



# State Medical Board of Ohio

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August 11, 2004

Douglas Holland Rank, M.D.  
100 Riverside Plaza, 201  
Covington, KY 41011

Dear Doctor Rank:

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 August 11, 2004, 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 a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

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

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 7000 0600 0024 5150 3034  
RETURN RECEIPT REQUESTED

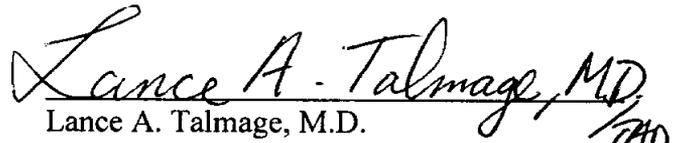
Cc: Kevin P. Byers, Esq.  
CERTIFIED MAIL NO. 7000 0600 0024 5150 3010  
RETURN RECEIPT REQUESTED

*Mailed 8-31-04*

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 August 11, 2004, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and Douglas Holland Rank, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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

  
Lance A. Talmage, M.D.  
Secretary

(SEAL)

August 11, 2004

Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF

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DOUGLAS HOLLAND RANK, M.D.

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ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on August 11, 2004.

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. The application of Douglas Holland Rank, M.D., for a certificate to practice medicine and surgery in Ohio is GRANTED, provided that he otherwise meets all statutory and regulatory requirements. Immediately upon issuance, such certificate shall be SUSPENDED for an indefinite period of time, but not less than six months.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Rank's certificate to practice medicine and surgery until all of the following conditions have been met:
  - 1. **Application for Reinstatement or Restoration:** Dr. Rank shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  - 2. **Professional Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Rank shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee.

Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

3. **Personal Ethics Course**: At the time he submits his application for reinstatement or restoration, Dr. Rank shall provide acceptable documentation of successful completion of a course or courses dealing with personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.
4. **Controlled Substances Prescribing Course**: At the time he submits his application for reinstatement or restoration, Dr. Rank shall provide acceptable documentation of successful completion of a course 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.
5. **Practice Plan**: At the time he submits his application for reinstatement or restoration, Dr. Rank shall submit to the Board and receive its approval for a plan of practice. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Rank's activities will be directly supervised and overseen by a monitoring physician approved by the Board.

At the time Dr. Rank submits his practice plan, he 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. Rank and who is engaged in the same or similar practice specialty.

6. **Documentation of CME**: At the time he submits his application for reinstatement or restoration, Dr. Rank shall provide acceptable documentation of satisfactory completion of the requisite hours of Continuing Medical Education obtained during the period of suspension.
7. **Additional Evidence of Fitness To Resume Practice**: In the event that Dr. Rank has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of

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

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

1. **Practice Plan:** Dr. Rank shall practice pursuant to the terms of the practice plan approved by the Board in accordance with paragraph B.5., above. Prior to his commencement of practice, Dr. Rank shall notify the Board of his intent to commence practice and shall appear before the Secretary and Supervising Member of the State Medical Board. Dr. Rank shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

In accordance with the approved plan of practice, the approved monitoring physician shall monitor Dr. Rank and his medical practice, and shall review Dr. Rank's 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. Rank and his medical practice, and on the review of Dr. Rank's patient charts. Dr. Rank 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. Rank's quarterly declaration.

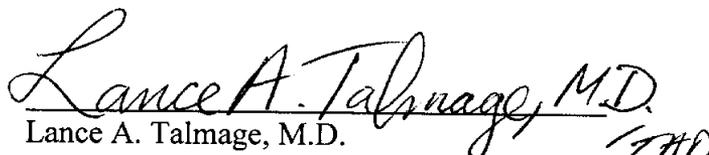
In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Rank must immediately so notify the Board in writing. In addition, Dr. Rank shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Rank 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.

2. **Documentation of CME:** Upon submission of any application for renewal of registration during the period of probation, Dr. Rank shall submit documentation acceptable to the Board of satisfactory completion of the requisite hours of Continuing Medical Education.
3. **Obey the Law:** Dr. Rank shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.

4. **Declarations of Compliance:** Dr. Rank shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which Dr. Rank's 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.
  5. **Personal Appearances:** Dr. Rank shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. Rank's certificate is restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances must occur every three 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.
  6. **Tolling of Probationary Period While Out of State:** In the event that Dr. Rank should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Rank must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.
  7. **Modification of Terms:** Dr. Rank shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.
- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Rank's certificate will be fully restored.

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

(SEAL)

  
Lance A. Talmage, M.D.  
Secretary

August 11, 2004  
Date

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**REPORT AND RECOMMENDATION  
IN THE MATTER OF DOUGLAS HOLLAND RANK, M.D.**

The Matter of Douglas Holland Rank, M.D., was heard by Siobhan R. Clovis, Esq., Hearing Examiner for the State Medical Board of Ohio, on May 14, 2004.

**INTRODUCTION**

I. Basis for Hearing

- A. By letter dated January 14, 2004, the State Medical Board of Ohio [Board] notified Douglas Holland Rank, M.D., that it had proposed to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate his certificate to practice medicine and surgery, or to reprimand him or place him on probation. The Board based its proposed action on the following allegations:
1. On or about March 13, 2003, Dr. Rank submitted an application for a license to practice medicine and surgery in Ohio. In submitting the application, Dr. Rank certified under oath that the information provided was true. He further promised to notify the Board in writing of any changes to his answers to the questions in the ADDITIONAL INFORMATION section of the application. Dr. Rank's application is currently pending.
  2. In the ADDITIONAL INFORMATION section, Dr. Rank answered "Yes" to Question 7, which asked whether any professional license ever held by Dr. Rank had been disciplined. In his explanation for the affirmative response, Dr. Rank reported "two separate events" that had previously occurred, including two disciplinary actions in Kentucky and the revocation of his New York medical license. However, he failed to subsequently disclose a third disciplinary action filed by the Kentucky State Board of Medical Licensure [Kentucky Board] after Dr. Rank's Ohio application had been submitted.
  3. On or about July 11, 2001, the Kentucky Board filed an Agreed Order which suspended Dr. Rank's Kentucky medical license for six months, and set forth probationary conditions for Dr. Rank's return to practice. The basis for this action was that Dr. Rank, in the course of his private practice of psychiatry, had engaged in a sexual relationship with Patient A while she was under his care.

4. On or about September 17, 2001, the Kentucky Board filed an Agreed Order which indefinitely restricted Dr. Rank from treating Patient B.
5. On or about May 9, 2003, the Kentucky Board filed an “Order of Fine” resulting from Dr. Rank’s failure to complete Continuing Medical Education requirements.
6. Effective on or about April 23, 2002, the New York State Department of Health Administrative Review Board for Professional Medical Conduct [New York Board] revoked Dr. Rank’s license to practice medicine in New York based upon the Kentucky action described in paragraph three.

The Board alleged that Dr. Rank’s acts, conduct, and/or omissions as alleged in paragraph two, individually and/or collectively constitute: “‘fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board,’ as that clause is used in R.C. 4731.22(A).”

The Board further alleged that the Kentucky Board Orders alleged in paragraphs three, four and five, as well as the New York Board Order alleged in paragraph six, individually and/or collectively constitute “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,’ as that clause is used in R.C. 4731.(B)(22).”

Lastly, the Board alleged that Dr. Rank’s acts, conduct, and/or omissions as alleged in paragraphs two, three, and six, individually and/or collectively constitute “a failure to furnish satisfactory proof of good moral character, as required by R.C. 4731.08 and R.C. 4731.29.”

Accordingly, the Board advised Dr. Rank of his right to request a hearing in this matter. (State’s Exhibit 1A).

- B. On February 11, 2004, Kevin P. Byers, Esq., submitted a written hearing request on behalf of Dr. Rank. (State’s Exhibit 1B).

## II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.

- B. On behalf of the Respondent: Kevin P. Byers, Esq.

### **EVIDENCE EXAMINED**

#### I. Testimony Heard

A. Presented by the State

1. Douglas Holland Rank, M.D., as if upon cross-examination

B. Presented by the Respondent

1. Susan Elizabeth Davis
2. Ellen Gale
3. Darla Johnson
4. Sharon Diane Horne
5. Douglas Holland Rank, M.D.

#### II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A through 1M: Procedural exhibits.
2. State's Exhibit 2: Copy of a May 9, 2003, "Order of Fine: Granting Six Months to Comply with 201 KAR 9:310" imposed by the Commonwealth of Kentucky Board of Medical Licensure [Kentucky Board] upon Douglas Holland Rank, M.D.
3. State's Exhibit 3: Copy of a September 17, 2001, "Agreed Order of Indefinite Restriction" filed in Kentucky Board Case No. 771. (Note: References to a patient have been redacted and replaced with the notation "Patient A."<sup>1</sup>)
4. State's Exhibit 4: Copy of a July 11, 2001, "Agreed Order" filed in Kentucky Board Case No. 707.

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<sup>1</sup>The individual identified as Patient A in this Exhibit is referred to as Patient B in these proceedings.

5. State's Exhibit 5: Copy of a March 29, 2001, "Amended Order of Revocation, Probated; Amended Order of Suspension/Probation" filed in Kentucky Board Case No. 707.
  6. State's Exhibit 6: Copy of a May 17, 2000, "Order of Revocation; Probated Order of Suspension and Probation" filed in Kentucky Board Case No. 707.
  7. State's Exhibit 7: Copy of a December 21, 2000, "Final Order Modifying Emergency Order of Suspension" filed in Kentucky Board Case No. 771.
  8. State's Exhibit 8: Copy of a November 30, 2000, "Emergency Order of Restriction" filed in Kentucky Board Case No. 771.
  9. State's Exhibit 9: Copy of a November 30, 2000, "Complaint" filed in Kentucky Board Case No. 771.
  10. State's Exhibit 10: Copy of a May 22, 2003, letter to Dr. Rank from Sandy K. Brooks, Continuing Medical Education Coordinator for the Kentucky Board.
  11. State's Exhibit 11: Copy of a February 7, 2000, "Findings of Fact, Conclusions of Law and Recommended Order" filed in Kentucky Board Case No. 707.
  12. State's Exhibit 14: Certified copies of documents maintained by the State of New York Department of Health concerning Dr. Rank. (Note: The Hearing Examiner numbered the pages post-hearing.)
  13. State's Exhibit 15: Certified copies of documents maintained by the Board concerning Dr. Rank's application to practice medicine and surgery in Ohio. (Note: A newspaper article was originally included in this exhibit at page 24. The Hearing Examiner separated this article and sealed it, because it contains numerous references to Patient A by name. The article is now labeled State's Exhibit 15A).
  14. State's Exhibit 15A: Newspaper article about Patient A's lawsuit against Dr. Rank, which was originally included as page 24 of Exhibit 15. (Note: This Exhibit has been sealed to protect patient privacy).
- B. Presented by the Respondent
1. Respondent's Exhibit B: Copy of a June 7, 2001, affidavit of Diana Loh.

2. Respondent's Exhibit C: Copy of a "Certificate of Completion" indicating that Dr. Rank participated in the course "Use of Controlled Substances" on October 28, 2000.
3. Respondent's Exhibit D: Copy of a "Certificate of Attendance" indicating that Dr. Rank completed the course "Maintaining Proper Boundaries" on April 25-27, 2001.
4. Respondent's Exhibit E: Copy of a certificate indicating that Dr. Rank attended four sessions of "Management of the Erotic Transference" on April 19, 26, and May 3, 10, 17, and 24, 2001.
5. Respondent's Exhibit F: Copy of a "Certificate of Attendance" indicating that Dr. Rank attended and completed the course "Prescribing Controlled Drugs" on June 20-22, 2001.
6. Respondent's Exhibit G: Copy of a "Certificate of Completion" indicating that Dr. Rank participated in the course "HIV/AIDS: Epidemic Update for Kentucky" on March 25, 2003.
7. Respondent's Exhibit H: Copy of the January 31, 2003, Opinion of the Commonwealth of Kentucky Court of Appeals in *Rank v. Kentucky Board of Medical Licensure*, Case No. 2001-CA-000602-MR.

### **PROCEDURAL MATTERS**

The hearing record in this matter was held open until May 21, 2004, to give the Respondent an opportunity to submit additional evidence. Additional evidence was timely submitted and entered into the record as Respondent's Exhibit H. (See Hearing Transcript at 144-146).

### **SUMMARY OF THE EVIDENCE**

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

1. Douglas Holland Rank, M.D., testified that he had received a Bachelor of Science Degree in biochemistry from Rice University. He attained his medical degree from Baylor College of Medicine in 1984. Dr. Rank testified that he had completed two residencies, which he described as "interdigitating," at Beth Israel Medical Center in New York City. He completed two years of an internal medicine residency, then three years of a psychiatry

residency, and then he finished a third year of the internal medicine residency. He completed this training in 1990. Dr. Rank became board-certified in both psychiatry and internal medicine in 1993. (Hearing Transcript [Tr.] at 10- 11; State's Exhibit [St. Ex.] 15 at 1-3, 7).

Dr. Rank testified that, in 1990, he had taken a position in Frankfort, Kentucky, at a private practice sponsored by Hospital Corporation of America. He stated that he had remained there for one year, and then he had moved his hospital practice to St. Joseph's Hospital in Lexington, Kentucky, while maintaining a part-time office practice in Frankfort. Dr. Rank testified that he had remained there until 2001, when his medical license was suspended by the Kentucky Board of Medical Licensure [Kentucky Board]. (Tr. at 12; St. Ex. 15 at 8-9).

After his suspension was completed, Dr. Rank engaged in *locum tenens* work in an injury clinic in Paintsville, Kentucky. He has been engaged in private practice since 2003, originally in Fort Mitchell, Kentucky, and currently in Covington, Kentucky. Dr. Rank described his practice as "primarily psychiatry though some of my—I treat other things, because I'm also a board certified internist, like migraine headache and fibromyalgia, things like that." Dr. Rank testified that his practice is office-based and clinical, and that he has no hospital privileges. He stated that he has about 500 patients. (Tr. at 9-10, 44; St. Ex. 15 at 9-10).

2. Dr. Rank testified that he has a "special local reputation for treating difficult headaches." (Tr. at 27). He explained that headache management is a combination of his two disciplines:

It's always a little of both. I will tell you why. Headache, migraine headache is like a mousetrap. Anything that touches the tongue of the trap snaps it. And so that could be the wrong food, like an aspartame, nitrates, MSG. It could be a flashbulb. It could be a perfume. It can be an argument with your spouse. It could be a change in weather.

\* \* \*

So to really get the headache better I have to teach them about diet, other triggers, Polaroid glasses, how to use cold packs. How, you know, even such simple things as Tylenol can transform an intermittent migraine into a daily headache, but then also how to control the stress in their life. So they will often have you treat the insomnia and any mood problems that come up and talk to them about how to conduct their—how to better deal with their spouse.

(Tr. at 132-133).

3. Dr. Rank is currently licensed to practice medicine in Kentucky. He was previously licensed in New York, but his license has been revoked. On March 17, 2003, Dr. Rank submitted an application to practice medicine and surgery in Ohio. (Tr. at 10; St. Ex. 15 at 7).

Dr. Rank stated that he would like to practice in Ohio because he currently lives in Golf Manor, a section of Cincinnati, Ohio. He testified that he has been offered a position at a nearby clinic by a member of his synagogue, Dr. Marilyn Sholiton. (Tr. at 55-56).

**Case No. 707 of the Kentucky Board – Sexual Relationship with Patient A**

4. On May 17, 2000, the Kentucky Board determined that Dr. Rank had admitted engaging in an improper sexual relationship with Patient A while she was under his care. Specifically, the Kentucky Board found that Dr. Rank had treated Patient A in his private practice of psychiatry (with a sub-specialty of headache and pain management), and that the two had engaged in sexual contact, including unprotected sexual intercourse, over a period of time. Patient A was married; Dr. Rank was not. (Tr. at 24; St. Ex. 6 at 1-2; St. Ex. 11 at 2-5).

In the May 17, 2000, Order, the Kentucky Board quoted Current Opinion 8.14 of the American Medical Association's Code of Ethics:

Sexual contact that occurs concurrent with the physician-patient relationship constitutes sexual misconduct. Sexual or romantic interactions between physicians and patients detract from the goals of the physician-patient relationship, may exploit the vulnerability of the patient, may obscure the physician's objective judgment concerning the patient's health care, and ultimately may be detrimental to the patient's well-being.

If a physician has reason to believe that non-sexual contact with a patient may be perceived as or may lead to sexual contact, then he or she should avoid the non-sexual contact. At a minimum, a physician's ethical duties include terminating the physician-patient relationship before initiating a dating, romantic, or sexual relationship with a patient.

(St. Ex. 6 at 6).

5. Dr. Rank testified that he would stipulate to the February 7, 2000, Findings of Fact which were adopted by the Kentucky Board on May 17, 2000. (St. Ex. 6 at 2; St. Ex. 11 at 2-8). Those Findings provide, in pertinent part:
  8. In April of 1993, Patient A was involved in a motor vehicle accident from which she sustained head and neck injuries. Following cervical disk surgery in October of 1993, she continued to suffer severe bouts

of pain. She consulted with several physicians and was prescribed multiple medications. She realized no dramatic improvement. In November of 1993, she was referred to Dr. Rank for the treatment of her pain symptoms and for resultant depression.

9. Dr. Rank treated Patient A on at least a weekly basis from November of 1993 to September of 1994. During this time frame, Dr. Rank prescribed many medications to Patient A for her severe migraine headaches, including Lorcet, Lortab, Levo-Dromoran, Valium, Xanax, Toradol, DHL-45 and Imitrex.
10. On or about September 4, 1994, Dr. Rank terminated his treatment of Patient A due to physical advances she made to him during the course of treatment. Dr. Rank identified Patient A's conduct to be indicative of 'transference,' in this instance, a primarily unconscious tendency of Patient A to assign to her psychiatrist those feelings and attitudes originally connected with significant figures during the course of early development. \* \* \*
11. In March of 1995, Dr. Rank, whose specialty in headache and pain management apparently is well known in the Lexington, Kentucky[,] medical community, was requested by a Lexington surgeon to see Patient A again to determine whether he could help relieve her severe migraine headaches. Dr. Rank met with Patient A in a hospital and, following discussion, Dr. Rank agreed to take Patient A back as a patient under the belief that the problems which lead to the termination of treatment in September 1994 would not be repeated.
12. From March of 1995 until the end of the professional relationship with Patient A, the billing codes used by Dr. Rank were for medical care, not for psychotherapy.
13. From April of 1994 through early 1995, Dr. Rank permitted his relationship with Patient A to develop outside the psychiatrist-patient context. Indeed, several different types of relationships began to form between them. Dr. Rank and Patient A began to engage in frequent evening telephone conversations in which personal matters were discussed as a matter of course. They began to meet socially outside the office, including restaurant lunches. Dr. Rank also began to develop a spiritual relationship with Patient A, which resulted in regular meetings at a Jewish synagogue. Dr. Rank and Patient A also met on occasions at a local bookstore to discuss religion, mysticism, health care, and literature.

14. Patient A's medical providers were never billed by Dr. Rank for services which were not medically related (i.e., bookstore meetings, conversations during restaurant lunches, etc.)
  15. During this same time period, Patient A had taken new employment as provider relocation specialist with Comprehensive Rehabilitation Associates, a managed care agency. Apparently vested with the authority to solicit applications for the agency's medical director position, Patient A encouraged Dr. Rank to consider taking the position, which he did. Dr. Rank was scheduled to be compensated in this position at a rate of \$100.00 to \$125.00 per hour, but before any service was provided, his position was eliminated.
  16. Shortly after Dr. Rank's position with this agency was terminated, Patient A's position was also terminated. In 'protest,' Dr. Rank wrote a letter to the commissioner of the Department of Insurance 'on her behalf.' Dr. Rank also met with Patient A's attorney, Fred Hensinger, to offer his assistance.<sup>2</sup>
  17. In or about June of 1995, Patient A made statements to Dr. Rank which [led] him to believe that Patient A and her husband had decided to divorce.
  18. In or about late October of 1995, Patient A met Dr. Rank at his apartment. They engaged in unprotected sexual intercourse. This was repeated on at least one occasion during each of the following three weeks.
  19. During this time frame, Patient A and Dr. Rank shared several dinners together. Patient A's husband worked second shift during this period.
  20. During this time frame, by his own admission, Dr. Rank fell in love with Patient A. During this time frame, without admission but found to be fact, Patient A fell in love with Dr. Rank.
- \* \* \*
22. In late 1995 or early 1996, Dr. Rank decided to terminate the sexual relationship with Patient A. He realized that his behavior with Patient A had violated his religious convictions and his medical

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<sup>2</sup> Dr. Rank testified that the Findings are incorrect on this point, in that he resigned his position after Patient A was terminated, in protest over her termination. (Tr. at 137-138).

ethics. Regardless of the impact this decision had upon Patient A (Patient A claimed she felt ‘abandoned,’ while Dr. Rank claimed she ‘was not in distress over it’), the record is clear that Dr. Rank continued to treat Patient A with regular (but less frequent) appointments and prescriptive medications through December of 1997.

23. In October of 1998, Dr. Rank was asked by a colleague about the possibility that he had transgressed appropriate boundaries with Patient A, as her attorneys had asked him to review the record as a potential expert witness. This was the first Dr. Rank had learned of potential litigation.
24. About this same time frame, Patient A retained two attorneys in Lexington to handle a lawsuit against Dr. Rank. These attorneys contacted Dr. Rank about the matters shared with them by Patient A, and Dr. Rank agreed to discuss it. During a meeting with the attorneys, Dr. Rank acknowledged the impropriety of his conduct.
25. In October of 1998, Patient A began to see Dr. Martha Lee Walden, a psychiatrist in Lexington, Kentucky.
26. By letter dated December 10, 1998, Dr. Walden reported to the [Kentucky] Board that Dr. Rank apparently had committed ‘sexual boundary violations’ with Patient A.

(St. Ex. 11 at 3-6).

6. Dr. Rank testified that, although there had never been any inappropriate contact during his initial efforts to treat her, Patient A had made “light advances” toward him. He further testified that he had initially decided that he could not help Patient A, not only because of the erotic transference, but also because she did not want psychotherapy and “she didn’t want to treat [the sessions] as a psychotherapy. She was a hospital administrator, and she just felt like very familiar with doctors, like we were peers, not like it was a doctor-patient relationship.” (Tr. at 24-25).

During the initial treatment, Dr. Rank learned of Patient A’s marital difficulties. He explained that Patient A’s “husband was just very uninvolved with her. He was on the golf course if he was not at work. He was—her problem in her marriage was how to have a life with sort of an absentee husband who was gruff with her when he was with her.” (Tr. at 26, 137).

Dr. Rank defended his decision to begin treating Patient A again, seven months after discharging her for erotic transference, by explaining that the two had agreed that Patient A would be treated by Dr. Rank in his capacity as an internist only; she would not receive any psychotherapy. However, Dr. Rank also testified that headache management is generally a combination of his two disciplines. Dr. Rank did not provide a clear answer to the question of whether the attempt to treat Patient A only in his capacity as an internist was an extraordinary one in his practice. (Tr. at 26-27, 132-133, 136-137).

Dr. Rank testified that, at the time that the relationship had become sexual, he had been suffering undue stress because his father, who had also been a physician, was dying of stomach cancer. Dr. Rank stated that Patient A had given him solace, which furthered their personal relationship. (Tr. at 32).

Dr. Rank admitted that he had known that it was wrong to have sex with Patient A, and that their relationship could cause him to lose his medical license. Dr. Rank testified that he had engaged in the misconduct despite this knowledge because “I was in love with her and she with me.” When asked whether he thought Patient A was partly to blame, he answered, “[i]n situations like this I really just look at my own behavior, and I tend not to blame other people for things.” (Tr. at 33-34, 36-37).

Dr. Rank testified that, after he had ended the sexual relationship, he and Patient A had continued to be friends. Dr. Rank treated Patient A for another two years, until December 1997. He stated that his treatment of Patient A was successful. (Tr. at 34-35, 117; St. Ex. 11 at 6 ).

7. On March 3, 1999, Patient A and her husband sued Dr. Rank. Dr. Rank testified that the two had claimed medical malpractice and a “boundary violation.” He stated that the medical malpractice claim had not been proved, but that Patient A and her husband had been awarded \$40,000 each for the boundary violation. He stated that Patient A’s award had been reduced by 20%, because the jury had decided that she was 20% responsible. (Tr. at 36; St. Ex. 11 at 6; St. Ex. 15A).
8. The procedural history of the Kentucky Board action disciplining Dr. Rank’s medical license for the sexual misconduct is somewhat complex, and it is not yet final. A brief timeline is as follows:
  - Based on the alleged sexual misconduct with Patient A, the Kentucky Board issued an Emergency Order of Suspension and a Complaint against Dr. Rank’s license on July 22, 1999. The emergency suspension was rescinded after an emergency hearing held on August 3 and 9, 1999. (Respondent’s Exhibit [Resp. Ex.] H at 2).
  - On December 6, 2000, a hearing was held on the Complaint. The hearing officer filed Findings of Fact, Conclusions of Law, and a Recommended Order

[Recommended Order] on February 7, 2000. (St. Ex. 11). On May 17, 2000, the Kentucky Board adopted the Recommended Order in part and rejected it in part. The Kentucky Board ordered the following:

1. Dr. Rank's license was revoked, with the revocation stayed subject to probationary terms.
2. Dr. Rank's license was suspended for two years, with eighteen months of the suspension stayed.
3. Dr. Rank was required to remain under probation for five years.
4. During the probationary period, Dr. Rank was required to have a chaperon present during any personal contacts with female patients in a clinical setting.
5. Dr. Rank was fined \$3,037.50, the costs of the proceeding.

The probationary terms also required Dr. Rank to abstain from sexual relationships with patients, and to continue psychiatric treatment and participation in the Kentucky Impaired Physicians Program [KIPP].<sup>3</sup> (St. Ex. 6).

- Dr. Rank appealed the May 17, 2000, Order of the Kentucky Board to the Jefferson County Circuit Court [Circuit Court]. The Circuit Board stayed the May 17, 2000, Order pending appeal. The Circuit Court affirmed the Kentucky Board's Order on March 2, 2001. (St. Ex. 5 at 1).
- Dr. Rank then appealed to the Kentucky Court of Appeals, which initially denied a stay. Accordingly, the Kentucky Board issued an Order on March 29, 2001, directing that the terms of its May 17, 2000, Order become effective immediately upon receipt of the March 29, 2001, Order. Dr. Rank stopped practicing medicine pursuant to the Orders on April 3, 2001. (St. Ex. 4 at 2).
- On April 30, 2001, the Kentucky Court of Appeals decided to grant Dr. Rank a stay pending his appeal, contingent upon his practicing under the probationary terms of the May 17, 2000, Order. On July 11, 2001, in Agency Case No. 707, Administrative Action No. 99-KBM-L-0448, the Kentucky Board issued an Agreed Order. In the Agreed Order, Dr. Rank assented to continuing to serve his suspension, to be

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<sup>3</sup> Dr. Rank testified that he would not object to the imposition of treatment requirements as a term of probation in Ohio, should he be licensed to practice, even though the Board did not allege psychiatric impairment in the Notice of Opportunity for Hearing. (Tr. at 141-142). See *In re Eastway* (1994), 95 Ohio App.3d 516, 523-524, 642 N.E.2d 1135 (the Board cannot require psychiatric treatment as a condition of probation unless the Board makes findings of fact demonstrating a need for such treatment.)

- completed on October 3, 2001. Dr. Rank further agreed that, upon return to practice, he would comply with all of the probationary terms previously ordered. (St. Ex. 4).
- On January 3, 2003, the Kentucky Court of Appeals affirmed in part and vacated in part the Kentucky Board's May 17, 2000, Order, and remanded the case to the Kentucky Board for further proceedings. The Kentucky Court of Appeals affirmed the Order with the following exceptions:
    1. Dr. Rank's license could not be both suspended and revoked. The Kentucky Board was statutorily required to choose one or the other.
    2. Dr. Rank was effectively credited the twenty-five days of suspension he had served under the initial emergency order of suspension.

(Resp. Ex. H).

The Kentucky Court of Appeals also noted that a problem with the length of the probation (which was unspecified) must be corrected upon remand. (Resp. Ex. H at 7).

Dr. Rank indicated that the remand to the Kentucky Board has not yet been completed. Therefore, the July 11, 2001, Agreed Order remains in effect and Dr. Rank is still on probation. He stated that he plans to meet with the Kentucky Board when the proceedings before the Ohio Board are completed. (Tr. at 56-57).

9. Dr. Rank testified that, even before any Orders were issued by the Kentucky Board, he had sought help in addressing his misconduct. He testified that, although he has never had an alcohol or drug problem, he initiated his involvement with KIPP. As part of his agreement with them, he is treated by Dr. Morris Oscherwitz, a psychoanalyst in Cincinnati. He also attended Continuing Medical Education [CME] courses on erotic transference and boundary issues on his own volition. (Tr. at 112, 119-122; Resp. Ex. D, E).
10. Dr. Rank stated that he would never engage in such misconduct again. He explained that he has learned a lot from this experience, and that, previously, he had not realized the danger to a patient from a patient and a physician falling in love and carrying on a relationship. Further, he testified that he has realized that his "rescuing personality" can get him into trouble. He is now more willing to seek outside help or refuse cases that are problematic for him. (Tr. at 58-59, 115-116).

#### **Revocation of Dr. Rank's New York Medical License**

11. Dr. Rank testified that he had become licensed to practice medicine in New York in 1984, when he had begun his residency in New York City. On August 21, 2001, the New York Department of Health Administrative Review Board for Professional Medical Conduct

[New York Board] filed a Statement of Charges against Dr. Rank based upon the Kentucky Board's May 17, 2000, Order of Revocation, Agency Case No. 707. Dr. Rank testified that, at this time, his New York license had been inactive. (Tr. at 53; St. Ex. 14 at 30-31).

The New York Board subsequently affirmed their Hearing Committee's decision to revoke Dr. Rank's license in Determination and Order No. 01-272. (St. Ex. 14 at 5). The New York Board Order states,

We disagree with the Respondent's assertion that the Kentucky conduct constituted an aberration, without premeditation. The Respondent conceded that he knew he was violating rules and he knew he was wrong to conduct a relationship with a patient, but the Respondent engaged in the conduct anyway. The Respondent also engaged in the conduct on multiple occasions. \* \* \* A physician who engages in sexual conduct with a vulnerable patient violates the medical profession's standards and violates the patient's trust. The Respondent's conduct demonstrates his unfitness to practice medicine in New York.

(St. Ex. 14 at 8).

The revocation became effective on or about April 23, 2002. (St. Ex. 14 at 3).

#### **Case No. 771 of the Kentucky Board – Prescribing Problem with Patient B**

12. On November 30, 2000, the Kentucky Board issued an Emergency Order of Restriction and a Complaint, both of which were based on allegations that Dr. Rank had been excessively prescribing Schedule II controlled substances to Patient B. The Complaint further stated that Dr. Rank had allowed his relationship with Patient B to "develop outside the context of a psychiatrist-patient relationship" and that he had shared "lots of personal and intimate things about himself" with her. The November 20, 2000, Emergency Order of Restriction prohibited Dr. Rank from "prescribing, dispensing, or otherwise utilizing Schedule II controlled substances." (St. Ex. 8, 9).

An emergency hearing was held to determine the propriety of the November 20, 2000, Emergency Order. On December 21, 2000, following a hearing, the Kentucky Board issued a "Final Order Modifying Emergency Order of Suspension," which modified the restriction on Dr. Rank's license to prohibit him only from prescribing Schedule II controlled substances to Patient B. (St. Ex. 7). In the December 21, 2000, Order, the Kentucky Board also made Findings of Fact, which indicate the following:

- Patient B, a female, was 28 years old at the time of the 2000 Kentucky Board action. She had suffered a stroke in 1994. In January of 1995 she began to develop migraine headaches. She was initially treated by Dr. Timothy Coleman, a neurologist. He

identified her condition as “a stroke related to migraine headaches, leaving her with a left hemiparesis.” Dr. Coleman prescribed Depakote and injectable Demerol, 200 mg as needed, with a maximum of 600 mg per day.

- During this treatment, Patient B’s headaches began to demonstrate a particular pattern. Each week, she would develop a migraine headache on Monday, which would continue until treated with injectable Demerol. By 1996, Dr. Coleman had noted a “problem” with Patient B’s use of narcotic medications.
- In 1996, Dr. Coleman sought assistance with Patient B, due to difficulties in treating and diagnosing her disorder, from other physicians, including Dr. Rank. By September of 1997, Dr. Rank had become the primary treatment provider for Patient B’s migraines, while Dr. Coleman remained the primary treatment provider for her seizure disorder.
- Dr. Coleman regularly prescribed 10,000 mg of Depakote per day for Patient B’s seizures. The amount was unusually high because Patient B rapidly metabolized medication. Over a period of 30 months, Dr. Rank consistently prescribed Demerol, 600 mg, for use one day per week, for Patient B’s migraines. He also periodically prescribed Depakote, Neurontin, Topamax, Soma, Zofran, and Carisoprodol. Dr. Rank’s working diagnosis of Patient B was “stroke; hemiplegic migraine; seizure and pseudoseizures potentially emanating from a somatoform disorder.” Dr. Rank determined during his course of treatment that Demerol was the only effective treatment for the migraines.
- Patient B also saw several other physicians during this time, to assist with the treatment of her seizure disorder, and also to treat physical injuries sustained during seizures. Consequently, she commonly filled prescriptions from different physicians. In 1999 through 2000, Patient B apparently began attempting to hide from her physicians and her pharmacist the total amount of injectable Demerol she was receiving.
- In 1999, the Kentucky Board initiated an action against Dr. Rank for his sexual misconduct with Patient A [as described above]. Dr. Rank anticipated that his license would be suspended or revoked. As part of his efforts to ensure continuity of Patient B’s care, he wrote a letter addressed “To Whom it May Concern.” The letter, dated January 21, 2000, detailed Patient B’s medications, namely “Depakote 12,000 mg/d (level-250), Topomax 75 mg/bid, Neurontin 400 mg, and injectable Demerol 200 mg/im up to three doses limited to one day per week.” Dr. Rank stated in the letter that he was no longer able to prescribe medication for Patient B.
- Although Dr. Rank’s license was eventually suspended pursuant to Case No. 707, the suspension did not go into effect prior to the Emergency Order issued in this action,

Case No. 717, on November 30, 2000. However, he never required Patient B to return the letter he had written, and he never attempted to identify and contact any physicians to whom she had shown the letter.

- Dr. Rank did not believe that Patient B was manipulating him. Even after receiving an Investigator's report in April 2000, he continued to prescribe injectable Demerol to Patient B. Despite the fact that the report indicated that two other physicians were also prescribing injectable Demerol to Patient B, Dr. Rank did not investigate whether Patient B was abusing the drug. Only after reviewing additional evidence at hearing, did Dr. Rank concede that Patient B may have been abusing her medications.
- Dr. C<sup>4</sup> conducted an extensive records review of Dr. Rank's treatment of Patient B and testified as to his opinion of Dr. Rank's treatment. Dr. C opined that Dr. Rank did not intend to provide Patient B with medication for reasons other than medical care, but that Dr. Rank should have known of the possibility that Patient B "sought Demerol for other purposes." He further stated that Dr. Rank should have based his prescriptions on something other than Patient B's self-reporting.
- Dr. C also opined that injectable Demerol was an inappropriate treatment for Patient B, because it can cause rebound headaches and a "perpetuation of the headache syndrome." Further, he advised that Demerol lowers a patient's threshold for seizures.
- Dr. C found that Dr. Rank allowed Patient B to frustrate his attempts to try treatments other than those desired by Patient B, thereby losing control of the doctor-patient relationship. Dr. C described Dr. Rank as "receiving guidance and advice on continued therapy from the patient." He concluded that Dr. Rank had failed to conform to acceptable standards and prevailing medical standards within the Commonwealth of Kentucky. However, Dr. C stated that this did not rise to "gross incompetence based on a single patient."
- Dr. C determined that, apart from Patient B, Dr. Rank's prescribing practices were appropriate, and that he was not a danger to the health, safety, or welfare of the general public.
- Dr. Rank maintained that his prescriptions to Patient B were appropriate. He submitted a number of articles which supported his opinion that the amount and frequency of his Demerol prescriptions to Patient B had been proper.

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<sup>4</sup> The name of the expert witness has been redacted from State's Exhibit 7, so he is referred to in this proceeding as "Dr. C."

(St. Ex. 7 at 4-13).

Based upon its Findings of Fact, the Kentucky Board made the following Conclusions of Law:

41. It is concluded as a matter of law that substantial evidence exists that Dr. Rank violated [Kentucky law] by engaging in unprofessional conduct of a character likely to harm Patient [B]. The testimony of Dr. [C] established that long-term prescription of injectable Demerol for the conditions diagnosed was inappropriate under accepted and prevailing medical practice standards. Although this evidence was countered by Dr. Rank's testimony and submission of isolated medical journal articles, there is no evidence in the record to otherwise suggest that the administration of Demerol in a consistent and repeated fashion over a course of years constituted an accepted or prevailing medical practice. \* \* \*
42. It is also concluded as a matter of law that Dr. Rank violated [Kentucky law] by failing to maintain control over the doctor-patient relationship. The record was replete with facts which, had they been recognized by Dr. Rank, should have been warning signs that Patient [B] was a high risk candidate for the abuse of narcotic pain medication. This was recognized by Dr. Coleman as early as 1995. Moreover, in 1996, Patient [B] forged a prescription from Dr. Rank in an effort to obtain such medication. Although Dr. Rank ascribed a plausible, non-criminal, explanation for this conduct, the incident should have placed him on notice of the potential for abuse. Moreover, during Dr. Rank's entire course of treatment, Patient [B] consistently manipulated her treatment by Dr. Rank to ensure a continuing stream of narcotic medication. It is reasonable to expect that at some point Dr. Rank should have made a concerted effort to determine whether other non-narcotic and less addictive alternatives were feasible. Nevertheless, he issued a letter to Patient [B] dated January 21, 2000, which enabled Patient [B] to obtain additional prescriptions for Demerol by inaccurately stating his license was suspended and he was not prescribing medications to Patient [B]. Regardless of the purpose or intent of the letter, Dr. Rank should have recognized that the letter created a potential for abuse. Finally, even after being confronted by the Board investigator with evidence suggesting that Patient [B] was abusing injectable Demerol by obtaining such medication from multiple sources, Dr. Rank continued to prescribe injectable Demerol without contacting the

other physicians who were reported to him as prescribing additional Demerol to Patient [B]. \* \* \*

\* \* \*

46. \* \* \* Dr. Rank's [] missteps are much more plausibly attributed to a combination of gullibility and negligence rather than a desire to intentionally assist Patient [B]'s drug seeking due to an improper relationship.
47. Certainly, there is no evidence which would equate the loss of control of the doctor-patient relationship cited by Dr. [C] to a boundary violation. The evidence establishes that Patient [B] is adept at manipulation of physicians for the purpose of obtaining Demerol. She was able to obtain similar prescriptions from a number of physicians. The difference between Dr. Rank's prescribing pattern and those of other physicians is that Dr. Rank allowed the course of treatment to continue for a much longer duration, and to continue after warning signs for potential abuse became, or should have become, apparent to him.

(St. Ex. 7 at 19-23).

The Kentucky Board concluded that Dr. Rank's actions demonstrated a danger to Patient B, but not to the public health, safety, or welfare generally. Accordingly, the Kentucky Board modified the emergency restriction on Dr. Rank's license to apply only to Patient B. (St. Ex. 7 at 24).

The action was ultimately resolved on September 17, 2001, with an "Agreed Order of Indefinite Restriction," filed in Agency Case No. 771, Administrative Action No. 00-KBML-0561 and 0569. The Agreed Order prohibits Dr. Rank from resuming, entering into, or continuing a physician-patient relationship with Patient B. (St. Ex. 3).

13. Dr. Rank testified that he had not worried about Patient B abusing her prescription drugs because her mother and her husband, a police officer, had controlled Patient B's access to the medication. He believed the two family members to be credible and reliable. He further testified that he had known Patient B and the details of her life very well. (Tr. at 48, 125, 127-128).

Dr. Rank also testified that he had voluntarily taken prescribing courses when he learned of the Kentucky Board's concerns about his prescribing practices in this case. However, Dr. Rank gave no indication that he had come to concur with the Kentucky Board's

Findings that Patient B had exhibited drug-seeking behavior or that Patient B had taken advantage of him. (Tr. at 51-52, 119, 122-128; Resp. Ex. C, F).

**Dr. Rank's Kentucky CME Violation, and His Failure to Report it to the Board**

14. The Ohio application submitted by Dr. Rank included an "ADDITIONAL INFORMATION" section, in which the following question was asked:

7. Has any board, bureau, department, agency, or other body, including those in Ohio, in any way limited, restricted, suspended or revoked any professional license, certificate, or registration granted to you; placed you on probation; or imposed a fine, censure or reprimand against you?

(St. Ex. 15 at 15).

Dr. Rank answered "Yes" to this question, and provided a further written explanation. He stated, "Two separate events answer [] this question." The first "separate event" described was the Kentucky Board's and the New York Board's disciplinary proceedings against Dr. Rank for his sexual misconduct with Patient A. The second "separate event" described was the Kentucky Board's disciplinary proceedings against Dr. Rank for prescribing issues with Patient B. Dr. Rank set forth the procedural history of these disciplinary actions and briefly described the underlying facts. He also included a newspaper article about the civil suit filed against him by Patient A. (St. Ex. 15 at 15, 20-21; St. Ex. 15A).

15. In his Ohio application, Dr. Rank signed an "Affidavit and Release of Applicant," in which he certified under oath that the information he had provided was true. He further certified the following:

I further understand that my application for a license to practice medicine or osteopathic medicine in Ohio is an ongoing process. I will immediately notify the State Medical Board of Ohio in writing of any changes to the answers to any of the questions contained in the ADDITIONAL INFORMATION section of the application if such a change in answer is warranted at any time prior to a license to practice medicine or osteopathic medicine being granted to me by the State Medical Board of Ohio.

(St. Ex. 15 at 27).

16. Despite this certification, Dr. Rank failed to notify the Board of another disciplinary action by the Kentucky Board, which was issued after Dr. Rank had submitted his March 17, 2003, Ohio application. On May 9, 2003, in Case No. CME 134, the Kentucky Board

issued an “Order of Fine: Granting Six Months to Comply with 201 KAR 9:310” [Order of Fine]. (St. Ex. 2).

In the Order of Fine, the Kentucky Board determined that Dr. Rank had failed to either timely complete CME requirements or to obtain an extension of time to complete the requisite CME. The Kentucky Board fined Dr. Rank \$200.00 and granted him a period of six months of continued licensure, within which Dr. Rank was required to come into compliance. The Kentucky Board further notified Dr. Rank that if he did not comply by November 8, 2003, his license would be immediately suspended. (St. Ex. 2).

On May 22, 2003, Sandy K. Brooks, CME Coordinator for the Kentucky Board, mailed a letter to Dr. Rank indicating that his payment of the \$200 fine had been received, and that it had been determined that he was now in compliance with his CME requirements. (St. Ex. 10).

17. Dr. Rank admitted that he had never informed the Board about the Order of Fine. He further acknowledged that he had “quickly” read the “Affidavit and Release of Applicant” before signing it. However, he stated that he had not been cognizant of the requirement to continue to notify the Board of any further actions against him. (Tr. at 13, 19, 130).

Dr. Rank testified that he had not considered the CME deficiency to constitute a formal Kentucky Board action. He explained that, after he was notified that his CME credits were being audited, he realized that, although he was otherwise compliant with CME requirements, he had failed to complete a mandatory two-hour HIV/AIDS course. He then called the Kentucky Board and spoke with Ms. Brooks, the CME Coordinator. She advised him of the requirements to come into compliance, i.e. a \$200 fine and completion of the course. Dr. Rank testified that, within a week, he had fulfilled those requirements. (Tr. at 19, 106-107, 131-132).

Dr. Rank stated that he had completed the HIV/AIDS course on March 25, 2003, and submitted proof of it, along with a check for \$200, soon thereafter. Therefore, it appears that Dr. Rank complied with the Order of Fine before it was even issued. He stated, “it appears to me that they just held on to the document and my check, which was also written in March, until the Board met in May.” (Tr. at 105-108; Resp. Ex. G).

18. On May 9, 2003, the Order of Fine was served via certified mail to Dr. Rank at a Paintsville address, where he had been engaged in *locum tenens* work until the end of March 2003. Dr. Rank testified that he had never received the Order of Fine because he had no longer worked in Paintsville, and the mailing had never been forwarded to him. He stated that he had not seen the Order of Fine until he received it from the Board in connection with these proceedings. Dr. Rank acknowledged that he should have kept his address current with the Kentucky Board. (Tr. at 19-20, 131; St. Ex. 2 at 2).

Dr. Rank admitted that he had received the May 22, 2003, letter from the Kentucky Board. The letter had been mailed to his home address in Cincinnati. He explained that since it was just a letter sent via regular mail from Ms. Brooks, it did not seem to be an official action of the Kentucky Board against him. Therefore, he “just didn’t think” to advise the Board about it. He admitted that it was a mistake on his part not to inform the Board. However, he maintained that he was not trying to deceive the Board. (Tr. at 19-20, 131; St. Ex. 10).

### **Additional Character Evidence**

19. Pursuant to the terms of his probation, Dr. Rank is required to use chaperons whenever he sees female patients in his Kentucky practice. Four women who have worked for Dr. Rank as chaperons testified on his behalf. An affidavit was submitted in lieu of live testimony for former chaperon Diana Loh, because she had mistakenly traveled to Columbus for the hearing on the previous day. (Tr. at 61-103; Resp. Ex. B).

Each of the chaperons testified that she helps Dr. Rank to some extent during the patient visits. Dr. Rank testified that he picks chaperons who are capable of being more than just passive observers. Patients are not informed that the chaperons are present pursuant to a disciplinary action against Dr. Rank. Rather, the chaperons are referred to as assistants. (Tr. at 57-58, 63, 69-70, 72, 78, 80, 85-86, 89, 97, 138-139).

Each chaperon testified that she believed Dr. Rank to be a moral individual, despite his sexual misconduct with Patient A. Each chaperon also unequivocally stated that she had never seen Dr. Rank exhibit any inappropriate behavior with female patients. Ms. Loh’s affidavit does not speak directly to moral character, but it speaks highly of Dr. Rank and his medical abilities, and says that he is sensitive to the needs of elderly patients. She also states that she had never observed any impropriety with any patients. (Tr. at 65, 67, 81, 88, 97-98, 100-101; Resp. Ex. B).

The testimony of the chaperons painted a picture of a caring and devoted doctor. Susan Davis testified that Dr. Rank helps a lot of indigent patients. Ellen Gale stated that Dr. Rank is “the most outstanding physician I have ever known. He is highly competent, and I believe he is saving lives and turning lives around.” Darla Johnson advised that she was amazed by the positive effects on patients after their treatment with Dr. Rank. Sharon Horne described Dr. Rank’s ability to transform difficult patients who had been discounted by the medical system. She testified that Dr. Rank would take time to listen to those patients, and to formulate new approaches. “And I watched people get their lives back, just pulled off the scrap heap.” (Tr. at 66, 81, 87, 98-99).

20. When asked why the Board should consider approving his application, Dr. Rank responded:

I have made every possible correction. I don't feel this is something that I would ever repeat. It was a bad judgment based upon being—falling in love with somebody, which itself, you know, stems—as I [learned] through the courses of Vanderbilt, stems from perhaps too much of a rescuing type of spirit that I have. And so now after this many years of practice, I feel like I know which cases I should send on and I know which cases I can treat. Very early in my practice if I didn't know what to do, I assumed I should go read about it, and it was my fault. Now I see where my limits may be, and I'm a different person due to this whole process.

(Tr. at 58-59).

### **FINDINGS OF FACT**

1. On March 17, 2003, Douglas Holland Rank, M.D., submitted an application for a license to practice medicine and surgery to the State Medical Board of Ohio [Board]. In the application, Dr. Rank certified under oath that the information provided was true, and he promised to notify the Board in writing of any changes to his answers to the questions in the ADDITIONAL INFORMATION section of the application, if such a change was warranted at any time prior to his license being granted. Dr. Rank's application is still pending.
2. In the ADDITIONAL INFORMATION section of the application, Dr. Rank answered "YES" to Question Number 7, which asks:

Has any board, bureau, department, agency, or other body, including those in Ohio, in any way limited, restricted, suspended, or revoked any professional license, certificate, or registration granted to you; placed you on probation; or imposed a fine, censure or reprimand against you?

In his response, Dr. Rank stated, "Two separate events answer [] this question." The first "separate event" was addressed in a Kentucky State Board of Medical Licensure [Kentucky Board] Order, set forth in Findings of Fact 3, and a New York State Department of Health Professional Medical Conduct Administrative Review Board [New York Board] Order, set forth in Findings of Fact 6, which was based upon that Kentucky Board Order. The second "separate event" was addressed in a second Kentucky Board Order, set forth in Findings of Fact 4.

However, Dr. Rank subsequently failed to disclose to the Board that, in addition to those "two separate events," the Kentucky Board, on May 9, 2003, had issued an "Order of Fine: Granting Six Months to Comply with 201 KAR 9:310," as set forth in Findings of Fact 5.

3. On July 11, 2001, the Kentucky Board filed an Agreed Order in Agency Case No. 707, Administrative Action No. 99-KBML-0448, which included Dr. Rank's agreement not to practice medicine for a six-month period ending on October 3, 2001. This Agreed Order is the latest Order in the case, which included previous orders issued on May 17, 2000, and March 29, 2001.

The Kentucky Board Agreed Order provided that, if Dr. Rank chose to practice medicine in Kentucky after October 3, 2001, he must fully comply with probationary terms and conditions, including: abstaining from sex with patients; continuing to receive psychiatric treatment and to participate in the Kentucky Impaired Physicians Program; and using a chaperon in all contacts with female patients.

The Kentucky Board found that, in Dr. Rank's Lexington, Kentucky, private practice of psychiatry, with a sub-specialty of headache and pain management, Dr. Rank had treated Patient A, with whom he had engaged in sexual contact over a period of time, including unprotected intercourse.

The Kentucky Board further found that Dr. Rank had admitted to having an improper sexual relationship with Patient A while she was under his care.

4. On September 17, 2001, the Kentucky Board filed an Agreed Order of Indefinite Restriction in Agency Case No. 771, Administrative Action No. 00-KBML-0561 and 0569, which included an indefinite restriction on Dr. Rank's license. The indefinite restriction prohibits Dr. Rank from resuming, entering into, or continuing a physician-patient relationship with Patient B. This Agreed Order culminated a case that included orders previously issued on November 30, 2000, and December 21, 2000.
5. On May 9, 2003, the Kentucky Board, in Case No. CME 134, issued an "Order of Fine: Granting Six Months to Comply with 201 KAR 9:310," addressing Dr. Rank's failure to either timely complete Continuing Medical Education [CME] requirements or to obtain an extension of time for completion.

The Order of Fine granted Dr. Rank licensure for six months and imposed a \$200 fine. Further, the Order of Fine gave notice that, should Dr. Rank fail to come into compliance by November 8, 2003, by paying the fine and completing the CME requirements, Dr. Rank's license to practice medicine in Kentucky would be immediately suspended.

6. Effective on or about April 23, 2002, the New York Board issued Determination and Order No. 01-272, affirming their Hearing Committee's determination to revoke Dr. Rank's New York license to practice medicine. This Order was based upon the Kentucky Board's May 17, 2000, Order of Revocation, Agency Case No. 707, as set forth in Findings of Fact 3.

### CONCLUSIONS OF LAW

1. The evidence demonstrates that Douglas Holland Rank, M.D., failed to disclose to the Board the May 9, 2003, “Order of Fine: Granting Six Months to Comply with 201 KAR 9:310,” [Order of Fine] issued by the Kentucky State Board of Medical Licensure [Kentucky Board]. However, the evidence fails to demonstrate that Dr. Rank intended to mislead the Board by failing to disclose the Order of Fine.

The totality of the circumstances demonstrates that Dr. Rank’s failure to report the Order of Fine was the result of negligence, rather than fraudulent intent. Dr. Rank provided a reasonable explanation demonstrating that he did not intend to deceive the Board, but rather that he had been inattentive to his duties to update his address with the Kentucky Board and to update his disciplinary actions with the Ohio Board. His explanation is credible, especially since the May 9, 2003, Order of Fine addressed a two-hour Continuing Medical Education deficiency which Dr. Rank had already rectified. Dr. Rank had previously reported to the Board two significantly more serious actions against his medical license in Kentucky, as well as the revocation of his New York medical license. Therefore, he had no compelling reason to attempt to conceal the relatively minor infraction addressed in the May 9, 2003, Order of Fine.

For these reasons, there is insufficient evidence to conclude that Dr. Rank’s acts, conduct, and/or omissions as alleged in Findings of Fact 1, individually and/or collectively constitute “fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board,” as that clause is used in Section 4731.22(A), Ohio Revised Code.<sup>5</sup>

2. The July 11, 2001, Agreed Order of the Kentucky Board in Case No. 707, and the prior orders filed on May 17, 2000, and March 29, 2001, as set forth in Findings of Fact 3, individually and/or collectively constitute “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.
3. The September 17, 2001, Agreed Order of Restriction, filed in Case No. 771, as set forth in Findings of Fact 4, constitutes “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and

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<sup>5</sup> See *Webb v. State Medical Board of Ohio*, 146 Ohio App.3d 621, 628, 2001 Ohio 3991, 767 N.E.2d 782 (“to find a violation of R.C. 4731.22(A), the Ohio medical board must find that ‘the statements were made with an intent to mislead the medical board.’”)

surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

4. The May 9, 2003, Order of Fine issued by the Kentucky Board, as set forth in Findings of Fact 5, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.
5. The New York State Department of Health Professional Medical Conduct Administrative Review Board [New York Board] Determination and Order filed in Case No. 01-272, effective on or about April 23, 2002, as set forth in Findings of Fact 6, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.
6. Dr. Rank's acts, conduct, and/or omissions as alleged in Findings of Fact 3 and 6 individually and/or collectively constitute a failure to furnish satisfactory proof of good moral character, as required by Sections 4731.08 and 4731.29, Ohio Revised Code.

\* \* \* \* \*

Dr. Rank's improper relationship with Patient A was a grave error. He has accepted responsibility for his misconduct, and participated in programs to learn from it. There is no evidence of sexual misconduct with other patients, and the testimony and affidavit of Dr. Rank's chaperons demonstrate that he has behaved properly with his female patients while under probation with the Kentucky Board. Further, each of Dr. Rank's chaperons unequivocally testified that, despite his sexual relationship with Patient A, she believed Dr. Rank to be a moral individual and a good, caring doctor.

Unfortunately, however, this mitigation does not suffice to overcome the conclusion that Dr. Rank should not be licensed to practice medicine in Ohio. A sexual relationship between a physician and a patient is clearly wrong; yet Dr. Rank resumed treating Patient A after having already discharged her once for erotic transference. He then allowed their relationship to become increasingly personal, to the point where he was essentially dating Patient A. He also entered into a business relationship with her. This does not evidence a mistake made in the heat of passion; rather, Dr. Rank's relationship with Patient A developed over time and he allowed himself to fall in love with her. Dr. Rank knew that his relationship with Patient A violated medical ethics, and he should have realized the potential dangers to Patient A, but he engaged in the misconduct anyway, to satisfy his own desires.

Further, the other two actions against Dr. Rank in Kentucky indicate that Dr. Rank has had more than one instance of bad judgment. Dr. Rank apparently persists in believing that he did nothing wrong with Patient B, although the Kentucky Board's Findings of Fact demonstrate that he ignored clear indications that she was drug seeking. Lastly, although Dr. Rank's CME violation was minor, and his failure to inform the Board about it does not amount to fraud, the circumstances are still troublesome. Given Dr. Rank's disciplinary history and the fact that he had a pending application in Ohio, he should have been much more attentive to the requirements and duties imposed upon him by the Kentucky and Ohio Boards.

For these reasons, Dr. Rank's application to practice medicine and surgery in Ohio should be denied.

### **PROPOSED ORDER**

It is hereby ORDERED that:

The application of Douglas Holland Rank, M.D., for a certificate to practice medicine and surgery in Ohio is PERMANENTLY DENIED.

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



Siobhan R. Clovis, Esq.  
Hearing Examiner



# State Medical Board of Ohio

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

## EXCERPT FROM THE DRAFT MINUTES OF AUGUST 11, 2004

### REPORTS AND RECOMMENDATIONS

Ms. Sloan announced that the Board would now consider the findings and orders appearing on the Board's agenda. She asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Gregory David Duncan, M.T.; Jitander N. Kalia, M.D.; Robert Noble, M.D.; Douglas Holland Rank, M.D.; Richard Arthur Thompson, M.T.; and Joseph C. Webster, M.D. A roll call was taken:

|            |                |       |
|------------|----------------|-------|
| ROLL CALL: | Mr. Albert     | - aye |
|            | Dr. Talmage    | - aye |
|            | Dr. Kumar      | - aye |
|            | Mr. Browning   | - aye |
|            | Dr. Davidson   | - aye |
|            | Dr. Robbins    | - aye |
|            | Dr. Garg       | - aye |
|            | Dr. Steinbergh | - aye |
|            | Ms. Sloan      | - aye |

Ms. Sloan 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. Talmage    | - aye |
|            | Dr. Kumar      | - aye |
|            | Mr. Browning   | - aye |
|            | Dr. Davidson   | - aye |
|            | Dr. Robbins    | - aye |
|            | Dr. Garg       | - aye |
|            | Dr. Steinbergh | - aye |
|            | Ms. Sloan      | - aye |

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

participation in the adjudication of these matters.

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

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

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DOUGLAS HOLLAND RANK, M.D.

Ms. Sloan directed the Board's attention to the matter of Douglas Holland Rank, M.D. She advised that objections were filed to Hearing Examiner Clovis' Report and Recommendation and were previously distributed to Board members.

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

Dr. Rank was accompanied by his attorney, Kevin P. Byers.

Mr. Byers stated that he is sure that the Board is aware that there are objections in this case, since the Proposed Order is for permanent denial. Mr. Byers stated that he believes that Dr. Rank has benefited by sitting here and seeing how the Board adjudicates these matters. It's obvious that the Board takes its mission quite seriously and earnestly. Mr. Byers stated that they are hoping that the same level of seriousness and earnestness is invested in this case and that the Board is able to look beyond the face of what brings Dr. Rank here, and look at his overall competency and qualifications as a practitioner.

Mr. Byers stated that Dr. Rank misstepped. He committed a boundary violation many years ago, nearly nine to ten years ago. Since that time he has undertaken significant remediation, rehabilitation, everything that possibly and reasonably could have been done by him. Dr. Rank testified at great length about how he's learned from this process. He's not proud that this boundary violation arose, and he's done everything possible to assure that it will not happen again, and that he is otherwise qualified for licensure in Ohio.

Dr. Rank thanked the Board for the opportunity to appear and speak with the Board. Dr. Rank stated that he was wrong in his actions with this patient. He had a deep, emotional involvement with her. He'd known her for two years before the boundary violation in 1995 and two years afterwards. He loved her. Dr. Rank stated that he didn't have children, nor did she. They talked about having children together. He added that the bottom line is that nothing changes the fact that he was wrong. Dr. Rank stated that he should have referred this patient when he felt his affections growing. This happened in the early years of his practice, from 1993 to 1995, and he didn't know his limits then. Since then he has grown emotionally quite a lot. He went to Vanderbilt's program on maintaining professional boundaries, its program on how

to avoid over-prescribing. He added that it's not just a slide show at Vanderbilt. It's like group therapy, where physicians all examine and share with each other the particulars of their emotional lives that led them to their misconduct in various cases.

Dr. Rank stated that he did over two years of group therapy with professionals, again exploring how their emotional lives led them into their wrong actions. He's maintained his psychoanalyst at the Cincinnati Psychoanalytic Institute, which he had started in 1991, just to make himself a better psychiatrist.

Dr. Rank stated that he is different. He's done more things, but he would like to wrap his statement up by saying that he's lived in Cincinnati for five years. He works as a psychiatrist in Covington, Kentucky. He's been offered an opportunity to practice in Ohio, and he's willing to abide by any oversight that makes the Board feel comfortable. Dr. Rank indicated that he would answer any questions the Board members may have.

Ms. Sloan asked whether the Assistant Attorney General wished to respond.

Mr. Wilcox stated that he agrees with the Hearing Examiner's Recommendation of permanent denial in this case. He advised that any physician who applies for licensure in Ohio who has multiple actions against his or her license from other state licensing bodies should be carefully scrutinized. This is especially true for a physician who has been disciplined for a boundary violation with a patient.

Mr. Wilcox continued that, in this case, Dr. Rank terminated his treatment initially with Patient A in 1994 because of physical advances she allegedly made during that treatment. Dr. Rank identified this transference and stopped treating Patient A. In spite of this history, and being on notice that this could be a problematic patient, he again agreed to treat Patient A when a surgeon referred her to Dr. Rank in 1995. Dr. Rank allowed the personal relationship to grow and, in fact, encouraged it with this married patient. This led to a sexual relationship with Patient A.

Mr. Wilcox stated that, not only was this behavior unprofessional and unethical, it is inexcusable, given the fact that he knew exactly what he was doing. Dr. Rank knew such behavior was completely wrong, evidenced by the fact that he terminated the prior care when this issue arose. Obviously, Dr. Rank could not control his behavior, and he pursued a romantic relationship with this patient. He noted that the New York Board explained, "Dr. Rank conceded that he knew he was violating rules and he knew he was wrong to conduct a relationship with a patient, but he engaged in the conduct anyway. And not only did he engage in such conduct once, but on multiple occasions."

Mr. Wilcox concluded by stating that licensing a physician with such a history would not be in the best interests of the citizens of Ohio.

**DR. GARG MOVED TO APPROVE AND CONFIRM MS. CLOVIS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF DOUGLAS HOLLAND RANK, M.D. DR. STEINBERGH SECONDED THE MOTION.**

Ms. Sloan stated that she would now entertain discussion in the above matter.

Dr. Steinbergh stated that she thinks the case is clear. This is a bootstrap issue with several pieces to it. The Medical Board in Kentucky has put Dr. Rank on probation and has disciplined him, as the Board has seen. Because of that, the State of New York revoked his license. Dr. Rank lives in Cincinnati and would like to come to work in Ohio and is asking for licensure in Ohio.

Dr. Steinbergh stated that she has thoroughly read the Report and Recommendation, and there are parts of it with which she agrees and parts of it with which she disagrees. She does not agree that the Board should permanently deny Dr. Rank a license. Dr. Steinbergh stated that she thought that Dr. Rank's objections were very appropriate.

Dr. Steinbergh stated that her perception of this case is that Dr. Rank clearly understands what he did. He's clearly remorseful, he knew he was making a mistake. He initially had poor judgment in regard to Patient A, and probably never should have allowed her back into his practice. He clearly understood the first time what he needed to do. Unfortunately, he subsequently accepted her again as a patient because of his expertise in treating headaches.

Dr. Steinbergh stated that she does not believe that Patient A was a vulnerable patient, adding that she didn't feel that Dr. Rank took advantage of Patient A. She was a professional woman, his peer, she was a hospital administrator. She came into his practice, and they apparently developed a relationship. It's clear that he should have relieved himself of the responsibility of caring for her, but the record states that they developed a relationship. They did not do anything secretly. They went out socially together, they apparently had intended on a long-term relationship, she told him she was being divorced, he was not married, and they developed a relationship.

Dr. Steinbergh stated that it was unfortunate that he made the decision that he made to treat her. Dr. Steinbergh stressed that she did not see this as a vulnerable patient. She didn't see Dr. Rank as clearly violating sexual boundary issues in this particular case, as the Board has seen in so many other cases. Dr. Steinbergh stated that Dr. Rank's objections in that area are appropriate.

Dr. Steinbergh referred to Patient B, whom Dr. Rank was treating for headaches. He again used poor judgment in the sense that, when he thought his license was going to be suspended, he gave this patient a note that she could take to other physicians that confirmed what he was prescribing for her and the doses that he was prescribing for her, in hopes of facilitating her care with other physicians. When he was allowed to go on to continue to treat her, he erred in not clearing this error. He should have retrieved the note. It was clear that she then went on to other physicians who prescribed medications. So, there was this prescriptive error here, and he recognized that. The Kentucky Board recognized that.

Dr. Steinbergh continued that there's also a small case of a C.M.E. issue, where he didn't notify Ohio in his application that Kentucky had disciplined him in regard to mandatory CME that he thought that he had

appropriately taken and hadn't. Dr. Steinbergh stated that she feels this is a minor infraction, and it is not of great concern to her. Nevertheless, it is in the record.

Dr. Steinbergh stated that she does have an alternative proposal to present to the Board. She stated that, if her proposal meets with the Board's approval, she would ask the Board to table the matter to finalize the language. Dr. Steinbergh stated that she would like to grant Dr. Rank a license. Immediately upon issuance, the license would be suspended for an indefinite period of time, but not less than six months. Conditions for reinstatement would include a requirement that he submit a practice plan for Board approval, with a monitoring physician. There are other steps in that process he must meet, but it's a basic monitoring situation for a period of time. Dr. Steinbergh continued that he would submit to a professional ethics course, a personal ethics course, and a controlled substance prescribing course. He would be required to continue to document his CME, and the Board would monitor his CME during his probationary period. Upon reinstatement or restoration of his license, he would go into probation for two years.

Dr. Steinbergh continued that there are certain things that Dr. Rank would have to do to be reinstated, which would include a practice plan, and the practice plan would be the mainstay of the probationary period of two years. There are other terms, including personal appearances, a tolling provision, etc. Dr. Steinbergh stated that she could bring back a written copy of her proposed amendment, if the Board indicates that it would be amenable to such an amendment.

Dr. Kumar spoke in support of Dr. Steinbergh's motion, adding that there has been a violation of boundary issues, there's no question about that. Dr. Kumar stated that he was a little bit more concerned about Dr. Rank's care of Patient B, particularly when the Report and Recommendation says that, even after being confronted by the Board investigator with evidence that Patient B was abusing injectable Demerol by obtaining such medication from multiple sources, Dr. Rank continued to prescribe the drug without contacting the other physicians. Dr. Kumar stated that one of the things the Board has to be very careful about is that he be required to take a controlled substance prescribing course, which Dr. Steinbergh has indicated will be in her amendment.

Dr. Garg asked whether he would have to take that course prior to reinstatement.

Dr. Steinbergh stated that he would.

Dr. Garg stated that boundary issues are always troublesome, especially when a psychiatrist is involved. He added that, as Dr. Steinbergh explained, the circumstances are a little different in this case. Changing the order from permanent denial to denial seems appropriate.

Dr. Kumar stated that the amendment wouldn't be to deny, but to license and then suspend.

Dr. Garg acknowledged his understanding.

Dr. Steinbergh stated that it is her understanding from the record that his treatment of Patient A was in

terms of pain control, headache management. She at no time had the sense that he was providing psychiatric care to Patient A. Dr. Steinbergh stated that she believes that he clearly understands what he did wrong in both of these cases, and he has really made efforts to improve himself immediately. His Board certification in internal medicine and psychiatry is up to date.

Mr. Browning stated that he's open to looking at an alternative Order, but it's not because he thinks that the patient wasn't a victim. Whether she has a Ph.D. or makes a lot of money or whatever, she was a victim of this doctor, and Mr. Browning added that he thinks Dr. Rank knows that. The Board has taken people out of practice for this behavior and will probably do so again. If the Board amends the Proposed Order, it's not because the patient wasn't a victim.

**DR. STEINBERGH MOVED TO TABLE THE MATTER OF DOUGLAS HOLLAND RANK, M.D. DR. GARG SECONDED THE MOTION. A vote was taken:**

|       |                |           |
|-------|----------------|-----------|
| Vote: | Mr. Albert     | - abstain |
|       | Dr. Talmage    | - abstain |
|       | Dr. Kumar      | - aye     |
|       | Mr. Browning   | - aye     |
|       | Dr. Davidson   | - aye     |
|       | Dr. Robbins    | - aye     |
|       | Dr. Garg       | - aye     |
|       | Dr. Steinbergh | - aye     |
|       | Ms. Sloan      | - aye     |

The motion carried.

.....

**DR. STEINBERGH MOVED TO REMOVE THE MATTER OF DOUGLAS HOLLAND RANK, M.D., FROM THE TABLE. DR. GARG SECONDED THE MOTION. A vote was taken:**

|       |                |           |
|-------|----------------|-----------|
| Vote: | Mr. Albert     | - abstain |
|       | Dr. Talmage    | - abstain |
|       | Dr. Kumar      | - aye     |
|       | Mr. Browning   | - aye     |
|       | Dr. Davidson   | - aye     |
|       | Dr. Robbins    | - aye     |
|       | Dr. Garg       | - aye     |
|       | Dr. Steinbergh | - aye     |
|       | Ms. Sloan      | - aye     |

The motion carried.

**DR. STEINBERGH MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF DOUGLAS HOLLAND RANK, M.D., BY SUBSTITUTING THE FOLLOWING:**

It is hereby ORDERED that:

- A. The application of Douglas Holland Rank, M.D., for a certificate to practice medicine and surgery in Ohio is GRANTED, provided that he otherwise meets all statutory and regulatory requirements. Immediately upon issuance, such certificate shall be SUSPENDED for an indefinite period of time, but not less than six months.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Rank's certificate to practice medicine and surgery until all of the following conditions have been met:
  1. **Application for Reinstatement or Restoration:** Dr. Rank shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  2. **Professional Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Rank shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.
  3. **Personal Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Rank shall provide acceptable documentation of successful completion of a course or courses dealing with personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.
  4. **Controlled Substances Prescribing Course:** At the time he submits his application for reinstatement or restoration, Dr. Rank shall provide acceptable documentation of successful completion of a course 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.

5. **Practice Plan**: At the time he submits his application for reinstatement or restoration, Dr. Rank shall submit to the Board and receive its approval for a plan of practice. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Rank's activities will be directly supervised and overseen by a monitoring physician approved by the Board.

At the time Dr. Rank submits his practice plan, he 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. Rank and who is engaged in the same or similar practice specialty.

5. **Documentation of CME**: At the time he submits his application for reinstatement or restoration, Dr. Rank shall provide acceptable documentation of satisfactory completion of the requisite hours of Continuing Medical Education obtained during the period of suspension.
6. **Additional Evidence of Fitness To Resume Practice**: In the event that Dr. Rank has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.

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

1. **Practice Plan**: Dr. Rank shall practice pursuant to the terms of the practice plan approved by the Board in accordance with paragraph B.5., above. Dr. Rank shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

In accordance with the approved plan of practice, the approved monitoring physician shall monitor Dr. Rank and his medical practice, and shall review Dr. Rank's 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. Rank and his medical practice, and on the review of Dr. Rank's patient charts. Dr. Rank 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. Rank's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Rank must immediately so notify the Board in writing. In addition, Dr. Rank 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. Rank 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.

2. **Documentation of CME:** Upon submission of any application for renewal of registration during the period of probation, Dr. Rank shall submit documentation acceptable to the Board of satisfactory completion of the requisite hours of Continuing Medical Education.
3. **Obey the Law:** Dr. Rank shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
4. **Declarations of Compliance:** Dr. Rank shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which Dr. Rank's 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.
5. **Personal Appearances:** Dr. Rank shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. Rank's certificate is restored or reinstated, or as otherwise directed by the Board. Subsequent personal appearances must occur every three 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.
6. **Tolling of Probationary Period While Out of State:** In the event that Dr. Rank should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Rank must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.
7. **Modification of Terms:** Dr. Rank shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.

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

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

**DR. GARG SECONDED THE MOTION.**

Dr. Garg asked whether Dr. Rank will be required to see the Secretary and Supervising Member before he starts practicing in Ohio. He stated that he would like that to be included in the Order.

Dr. Steinbergh stated that he is required to appear before the Board during the third month following the month in which he receives his certificate.

Dr. Garg stated that he would like Dr. Rank to appear before the Secretary and Supervising Member prior to his commencing practice in Ohio.

Dr. Steinbergh agreed to include that.

Pursuant to Dr. Garg's request, the first paragraph of paragraph (C)(1) will be revised as follows:

1. **Practice Plan**: Dr. Rank shall practice pursuant to the terms of the practice plan approved by the Board in accordance with paragraph B.5., above. Prior to his commencement of practice, Dr. Rank shall notify the Board of his intent to commence practice and shall appear before the Secretary and Supervising Member of the State Medical Board. Dr. Rank shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

Mr. Browning stated that the more that is on the list, the more hoops for Dr. Rank to go through, the more he wants to vote "no." If the Board has such a low level of trust in this guy, why is it licensing him? Why grant him a license? The incident was ten years ago, and it seems that the Board thinks that he deserves to get a license in Ohio. Dr Rank has gone through a lot, and the Board thinks he's done it very responsibly. Therefore he ought to be granted a license in Ohio. Mr. Browning stated that he would understand monitoring Dr. Rank, but it seems strange to grant a guy a license, immediately suspend it for at least six months and then go through this whole routine.

Dr. Steinbergh stated that her sense is that the Proposed Order is for permanent denial. After her review of the case, and for the reasons that she discussed, she feels her proposal is appropriate.

Mr. Browning again stated that this was a ten-year-old thing. He questioned the need for an ethics course.

Dr. Steinbergh stated that the Board is aware that Dr. Rank has been through courses. He simply has to present this information to the Medical Board, which could then assess the courses he's already taken as meeting the criteria. However, because of the concerns from the hearing record, she thinks that it makes sense to her that the Board knows that Dr. Rank has finished a professional and personal ethics course and that he's addressed these issues.

Mr. Browning stated that it's his sense that if Dr. Rank didn't have a history, and this was at the beginning of the problem, the Board would revoke his license, as it has done repeatedly in these situations, particularly with psychiatrists victimizing their patients.

Dr. Steinbergh stated that, for the reasons she stated before, she doesn't see the case in that way. When she looked at this, she questioned whether she would have revoked his license, had he been practicing in the State of Ohio. In this particular case, she read through the Proposed Order, the response, his objections, they sounded honest and appropriate to her. In this case she doesn't have the sense of victimization. She acknowledged that Dr. Rank did something wrong, but she doesn't believe that, were he licensed in the State of Ohio, she would vote to permanently revoke his license. She therefore looked for an alternative order that would make the Board feel comfortable. It would ask him to do things, and present the Board with information that confirms he's addressed these issues. She noted that Dr. Rank has told the Board that he has addressed the issues, but he would have to provide the Board with documentation. The Board could then determine whether or not what he provides fulfills the criteria, and would move on from there. The proposed alternative gives Dr. Rank the opportunity to be licensed and to reassure the Board that he's addressed the issues. Dr. Steinbergh commented that she is personally comfortable with this amendment.

Dr. Davidson spoke in support of the amendment. She stated that she thinks that Dr. Rank comported himself well today, as opposed to some people who have come before the Board. He took responsibility for his actions, he realized he was wrong, he's made some personal efforts to fix this with the Board's help. The Board can hopefully feel comfortable that the Board will have a good licensee for the State of Ohio.

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

|       |                |           |
|-------|----------------|-----------|
| Vote: | Mr. Albert     | - abstain |
|       | Dr. Talmage    | - abstain |
|       | Dr. Kumar      | - aye     |
|       | Mr. Browning   | - aye     |
|       | Dr. Davidson   | - aye     |
|       | Dr. Robbins    | - aye     |
|       | Dr. Garg       | - aye     |
|       | Dr. Steinbergh | - aye     |
|       | Ms. Sloan      | - aye     |

The motion carried.

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. CLOVIS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF DOUGLAS HOLLAND RANK, M.D. DR. KUMAR SECONDED THE MOTION.** A vote was taken:

|       |                |           |
|-------|----------------|-----------|
| Vote: | Mr. Albert     | - abstain |
|       | Dr. Talmage    | - abstain |
|       | Dr. Kumar      | - aye     |
|       | Mr. Browning   | - aye     |
|       | Dr. Davidson   | - aye     |
|       | Dr. Robbins    | - aye     |
|       | Dr. Garg       | - aye     |
|       | Dr. Steinbergh | - aye     |
|       | Ms. Sloan      | - aye     |

The motion carried.



# State Medical Board of Ohio

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

January 14, 2004

Douglas Holland Rank, M.D.  
6462 Stover Avenue  
Cincinnati, Ohio 45237

Dear Doctor Rank:

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

- (1) On or about March 13, 2003, you submitted an application for a license to practice medicine and surgery (Application) to the State Medical Board of Ohio (Ohio Board). In submitting that application, you certified under oath that the information provided was true, and you promised to notify the Ohio Board in writing of any changes to the answers to any of the questions in the ADDITIONAL INFORMATION section of the application if such a change in an answer was warranted at any time prior to a license being granted to you by the Ohio Board. Your Application is currently pending.
- (2) In the ADDITIONAL INFORMATION Section of the Application, you answered "YES" to Question Number 7, which asks the following:

Has any board, bureau, department, agency or other body, including those in Ohio, in any way limited, restricted, suspended or revoked any professional license, certificate or registration granted to you; placed you on probation; or imposed a fine, censure or reprimand against you?

In your response, you stated "Two separate events answer to [sic] this question." The first "separate event" was addressed in a Kentucky State Board of Medical Licensure (Kentucky Board) Order, paragraph three (3) below, and a New York State Department of Health Professional Medical Conduct Administrative Review Board (New York Board) Order, paragraph six (6) below, which was based upon that Kentucky Board Order. The second "separate event" was addressed in a second Kentucky Board Order, paragraph four (4) below.

*Mailed 1-15-04*

However, you subsequently failed to disclose to the Ohio Board that, in addition to the above described "two separate events," on or about May 9, 2003, the Kentucky Board filed an Order of Fine: Granting Six Months to Comply with 201 KAR 9:310, as alleged in paragraph (5), below.

- (3) On or about July 11, 2001, the Kentucky Board filed an Agreed Order, Agency Case No. 707, Administrative Action No. 99-KBML-0448 (Kentucky Board Agreed Order in Case No. 707), which included your agreement not to perform any act that would constitute the practice of medicine for a six month period ending on October 3, 2001. This Agreed Order culminated a case that had included issuance of orders on or about May 17, 2000 and on or about March 29, 2001.

The Kentucky Board Agreed Order provided that, if you choose to practice medicine in Kentucky after October 3, 2001, you shall fully comply with probationary terms and conditions previously set forth, including abstaining from sex with patients, ongoing psychiatric treatment and participation in the Kentucky Impaired Physicians Program, and the use of a chaperone in all contacts with female patients.

The Kentucky Board found that, in your Lexington, Kentucky, private practice of psychiatry, with a sub-specialty of headache and pain management, you treated Patient A., with whom you engaged in sexual contact over a period of time, to include unprotected sexual intercourse.

The Kentucky Board found that you admitted that you engaged in an improper sexual relationship with Patient A., while she was under your care.

Your conduct underlying these Orders is provided in greater detail in the Kentucky Board July 11, 2001, Agreed Order in Case No. 707, Kentucky Board March 29, 2001, Amended Order, and Kentucky Board May 17, 2000, Order of Revocation, copies of which are attached hereto and incorporated herein.

- (4) On or about September 17, 2001, the Kentucky Board filed an Agreed Order of Indefinite Restriction, Agency Case No. 771, Administrative Action No. 00-KBML-0561 and 0569 (Kentucky Board Restriction Order in Case No. 771), which included that your Kentucky license to practice medicine is limited/restricted for an indefinite period of time prohibiting you from resuming, entering into, or continuing a physician-patient relationship with Patient B. [not the same person as Patient A., paragraph three (3) above]. This Agreed Order culminated a case that had included issuance of orders on or about November 30, 2000, and on or about December 21, 2000.

Your underlying conduct is provided in greater detail in the Kentucky Board Agreed Order of Indefinite Restriction, Agency Case No. 771, filed September 17, 2001, a copy of which is attached hereto and incorporated herein.

- (5) On or about May 9, 2003, the Kentucky Board, in Case No. CME 134, filed an Order of Fine: Granting Six Months to Comply with 201 KAR 9:310, (Order of Fine) resulting from your failure either to timely complete the continuing medical education (CME) requirements or to obtain an extension of time for completion.

The Order of Fine granted you licensure for a fixed period of six (6) months and imposed a fine of \$200.00. Further, the Order of Fine gave Notice, should you fail to come into compliance by November 8, 2003, by paying the fine and completing the CME requirements, your license to practice medicine in the Commonwealth of Kentucky shall be immediately suspended.

A copy of the Kentucky Board Order of Fine, filed May 9, 2003, is attached hereto and incorporated herein.

- (6) Effective on or about April 23, 2002, New York Board issued Determination and Order No. 01-272, affirming their Hearing Committee's Determination to revoke your New York License.

The New York Board Determination and Order No. 01-272 was based upon the Kentucky Board May 17, 2000, Order of Revocation, Agency Case No. 707, (see Kentucky Board Agreed Order in Case No. 707, paragraph three (3) above).

A copy of New York Board Determination and Order No. 01-272 is attached hereto and incorporated herein.

Your acts, conduct, and/or omissions as alleged in paragraph two (2) above, individually and collectively, constitute "fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board," as that clause is used in R.C. 4731.22(A).

Further, the Kentucky Board Agreed Order filed July 11, 2001 in Case No. 707, and the prior orders filed May 17, 2000 and March 29, 2001, as alleged in paragraph three (3) above, individually and/or collectively, constitute "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in R.C. 4731.22(B)(22).

Further, the Kentucky Board Agreed Order of Restriction filed September 17, 2001, in Case No. 771, constitutes “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that clause is used in R.C. 4731.22(B)(22).

Further, the Kentucky Board Order of Fine filed May 9, 2003, as alleged in paragraph five (5) above, constitutes “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that clause is used in R.C. 4731.22(B)(22).

Further, the New York Board Determination and Order (No. 01-272), effective April 23, 2002, as alleged in paragraph six (6) above, constitutes “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that clause is used in R.C. 4731.22(B)(22).

Further, your acts, conduct, and/or omissions as alleged in paragraphs two (2), three (3), and six (6) above, individually and/or collectively, constitute a failure to furnish satisfactory proof of good moral character, as required by R.C. 4731.08 and R.C. 4731.29.

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

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

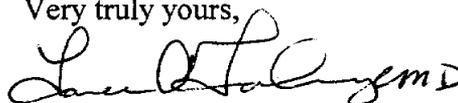
or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.  
Secretary

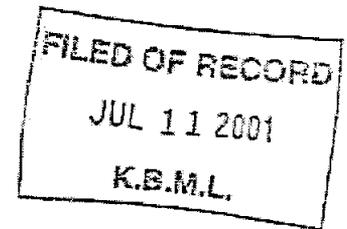
LAT/cad  
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5149 4196  
RETURN RECEIPT REQUESTED

100 Riverside Plaza, Suite 201  
Covington, Kentucky 41011

CERTIFIED MAIL # 7000 0600 0024 5142 2571  
RETURN RECEIPT REQUESTED

COMMONWEALTH OF KENTUCKY  
STATE BOARD OF MEDICAL LICENSURE  
CASE NO. 707  
ADMINISTRATIVE ACTION NO. 99-KBM L-0448



IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF  
KENTUCKY HELD BY DOUGLAS RANK, M.D., LICENSE NO. 27590, 3133  
CUSTER DRIVE, LEXINGTON, KENTUCKY 40517

AGREED ORDER

Come now the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Hearing Panel B, and Douglas Rank, M.D., and, based upon their mutual desire to fully and appropriately address an issue raised by this case during the period of time this case is under review by the Kentucky Court of Appeals, hereby ENTER INTO the following AGREED ORDER:

Factual and Procedural Background

On May 17, 2000, the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Hearing Panel B, issued an Order of Revocation, Probated; Order of Suspension/Probation. The factual findings and legal conclusions relied upon by the Board for that Order were recited in the Order and in the Findings of Fact, Conclusions of Law, and Recommended Order which were adopted and incorporated in part into the Order. Pursuant to KRS 311.593(1), that Order was to become effective thirty (30) days after notice was given to the licensee.

The licensee received notice of the Order on May 18, 2000. Prior to the effective date of the Order, the licensee filed a Petition for Judicial Review in Jefferson Circuit Court and sought a Temporary Restraining Order to prevent the Order becoming effective pending resolution of the Petition. Prior to the Order becoming effective, the Jefferson

Circuit Court issued a Temporary Restraining Order, restraining the Board from enforcing the terms of the Order during the pendency of the review process. On March 2, 2001, the Jefferson Circuit Court issued an Opinion and Order affirming the Board's Order. The licensee filed an appeal to Court of Appeals. As part of that action, he filed Motions for Emergency and Intermediate Relief. On March 29, 2001, Court of Appeals Judge William McAnulty, Jr., issued an Order Denying Motion for Emergency Relief, concluding that the licensee "...has not made sufficient showing either of injury or of possible success on the merits so as to justify the issuance of an emergency stay."

Having considered all of this information, Hearing Panel B issued an Amended Order of Revocation; Probated; Amended Order of Suspension/Probation on March 29, 2001, directing that the terms and conditions of the original Order become effective immediately upon receipt by the licensee or his agent. The licensee received this Amended Order on April 2, 2001; the terms and conditions of the Amended Order became effective on that date. Pursuant to the terms and conditions of the Amended Order, the licensee stopped practicing medicine on April 3, 2001.

On April 30, 2001, a three-judge panel of the Court of Appeals issued an Order Granting Motion for Intermediate Relief, ruling in part,

...Having considered the motion for intermediate relief and the response thereto, the Court orders that the motion be GRANTED under the conditions set out in this order.

...the Court ORDERS that the suspension of the appellant's medical license be STAYED pending appeal. However, the stay is hereby made contingent upon the appellant immediately commencing compliance with all of the conditions which the Board imposed for the period of the probation which was to follow the suspension. These conditions include continuing the appellant's own course of counseling and the use of a chaperon when treating female patients.

### AGREED ORDER

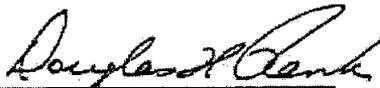
Having considered the factual and procedural background of this case and wishing to appropriately address the issue presented, the parties hereby ENTER INTO the following **AGREED ORDER**:

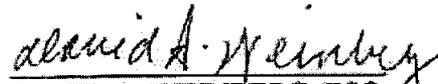
1. The licensee agrees not to perform any act which would constitute the "practice of medicine," as that term is defined in KRS 311.550(10) – the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities – for a full six-month period ending on October 3, 2001. Full compliance with this term will fully satisfy Condition 3 of the Amended Order of Revocation, Probated; Amended Order of Suspension/Probation.
2. If the licensee should choose to practice medicine in the Commonwealth of Kentucky after October 3, 2001, he shall fully comply with all terms and conditions of probation set out in the Amended Order of Revocation, Probated; Amended Order of Suspension/Probation and the Court of Appeals' Order Granting Motion for Intermediate Relief, dated April 30, 2001. The licensee's counsel shall promptly notify the Board of the licensee's return to practice within the Commonwealth. The licensee will be given credit toward the total of 54 months of probation for any period of time after October 3, 2001 during which he is in compliance with the terms and conditions of probation.
3. The parties agree that the licensee does not waive any of his appellate rights regarding this case or concede any issue in the appeal presently pending before the Kentucky

Court of Appeals by entering into or complying with the terms of this Agreed Order.

SO AGREED on this 11th day of <sup>July</sup>~~May~~, 2001.

FOR THE LICENSEE:

  
DOUGLAS RANK, M.D.

  
DAVID A. WEINBERG, ESQ.  
COUNSEL FOR THE LICENSEE

FOR THE BOARD:

  
PRESTON P. NUNNELLEY, M.D.  
CHAIR, HEARING PANEL B

  
C. LLOYD VEST II  
General Counsel  
Kentucky Board of Medical Licensure  
310 Whittington Parkway, Suite 1B  
Louisville, Kentucky 40222  
(502) 429-8046

ENTERED: 07/11/01

COMMONWEALTH OF KENTUCKY  
STATE BOARD OF MEDICAL LICENSURE  
CASE NO. 707  
ADMINISTRATIVE ACTION NO. 99-KBM L-0448

FILED OF RECORD  
MAR 29 2001  
K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DOUGLAS RANK, M.D., LICENSE NO. 27590, 3133 CUSTER DRIVE, LEXINGTON, KENTUCKY 40517

**AMENDED ORDER OF REVOCATION, PROBATED;  
AMENDED ORDER OF SUSPENSION/PROBATION**

On May 17, 2000, the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Hearing Panel B, issued an Order of Revocation, Probated; Order of Suspension/Probation. The factual findings and legal conclusions providing the bases for that Order were set out in the Order and in the Findings of Fact, Conclusions of Law, and Recommended Order which were adopted and incorporated in part into the Order. Pursuant to KRS 311.593(1), that Order was to become effective thirty (30) days after notice was given to the licensee.

The licensee received notice of the Order on May 18, 2000. Prior to the effective date of the Order, the licensee filed a Petition for Judicial Review in Jefferson Circuit Court and sought a Temporary Restraining Order to prevent the Order becoming effective pending resolution of the Petition. Prior to the Order becoming effective, the Jefferson Circuit Court issued a Temporary Restraining Order, restraining the Board from enforcing the terms of the Order during the pendency of the review process. On March 2, 2001, the Jefferson Circuit Court issued an Opinion and Order affirming the Board's Order. The licensee filed an appeal to Court of Appeals. As part of that action, he filed Motions for Emergency and Intermediate Relief. On March 29, 2001, Court of Appeals

Judge William McAnulty, Jr., issued an Order Denying Motion for Intermediate Relief, concluding that the licensee "...has not made sufficient showing either of injury or of possible success on the merits so as to justify the issuance of an emergency stay."

Having considered all of this information and finding that there are no longer reasons for delaying the effective date of the Panel's Order, Hearing Panel B hereby ORDERS that the following terms and conditions SHALL BECOME EFFECTIVE IMMEDIATELY UPON RECEIPT BY THE LICENSEE AND/OR HIS AGENT AND SHALL REMAIN IN EFFECT FOR A PERIOD OF FIVE (5) YEARS FROM THAT DATE, OR AS SPECIFICALLY SPECIFIED IN THE TERM OR CONDITION:

1. The license to practice medicine in the Commonwealth of Kentucky held by Douglas H. Rank, M.D., is REVOKED; however, such revocation is STAYED on the sole condition that the licensee fully comply with the terms/conditions of probation that he not engage in sexual contact with a patient while that patient is under the licensee's care. If one of the Board's Panels should conclude by stipulation of the parties or after an evidentiary hearing that the licensee has violated Condition 4a and/or 4b of his probation, as set out below, the sanction for such violation(s) shall be imposition of this sanction of Revocation;
2. The licensee to practice medicine in the Commonwealth of Kentucky held by Douglas H. Rank, M.D., is SUSPENDED for a PERIOD OF TWO (2) YEARS; however, Hearing Panel B ORDERS that the last eighteen months of that twenty-four month suspension is STAYED on the condition that the licensee fully comply with all remaining terms and conditions of probation. If the licensee should be found to have violated any term or condition of probation, as set out below, other than Condition 4a

and/or 4b, upon stipulation of the parties or pursuant to evidentiary hearing, the assigned Panel will impose the remaining eighteen months of suspension as an appropriate sanction for such violation(s);

3. Given that the Hearing Panel has only stayed the final eighteen months of the 24-month suspension, the initial 6-month suspension shall commence on the calendar day following receipt of this Order by the licensee or his agent and shall continue in force for 6 calendar months from that date. During that period of actual suspension, the licensee shall not perform any act which would constitute the "practice of medicine," as that term is defined in KRS 311.550(10) – the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities;
4. Immediately after the conclusion of the actual suspension period of six months, the licensee's medical license is PLACED ON PROBATION for a PERIOD OF FIFTY-FOUR (54) MONTHS. During that period of probation, the licensee's Kentucky medical license shall be subject to the following terms and conditions:
  - a. The licensee shall not engage in sexual contact with any patient while that patient is under the licensee's care;
  - b. The licensee shall fully comply with the provisions of Current Opinion 8.14 of the American Medical Association's Code of Ethics:

Sexual contact that occurs concurrent with the physician-patient relationship constitutes sexual misconduct. Sexual or romantic interactions between physicians and patients detract from the goals of the physician patient-relationship, may exploit the vulnerability of the patient, may obscure the physician's objective judgment concerning the patient's health care, and ultimately may be detrimental to the patient's well-being.

If a physician has reason to believe that non-sexual contact with a patient may be perceived as or may lead to the sexual contact, then he or she should

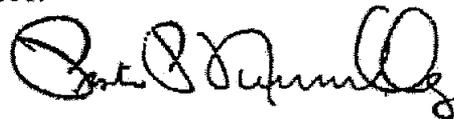
avoid the non-sexual contact. At a minimum, a physician's ethical duties include terminating the physician-patient relationship before initiating a dating, romantic, or sexual relationship with a patient.

Sexual or romantic relationships between a physician and a former patient may be unduly influenced by the previous physician-patient relationship. Sexual or romantic relationships with former patients are unethical if the physician uses or exploits trust, knowledge, emotions, or influence derived from the previous professional relationship.

5. The licensee shall continue with bi-weekly individual treatment with Dr. Oscherwitz and with his participation in the Kentucky Physicians Health Foundation – Impaired Physicians Program (IPP). The licensee shall arrange for Dr. Oscherwitz and with the Medical Director, IPP, to file written reports with the Board, on a quarterly basis, detailing his compliance with this condition and with the parameters of his respective treatment program(s). Failure to arrange for the filing of such quarterly written reports shall constitute a violation of this condition.
6. The licensee shall have a chaperon present throughout any personal contact with a female patient in his professional office or in any other clinical setting.
7. Any chaperon utilized by the licensee must be approved, in advance, by the Board or its staff and must agree in writing to 1) remain present and within direct eyesight and within clear hearing distance of the licensee and the patient throughout the entire period the licensee is with a female patient; 2) accurately record the chaperon's presence, or absence, for the entire duration of such patient interaction in the patient's chart, or the patient record maintained by that clinical setting; 3) immediately notify the designated contact person at the Board's offices to report any violation of the chaperon requirement by the licensee. The licensee may submit and the Board or its agents may approve more than one chaperon to fulfill this requirement. The licensee shall be solely responsible for payment of the costs of such chaperon(s).

8. Upon request, the licensee shall immediately make available any requested patient charts for female patients and/or any documentation about patient contacts outside of the office. The licensee shall also make available, upon request, the chaperon(s) for interview by Board agents regarding his compliance with that condition.
9. The licensee shall pay a fine in the amount of \$3,037.50. The licensee shall pay this fine within twenty-four (24) months of the filing of this Order.
10. The licensee shall fully comply with the provisions of the Kentucky Medical Practice Act, KRS 311.530 *et seq.*

SO ORDER this 29<sup>th</sup> day of March, 2001.

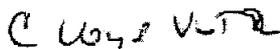


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PRESTON P. NUNNELLEY, M.D.  
CHAIR, HEARING PANEL B

Certificate of Service

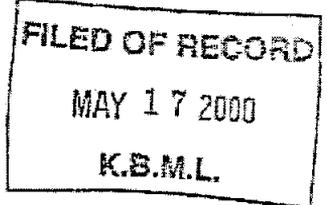
I hereby certify that the original of this Amended Order of Revocation, Probated; Amended Order of Suspension/Probation was delivered to Mr. C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; and copies were mailed to Scott D. Majors, Esq., Hearing Officer, Division of Administrative Hearings, 1024 Capital Center Drive, Frankfort, Kentucky 40601-8204; via certified mail return-receipt requested to David A. Weinberg, Esq., Weinberg & Capello, 301 East Main Street, Suite 800, Lexington, Kentucky 40507 and Douglas H. Rank, M.D., 3133 Custer Drive, Lexington, Kentucky 40517-4001 on this 29<sup>th</sup> day of March, 2001.



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C. LLOYD VEST, II  
General Counsel  
Kentucky Board of Medical Licensure  
310 Whittington Parkway, Suite 1B  
Louisville, Kentucky 40222  
502/429-8046

COMMONWEALTH OF KENTUCKY  
STATE BOARD OF MEDICAL LICENSURE  
CASE NO. 707  
ADMINISTRATIVE ACTION NO. 99-KBM L-0448



IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF  
KENTUCKY HELD BY DOUGLAS RANK, M.D., LICENSE NO. 27590, 3133  
CUSTER DRIVE, LEXINGTON, KENTUCKY 40517

**ORDER OF REVOCATION; PROBATED  
ORDER OF SUSPENSION AND PROBATION**

The Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Hearing Panel B, took up this case for final action at its April 20, 2000 meeting. Hearing Panel B reviewed the Complaint; the recommended Findings of Fact, Conclusion of Law and Recommended Order issued by the hearing officer; the Board's Exceptions to the Recommended Order; the Respondent's Exceptions to Recommended Order; a March 20, 2000 memorandum by the Board's General Counsel; and letters from the licensee's counsel dated April 7 and 11, 2000. The licensee's counsel of record was present during the Panel meeting; however, he advised the Panel that he was not authorized to represent the licensee regarding the Panel's final action, but was only authorized to present the licensee's request to continue the matter to the next scheduled Panel meeting. The Board's General Counsel addressed the Panel regarding the motion for continuance and the matters relating to final resolution of the case.

As an initial matter, the Panel considered the licensee's request to postpone its final action to a later meeting, due to his inability to attend the meeting for religious observance of the Passover Holiday, and his written waiver of the requirement of KRS 13B.120(4)(b) that the final order be issued within 90 days of submission of the hearing

officer's report. The Board's General Counsel advised the Panel that, based upon the waiver, it had the legal authority to postpone final action in this case, but that the Panel was not required to postpone its action. The General Counsel also noted that the licensee had had a full opportunity to testify before the hearing officer and was subjected to cross-examination and that the hearing officer had considered all testimony in his report. Having considered all of the information available to it and being sufficiently advised, Hearing Panel B ORDERS that the request to postpone final resolution of this case to a later date is DENIED.

Having considered all of the information available to it and being sufficiently advised, Hearing Panel B ACCEPTS the recommended Findings of Fact 1-33 reported by the hearing officer and INCORPORATES those Findings of Fact in their entirety into this Order. Hearing Panel B ACCEPTS the recommended Conclusions of Law 34-46 reported by the hearing officer and INCORPORATES those Conclusions of Law in their entirety into this Order.

Hearing Panel ACCEPTS recommended Conclusion of Law 47 IN PART, to the extent there is a conclusion that the requirement that an approved chaperon be present during the licensee's treatment of female patients would provide sufficient protection to patients so that it would not be necessary to impose an absolute prohibition preventing the licensee from providing medical treatment to female patients. However, the Hearing Panel REJECTS recommended Conclusion of Law 47 IN PART, to the extent that it suggests that such a chaperon requirement be limited to the licensee's treatment of female psychiatric patients. From its review of the information available to it, the Panel CONCLUDES as a MATTER OF LAW that, in order to properly protect the public in a

manner that does not require an absolute prohibition preventing the licensee from treating female patients, such a chaperon requirement must apply to the licensee's medical treatment of all female patients. There is no logical reason to conclude from the information available to it that the licensee would knowingly limit his unlawful sexual conduct with patients to psychiatric patients, if unchaperoned. Based upon the information presented in the hearing officer's report, particularly Findings of Fact 11-22, and the Board's Exceptions to that report, the Panel CONCLUDES that it is equally likely that the licensee would engage in unlawful sexual conduct with non-psychiatric patients he encountered in his medical practice.

Hearing Panel B ACCEPTS Recommended Order 1 IN WHOLE and incorporates it into this Order. Based upon the seriousness of the violations, the nature of the physician-patient relationship in this case, and the licensee's specific actions regarding Patient A, Hearing Panel B CONCLUDES that the licensee's Kentucky medical license should be suspended for a full 6-month period as part of the Board's final action in this case. For those reasons, the Panel REJECTS Recommended Order 2 IN WHOLE.

Although the assigned hearing officer ultimately disagreed that such action was necessary to protect the public, the Emergency Order of Suspension issued by Inquiry Panel A on July 22, 1999 was an interim protective measure authorized by KRS 311.592 for the protection of the public during the period of time between the issuance of the Complaint and final resolution of that Complaint; it was not designed for or utilized as a sanction of the licensee's Kentucky medical license. The sanction for the licensee's unlawful actions is determined and issued by this Order and Hearing Panel B CONCLUDES that the licensee's violations and specific conduct warrant a suspension of his medical license for

a full 6-month period. For those reasons, the Panel will not shorten the period of suspension in this case by the period of time the licensee's license was suspended pursuant to the Emergency Order of Suspension.

Hearing Panel B ACCEPTS Recommended Orders 4 and 5 IN WHOLE and incorporates those Recommended Orders into this Order.

Hearing Panel B ACCEPTS Recommended Order 3 IN PART and REJECTS it IN PART. For the reasons previously stated, Panel B CONCLUDES that the chaperon requirement should apply to all female patients who receive medical treatment from the licensee. The Board has also developed standard orders to be used for the approval, supervision and implementation of such a chaperon requirement and believes that the Recommended Order should be MODIFIED so that the chaperon requirements are consistent with those standard orders. In order to prevent a recurrence of the violations found in this case and to fully implement Recommended Order 5, Hearing Panel B CONCLUDES that any Order issued in this case must include a prohibition against the licensee engaging in sexual contact with a patient while that is under the licensee's care. Accordingly, Panel B MODIFIES the Recommended Order to include a term/condition of probation that prohibits the licensee from engaging in sexual contact with patients under such circumstances. Based upon Board policy and based upon the circumstances of this case, in which a hearing was required in the face of the licensee's admission of the violation and his rejection of the Inquiry Panel's initial offer to informally resolve the case by an Agreed Order of Suspension, with a suspension for a period less than that imposed under this Order, Hearing Panel B CONCLUDES that the licensee should pay a fine in an amount equal to the costs of the administrative hearing. Accordingly, Hearing

Panel B MODIFIES the Recommended Order to include the requirement of a fine in the amount of \$3,037.50. Finally, Panel B CONCLUDES that it is legally appropriate and advisable under KRS 311.595 to fix the period of probation for a specific number of years. Accordingly, Panel B CONCLUDES that the Recommended Order should be MODIFIED so that the period of probation imposed is fixed at a specific number of years.

Based upon the information available to it and being sufficiently advised, and based upon the foregoing discussion, Hearing Panel B ORDERS that the license to practice medicine in the Commonwealth of Kentucky held by Douglas H. Rank, M.D., is REVOKED; however, such revocation is STAYED on the sole condition that the licensee fully comply with the term/condition of probation that he not engage in sexual contact with a patient while that patient is under the licensee's care. If a Hearing Panel of the Board should conclude by stipulation of the parties or after an evidentiary hearing that the licensee has violated that Conditions 1 and/or 2 of his probation, the sanction for such violation shall be imposition of this sanction of Revocation.

Hearing Panel B further ORDERS that the license to practice medicine in the Commonwealth of Kentucky held by Douglas H. Rank, M.D. is SUSPENDED for a PERIOD OF TWO (2) YEARS; however, Hearing Panel B ORDERS that the last eighteen months of that twenty-four month suspension is STAYED on the condition that the licensee fully comply with all remaining terms and conditions of probation. If the licensee should be found to have violated any term or condition of probation other than Conditions 1 and/or 2, upon stipulation of the parties or pursuant to evidentiary hearing,

the assigned Hearing Panel will impose that remaining eighteen months of suspension as the appropriate sanction for such violation(s).

Hearing Panel B further ORDERS that the license to practice medicine in the Commonwealth is PLACED ON PROBATION for a period of FIVE (5) YEARS. During that period of probation, the licensee's Kentucky medical license shall be subject to the following terms and conditions:

1. The licensee shall not engage in sexual contact with any patient while that patient is under the licensee's care;
2. The licensee shall fully comply with the provisions of Current Opinion 8.14 of the American Medical Association's Code of Ethics:

Sexual contact that occurs concurrent with the physician-patient relationship constitutes sexual misconduct. Sexual or romantic interactions between physicians and patients detract from the goals of the physician-patient relationship, may exploit the vulnerability of the patient, may obscure the physician's objective judgment concerning the patient's health care, and ultimately may be detrimental to the patient's well-being.

If a physician has reason to believe that non-sexual contact with a patient may be perceived as or may lead to sexual contact, then he or she should avoid the non-sexual contact. At a minimum, a physician's ethical duties include terminating the physician-patient relationship before initiating a dating, romantic, or sexual relationship with a patient.

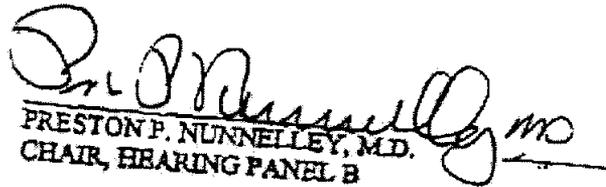
Sexual or romantic relationships between a physician and a former patient may be unduly influenced by the previous physician-patient relationship. Sexual or romantic relationships with former patients are unethical if the physician uses or exploits trust, knowledge, emotions, or influence derived from the previous professional relationship.

3. The licensee shall continue with his bi-weekly individual treatment with Dr. Oscherwitz and with his participation in the Kentucky Physicians Health Foundation – Impaired Physicians Program (IPP). The licensee shall arrange for Dr. Oscherwitz and with the Medical Director, IPP, to file written reports with the Board, on a quarterly basis, detailing his compliance with this condition and with the parameters

of his respective treatment program(s). Failure to arrange for the filing of such quarterly written reports shall constitute a violation of this condition.

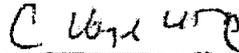
4. The licensee shall have a chaperon present throughout any personal contact with a female patient in his professional office or in any other clinical setting.
5. Any chaperon utilized by the licensee must be approved, in advance, by the Board or its staff and must agree in writing to 1) remain present and within direct eyesight and within clear hearing distance of the licensee and the patient throughout the entire period the licensee is with a female patient; 2) accurately record the chaperon's presence, or absence, for the entire duration of such patient interaction in the patient's chart, or the patient record maintained by that clinical setting; 3) immediately notify the designated contact person at the Board's offices to report any violation of the chaperon requirement by the licensee. The licensee may submit and the Board or its agents may approve more than one chaperon to fulfill this requirement. The licensee shall be solely responsible for payment of the costs of such chaperon(s).
6. Upon request, the licensee shall immediately make available any requested patient charts for female patients and/or any documentation about patient contacts outside of the office. The licensee shall also make available, upon request, the chaperon(s) for interview by Board agents regarding his compliance with that condition.
7. The licensee shall pay a fine in the amount of \$3,037.50. The licensee shall pay this fine within twenty-four (24) months of the filing of this Order.
8. The licensee shall fully comply with the provisions of the Kentucky Medical Practice Act, KRS 311.530 *et seq.*

SO ORDERED this 17<sup>th</sup> day of May, 2000.

  
PRESTON P. NUNNELLEY, M.D.  
CHAIR, HEARING PANEL B

Certificate of Service

I certify that the original of this Order of Suspension/Indefinite Restriction was delivered to Mr. C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; and copies were mailed to Scott D. Majors, Esq., Hearing Officer, Division of Administrative Hearings, 1024 Capital Center Drive, Frankfort, Kentucky 40601-8204; via certified mail return-receipt requested to David A. Weinberg, Esq., Weinberg & Capello, 301 East Main Street, Suite 800, Lexington, Kentucky 40507 and Douglas H. Rank, M.D., 3133 Custer Drive, Lexington, Kentucky 40517-4001 on this 18<sup>th</sup> day of May, 2000.

  
C. LLOYD VEST, III  
General Counsel  
Kentucky Board of Medical Licensure  
310 Whittington Parkway, Suite 1B  
Louisville, Kentucky 40222  
502/429-8046

EFFECTIVE DATE AND APPEAL RIGHTS

Pursuant to KRS 311.593(1), the effective date of this Order will be thirty (30) days after the licensee and/or the licensee's counsel has received notice of the Order.

The licensee may appeal from this Order, pursuant to KRS 311.593 and 13B.140-.150, by filing a Petition for Judicial Review in Jefferson Circuit Court within thirty (30) days after this Order is mailed or delivered by personal service. Copies of the petition shall be served by the licensee upon the Board and its General Counsel. The Petition shall include the names and addresses of all parties to the proceeding and the agency

involved, and a statement of the grounds on which the review is requested, along with a copy of this Order.

FILED OF RECORD  
SEP 17 2001  
K.B.M.L.

COMMONWEALTH OF KENTUCKY  
STATE BOARD OF MEDICAL LICENSURE  
CASE NO. 771  
ADMINISTRATIVE ACTION NO. 00-KBML-0561 AND 0569

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DOUGLAS H. RANK, M.D., LICENSE NO. 27590, 3133 CUSTER DRIVE, LEXINGTON, KENTUCKY 40517-4001

AGREED ORDER OF INDEFINITE RESTRICTION

Come now the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Hearing Panel A, and Douglas H. Rank, M.D., and, based upon their mutual desire to fully and finally resolve a pending grievance without further evidentiary proceedings, hereby ENTER INTO the following AGREED ORDER OF INDEFINITE RESTRICTION:

STIPULATIONS OF FACT

The parties stipulate the following facts, which serve as the factual bases for this Agreed Order of Indefinite Restriction:

1. At all relevant times, Douglas H. Rank, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is Psychiatry, the licensee is also board-certified in internal medicine.
3. In 1998, the Board conducted an investigation of the licensee's medical treatment for B after receiving a grievance concerning it. Based upon the information that was revealed during the investigation, the Board's Inquiry Panel voted that there was no evidence that the licensee's medical treatment for Ms.

B constituted a violation of the Medical Practice Act. The matter was, therefore, closed with no further action.

4. On January 25, 2000, the Board received a letter, dated January 24, 2000, from Detective Lynne Thompson of the Lexington Police Department's Narcotics Unit, reporting the "high dosages of narcotic prescriptions" that the licensee was writing for B. As a result of this grievance, the Board conducted an investigation of the licensee's medical treatment for Ms. B, which revealed fifty-seven (57) prescriptions for controlled substances that the licensee had prescribed for Ms. B between January 1, 1999 and April 12, 2000. The licensee maintains that he appropriately prescribed same for Ms. B.
5. During the Board's investigation of the matter concerning the January 2000 grievance, a Board investigator obtained information and records that were submitted to a Board consultant specializing in pain management for review.

Based upon his review, the consultant opined:

...I believe that Dr. Rank did engage in conduct which departs from or fails to conform to the acceptable standards and prevailing medical practice within the Commonwealth of Kentucky. He lost control of the doctor patient relationship...I think that Dr. Rank was negligent in not taking the steps necessary to make a firm diagnosis and an appropriate treatment plan. He instead chose to follow conflicting diagnoses made by other physicians and follow a treatment plan prescribed [by] the patient.

...  
I cannot say on the basis of a single patient review that this physician's overall practice is dangerous. In fact, the KASPER report, which is the only document reviewed that contains any indication of how he treats his other patients, indicates exactly the opposite. It indicates that this physician's practice is probably appropriate. For some unexplained reason, this physician has allowed one patient to deceive him into prescribing inappropriate medications to her, but there is no indication that this has spilled over to his treatment of other patients....

6. On October 28, 2000, the licensee voluntarily participated in and successfully completed the 12.25 hours of the University of Kentucky's "Use of Controlled Substances" course. The Board is in receipt of a copy of a Certificate of Completion, certifying his participation in same.
7. On November 30, 2000, an *Emergency Order of Restriction*, was filed in this proceeding, prohibiting the licensee from prescribing, dispensing or otherwise utilizing Schedule II controlled substances until final resolution of this matter or until further order of the Board's Panel.
8. On December 12 and 14, 2000, an emergency hearing was held in this matter.
9. On December 27, 2000, the Board received the December 21, 2000 *Final Order Modifying Emergency Order of Suspension* that was submitted by the hearing officer who was assigned to preside over the emergency hearing. In said Order, the hearing officer modified the Board's *Emergency Order of Restriction* "to restrict Dr. Rank's license solely from the prescription of Schedule II controlled substances in the course of his treatment of [ ] B [ ]".
10. On March 27 and 28, 2001, a hearing was held on the Complaint that was filed in this case on November 30, 2000.
11. During the administrative hearings in this matter, the licensee introduced evidence to refute the allegations against him. Said evidence included the licensee's testimony, testimony of [ ] B [ ], testimony of the Board's consultant, and the following medical journal articles: (1) *Double-Blind, Multicenter Trial to Compare the Efficiency of Intramuscular Dihydroergotamine Plus Hydroxyzine Versus Intramuscular Meperidine Plus Hydroxyzine for the Emergency*

*Department Treatment of Acute Migraine Headaches*, appearing in the Annals of Emergency Medicine, Vol. 32, No. 2 (August 1998); (2) *Acute Treatment of Periodic Severe Headaches; Comparison of Three Outpatient Care Facilities*, appearing in Headache (February 1998); (3) *Headache Associated with Medication and Substance Withdrawal*, appearing in a publication entitled Headache: Diagnosis and Treatment, Chapter 28 (1993); (4) *Meperidine-Induced Generalized Seizures with Normal Renal Function*, appearing in the Southern Medical Journal, Vol. 90, No. 5 (May 1997); (5) *Meperidine: Therapeutic Use and Toxicity*, appearing in the Journal of Emergency Medicine, Vol. 13, No.6 (Nov.-Dec. 1995); (6) *Psychodynamics and Psychiatric Diagnosis of Pseudoseizure Subjects*, appearing in the American Journal of Psychiatry, Vol. 153, No. 1 (January 1996); (7) *Pseudoseizure Status*, appearing in the Journal of Psychosomatic Research, Vol. 42, No. 5 (May 1997); and, (8) *Amnesia Possibly Associated with Zopidem Administration*, appearing in the Journal of Pharmacotherapy, Vol.16 (July-Aug. 1996).

12. In April 2001, the licensee enrolled in and completed a 3-day intensive course entitled "Maintaining Proper Boundaries", given by The Center for Professional Health at Vanderbilt University Medical Center, located in Nashville, Tennessee. The Board is in receipt of a copy of a Certificate of Attendance, certifying his attendance and completion of said course.
13. The licensee voluntarily enrolled in and completed, at his own expense, a 3-day intensive course, also given by The Center for Professional Health at Vanderbilt University Medical Center, entitled "Prescribing Controlled Drugs: Critical Issues

and Common Pitfalls." The Board is in receipt of a copy of a Certificate of Attendance, certifying his attendance and completion of said course, which began on June 20, 2001 and ended on June 22, 2001.

14. The licensee states that he has voluntarily dismissed            B            from his medical practice and he voluntarily agrees that he will no longer provide medical treatment to Ms. B           .

#### STIPULATED CONCLUSIONS OF LAW

The parties stipulate the following Conclusions of Law, which serve as the legal bases for this Agreed Order of Indefinite Restriction:

1. The licensee's Kentucky medical license is subject to regulation and discipline by the Board.
2. The licensee's conduct, as described in the Stipulations of Fact, would, if proven, constitute violations of KRS 311.595(9), as illustrated by KRS 311.597(1)(d) and (4); KRS 311.595(12) and 201 KAR 9:005(1)(a); and KRS 311.595(10). Accordingly, there would be a legal basis for the Board to impose disciplinary sanctions upon the licensee's Kentucky medical license pursuant to KRS 311.595, upon proof that the licensee has violated said provisions.
3. While the licensee refutes an ultimate conclusion that he has violated the Act by engaging in the conduct described in the Stipulations of Fact, he agrees that there is a legal basis for resolving this case pursuant to the terms of an Agreed Order of Indefinite Restriction such as this.

4. Pursuant to KRS 311.595(6) and 201 KAR 9:082, the parties may fully and finally resolve the pending grievance without further formal proceedings by entering into an informal resolution such as this Agreed Order of Indefinite Restriction.
5. The Board recognizes and accepts the licensee's voluntary participation in and successful completion of the aforementioned courses as remedial actions.
6. KRS 311.595 provides that the Board may limit or restrict a license for an indefinite period upon proof that the licensee has engaged in conduct described in KRS 311.595.

#### AGREED ORDER OF INDEFINITE RESTRICTION

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to fully and finally resolve the Board's investigation without further evidentiary proceedings, the parties hereby ENTER INTO the following **AGREED ORDER OF INDEFINITE RESTRICTION:**

1. The license to practice medicine in the Commonwealth of Kentucky held by Douglas H. Rank, M.D., is LIMITED/RESTRICTED for an INDEFINITE PERIOD OF TIME by the following terms and conditions:
  - a. The licensee shall not resume, enter into, or continue a physician-patient relationship with B.
  - b. The licensee, as a practicing physician, is required to fully comply with all provisions of the Kentucky Medical Practice Act, KRS 311.530 *et seq.*
2. The licensee expressly agrees that, if he should violate the specific term or condition of this Agreed Order of Indefinite Restriction, regarding the treatment of B) or any provision of the Kentucky Medical Practice Act, the licensee's practice

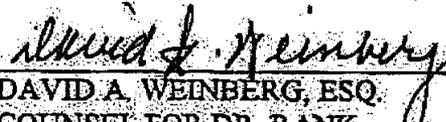
will constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that, if the Board should receive reliable information that he has violated the term or condition of this Agreed Order of Indefinite Restriction, regarding the treatment of Angela Brown, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that the violation has occurred, after an *ex parte* presentation of the relevant facts by the Board's General Counsel or Assistant General Counsel. If the Panel Chair should issue such an Emergency Order, the parties agree and stipulate that a proven violation of the specific condition of this Agreed Order of Indefinite Restriction would render the licensee's practice an immediate danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated the specific condition or term of this Agreed Order of Indefinite Restriction. At any such emergency hearing, the licensee may establish that the suspension should not continue because, in spite of the licensee's best efforts to comply, it was impossible for the licensee to comply with the term(s) or condition(s) in question.

3. The licensee understands and agrees that any violation of this Agreed Order of Indefinite Restriction would also constitute separate grounds for disciplinary action against his Kentucky medical license, including revocation, pursuant to KRS 311.595(13).

SO AGREED on this 17th day of September, 2001.

FOR DR. RANK:

  
DOUGLAS H. RANK, M.D.

  
DAVID A. WEINBERG, ESQ.  
COUNSEL FOR DR. RANK

FOR THE BOARD:

  
KATHIE E. GRISHAM, ESQ.  
CHAIR, HEARING PANEL A

  
Y. DENISE PAYNE WADE  
Assistant General Counsel  
Kentucky Board of Medical Licensure  
310 Whittington Parkway, Suite 1B  
Louisville, Kentucky 40222  
(502) 429-8046

ENTERED: 09/17/01

FILED OF RECORD  
MAY 09 2003  
K.B.M.L.

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. CME134

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF  
KENTUCKY HELD BY DOUGLAS H. RANK, M.D., LICENSE NO. 27590,  
958 BROADWAY PLAZA, PAINTSVILLE, KENTUCKY 41240

**ORDER OF FINE: GRANTING SIX MONTHS  
TO COMPLY WITH 201 KAR 9:310**

Based upon a review of the records of the Kentucky Board of Medical Licensure (hereafter "the Board"), the Board FINDS that the licensee has failed to 1) timely complete the continuing medical education requirements of 201 KAR 9:310; and, 2) obtain an extension of time for completion of the continuing medical education requirements. Accordingly, the Board ORDERS that a FINE of TWO HUNDRED DOLLARS (\$200.00) is imposed against the licensee, with the fine being due and payable immediately.

Pursuant to 201 KAR 9:310, Section 7(2)(a), the licensee is GRANTED a period of six (6) months, until November 8, 2003, to come into compliance, by paying the fine imposed and by completing the continuing medical education requirements. NOTICE is hereby given that, if the licensee should fail to come into compliance within that six (6) month period, the license to practice medicine in the Commonwealth of Kentucky held by the licensee shall be immediately suspended and shall remain suspended until the licensee has submitted verifiable evidence that the licensee has completed the continuing medical education requirements.

SO ORDERED this 8<sup>th</sup> day of May, 2003.

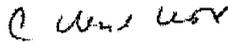


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DANNY M. CLARK, M.D.  
PRESIDENT

Certificate of Service

I certify that the original of this Order was delivered to C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, and a copy was mailed, by certified mail return-receipt requested, to Douglas H. Rank, M.D., 958 Broadway Plaza, Paintsville, Kentucky 41240 on this 9th day of May, 2003.



---

C. Lloyd Vest II  
General Counsel  
310 Whittington Parkway, Suite 1B  
Kentucky Board of Medical Licensure  
Louisville, Kentucky 40222  
(502) 429-8046



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.  
Commissioner

Dennis P. Whalen  
Executive Deputy Commissioner

April 16, 2002

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Robert Bogan, Esq.  
& Robert Maher, Esq.  
NYS Department of Health  
Hedley Park Place – 4<sup>th</sup> Floor  
Troy, New York 12180

Hermes Fernandez, Esq.  
Bond, Schoeneck & King, LLP  
111 Washington Avenue  
Albany, New York 12210-2211

OHIO STATE MEDICAL BOARD

Douglas Holland Rank, M.D.  
6462 Stover Drive  
Cincinnati, Ohio 45237

Douglas Holland Rank, M.D.  
3133 Custer Drive  
Lexington, Kentucky 40517

OCT 21 2003

**RE: In the Matter of Douglas Holland Rank, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 01-272) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

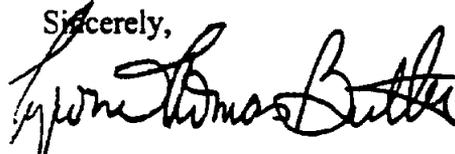
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct  
New York State Department of Health  
Hedley Park Place  
433 River Street-Fourth Floor  
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:cah  
Enclosure

OHIO STATE MEDICAL BOARD

OCT 21 2003

**STATE OF NEW YORK : DEPARTMENT OF HEALTH  
ADMINISTRATIVE REVIEW BOARD FOR PROFESSIONAL MEDICAL CONDUCT**

**In the Matter of**

**Douglas Holland Rank, M.D. (Respondent)**

**A proceeding to review a Determination by a  
Committee (Committee) from the Board for  
Professional Medical Conduct (BPMC)**

**Administrative Review Board (ARB)**

**Determination and Order No. 01-272**

**COPY**

**Before ARB Members Grossman, Lynch, Pellman, Price and Briber  
Administrative Law Judge James F. Horan drafted the Determination**

**OHIO STATE MEDICAL BOARD**

**OCT 21 2003**

**For the Department of Health (Petitioner):**

**Paul Robert Mahar, Esq.**

**For the Respondent:**

**Hermes Fernandez, Esq.**

In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's 2002), the ARB determines the penalty to impose against the Respondent following a ruling that he engaged in sexual conduct with a patient, while practicing medicine in another state. After a hearing below, a BPMC Committee revoked the Respondent's New York Medical License. The Respondent asks the ARB to reduce that penalty and alleges that the Committee failed to consider mitigating factors in assessing the penalty in this case. After reviewing the hearing record and the review submissions from the parties, the ARB affirms the Committee's Determination.

**Committee Determination on the Charges**

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent violated N. Y. Educ. Law §§ 6530(9)(b) & (9)(d) (McKinney Supp. 2001) by committing professional misconduct because:

- the duly authorized professional disciplinary agency from another state found the Respondent guilty for professional misconduct [§6530(9)(b)] and/or took

disciplinary action against the Respondent's medical license in that state [§6530(9)(d)], for, conduct that would constitute professional misconduct, if the Respondent had committed such conduct in New York.

The Petitioner's Statement of Charges [Petitioner Exhibit 1] alleged that the Respondent's misconduct in Kentucky would constitute misconduct if committed in New York, under the following categories:

- practicing medicine with negligence on more than one occasion, a violation under N. Y. Educ. Law §§ 6530(3) (McKinney 2002),
- willful or grossly negligent failure to comply with Federal, state or local laws, rules or regulations governing the practice of medicine, a violation under N. Y. Educ. Law §6530(16) (McKinney 2002)
- engaging in conduct that evidences moral unfitness, a violation under N. Y. Educ. Law § 6530(20) (McKinney 2002), and,
- physical contact of a sexual nature between a patient and psychiatrist, in the practice of psychiatry, a violation under N. Y. Educ. Law §6530(44) (McKinney 2002).

An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney 2002), before a BPMC Committee, which rendered the Determination now on review. In the Direct Referral Proceeding, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, see In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The evidence at the hearing demonstrated that the Kentucky State Board of Medical Licensure (Kentucky Board) determined that the Respondent, a psychiatrist, engaged in sexual contact with a patient under his care and failed to meet acceptable psychiatrist/patient boundaries. The Kentucky Board revoked the Respondent's Kentucky medical license, stayed the revocation, suspended the license for two years, stayed the last eighteen months and placed the Respondent on probation for five years.

OHIO STATE MEDICAL BOARD  
OCT 21 2003

The BPMC Committee determined that the Respondent's Kentucky conduct would constitute misconduct in New York as:

- practicing with negligence on more than one occasion,
- willful or grossly negligent failure to comply with statutes, rules or regulations governing medical practice,
- engaging in conduct that evidenced moral unfitness, and,
- engaging in contact of a sexual nature between a psychiatrist and patient.

The Committee concluded that the conduct made the Respondent liable for disciplinary action against his License, pursuant to N. Y. Educ. Law §§ 6530(9)(b) & (9)(d).

The Committee voted to revoke the Respondent's License. The Committee noted that the patient at issue suffered marital difficulties during her relationship with the Respondent. The Committee found that the Respondent's relationship with the Patient came about despite the Respondent's acknowledgement that he knew he was wrong to have sexual contact with a patient. The Committee noted that the Respondent engaged in the conduct on multiple occasions and that the Respondent willfully violated the rules against the conduct.

OHIO STATE MEDICAL BOARD

OCT 21 2003

#### Review History and Issues

The Committee rendered their Determination on November 16, 2001. This proceeding commenced on December 5, 2001, when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and the Petitioner's response brief. The record closed when the ARB received the response brief on January 11, 2002.

The Respondent asks that the ARB overrule the Committee. The Respondent argues that the Kentucky Board imposed a well-reasoned decision and that the Committee failed to consider mitigating factors in assessing a penalty in New York. The Respondent contends that the relationship with the patient constituted a brief, isolated incident without premeditation or

coercion. The Respondent argues that he has acknowledged his responsibility and sought remediation. He also notes that the severe sanction in Kentucky has resulted in collateral losses in his Kentucky practice.

In response, the Petitioner argued that the Respondent was aware of the patient's vulnerability and the Petitioner asked that the ARB affirm the Committee's Determination.

#### Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination to revoke the Respondent's License. We disagree with the Respondent's assertion that the Kentucky conduct constituted an aberration, without premeditation. The Respondent conceded that he knew he was violating rules and he knew he was wrong to conduct a relationship with a patient, but the Respondent engaged in the conduct anyway. The Respondent also engaged in the conduct on multiple occasions. We conclude that the Committee considered the facts in this case carefully and that the Committee came to the appropriate conclusion. A physician who engages in sexual conduct with a vulnerable patient violates the medical profession's standards and violates the patient's trust. The Respondent's conduct demonstrates his unfitness to practice medicine in New York.

OHIO STATE MEDICAL BOARD  
OCT 21 2003

**ORDER**

**NOW**, with this Determination as our basis, the ARB renders the following **ORDER**:

1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to revoke the Respondent's License.

Robert M. Briber  
Thea Graves Pellman  
Winston S. Price, M.D.  
Stanley L. Grossman, M.D.  
Therese G. Lynch, M.D.

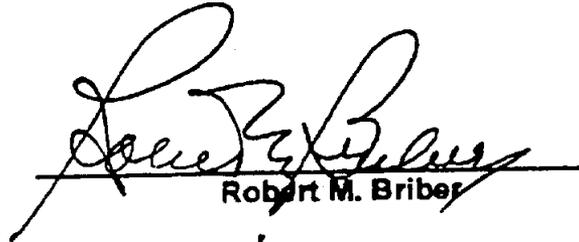
**OHIO STATE MEDICAL BOARD**

**OCT 21 2003**

In the Matter of Douglas Holand Rank, M.D.

Robert M. Briber, an ARB Member concurs in the Determination and Order in the Matter of Dr. Rank.

Dated: March 20, 2002



Robert M. Briber

OHIO STATE MEDICAL BOARD

OCT 21 2003

In the Matter of Douglas Holand Rank, M.D.

Thea Graves Pellman, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Rank.

Dated: 4/11, 2002



Thea Graves Pellman

OHIO STATE MEDICAL BOARD

OCT 21 2003

**In the Matter of Douglas Holand Rank, M.D.**

Winston S. Price, M.D., an ARB Member concurs in the Determination and Order in the

Matter of Dr. Rank.

Dated: 3/12, 2002



Winston S. Price, M.D.

OHIO STATE MEDICAL BOARD

OCT 21 2003

In the Matter of Douglas Holand Rank, M.D.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the  
Matter of Dr. Rank.

Dated: March 11, 2002

Stanley L. Grossman, M.D.

Stanley L. Grossman, M.D.

OHIO STATE MEDICAL BOARD

OCT 21 2003

In the Matter of Douglas Holand Rank, M.D.

Therese G. Lynch, M.D., an ARB Member concurs in the Determination and Order in  
the Matter of Dr. Rank.

Dated: March, 2002

Therese G. Lynch M.D.

Therese G. Lynch, M.D.

OHIO STATE MEDICAL BOARD  
OCT 21 2003



**STATE OF NEW YORK  
DEPARTMENT OF HEALTH**

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

November 16, 2001

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Robert Bogan, Esq.  
& Robert Maher, Esq.  
NYS Department of Health  
Hedley Park Place – 4<sup>th</sup> Floor  
Troy, New York 12180

Hermes Fernandez, Esq.  
Bond, Schoeneck & King, LLP  
111 Washington Avenue  
Albany, New York 12210-2211

Douglas Holland Rank, M.D.  
6462 Stover Drive  
Cincinnati, Ohio 45237

Douglas Holland Rank, M.D.  
3133 Custer Drive  
Lexington, Kentucky 40517

OHIO STATE MEDICAL BOARD

OCT 21 2003

**RE: In the Matter of Douglas Holland Rank, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 01-272) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct  
New York State Department of Health  
Hedley Park Place  
433 River Street - Fourth Floor  
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
Hedley Park Place  
433 River Street, Fifth Floor  
Troy, New York 12180

OHIO STATE MEDICAL BOARD  
OCT 21 2003

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:cah  
Enclosure

OHIO STATE MEDICAL BOARD

OCT 21 2003

OHIO STATE MEDICAL BOARD

OCT 21 2003

STATE OF NEW YORK : DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER  
OF  
DOUGLAS HOLLAND RANK, M.D.

DETERMINATION

AND

ORDER

BPMC #01-272

**COPY**

A Notice of Referral Proceeding and Statement of Charges, both dated August 21, 2001, were served upon the Respondent, **DOUGLAS HOLLAND RANK, M.D.** **HRUSIKESH PARIDA, M.D.**, Chairperson, **RAFAEL LOPEZ, M.D.** and **NANCY J. MACINTYRE, R.N., PH.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on October 18, 2001, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **PAUL ROBERT MAHER, ESQ.** and **ROBERT BOGAN, ESQ.**, of Counsel. The Respondent appeared in person and by **HERMES FERNANDEZ, ESQ.**

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

**STATEMENT OF CASE**

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Sections 6530(9)(b) and (d), based upon actions constituting violations of subdivisions (3), (16), (20), and (44). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

**WITNESSES**

**OHIO STATE MEDICAL BOARD**  
**OCT 21 2003**

For the Petitioner:

None

For the Respondent:

Respondent

Diana Loh, B.S.N, M.S.N.

## FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex.". The abbreviation "FF" refers to finding(s) of fact. These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous unless otherwise specified.

1. **DOUGLAS HOLLAND RANK, M.D.**, the Respondent, was authorized to practice medicine in New York State on November 1, 1985, by the issuance of license number 164631 by the New York State Education Department (Ex. 4).
2. On May 17, 2000, the Commonwealth of Kentucky, State Board of Medical Licensure (hereinafter "Kentucky Board"), by an "Order of Revocation; Probated, Order of Suspension and Probation" (hereinafter "Kentucky Order"), revoked Respondent's license to practice medicine, stayed the revocation, suspended his license for two (2) years, stayed the last eighteen (18) months of the suspension and placed his license on five (5) years probation, based upon findings that Respondent, a psychiatrist, had sexual contact with a patient while she was under his care and that he failed to maintain acceptable psychiatrist/patient boundaries (Ex. 5).

OHIO STATE MEDICAL BOARD

OCT 21 2003

## HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the Kentucky Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to:

- New York Education Law §6530(3)(negligence on more than one occasion);
- New York Education Law §6530(16)(gross or willful failure to comply with federal, state or local laws, rules or regulations governing the practice of medicine);
- New York Education Law §6530(20)(moral unfitness);
- New York Education Law §6530(44)(physical contact of a sexual nature between a psychiatrist and patient);

### VOTE OF THE HEARING COMMITTEE

#### SPECIFICATIONS

#### FIRST SPECIFICATION

OHIO STATE MEDICAL BOARD

OCT 21 2003

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state.

**VOTE: SUSTAINED (3-0)**

#### SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the

disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state.

**VOTE: SUSTAINED (3-0)**

OHIO STATE MEDICAL BOARD

OCT 21 2003

### HEARING COMMITTEE DETERMINATION

The record in this case establishes that on May 17, 2000, the Kentucky Board, by issuance of the Kentucky Order, revoked Respondent's license to practice medicine, stayed the revocation, suspended his license for two years, stayed the last eighteen months of the suspension and placed his license on five years probation, based upon findings that Respondent had sexual contact with a patient while she was under his care and that he failed to maintain acceptable psychiatrist/patient boundaries. Specifically, Respondent had sexual intercourse with a patient on at least four occasions, and engaged in inappropriate out-of-office contacts with her, at a time when he was treating her (Hearing Officer's findings of fact, contained in exhibit 5).

Respondent's actions constituted misconduct in New York State under the statutory provisions cited above. Specifically, Respondent's conduct would have constituted negligence on more than one occasion had it occurred in New York, involved a willful failure to comply with state laws governing the practice of medicine (as cited in Ex. 5), and evinced moral unfitness.

The Department also charged that Respondent's conduct would have constituted misconduct in New York under New York Education Law §6530(44), which defines misconduct, in pertinent part, as follows:

In the practice of psychiatry, ... any physical contact of a sexual nature between the licensee and patient...

The question of whether Respondent's conduct violated this definition of misconduct is more complex, given the history of Respondent's involvement with this patient. Although resolution of this issue is not crucial to the ultimate result in this proceeding, since the charge was made, it must be addressed.

The Kentucky Hearing Officer's fact-findings indicate that Respondent treated the patient on at least a weekly basis for severe migraine headaches resulting from an automobile accident, and related depression, from November, 1993 through early September, 1994. At that time, he discharged the patient because she made physical advances toward him and he believed that she was suffering from "transference", ... a primarily unconscious tendency ... to assign to her psychiatrist those feelings originally connected with significant figures during the course of early development" (Ex. 5, FF's 8-10).

However, in March, 1995, Respondent again began to see the patient, at the request of her surgeon, for treatment of her severe migraine headaches. Thereafter, their relationship developed into a social, business and sexual relationship, all while Respondent was treating the patient (Ex. 5, FF's 11-22). Although Respondent was billing the patient (or her insurance carrier) only for medical care, and not psychiatric care, during this period, the Hearing Committee concludes that the care being provided to the patient was provided "in the practice of psychiatry", since the patient had previously been his psychiatric patient, and especially since there is no evidence that the patient was not still suffering from some depression and/or transference. This was not a case where a mentally stable patient was seen by a psychiatrist solely for medical care, where the argument that there was no "practice of psychiatry" might be stronger. The patient was a former psychiatric patient and was, during this period, experiencing marital difficulties.

OHIO STATE MEDICAL BOARD

OCT 21 2003

This conclusion is consistent with the conclusion reached by the Kentucky Board, as expressed in the Hearing Officer's FF # 44, as incorporated into the final order:

Finally, despite some evidence presented to the contrary, it was found as fact that Dr. Rank's professional transgressions and boundary violations with Patient A occurred during the course of the psychiatrist-patient relationship. The undersigned adopts the conclusions reached in [thereafter-cited] decisions which hold that a violation is committed, for which a sanction should be imposed, even if the professional relationship is terminated prior to the initiation of the sexual relationship with the patient.

Since Respondent was found guilty of medical misconduct and disciplined in Kentucky after charges were brought against him, the acts for which he was disciplined in Kentucky constitute misconduct under New York Education Law §6530(9)(b) and (d).

Having so found, the Hearing Committee next addresses itself to the appropriate penalty to be imposed. The Hearing Committee concludes that revocation of Respondent's New York License is the appropriate penalty under the circumstances. The Hearing Committee was especially troubled by the evidence as to how Respondent's sexual relationship with the patient came about, and by his admissions at the hearing that, despite his knowledge that it was wrong to have sexual contact with a patient, he did so on multiple occasions, and that, despite his knowledge that there were rules against this behavior, he willfully violated these rules.

The Hearing Committee does not feel constrained to be as lenient toward Respondent as was the Kentucky Board, and, in fact, concludes that no tolerance should be accorded to physicians who engage in sexual activity with patients. The Hearing Committee concludes, therefore, that Respondent's New York medical license should be revoked. The Hearing Committee was not swayed by the evidence presented by Respondent as to the steps he has taken to minimize the possibility that such conduct might be repeated.

OHIO STATE MEDICAL BOARD

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**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. Respondent's New York Medical license should be **REVOKED**.

The **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

**DATED: Middletown, New York**  
9 Nov., 2001

*Hrusikesh Parida*  
\_\_\_\_\_  
**HRUSIKESH PARIDA, M.D.**  
Chairperson

**RAFAEL LOPEZ, M.D.**  
**NANCY J. MACINTYRE, R.N., PH.D.**

**OHIO STATE MEDICAL BOARD**

**OCT 21 2003**

# APPENDIX 1

OHIO STATE MEDICAL BOARD

OCT 21 2003

EXHIBIT  
810  
KTD 10/18/01

STATE OF NEW YORK DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER  
OF  
DOUGLAS HOLLAND RANK, M.D.  
CO-01-06-2785-A

NOTICE OF  
REFERRAL  
PROCEEDING

TO: DOUGLAS HOLLAND RANK, M.D.  
6462 Stover Drive  
Cincinnati, Ohio 45237

DOUGLAS HOLLAND RANK, M.D.  
3133 Custer Drive  
Lexington, KY 40517

OHIO STATE MEDICAL BOARD  
OCT 21 2003

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 28<sup>th</sup> day of September 2001, at 10:00 in the forenoon of that day at the Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered that would show that the conviction would not be a crime in New York state. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication,

Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before September 18, 2001.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before September 18, 2001, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR

OHIO STATE MEDICAL BOARD  
OCT 21 2003

EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN  
ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

*August 21, 2001*



PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan  
Associate Counsel  
New York State Department of Health  
Office of Professional Medical Conduct  
433 River Street - Suite 303  
Troy, New York 12180  
(518) 402-0828

OHIO STATE MEDICAL BOARD  
OCT 21 2003

STATE OF NEW YORK                      DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

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IN THE MATTER  
OF  
DOUGLAS HOLLAND RANK, M.D.  
CO-01-06-2785-A

---

STATEMENT  
OF  
CHARGES

DOUGLAS HOLLAND RANK, M.D., the Respondent, was authorized to practice medicine in New York state on November 1, 1985, by the issuance of license number 164631 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

OHIO STATE MEDICAL BOARD

A. On or about May 17, 2000, the Commonwealth of Kentucky, State Board of Medical Licensure (hereinafter "Kentucky Board"), by an Order of Revocation; Probated, Order of Suspension and Probation (hereinafter "Kentucky Order"), revoked Respondent's license to practice medicine, stayed the revocation, suspended his license for two (2) years, stayed the last eighteen (18) months of the suspension and placed his license on five (5) years probation, based on Respondent, a psychiatrist, having sexual contact with a patient while she was under his care and his failure to maintain acceptable psychiatrist/patient boundaries.

B. The conduct resulting in the Kentucky Board's disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state Law:

1. New York Education Law §6530(3) (negligence on more than one occasion);
2. New York Education Law §6530(16) (failure to comply with federal, state, or local laws, rules, or regulations governing the practice of medicine);
3. New York Education Law §6530(20) (moral unfitness); and/or

4. New York Education Law §6530(44) (in the practice of psychiatry, physical contact of a sexual nature between licensee and patient).

**SPECIFICATIONS**  
**FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.

**SECOND SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

2. The facts in Paragraphs A and/or B.

DATED: *August 21*, 2001  
Albany, New York

  
PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional Medical Conduct

OHIO STATE MEDICAL BOARD

OCT 21 2003