, give verbal orders for, administer, personally furnish, or possess (except for her own personal use as prescribed by her treating physician for legitimate medical purposes) any controlled substances without prior Board approval.

In the event that the Board agrees at a future date to modify this Order to allow Dr. Banks to prescribe, order, administer or personally furnish controlled substances, based upon Dr. Banks' having successfully reinstated her DEA certificate, Dr. Banks shall keep a log of all controlled substances prescribed, ordered, administered, or personally furnished. Such log shall be submitted in a format approved by the Board thirty days prior to Dr. Banks' personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Banks shall make her patient records with regard to such prescribing, administering, or personally furnishing available for review by an agent of the Board upon request.

6. **Violation of Probation; Discretionary Sanction Imposed:** If Dr. Banks violates probation in any respect, the Board, after giving her notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of her certificate.

D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Banks' certificate will be fully restored.

E. **REQUIRED REPORTING AND DOCUMENTATION OF REPORTING:**

1. **Required Reporting to Employers and Hospitals:** Within thirty days of the effective date of this Board Order, Dr. Banks shall provide a copy of this Board Order to all employers or entities with which she is under contract to provide health care services (including but not limited to third party payors) or is receiving training, and the Chief of Staff at each hospital where she has privileges or appointments. Further, Dr. Banks shall promptly provide a copy of this Board Order to all employers or entities with which she contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where she applies for or obtains privileges or appointments. In the event that Dr. Banks provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within thirty days of the

effective date of this Board Order, Dr. Banks shall provide a copy of this Board Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

This requirement shall continue until Dr. Banks receives from the Board written notification of her successful completion of probation as set forth in paragraph D, above.

2. **Required Reporting to Other State Licensing Authorities:** Within thirty days of the effective date of this Board Order, Dr. Banks shall provide a copy of this Board Order to the proper licensing authority of any state or jurisdiction in which she currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which she currently holds any license or certificate. Dr. Banks further agrees to provide a copy of this Board Order at time of application to the proper licensing authority of any state in which she applies for any professional license or for reinstatement of any professional license.

This requirement shall continue until Dr. Banks receives from the Board written notification of her successful completion of probation as set forth in paragraph D, above.

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

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

Dr. Stephens stated that she doesn't have a problem with much of this, but she doesn't see why Dr. Banks should have to take the SPEX. Dr. Stephens stated that she didn't have any problems with Dr. Banks' past training. She thinks it would be pretty oppressive for Dr. Banks to have to take SPEX.

Dr. Steinbergh stated that under the amendment, Dr. Banks' license will be suspended for an indefinite period of time, but not less than two years. After two years out of practice, the Board has the right to require re-examination.

**DR. AMATO SECONDED THE MOTION.**

Dr. Stephens asked for clarification of the probationary period.

Dr. Steinbergh stated that once Dr. Banks gets her license back, she will be in a monitored practice plan that the Board will approve. She'll be monitored for two years. She'll come to the Board in the first three months of her probation and then every six months thereafter until the end of her probation.

Dr. Stephens asked why suspension is being ordered. Why not just place her on probation.

Dr. Steinbergh stated that the findings would allow that the Board suspend her license. She added that there has to be a penalty. The proposed two-year suspension is, for her, far superior to permanent revocation. There has to be an action on Dr. Banks' license.

Dr. Stephens asked whether Dr. Steinbergh means that she would take Dr. Banks out of practice for two years.

Dr. Steinbergh stated that that's correct.

Dr. Stephens stated that it's incredible to her that she's seen other things go by and then the Board is going to take someone out of practice for two years. The Board has talked about how that just kills somebody's career. She stated that she totally disagrees with this.

Dr. Egner noted that she has spoken in favor of permanent revocation, and she still feels that way; however, if Dr. Banks' license is not going to be permanently revoked, she would accept nothing less than the proposed amendment. She stated that this is a gift for the things that Dr. Banks has done. To be out of practice for two years, to be required to take the SPEX, to be required to take the controlled substance course, and to be monitored after she's back in practice is a minimum of what the Board should be doing.

Dr. Talmage left the room during the previous discussion.

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

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- nay
	Dr. Suppan	- nay
	Dr. Madia	- nay
	Mr. Hairston	- aye

Dr. Amato	- aye
Dr. Stephens	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Varyani	- nay

The motion carried.

**DR. STEINBERGH MOVED TO MOVED TO APPROVE AND CONFIRM MS. CLOVIS' FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF BRENDA LOUISE BANKS, M.D. MR. HAIRSTON SECONDED THE MOTION.** A vote was taken:

[Did Mr. Albert leave the meeting? You did not mention that.]

ROLL CALL:

Dr. Egner	- aye
Dr. Talmage	- abstain [you haven't mentioned that Dr.

Talmage returned to the meeting.]

Dr. Suppan	- aye
Dr. Madia	- aye
Mr. Hairston	- aye
Dr. Amato	- aye
Dr. Stephens	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Varyani	- nay

The motion carried.

# State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.  
Executive Director

(614) 466-3934  
med.ohio.gov

April 9, 2008

Case number: 08-CRF- **036**

Brenda Louise Banks, M.D.  
3983 Spectacle Drive  
Columbus, Ohio 43230

Dear Doctor Banks:

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

- (1) On or about February 19, 2008, you executed a Voluntary Surrender of Controlled Substances Privileges [Voluntary Surrender] to the U.S. Department of Justice – Drug Enforcement Administration, based upon your alleged failure to comply with the Federal requirements pertaining to controlled substances, and as an indication to remedy any incorrect or unlawful practices on your part. A copy of the Voluntary Surrender is attached hereto and incorporated herein.

The Voluntary Surrender as alleged in paragraph (1) above, constitutes “[t]he revocation, suspension, restriction, reduction, or termination of clinical privileges by the United States department of defense or department of veterans affairs or the termination or suspension of a certificate of registration to prescribe drugs by the drug enforcement administration of the United States department of justice,” as that clause is used in Section 4731.22(B)(24), Ohio Revised Code.

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

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments,

*Mailed 4-10-08*

Brenda Louise Banks, M.D.

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or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.  
Secretary

LAT/DSZ/flb  
Enclosures

CERTIFIED MAIL #91 7108 2133 3934 3686 8294  
RETURN RECEIPT REQUESTED

*Duplicate Mailing:*

Brenda Louise Banks, M.D.  
4134 Migration Lane  
Columbus, Ohio 43230

CERTIFIED MAIL #91 7108 2133 3934 3686 8300  
RETURN RECEIPT REQUESTED  
RESTRICTED DELIVERY

**VOLUNTARY SURRENDER OF CONTROLLED SUBSTANCES PRIVILEGES**

DEA USE ONLY  
File No. \_\_\_\_\_

After being fully advised of my rights, and understanding that I am not required to surrender my controlled substances privileges, I freely execute this document and choose to take the actions described herein.

- In view of my alleged failure to comply with the Federal requirements pertaining to controlled substances, and as an indication of my good faith in desiring to remedy any incorrect or unlawful practices on my part;
- In view of my desire to terminate handling of controlled substances listed in schedule(s) \_\_\_\_\_;

I hereby voluntarily surrender my Drug Enforcement Administration Certificate of Registration, unused order forms, and all my controlled substances listed in schedule(s) II thru V as evidence of my agreement to relinquish my privilege to handle controlled substances listed in schedule(s) II thru V. Further, I agree and consent that this document shall be authority for the Administrator of the Drug Enforcement Administration to terminate and revoke my registration without an order to show cause, a hearing, or any other proceedings, (and if not all controlled substances privileges are surrendered, be issued a new registration certificate limited to schedule(s) II thru V).

I waive refund of any payments made by me in connection with my registration.

I understand that I will not be permitted to order, manufacture, distribute, possess, dispense, administer, prescribe, or engage in any other controlled substance activities whatever, until such time as I am again properly registered.

NAME OF REGISTRANT (Print) Brenda L. Banks, M.D.		ADDRESS OF REGISTRANT 850 W. Emmitt Ave Suite 5 Waverly, OH 45690	
DEA REGISTRATION NO. BB6297457			
SIGNATURE OF REGISTRANT OR AUTHORIZED INDIVIDUAL <i>Brenda L. Banks</i> BRENDA L. BANKS		DATE 19 Feb 08	

**WITNESSES:**

NAME AND DATE <i>Lewis Thomas</i>	TITLE <i>Pharmacist</i>
NAME AND DATE <i>Dawn Valerie Mitchell</i>	TITLE <i>DEA/Cols DO Diversions Investigator</i>

**PRIVACY ACT**

**AUTHORITY:** Section 301 of the Controlled Substances Act of 1970 (PL 91-513).  
**PURPOSE:** Permit voluntary surrender of controlled substances.  
**ROUTINE USES:** The Controlled Substances Act Registration Records produces special reports as required for statistical analytical purposes. Disclosures of information from this system are made to the following categories of users for the purposes stated:  
 A. Other Federal law enforcement and regulatory agencies for law enforcement and regulatory purposes.  
 B. State and local law enforcement and regulatory agencies for law enforcement and regulatory purposes.  
 C. Persons registered under the Controlled Substances Act (Public Law 91-513) for the purpose of verifying the registration of customers and practitioners.  
**EFFECT:** Failure to provide the information will have no effect on the individual.