

# State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.  
Executive Director

(614) 466-3934  
med.ohio.gov

October 14, 2009

Frank Murray Strasek, D.P.M.  
20534 Lake Road  
Rocky River, OH 44116

RE: 09-CRF-073

Dear Doctor Strasek:

Please find enclosed a certified copy of the Findings, Order and Journal Entry approved and confirmed by the State Medical Board meeting in regular session on October 14, 2009.

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

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

Very truly yours,



Lance A. Talmage, M.D.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL RECEIPT NO. 91 7108 2133 3934 3487 6857  
RETURN RECEIPT REQUESTED

*Mailed 10.15.09*

CERTIFICATION

I hereby certify that the attached copy of the Findings, Order and Journal Entry approved by the State Medical Board, meeting in regular session on October 14, 2009, constitutes a true and complete copy of the Findings, Order and Journal Entry in the Matter of Frank Murray Strasek, D.P.M., Case Number 09-CRF-073, as it appears in the Journal of the State Medical Board of Ohio.

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



Lance A. Talmage, M.D.  
Secretary

(SEAL)

October 14, 2009

\_\_\_\_\_  
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF :  
 : Case No. 09-CRF-073  
FRANK MURRAY STRASEK, D.P.M. :

**FINDINGS, ORDER AND JOURNAL ENTRY**

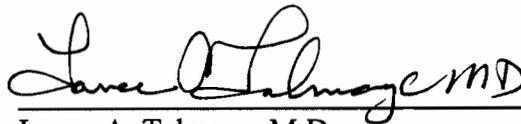
This matter came on for consideration before the State Medical Board of Ohio on October 14, 2009, pursuant to a Notice of Opportunity for Hearing issued to Frank Murray Strasek, D.P.M., on June 10, 2009. No request for hearing having been received within the statutorily mandated time period, Hearing Examiner Patricia A. Davidson, Esq., on behalf of the Board, reviewed and summarized evidence supporting the Notice, and prepared Proposed Findings and a Proposed Order.

WHEREFORE, having reviewed Ms. Davidson's Proposed Findings and Proposed Order, which is attached hereto and incorporated herein, the Board hereby adopts the Proposed Findings and Proposed Order.

Accordingly, it is hereby ORDERED that:

The certificate of Frank Murray Strasek, D.P.M., to practice podiatric medicine and surgery in the State of Ohio is PERMANENTLY REVOKED.

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



Lance A. Talmage, M.D.  
Secretary

(SEAL)

October 14, 2009  
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

2009 SEP 21 PM 3: 18

**In the Matter of**

\*

**Case No. 09-CRF-073**

**Frank Murray Strasek, D.P.M.**

\*

**Hearing Examiner Davidson**

**Respondent.**

\*

**PROPOSED FINDINGS AND PROPOSED ORDER**

Basis for the Review

*Notice of Opportunity for Hearing:* In a letter dated June 10, 2009 [Notice], the State Medical Board of Ohio notified Frank Murray Strasek, D.P.M., that it proposed to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate his certificate to practice podiatric medicine and surgery, or to reprimand him or place him on probation. (Exhibit 1)

The Board's proposed action was based on allegations including the following:

- In an Order entered in July 2006 the Board concluded that Dr. Strasek had violated Ohio Revised Code Section [R.C.] 4731.22(B)(9), and the Board permanently revoked his certificate to practice podiatric medicine and surgery. The Board stayed the permanent revocation, suspended Dr. Strasek's certificate for an indefinite period not less than six months, and provided conditions for reinstatement of the certificate subject to probationary terms, conditions, and limitations.
- In July 2007, the Board reinstated Dr. Strasek's certificate pursuant to the 2006 Board Order. The probationary period remains in effect, and, therefore, Dr. Strasek remains subject to the probationary terms, conditions, and limitations of the 2006 Board Order.
- In August 2008, the Board entered an Order finding that Dr. Strasek had violated the probationary terms of the 2006 Board Order. In this 2008 Board Order, the Board reprimanded Dr. Strasek and extended for six months the minimum probationary period imposed by the Board in the 2006 Board Order, which remains in effect.
- Under the 2006 Board Order and the 2008 Board Order, Dr. Strasek was required to appear in person for an interview every three months before the Board or its designated representative. However, Dr. Strasek failed to appear as scheduled in January 2009, February 2009, March 2009, April 2009, and May 2009.

The Board charged that Dr. Strasek's acts, conduct, and/or omissions constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that language is used in R.C. 4731.22(B)(15). The Board notified Dr. Strasek that he was entitled to a hearing if he made a written request within thirty days. (Ex. 1)

2009 SEP 21 PM 3: 18

STATE MEDICAL BOARD  
OF OHIO

*No Request for Hearing from the Respondent:* On July 6, 2009, the Notice was served on Dr. Strasek by hand delivery. Dr. Strasek signed a written acknowledgement of his receipt of the Notice, and he further acknowledged his understanding that, if he wished to have a hearing, he must submit a request no later than August 5, 2009. As of August 20, 2009, the Board had not received a request for hearing from Dr. Strasek. (Exs. 3, 3B)

*Board's Request for Proposed Findings and Proposed Order.* In a memorandum dated August 21, 2009, the Public Services Administrator requested that a hearing examiner review the attached evidence and prepare Proposed Findings and a Proposed Order ("PFPO"). (Ex. 5)

### Evidence Examined

Exhibit 1: Affidavit of the Public Services Administrator for the Board, signed August 20, 2009, authenticating the accompanying documents:

Exhibit 1A: Notice of opportunity for hearing issued in *Matter of Frank Murray Strasek, D.P.M.* (May 2005), with copies of documents relating to Dr. Strasek's criminal conviction in *United States v. Strasek, Case No. 1:04CR-250* (Northern District of Ohio), including indictment, plea agreement, and judgment entry.

Exhibit 1B: Board documents relating to the proceedings in *Matter of Frank Murray Strasek, D.P.M.*,\* including the Report and Recommendation of the Hearing Examiner (May 2006), the Board's Entry of Order (July 2006), and an excerpt from the draft minutes for the Board Meeting in July 2006.

Exhibit 1C: Notice of opportunity for hearing issued by the Board in *Matter of Frank Murray Strasek, D.P.M.*, Case No. 08-CRF-067 (May 2008). The notice was based on allegations that Dr. Strasek had violated the Board's 2006 Order by failing to comply with the federal court's sentencing order.

Exhibit 1D: Board documents regarding *Strasek*, Case No. 08-CRF-067, including the Hearing Examiner's Proposed Findings and Proposed Order (July 2008), which sets forth, among other things, portions of the transcript from the federal court's hearing regarding Dr. Strasek's failure to comply with the sentencing order.

In addition, this exhibit includes the Board's Findings, Order and Journal Entry, entered in August 2008 in Case No. 08-CRF-067. In the 2008 Board Order, the Board amended its 2006 Board Order, but only to extend the previously ordered period of probation, for a total probationary period of at least three years and six months. The Board stated that all other terms, conditions, and limitations of the 2006 Board Order remained in full force and effect.

Exhibit 1E: Notice of opportunity for hearing issued in *Matter of Frank Murray Strasek, D.P.M.*, Case No. 09-CRF-073 (June 2009).

Exhibit 2: Affidavit of the Continuing Medical Education and Renewal Officer, confirming Dr. Strasek's address of record as of August 18, 2009.

---

\* Prior to October 2007, the Board did not assign case numbers to its adjudicative matters. This 2006 action has the same name as the 2008 action and the 2009 action, but it is a separate and distinct administrative action.

Exhibit 3: Affidavit of the Board's Public Services Administrator regarding service of the notice of opportunity for hearing in Case No. 09-CRF-073, and also attesting that, as of August 20, 2009, the Board had not received a request for hearing from Dr. Strasek.

Exhibit 4: Affidavit of the Board's Compliance Supervisor, stating, among other things, that Dr. Strasek failed to attend his quarterly appearances that were scheduled for the following dates: January 13, 2009; February 9, 2009; March 9, 2009; April 7, 2009; May 11, 2009. In this affidavit, the Compliance Supervisor also authenticated copies of correspondence with Dr. Strasek regarding his scheduled appearances:

Exhibit 4A: The Board's letter to Dr. Strasek scheduling him for an appearance on January 13, 2009.

Exhibit 4B: Email message from Dr. Strasek on January 12, 2009, stating that he was unable to attend his appearance the next day because his car would not start in the cold weather, and asking to be rescheduled to appear in February, and the Compliance Supervisor's response.

Exhibit 4C: The Board's letter to Dr. Strasek scheduling him for an appearance on February 9, 2009.

Exhibit 4D: The Board's letter to Dr. Strasek scheduling him for an appearance on March 9, 2009.

Exhibit 4E: The Board's letter to Dr. Strasek scheduling him for an appearance on April 7, 2009.

Exhibit 4F: The Board's letter to Dr. Strasek scheduling him for an appearance on May 11, 2009.

Exhibit 4G: Email message from Dr. Strasek on May 11, 2009, stating among other things:

- "I am now in 2x compliance problem/violation."
- His conduct in "missing the appointments has not been intentional," and that he hopes it will not "be misconstrued as lack of interest, or lack of respect for the SMBO and the opportunity [he] was granted."
- He has not yet reopened his practice due to a number of difficulties.

Exhibit 5: Memorandum dated March 10, 2009, requesting a PFPO report.

The Hearing Examiner also took notice of the current status of Dr. Strasek's certificate to practice podiatric medicine and surgery in Ohio. According to the Ohio eLicense Center, Dr. Strasek's certificate expired on January 1, 2008. (<<https://license.ohio.gov/lookup/default.asp>>, entry for Frank Murray Strasek, D.P.M., 18 Sept. 2009.)

**Proposed Findings**

1. On or about July 12, 2006, the Board entered an Order [2006 Board Order] finding that Frank Murray Strasek, D.P.M., was in violation of Ohio Revised Code Section [R.C.] 4731.22(B)(9). The 2006 Board Order permanently revoked Dr. Strasek's certificate to practice podiatric medicine and surgery in Ohio but then stayed the permanent revocation. The Board suspended the certificate for an indefinite period of time not less than six months and provided for reinstatement of the certificate followed by at least three years of probation subject to probationary terms, conditions, and limitations.

*This proposed finding is supported by Exhibit 1B.*

2. On or about July 11, 2007, the Board reinstated Dr. Strasek's certificate to practice podiatric medicine and surgery, and his probation commenced. Dr. Strasek currently remains subject to the probationary terms, conditions, and limitations set forth in the 2006 Board Order.

*This proposed finding is supported by Exhibit 1D (including the 2008 Board Order and accompanying Proposed Findings and Proposed Order at page 3).*

3. On or about August 14, 2008, the Board entered Findings, Order and Journal Entry in the *Matter of Frank Murray Strasek, D.P.M.*, Case No. 08-CRF-067 [2008 Board Order]. The Board found that Dr. Strasek had violated the 2006 Board Order and had thus violated R.C. 4731.22(B)(15). The Board reprimanded Dr. Strasek and extended by six months the probationary period ordered in the 2006 Board Order. The Board further stated that the 2006 Board Order remained in full force and effect.

*This proposed finding is supported by Exhibit 1D.*

4. Paragraph C.3 of the 2006 Board Order requires Dr. Strasek to appear in person for an interview every three months before the full Board or its designated representative.

Dr. Strasek failed to attend probationary office conferences scheduled for January 13, 2009, February 9, 2009, March 9, 2009, April 7, 2009, and May 11, 2009. Accordingly, he has violated the 2006 Board Order.

*This proposed finding is supported by Exhibits 1B, 4, 4A-4G. Although the Hearing Examiner accepts with regard to the January 2009 appearance that cold weather may have prevented Dr. Strasek from attending the appearance as scheduled, the Board rescheduled that appearance to take place in February 2009, and Dr. Strasek again failed to attend. Dr. Strasek then failed to attend every scheduled appearance from February 2009 through May 2009.*

5. Dr. Strasek's acts, conduct, and/or omissions as set forth in the Proposed Findings above, individually and/or collectively, constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that language is used in R.C. 4731.22(B)(15).

### **Discussion of the Proposed Order**

In its 2006 Order, the Board found that Dr. Strasek had been convicted of federal crimes based on fraudulent billing practices. His criminal convictions constituted a violation of R.C. 4731.22(B)(9) for which some physicians have had their certificates permanently revoked. However, based on the individual circumstances, the Board stayed the permanent revocation of Dr. Strasek's certificate in 2006.

However, Dr. Strasek then violated the Board's 2006 Order by failing to comply with the terms and conditions imposed by the federal court in its sentencing order. When the Board issued a notice of opportunity for hearing on this matter, Dr. Strasek did not request a hearing. The Board found that Dr. Strasek had violated the Board's 2006 Order, but it did not lift the stay of the permanent revocation or impose another suspension at that time.

Now, Dr. Strasek has again violated the 2006 Board Order. He did not ask for a hearing. His acts, omissions, and conduct as a whole show only a mild concern about complying with the Board's probationary terms.

A suspension is unlikely to have a beneficial effect, as Dr. Strasek has a history of marked indifference to compliance. He violated federal law, he violated the federal court's order, and he violated the Board's 2006 order more than once. The Hearing Examiner believes that the Board should lift the stay on the permanent revocation of Dr. Strasek's certificate.

### **PROPOSED ORDER**

It is hereby **ORDERED** that:

The certificate of Frank Murray Strasek, D.P.M., to practice podiatric medicine and surgery in the State of Ohio is **PERMANENTLY REVOKED**.

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



---

Patricia A. Davidson  
Hearing Examiner



**State Medical Board of Ohio**  
30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.  
Executive Director

(614) 466-3934  
med.ohio.gov

**Memorandum**

TO: BOARD MEMBERS  
FROM: Patricia A. Davidson<sup>PD</sup>, Chief Hearing Examiner  
RE: Frank Murray Strasek, D.P.M.  
Case No. 09-CRF-073  
DATE: September 21, 2009

Please find enclosed copies of the exhibits and the Proposed Findings and Proposed Order concerning the review of the above-referenced matter by Hearing Examiner Davidson.

This matter is scheduled for consideration at the October 14, 2009, Board meeting.

The allegations contained in the Board's notice of opportunity for hearing concern the following issues: Violation of Board Order.

The following sections of the Disciplinary Guidelines were considered in drafting the Proposed Order in this matter. Please note, however, that the Disciplinary Guidelines do not limit any sanction that the Board may impose, and that the range of sanctions available in this matter extends from dismissal to permanent revocation.

**VII.B: VIOLATION OF CONDITIONS OF LIMITATION, OTHER THAN PRACTICE PROHIBITIONS, PLACED BY THE BOARD.**

- The minimum penalty for section VII.B is: Stayed revocation; indefinite suspension, min. as appropriate, with conditions for reinstatement; subsequent probation, min. 5 years.
- The maximum penalty for section VII.B is: Permanent revocation of certificate or permanent denial of application.

The Proposed Order is within the penalties delineated for each of the Disciplinary Guidelines noted above.

enclosures



# State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.  
Executive Director

(614) 466-3934  
med.ohio.gov

June 10, 2009

Case number: 09-CRF- 073

Frank Murray Strasek, D.P.M.  
20534 Lake Road  
Rocky River, Ohio 44116

Dear Doctor Strasek:

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

- (1) On or about July 12, 2006, by Order of the Board [2006 Board Order], you were found to be in violation of Section 4731.22(B)(9), Ohio Revised Code. The 2006 Board Order permanently revoked your certificate to practice podiatric medicine and surgery, stayed such revocation, and suspended your certificate for an indefinite period of time, but not less than six months. The 2006 Board Order also provided conditions for reinstatement, which upon completion, would allow for the reinstatement or restoration of your certificate subject to probationary terms, conditions, and limitations.

On or about July 11, 2007, your certificate to practice podiatric medicine and surgery was reinstated, and as of this date, you remain subject to the probationary terms, conditions, and limitations of the 2006 Board Order, a copy of which is attached hereto and incorporated herein.

- (2) On or about August 14, 2008, by Order of the Board [2008 Board Order], you were found to be in violation of Section 4731.22(B)(15), Ohio Revised Code. The 2008 Board Order reprimanded you, as well as extended by six months the probationary terms, conditions and limitations contained in your 2006 Board Order. A copy of the 2008 Board Order is attached hereto and incorporated herein.
- (3) Paragraph C.3. of the 2006 Board Order, as modified in the 2008 Board Order, requires you to appear in person for an interview every three months before the full Board, or its designated representative. You failed to attend probationary

*Mailed 6-11-09*

Frank Murray Strasek, D.P.M.

Page 2

office conferences scheduled for January 13, 2009, February 9, 2009, March 9, 2009, April 7, 2009, and May 11, 2009.

Your acts, conduct, and/or omissions as alleged in paragraph (3) above, individually and/or collectively, constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

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

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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.  
Secretary

LAT/DSZ/flb  
Enclosures

CERTIFIED MAIL #91 7108 2133 3936 3083 4439  
RETURN RECEIPT REQUESTED

  
**State Medical Board of Ohio**  
30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.  
Executive Director

(614) 466-3934  
med.ohio.gov

August 14, 2008

Frank Murray Strasek, D.P.M.  
20534 Lake Road  
Rocky River, OH 44116

RE: 08-CRF-067

Dear Doctor Strasek:

Please find enclosed a certified copy of the Findings, Order and Journal Entry approved and confirmed by the State Medical Board meeting in regular session on August 14, 2008.

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

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

Very truly yours,

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

LAT:jam  
Enclosures

CERTIFIED MAIL RECEIPT NO. 91 7108 2133 3934 3487 3054  
RETURN RECEIPT REQUESTED

*Re-mailed 9/15/08 via  
certificate of mailing*

*Mailed 8.14.08*

CERTIFICATION

I hereby certify that the attached copy of the Findings, Order and Journal Entry approved by the State Medical Board, meeting in regular session on August 14, 2008, constitutes a true and complete copy of the Findings, Order and Journal Entry in the Matter of Frank Murray Strasek, D.P.M., Case Number 08-CRF-067, as it appears in the Journal of the State Medical Board of Ohio.

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

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

(SEAL)

August 14, 2008  
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF :  
: Case No. 08-CRF-067  
FRANK MURRAY STRASEK, D.P.M. :

**FINDINGS, ORDER AND JOURNAL ENTRY**

This matter came on for consideration before the State Medical Board of Ohio on August 14, 2008, pursuant to a Notice of Opportunity for Hearing issued to Frank Murray Strasek, D.P.M., on May 14, 2008. No request for hearing having been received within the statutorily mandated time period, Hearing Examiner Patricia A. Davidson, Esq., on behalf of the Board, reviewed and summarized evidence supporting the Notice, and prepared Proposed Findings and a Proposed Order.

WHEREFORE, having reviewed Ms. Davidson's Proposed Findings and Proposed Order, which is attached hereto and incorporated herein, the Board hereby adopts the Proposed Findings and Proposed Order.

Accordingly, it is hereby ORDERED that:

- A. Frank Murray Strasek, D.P.M., is hereby REPRIMANDED.
- B. The Board's Order dated July 12, 2006, in the *Matter of Frank Murray Strasek*, is hereby modified to this extent: the previously ordered minimum period of probation is extended by six months, for a total probationary period of at least three years and six months. All other terms, conditions, and limitations of the July 2006 Order remain in full force and effect.

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

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

(SEAL)

August 14, 2008  
Date

2008 JUL 14 A 10: 21

**PROPOSED FINDINGS AND PROPOSED ORDER  
IN THE MATTER OF FRANK MURRAY STRASEK, D.P.M  
Case No. 08-CRF-067**

The Matter of Frank Murray Strasek, D.P.M., was reviewed by Patricia A. Davidson, Hearing Examiner for the State Medical Board of Ohio.

**INTRODUCTION**

**Basis for the Review**

1. On May 14, 2008, the State Medical Board of Ohio [Board] issued a notice of opportunity for hearing [Notice] to Frank Murray Strasek, D.P.M., informing him that the Board intended to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate his certificate to practice podiatric medicine and surgery, or to reprimand him or place him on probation. The Board alleged, among other things, that Dr. Strasek had violated the terms of his probation as imposed by the Board in an Order issued in 2006. The Board charged that Dr. Strasek's conduct constitutes a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that language is used in Ohio Revised Code Section [R.C.] 4731.22(B)(15). Further, the Board notified Dr. Strasek that he was entitled to a hearing if he submitted a written request that was "received in the offices of the Board within thirty days of the time of mailing of [the] notice." (Ex. 1)
2. The Notice was mailed to Dr. Strasek on May 15, 2008, by certified mail to his most recent address of record. The U.S. Postal Service provided a receipt showing delivery of the Notice to that address on June 2, 2008. (Exs. 1, 4-5)
3. In a sworn declaration, the Board's Public Services Administrator stated that, as of June 26, 2008, Dr. Strasek had not submitted a written hearing request to the Board. (Ex. 4)
4. In a memorandum dated June 27, 2008, the Public Services Administrator requested that a Hearing Examiner review documentary evidence, as provided, in the *Matter of Frank Murray Strasek* and prepare proposed findings and a proposed order. (Ex. 6)

**EVIDENCE EXAMINED**

**Exhibit 1:** Notice of Opportunity for Hearing and attachments including the Board's 2006 Order and the 2006 Report and Recommendation of the Hearing Examiner.

**Exhibit 2:** Minutes of the July 2007 meeting in which the Board voted to reinstate Dr. Strasek's certificate, which had been suspended in 2006.

**Exhibit 3:** Affidavit of Daniel Zinsmaster, Enforcement Attorney for the Board, with attached exhibits:

Exhibit 3-1: Documents filed in *United States v. Frank M. Strasek*, Case No. 1:04CR-250, U.S. District Court for the Northern District of Ohio.

Exhibit 3-2: Transcript of Dr. Strasek's hearing in federal court in March 2008.

Exhibit 4: Affidavit of Public Services Administrator attesting that, as of June 26, 2008, the Board had not received a hearing request from Dr. Strasek.

Exhibit 5: Affidavit of Debra Jones, Continuing Medical Education and Renewal Officer, verifying Dr. Strasek's address of record.

Exhibit 6: Memorandum to the Chief Hearing Examiner requesting a review and report.

### SUMMARY OF THE EVIDENCE

#### July 2006 Board Order

1. In an Order dated July 12, 2006, the Board found that Frank Murray Strasek, D.P.M., had pleaded guilty to, and been adjudicated guilty of, eleven felony counts of mail fraud in violation of 18 U.S.C. §1341 and nine felony counts of health-care fraud in violation of 18 U.S.C. §1347, in *United States v. Strasek*, Case No. 1:04CR-250 in the U.S. District Court for the Northern District of Ohio. The Board concluded that Dr. Strasek's plea and the adjudication constituted a "plea of guilty to [or] a judicial finding of guilt of \* \* \* a felony," under R.C. 4731.22(B)(9). (Ex. 1)<sup>1</sup>
2. The Board noted that the federal court's sentence had included the following: two months of community confinement, supervised release (probation) for a term of three years with home confinement for the first ten months under electronic monitoring, payment of the cost of the monitoring while on supervised release, 300 hours of community service, a special assessment in the amount of \$2,000, and payment of restitution in the amount of \$105,207.53. (Ex. 1)
3. The Board concluded in its 2006 Order that discipline was warranted under R.C. 4731.22(B)(9), and it imposed sanctions including a permanent revocation that was stayed, an indefinite suspension of not less than six months, reinstatement requirements, and a set of probationary terms, conditions, and limitations that would remain in effect for at least three years following reinstatement of the certificate. (Ex. 1)
4. The probationary terms imposed by the Board in its 2006 Order included the following:
  1. **Obey the Law and Terms of Criminal Probation**: Dr. Strasek shall obey all federal, state and local laws, and all rules governing the practice of podiatric medicine and surgery in Ohio, and all terms imposed by the United States District Court, Northern District of Ohio,

---

<sup>1</sup> The 2006 order incorrectly identified the respondent as "Frank Murray Strasek, M.D."

Eastern Division, in *United States v. Frank M. Strasek*, Case No. 1:04CR-250.

\* \* \*

5. **Violation of Terms of Probation:** If Dr. Strasek violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

(Ex. 1)

#### **July 2007 Reinstatement of Dr. Strasek's Certificate**

5. On July 11, 2007, the Board considered Dr. Strasek's application for the reinstatement of his certificate. By a unanimous vote, the Board reinstated his certificate, subject to the probationary terms and conditions set forth in the 2006 Order. The probationary terms remain in effect and are binding to date. (Ex. 2)

#### **Further Proceedings in Federal Court**

6. On December 19, 2007, Dr. Strasek's probation officer filed a report with the federal court stating that he believed Dr. Strasek was in violation of the Court's judgment, in that Dr. Strasek had failed to pay restitution and had failed to pay the cost of electronic monitoring for his period of home confinement, as ordered by the Court. (St. Exs. 3, 3-1)
7. The probation officer provided the following information to the Court:

**Failure to Pay Restitution:** This officer received a letter from the Department of Health and Human Services on August 29, 2006 indicating that a lump-sum payment was withheld [by] Medicare in the amount of \$84,820.83, and applied to the balance of the offender's restitution. Since that time, the offender has made one (1) \$10.00 payment, in September of 2007. He has not made a payment since.

Despite failing to make regular monthly restitution payments, it was discovered in April of 2007, that the offender is driving a 2007 Ford Edge that he claims he pays \$370.00 in monthly lease fees. He maintains that he needs a vehicle, and is making the payments based on loans he has received from friends and relatives. When advised that he would have to explain to the Court, he has stated that he is prepared to do so. The offender paid a \$2,000 Special Assessment Fee in full on July 1, 2005.

**Failure to Pay Cost of Home Confinement Program with/Electronic Monitoring Fee:** The offender completed the Home Confinement Program on May 20, 2006, however, he has not paid toward the cost of the program. He was denied waiver of the cost on January 19, 2006.

**300 Hours of Court Community Service:** The offender completed 300 hours of Court Community Service at the St. Augustine Hunger Center on October 26,

2006. According to the Director of the Hunger Center, Sister Corita Ambro, the offender's work was exemplary, and he continues to volunteer on occasion. Sister Corita maintains that the church is grateful for offender's work. He has completed over 200 hours of volunteer work in excess of his requirement. It should be noted that the offender borrowed over \$2,000.00 from St. Augustine Church. A conversation with Sister Corita revealed that she willingly lent the money to the offender. He advised this officer that he intends to pay the money back, but recently stated that he "worked the loan payment off." The offender reports that he and Sister Corita are attempting to open a medical clinic at the church on a part-time basis.

\* \* \*

**Residence:** Since October of this year, the offender has resided with his elderly mother in her single-family home located at \* \* \* Lake Road, Rocky River, Ohio. Also, living at the home are the offender's two adult sisters. He reports that his mother is currently helping him financially. Prior to this residence, he was residing at the home of a friend, [name and street address omitted], in Avon Lake, Ohio. [This friend] was frequently out of town on business and allowed the offender to reside at his home. He asked the offender to move out in October. The offender's wife filed for and was recently granted a divorce from the offender. He states there is a continuing custody case over their 7-year-old son.

**Employment:** The offender's medical license was reinstated at the end of July 2007. Prior to the reinstatement, the offender had not been employed. He reports that he has been occupied daily by continuing education for his practice, his recent divorce, community service and his continuing volunteer status at St. Augustine. The offender reports that all of his income has come in the form of loans from family and friends.

(Ex. 3-1 at pages 2-3)

8. In December 2007, the Court ordered a hearing for Dr. Strasek to address the alleged violations of his probation, and two hearings were held. At the first hearing, Dr. Strasek refused to admit that he had violated his probation, and the Court granted a postponement to allow the government to present additional evidence regarding Dr. Strasek's failure to make restitution, the amount of his expenses, and his failure to engage in active efforts to earn an income. At the second hearing, held on March 24, 2008, Dr. Strasek admitted that he had failed to pay the court-ordered restitution and costs of his home confinement. (Ex. 3-2 at 2-3)
9. At the March 2008 hearing, Dr. Strasek's attorney described the criminal conduct for which Dr. Strasek had been convicted, stating that Dr. Strasek had improperly billed Medicare/Medicaid by entering codes that were not the proper codes, which had caused him to receive higher payments than he was entitled to receive, and that, in essence, Dr. Strasek had billed the government for more services than he had actually performed. (Ex. 3-2 at 12)

10. With regard to his failure to pay restitution, Dr. Strasek emphasized that he had paid almost \$85,000 of the total amount of restitution, in a large lump-sum payment transferred from Medicare/Medicaid. He explained that, during the litigation of the government's fraud claims against him, funds lawfully owed to him by Medicare/Medicaid had not been paid to him, but were held in an escrow account pending resolution of the litigation. Upon his conviction, the monies duly owed to him were transferred to pay the court-ordered restitution and had satisfied about 80% of the total restitution. Dr. Strasek also asserted that that he had made sporadic payments totaling \$150 toward the cost of his home confinement. (Ex. 3-2 at 12-13, 26-27)
11. Dr. Strasek provided the Court with information about his other financial obligations. He emphasized that he had been paying \$337 per month in child support for his eight-year-old son and that he was current on that obligation. When the Court asked where Dr. Strasek had obtained the money to pay child support, he stated that he had been able to see a few patients since his reinstatement and that he had received some payments from past years, which he had applied to child support. He said that, on some occasions, his mother had given him money to make up shortages of ten or twenty dollars. Dr. Strasek told the Court that he was giving priority to his child-support obligation. (Ex. 3-2 at 16, 22-23)
12. Dr. Strasek added that the government had instituted a civil action against him concerning the same events that had resulted in his criminal conviction. He stated that a judgment had been rendered against him for treble damages, which meant that he now owed the government about \$315,000. He also stated that he has had to pay attorney fees for several lawsuits, including his divorce, and that he has credit-card debt and other bills. Dr. Strasek maintained that he was working diligently to get his practice up and running, and had gained access to his office and spent days cleaning it, but then he was locked out the next time he arrived, for reasons he did not know. He explained that he could not get into his office to get his accounts-receivable records, and he believed there was money owing to him that would pay off the amount he owed to the Court. His lawyer described Dr. Strasek as "overwhelmed." (Ex. 3-2 at 13-14, 20-21, 25-28)
13. Dr. Strasek acknowledged to the Court that he had taken loans from family members and from St. Augustine Church. He stated that he had submitted a letter from Sister Ambro<sup>2</sup> in which she stated that she had loaned him the money because he was struggling to get his life back together and she wanted to help him, not because she had been manipulated by him. Dr. Strasek stated that Sister Ambro had wanted to give him the money as a gift because he had helped her, but that he had insisted that he would pay the money back or work it off. Dr. Strasek told the Court that he had been living in his mother's basement for the past four months and that he had lived at a friend's house before moving to his mother's home. (Ex. 3-2 at 17-18, 24, 28, 40)
14. Regarding his search for sources of income, Dr. Strasek told the Court: "I'm pursuing the order for employment. I have not been sitting." He said he had been diligently contacting vendors and his accountant to get the supplies and the permits to reopen his practice. In addition, Dr. Strasek claimed that he had been writing "some books" that were about to be published and

---

<sup>2</sup> The transcript of the hearing refers to Sister Ambro as "Sister Ambrose." (Ex. 3-2)

that he had submitted applications for employment at Lowe's, for "internet jobs," and with a headhunter. He stated that he had received communications from people who were awaiting his return to practice. He urged the Court to believe that he was "on the verge" of being able to service his debts. (Ex. 3-2 at 25-28)

15. The government argued that Dr. Strasek's statements about being close to reopening his practice were unrealistic because he had been excluded from the Medicare/Medicaid system for 13 years, and private insurers were unlikely to look favorably on him. The government noted that the amounts supposedly owing to Dr. Strasek had not yet been billed and probably could not be billed at this point, years after the services were rendered. In addition, the government emphasized that Dr. Strasek had waited until three months before the end of his three-year term of supervised release to apply for any employment, and that he had not submitted applications until the Court scheduled a hearing on his violation of court-ordered terms. (Ex. 3-2 at 31-32)
16. The government presented Dr. Strasek's application to obtain the lease on his 2007 Ford Edge, in which he had stated that his gross monthly income was \$6,000. Dr. Strasek admitted that he had signed the application, but he claimed that he had stated that his monthly income was only \$3,000, an amount that he had estimated he would be able to make as soon as he got his practice up and running. He claimed that the salesperson had filled in some of the lease forms and that someone must have written a "6" over the "3" on his application. Dr. Strasek stated that he had never told anyone his monthly income would be \$6,000. He also asserted that the statement on the credit application that he was in the process of buying a home was incorrect. Dr. Strasek told the Court that he had needed a vehicle and that his Board license had just been reinstated when he signed the application, and that, when asked for an income amount, he had accounts receivable which totaled about \$3,000. He said that, at the time he completed the form, he had believed he could get his practice started again and that his income would be about \$3,000 a month once that happened. Dr. Strasek told the Court that he had turned the car back in and was now using the bus for transportation. (Ex. 3-2 at 4-10)
17. In response, the government pointed out that the pending Medicare payment was known at the time of Dr. Strasek's sentencing in March 2005, at which time the Court had imposed two months of incarceration followed by ten months of home confinement. The government stated that, since the sentencing in 2005, Dr. Strasek had made only one payment of ten dollars. The government disagreed that Dr. Strasek had paid \$150 toward the cost of his home confinement. (Ex. 3-2 at 30-32)
18. The Court found that Dr. Strasek was in violation of his probation:

THE COURT: \* \* \* At the time you're telling your probation officer that you have no money to pay any debts that you owe to the government, and at the time you're telling the probation officer that you're in substantial debt to family members and to the church, at the same time you are applying to pay \$400 a month for a car?

THE DEFENDANT: Yes. The application is that.

THE COURT: All right. Well, the Court finds that the defendant is obviously in violation of his obligations both to pay restitution and to pay for his electronic monitoring fees. The question is what is the most appropriate sentence for this defendant in these circumstances. The Guidelines recommend a three to nine month custody range and then the Court also would have the authority to reimpose a term of supervised release.

(Ex. 3-2 at 10)

19. Dr. Strasek urged the Court to be lenient, noting the following factors: "I don't see a job in the near future that I would be able to service a \$3,000-a-month bill from the government to help pay the civil case. And I'm 59. I don't have that many more years of practice." Dr. Strasek noted that he had submitted a letter from his son's counselor, who had advised that, if he were taken away from his son, the child would suffer. Dr. Strasek presented a timeline he had made that showed his various efforts to "get his life back in order." (Ex. 3-2 at 28-29)
20. In considering whether to modify Dr. Strasek's sentence, the federal judge summarized the history of this case, addressing Dr. Strasek and his attorney:

THE COURT: All right. Mr. Bryan, while you're correct that normally this Court does not impose any custody terms because of a failure to pay restitution where there's a clear inability to make those payments, this isn't a normal case, and I think that some history of this defendant's dealings with the Court and dealings with probation is appropriate. \* \* \* When this case first came to me

\* \* \* this defendant appeared before me humble, contrite, tears in his eyes, said he wanted to prove that he was a good and honorable man, and, despite the fact that he had agreed to a plea agreement that should have imposed Bureau of Prisons custody upon him, I deviated from that agreement.

I said, "There's no need to put this man in prison. He needs to make these payments. We could put him on home confinement. He could do more good in the community."

So I structured a very ridiculously favorable deal, much to the chagrin of Ms. Hearey, who was the U.S. Attorney at the time, who was appalled that I didn't make him abide by his original deal and put him in the custody of the Bureau of Prisons.

Then, within months, I started receiving letters from Mr. Strasek telling me how unfair the deal was to him. How imposing home confinement on him was just really unduly harsh and imposed an undue punishment and limited his ability to live his life and catch up and do all the things he wanted.

I sent word back through his counsel that I was shocked that he would ask for or complain about the deal of the century. And after his counsel sent that word to him, a few months later I get another letter saying, "Now it's time for

you to let me off of supervised release because you're holding me back in my life."

\* \* \* [A]nd in those letters, he continued to say why he wasn't really at fault for any of his behavior. It's clear this defendant never really accepted responsibility for his actions.

As it relates to the issue of payment of restitution and payment for his home confinement fees—which I thought was more than reasonable given that the home confinement was a gift—the defendant, he made one \$10 payment.

It's not like the defendant was out there and, you know, making all kinds of efforts to obtain employment. The only reason he applied to Lowe's this time is because, the last time he was here. I said he's never even so much as applied for a job as \* \* \* a Wal-Mart greeter or something.

In other words, this defendant is able-bodied and could have gotten a job at a retail establishment, could have gotten a job anywhere for the years that the probation officer and I have been patient with the defendant and while he did nothing.

His timeline talks about dealing with his lawsuits. As the government points out, the one lawsuit he didn't deal with at all.

It talks about dealing with emotional issues, but never reflects efforts to obtain employment.

He has in the past told me that he was spending all his time trying to rebuild his practice and going through files, and now I find out that he's been locked out of his office and doesn't even have access to those files.

He has made representations—he made representations to me that he was doing this additional community service out of the goodness of his heart and I should take that into consideration in releasing him from his supervised release, and it turns out that it wasn't out of the goodness of his heart. It was because he was getting the church to hand him money.

The defendant has manipulated the system. He's manipulated even the people I sent him to \* \* \* for purposes of community service. And it appears that he continues to take advantage of all around him.

Driving a car with a \$400 lease when you can't even make a \$10 payment on your restitution obligation is just completely inexcusable.

I note that the probation officer more than once offered to help Mr. Strasek find employment, offered to help Mr. Strasek by setting up a small monthly

payment obligation that he could satisfy, and each time this defendant rejected those efforts.

This probation officer was more than patient with this defendant. This is not a situation of someone who just simply can't make a restitution obligation and for whom some kind of confinement would be a debtor's prison.

This is an individual who has never accepted responsibility for his actions and never made an attempt to try to live up to those obligations by really responding to the obligations the Court put on him.

(Ex. 3-2 at 33-36)

21. Ultimately, the Court chose not to order Dr. Strasek into the custody of the Bureau of Prisons. Instead, the judge ordered Dr. Strasek to be put into a halfway house, with community confinement for the remainder of his supervised-release term of approximately 90 days. The judge stated that her ruling was, again, a gift to Dr. Strasek. (Ex. 3-2 at 37-40)

The Court provided that Dr. Strasek could leave confinement for employment purposes but clarified that "employment" does not include "this generalized description of his continuing effort to reinvent his practice, which has been now a couple years that he's been describing to me that he's in the process of, and it has resulted in no actual cash to him." (Ex. 3-2 at 37)

The Court stated that this placement would allow the Court to monitor Dr. Strasek's employment efforts and get him "in a position that he understands that employment is an important obligation, so that he can fulfill his obligations to the government, to his family, and hopefully make repayment to his 90-year-old mother of the monies he's been taking from her." The Court ordered the sentence to take effect as soon as Dr. Strasek's probation officer could find a placement for him at a community-corrections facility. (Ex. 3-2 at 37-38)

22. On March 26, 2008, the Court entered an Order placing Dr. Strasek in community confinement at Oriana House with work-release privileges for the remaining term of supervised release, a period of approximately 90 days. The Court provided that, on termination of his supervised release, the unpaid amount of restitution would be referred to the debt-collection division of the U.S. Attorney's office. (Ex. 3-1)

#### **PROPOSED FINDINGS**

1. In an Order dated July 12, 2006 [2006 Order], the Board imposed discipline on Frank Murray Strasek, D.P.M., pursuant to R.C. 4731.22(B)(9), based on his plea of guilty to, and the adjudication of his guilt of, multiple felonies in *United States v. Frank M. Strasek*, Case No. 1:04CR-250, in the U.S. District Court for the Northern District of Ohio.

In its 2006 Order, the Board permanently revoked Dr. Strasek's certificate to practice podiatric medicine and surgery, stayed that revocation, and suspended his certificate for an indefinite period of not less than six months. The Board imposed terms and conditions for

reinstatement and set forth probationary terms, conditions, and limitations with which Dr. Strasek must comply for at least three years of probation, if and when his certificate was reinstated. The probationary terms imposed by the Board in its 2006 Order include the requirement that Dr. Strasek must obey all terms imposed by the federal district court in *U.S. v. Strasek*.

2. On July 11, 2007, Dr. Strasek's certificate to practice podiatric medicine and surgery was reinstated. Since that date, he has remained subject to the probationary terms, conditions, and limitations of the 2006 Board Order.
3. On March 26, 2008, the federal district court entered an order finding that Dr. Strasek was in violation of the court-ordered terms for supervised release. The Court modified Dr. Strasek's sentence, ordering among other things that he must serve approximately ninety days of community confinement at Oriana House, a community-corrections center.
4. The findings set forth above in Proposed Findings 1 through 3 establish that Dr. Strasek failed to comply with a probationary term imposed by the Board. Specifically, he violated the requirement that he must comply with all the terms and conditions imposed by the federal court.
5. Dr. Strasek's acts, conduct, and/or omissions, as set forth above in Proposed Findings 1 through 4 above, establish a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that language is used in R.C. 4731.22(B)(15).
6. In this administrative action, the Board issued a notice of opportunity for hearing to Dr. Strasek, which was duly served on him, and he did not request a hearing within 30 days. Therefore, the Board may consider the evidence and determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate his certificate to practice podiatric medicine and surgery, or to reprimand him or place him on probation.

\* \* \* \* \*

Several features in the record are noteworthy: that the federal court was very lenient in its initial sentencing order; that Dr. Strasek nonetheless sent letters to the Court seeking even more lenient treatment while failing to comply with the Court's terms for supervised release; and that Dr. Strasek has not been completely honest in his dealings with the Court. The federal court repeatedly instructed Dr. Strasek to secure some type of steady employment so that he could generate income, however small, to make regular payments on his court-ordered restitution and costs. He did not do this, choosing instead to borrow money from his friends, family, and church. During the March 2008 hearing, the Court expressly concluded that Dr. Strasek has failed to accept responsibility for his criminal conduct. The Hearing Examiner agrees.

However, it is important to recognize that the Court has already imposed punishment on Dr. Strasek for violating the terms of his federal sentence. He will not be able to demonstrate full compliance with the Court's sentencing order, and, hence, full compliance with the Board's probationary terms, until he shows full restitution and full payment of all the costs ordered by the Court.

It is clear that Dr. Strasek's violation of the Board's probationary term warrants discipline. However, as a practical matter, there are few administrative sanctions that match well with the circumstances. A permanent revocation has been stayed, but lifting the stay at this point appears harsh under all the circumstances. A suspension is warranted, but it would exacerbate Dr. Strasek's inability to pay child support, restitution, and other debts, and, in addition, he has not fully returned to practice since his certificate was reinstated in July 2007. Additional community service makes little sense because Dr. Strasek has already exceeded the hours imposed by the Court. In addition, the Board lacks statutory authority to impose a fine to recompense it for any part of the costs of the Board's investigation and review.

A reprimand from the Board is warranted at the very least. Further, the Board would be within its discretion to conclude that, because Dr. Strasek was not in compliance with his probationary terms for a number of months, he has not fully served his probation for a significant period. The Board would be justified in extending his probationary period by at least six months, or more, as a sanction for his violation. Indeed, the conduct described by the federal court indicates that Dr. Strasek needs further monitoring.

#### PROPOSED ORDER

It is ORDERED that:

- A. Frank Murray Strasek, D.P.M., is hereby REPRIMANDED.
- B. The Board's Order dated July 12, 2006, in the *Matter of Frank Murray Strasek*, is hereby modified to this extent: the previously ordered minimum period of probation is extended by six months, for a total probationary period of at least three years and six months. All other terms, conditions, and limitations of the July 2006 Order remain in full force and effect.

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

  
Hearing Examiner

# State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.  
Executive Director

(614) 466-3934  
med.ohio.gov



May 14, 2008

Case number: 08-CRF-067

Frank Murray Strasek, D.P.M.  
21282 Erie Road  
Rocky River, Ohio 44116

Dear Doctor Strasek:

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

- (1) On or about July 12, 2006, by Order of the Board [2006 Board Order], you were found to be in violation of Section 4731.22(B)(9), Ohio Revised Code. The 2006 Board Order permanently revoked your certificate to practice podiatric medicine and surgery, stayed such revocation, and suspended your certificate for an indefinite period of time, but not less than six months. The 2006 Board Order also provided conditions for reinstatement, which upon completion, would allow for the reinstatement or restoration of your certificate subject to probationary terms, conditions, and limitations.

On or about July 11, 2007, your certificate to practice podiatric medicine and surgery was reinstated, and as of this date, you remain subject to the probationary terms, conditions, and limitations of the 2006 Board Order, a copy of which is attached hereto and incorporated herein.

- (2) Paragraph C.1. of the 2006 Board Order requires that you obey all federal, state, and local laws, and all rules governing the practice of podiatric medicine and surgery in Ohio, and all terms imposed by the United States District Court, Northern District of Ohio, Eastern Division, in *United States v. Frank M. Strasek*, Case No. 1:04CR-250.

On or about March 26, 2008, in the United States District Court, Northern District of Ohio, Eastern Division, you were found to be in violation of the probationary terms imposed by the Court in the abovementioned criminal case, and you were further sentenced, *inter alia*, to approximately ninety days confinement at the Oriana House, a community corrections center. You have failed to comply with the requirements of paragraph C.1. of the 2006 Board Order.

*Mailed 5-15-08*

Frank Murray Strasek, D.P.M.

Page 2

Your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

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

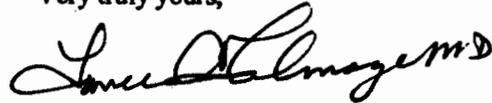
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.  
Secretary

LAT/DSZ/flb  
Enclosures

CERTIFIED MAIL #91 7108 2133 3934 3689 4002  
RETURN RECEIPT REQUESTED



# 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)

July 12, 2006

Frank Murray Strasek, D.P.M.  
21282 Erie Road  
Rocky River, OH 44116

Dear Doctor Strasek:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 12, 2006, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 7003 0500 0002 4329 8845  
RETURN RECEIPT REQUESTED

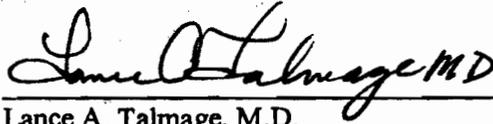
Cc: William J. McGinty, Esq.  
CERTIFIED MAIL NO. 7003 0500 0002 4329 9972  
RETURN RECEIPT REQUESTED

*Mailed 8-8-06*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 12, 2006, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Frank Murray Strasek, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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



Lance A. Talmage, M.D.  
Secretary

(SEAL)

July 12, 2006

Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF

\*

\*

FRANK MURRAY STRASEK, M.D.

\*

**ENTRY OF ORDER**

This matter came on for consideration before the State Medical Board of Ohio on July 12, 2006.

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

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Frank Murray Strasek, D.P.M., to practice podiatric medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Strasek's 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. Strasek's certificate to practice podiatric medicine and surgery until all of the following conditions have been met:
  1. **Application for Reinstatement or Restoration:** Dr. Strasek shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  2. **Obey the Terms of Criminal Probation:** At the time he submits his application for reinstatement or restoration, Dr. Strasek shall provide acceptable documentation certifying that he has maintained full compliance with all terms imposed by the United States District Court, Northern District of Ohio, Eastern Division, in *United States v. Frank M. Strasek*, Case No. 1:04CR-250.

3. **Billing/Coding Course:** At the time he submits his application for reinstatement or restoration, Dr. Strasek shall provide acceptable documentation of successful completion of a course or courses dealing with coding and billing. 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
  
4. **Personal Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Strasek 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 acquisition period(s) in which they are completed.

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

5. **Professional Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Strasek 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 acquisition period(s) in which they are completed.

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

6. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Strasek has not been engaged in the active practice of podiatric 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. Strasek's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:
1. **Obey the Law and Terms of Criminal Probation:** Dr. Strasek shall obey all federal, state and local laws, and all rules governing the practice of podiatric medicine and surgery in Ohio, and all terms imposed by the United States District Court, Northern District of Ohio, Eastern Division, in *United States v. Frank M. Strasek*, Case No. 1:04CR-250.
  2. **Declarations of Compliance:** Dr. Strasek 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. Strasek'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.
  3. **Personal Appearances:** Dr. Strasek 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. Strasek'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.
  4. **Tolling of Probationary Period While Out of State:** In the event that Dr. Strasek should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Strasek 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.
  5. **Violation of Terms of Probation:** If Dr. Strasek violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Strasek's certificate will be fully restored.
- E. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Strasek shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or

appointments. Further, Dr. Strasek shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

**F. REQUIRED REPORTING TO OTHER STATE LICENSING**

**AUTHORITIES:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Strasek shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license.

Dr. Strasek shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration or restoration of any professional license. Further, Dr. Strasek shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.

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

(SEAL)



Lance A. Talmage, M.D.  
Secretary

July 12, 2006

\_\_\_\_\_  
Date

2006 MAY 22 P 12:11

**REPORT AND RECOMMENDATION  
IN THE MATTER OF FRANK MURRAY STRASEK, D.P.M.**

The Matter of Frank Murray Strasek, D.P.M., was heard by Sharon W. Murphy, Esq., Hearing Examiner for the State Medical Board of Ohio, on February 10, 2006.

**INTRODUCTION**

**I. Basis for Hearing**

- A. By letter dated May 18, 2005, the State Medical Board of Ohio [Board] notified Frank Murray Strasek, D.P.M., of proposed disciplinary action against his certificate to practice podiatric medicine and surgery in Ohio. The Board's action was based on allegations that Dr. Strasek had pleaded guilty to, and been found guilty of, multiple counts of mail fraud and health care fraud under federal law. The Board charged that Dr. Strasek's plea and the court's adjudication constitute a "plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code. Accordingly, the Board advised Dr. Strasek of his right to request a hearing in this matter. (State's Exhibit 1A)
- B. On June 17, 2005, Jay Milano, Esq., submitted a letter requesting a hearing on behalf of Dr. Strasek. (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: William T. McGinty, Esq.

**EVIDENCE EXAMINED**

**I. Testimony Heard**

Frank Murray Strasek, D.P.M.

## II. Exhibits Examined

### A. Presented by the State

1. State's Exhibits 1A through 1O: Procedural Exhibits
2. State's Exhibits 2-7: Certified copies of transcripts and documents filed in *United States v. Frank M. Strasek*, Case No. 1:04CR-250, in the United States District Court for the Northern District of Ohio.

### B. Presented by the Respondent

1. Respondent's Exhibit A: Curriculum vitae of Dr. Strasek.
2. Respondent's Exhibits B through G: Copies of notices from insurance companies and other third-party payors notifying Dr. Strasek that he was no longer eligible for reimbursement under their plans.
3. Respondent's Exhibits H and I: Copies of letters written in support of Dr. Strasek. (Note: These exhibits are sealed to protect patient confidentiality.)
4. Respondent's Exhibit J through M, and O: Copies of certificates of membership, fellowship, board certification, and training pertaining to Dr. Strasek.
5. Respondent's Exhibit N: Copy of a January 12, 1988, letter from Congressman Edward F. Feighan, United States House of Representatives, thanking Dr. Strasek for his insightful responses on a questionnaire regarding medical care for the homeless.
6. Respondent's Exhibit P: Copy of a November 14, 1996, letter from Governor Voinovich appointing Dr. Strasek to the Ohio Radiation Advisory Council.
7. Respondent's Exhibit Q and R: Copies of letters written in support of Dr. Strasek.

## SUMMARY OF THE EVIDENCE

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

1. Frank Murray Strasek, D.P.M., testified that he had received his degree in podiatric medicine and surgery in 1975 from the Ohio College of Podiatric Medicine in Cleveland, Ohio. Dr. Strasek testified that he had trained "at many facilities both in the United States and in Europe." For example, in 1978, Dr. Strasek studied at the University of Vienna in Austria, and

he also received a management fellowship certificate in 1997 from Case Western Reserve University. (Hearing Transcript [Tr.] at 10-12; Respondent's Exhibit [Resp. Ex.] A)

Dr. Strasek testified that he had received his Ohio license as a podiatrist in 1976 and then opened a private practice in Rocky River, Ohio, where he had had a successful practice for thirty years. Dr. Strasek stated that he has served as adjunct faculty at the College of Podiatric Medicine on the campus of the Cleveland Clinic. He testified further that he is board certified in podiatric medicine and surgery, and is a fellow of the American Academy of Podiatric Sports Medicine as well as the American Professional Wound Care Association. (Tr. at 9-12; Resp. Exs. J-L)

Dr. Strasek testified that he had also served as a team doctor for the U.S. Olympic trials and for high schools. He stated that he had consulted with professional sports teams in football, basketball, and baseball. In addition, Dr. Strasek testified that he had served as a lobbyist for his medical association in both Columbus and Washington, D.C., and that he had served all the chairs at the state podiatric medical association. Dr. Strasek further noted that he had been appointed by Governors Voinovich and Taft to the Radiation Advisory Council, where he helped write laws regarding radiation safety. Dr. Strasek testified that he had retired as of December 31, 2005. He explained that he is not treating patients but visits his office for administrative matters. (Tr. at 10-15, 26; Resp. Exs. P-Q)

### The Criminal Proceedings

2. Dr. Strasek testified that, on September 27, 2001, federal agents had come to his office with a warrant to seize his records, computers, and other materials. He was indicted in May 2004 on various fraud charges related to his billing. (Tr. at 16-18; State's Exhibits [St. Exs.] 2-4)

On August 4, 2004, a Superseding Indictment [the Indictment] was filed in the United States District Court for the Northern District of Ohio, Eastern Division, in *United States v. Frank M. Strasek*, Case No. 1:04CR-250. The Indictment charged Dr. Strasek with multiple counts of mail fraud and health care fraud in violation of 18 U.S.C. §§ 1341 and 1347, respectively, based on coding violations over a period of eight years. (St. Ex. 3) The Indictment included allegations such as the following:

26. \* \* \* [T]he defendant removed simple nail specula, debrided nails, clipped nails and otherwise provided routine foot care, procedures that were reimbursable, if at all, under CPT Code 11719<sup>1</sup> or 11720,<sup>2</sup> but claimed payment from health care benefit programs for those services using CPT codes 10060,<sup>3</sup> 10061,<sup>4</sup> and 20000,<sup>5</sup>

<sup>1</sup> In the Superseding Indictment, CPT Code 11719 is defined as "trimming of nondystrophic nails, any number." (St. Ex. 3 at 5)

<sup>2</sup> CPT Code 11720 is defined as "debridement of nail(s) by any method(s); one to five." (St. Ex. 3 at 5)

<sup>3</sup> CPT Code 10060 is defined as "a surgical procedure, 'incision and drainage of abscess (e.g., carbuncle, suppurative hidradenitis, cutaneous or subcutaneous abscess, cyst, furuncle, or paronychia) simple or single.'" (St. Ex. 3 at 5)

<sup>4</sup> CPT Code 10061 is defined as "10060, 'complicated or multiple.'" (St. Ex. 3 at 5)

<sup>5</sup> CPT Code 20000 is defined as "a surgical procedure, 'incision of soft tissue abscess (e.g., secondary to osteomyelitis); superficial.'" (St. Ex. 3 at 6)

representing that he had performed surgical procedures for incision and drainage of abscesses.

27. \* \* \* [T]he defendant debrided nails, clipped nails, removed corns and calluses, and otherwise provided routine foot care, procedures that were reimbursable if at all under CPT Code 11719 or 11720, but claimed payment from health care benefit programs for those services using CPT codes 11040<sup>6</sup> and 11041,<sup>7</sup> representing that he had performed skin debridement procedures.<sup>8</sup>

28. \* \* \* [T]he defendant claimed payment from health care benefit programs for evaluation and management services (office and home visits) using CPT Codes 99213<sup>9</sup> and 99213<sup>10</sup> when he had not rendered services significantly different, or separately identifiable, from procedures for which he had also claimed payment under CPT Codes 11040, 11041, 11060, 10061.

29. \* \* \* [T]he defendant claimed payment from health care benefit programs by adding the -25 modifier to CPT Codes, when he did not perform any separately reimbursable services.<sup>11</sup>

30. \* \* \* [T]he defendant, for the purposes of obtaining payment from health care benefit programs, and of concealing and covering up the scheme, placed false statements in patient records.

(St. Ex. 3 at 7-8)

---

<sup>6</sup> CPT Code 11040 is defined as “debridement; skin, partial thickness.” (St. Ex. 3 at 5)

<sup>7</sup> CPT Code 11041 is defined as “debridement; skin, full thickness.” (St. Ex. 3 at 5)

<sup>8</sup> The Superseding Indictment provides that, “In 1993, Nationwide notified physicians, including defendant, that effective July 1, reimbursement for skin debridement under CPT codes 11040 and 11041 required removal of a tissue ‘by cutting with the surgical instruments such as a scalpel, laser, curette, or a electric cautery,’ not merely ‘a cleansing [or] scraping.’”

<sup>9</sup> CPT Code 99213 is defined as “an ‘office or other outpatient visit for the evaluation and management of an established patient.’” (St. Ex. 3 at 6)

<sup>10</sup> CPT Code 99213 is defined as a “‘home visit for the evaluation and management of an established patient.’” (St. Ex. 3 at 6)

<sup>11</sup> In the Superseding Indictment, the following explanation was provided regarding “the -25 Modifier”:

Costs of pre- and post-operative visits were included in reimbursements for medical and surgical procedures. Health care benefit programs did not pay separately for visits provided on the same day as, or within a specified number of days of, a billed medical or surgical procedure for the same patient for the same condition. By adding two-digit Modifier-25 to the CPT code used to claim payment for a medical or surgical procedure, however, a physician could request payment for “a significant, separately identifiable evaluation and management service above and beyond the other service provided or beyond the usual preoperative and postoperative care associated with the procedure that was performed.”

(St. Ex. 3 at 6-7)

3. Dr. Strasek entered into a plea agreement on January 3, 2005. (St. Ex. 4) That agreement included his stipulation to the following facts:

From December 21, 1993, through September 27, 2001, Defendant devised and intended to devise a scheme and artifice to defraud the federal Medicare, Railroad Medicare and Medicaid programs by charging those programs for services he did not provide, as outlined in the indictment and as follows:

A. Defendant claimed payment for surgical procedures for incision and drainage of abscesses, when in fact Defendant provided routine foot care that was reimbursable, if at all, at lower rates.

B. Defendant claimed payment for skin debridement procedures, when in fact Defendant provided routine foot care that was reimbursable, if at all, at lower rates.

C. Defendant claimed payment for office visits when in fact he had not performed any service significantly different from procedures for which he had already claimed payment.

D. Defendant claimed payment using two-digit numeric codes known as modifiers, when in fact he did not perform any reimbursable service.

E. Defendant placed false statement in patient records for the purpose of obtaining payment for services he did not render.

F. Defendant claimed payment for services for which there was no written substantiation.

(St. Ex. 4 at 6-7)

4. On January 3, 2005, Dr. Strasek appeared in federal district court to enter his plea of guilty to eleven felony counts of mail fraud and nine counts of health care fraud. Dr. Strasek testified at that hearing that he understood the elements of the fraud charges and had committed the violations knowingly and intentionally with the intent to defraud. He agreed that the restitution amount of \$105,207.53 was appropriate and said he understood that the court was required to order incarceration. (St. Ex. 6 at 3-19)

In the Plea Agreement, it was acknowledged that Dr. Strasek had accepted personal responsibility for the violations. Moreover, the prosecution acknowledged that Dr. Strasek had "met with law enforcement officers and provided truthful information regarding [his] involvement and timely notified the government of [his] intent to plead guilty. (St. Ex. 4 at 8-9)

5. At the sentencing hearing on March 21, 2005, Dr. Strasek testified about his current situation, among other things. Dr. Strasek stated that he was essentially indigent. He stated that he owned no real estate and was leasing his car, and that he had been obliged to borrow money against his dower interest in his wife's house to pay his attorney. He testified that he had no stocks or certificates of deposit. Dr. Strasek testified that he had closed his business and surrendered his DEA certificate. He stated that he had not been able to plan operations due to the uncertainties of the criminal prosecution and due to his expected incarceration. He explained that, since 2001, he had been providing medical services to Medicare patients without receiving reimbursement, to pay back what he owed. Based on all these factors, Dr. Strasek said that his income in the past four years had dropped to one third of its former level.<sup>12</sup> (St. Ex. 7)
6. The court sentenced Dr. Strasek to two months of custody in a community confinement facility followed by home confinement with electronic monitoring as the first ten months of a three-year term of supervised release. The court ordered Dr. Strasek to perform three hundred hours of community service and to pay restitution of \$105, 207.53 at the rate of ten percent of his gross monthly income. No fine was ordered, although there was a \$2,000 special assessment. (St. Exs. 5, 7 at 14-17)

#### **Dr. Strasek's Testimony Regarding His Billing Practices**

7. At hearing, Dr. Strasek testified that, between 1993 and 2001, billing codes and nomenclature had changed repeatedly. He continued:

There was a constant flux in the codes for those. The diagnoses that were used for an abscess was a different code than for paronychia. The only place in the whole CPT book where paronychia was written as an applicable diagnosis, my office manager told me, was on the 10060 or 61.

She would call Medicare and ask what to do, and she faxed them copies of the codebook, of course Medicare knew, and she would show that the diagnostic codes on the insurance that was submitted was for paronychia, which by definition is an inflammation with or without an abscess. Which an ingrown tale, if you have ever had a red toe, that is an inflammation. That was used as a secondary diagnosis. But the coding problem is matching up the diagnostic code with the procedure codes. Therein lies the problem. So then she would call, "Should I use this code or not?"

I sent my staff across the country to seminars. Without any question, even in the medical journals, any expert that gives advice on coding puts a disclaimer that this may or may not be good in your state, across the country. So in due process, in due diligence to call and tried to hash through this, they did what they felt was right, and I got accused of fraud.

---

<sup>12</sup> In his Board hearing, Dr. Strasek presented documents showing that, in 2005, insurance companies and other third-party payors terminated his participation as a provider under their health-care plans. (Resp. Exs. B-G)

The 11719 number was not used in my office until I think 2001. Frankly, my office staff did not know what the heck to use when this thing came down. The 10060 and 10061, if you have two ingrown toenails, that is 61. Anything more than one is the next number up. So like 11720 becomes 11721. But how it was billed changed over that 10-year period of time. It was forever being changed.

And every billing course would always have a disclaimer like I said. So you are left to do what you could do. So to match up a diagnosis with a procedure code, the way that these computers work is that there are certain diagnostic codes that are applied to a code and more than one applied. \* \* \* So was there confusion, yes. Could this explanation be longer, absolutely. Would it be still is confusing, absolutely.

(Tr. at 36-38)

#### **Letters in Support of Dr. Strasek**

8. Dr. Strasek presented letters from colleagues and community members regarding his admirable skill as a physician, leadership in the community, high ethical principles, and compassion. (Resp. Exs. H-I, Q-R)

#### **FINDINGS OF FACT**

On January 3, 2005, in the United States District Court for the Northern District of Ohio, Frank Murray Strasek, D.P.M., pleaded guilty to eleven felony counts of mail fraud in violation of 18 U.S.C. §1341, and nine felony counts of health care fraud in violation of 18 U.S.C. §1347. Pursuant to a hearing on March 21, 2005, the court entered a judgment on March 29, 2005, adjudicating Dr. Strasek guilty of these felonies. The court ordered the following sentence: two months to be served in a community confinement facility; supervised release for a term of three years with home confinement for the first ten months under electronic monitoring; three hundred hours of community service; a special assessment in the amount of \$2,000.00; and restitution in the amount of \$105,207.53.

#### **CONCLUSION OF LAW**

The guilty plea of Frank Murray Strasek, D.P.M., and the court's adjudication of guilt, as set forth above in the Findings of Fact, constitute a "plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

\* \* \* \* \*

Dr. Strasek admitted to having committed serious felonies. Although he testified that his office staff tried its best to submit proper codes for proper diagnoses, he admitted his guilt to all elements of these crimes. In mitigation, however, Dr. Strasek has no other criminal or disciplinary history. Prior to these events, he had practiced for thirty years without incident, and

had volunteered his time to the public good. Further, Dr. Strasek is remorseful; he is extremely unlikely to ever commit a crime, or to violate any Board rule, in the future.

### PROPOSED ORDER

It is hereby ORDERED that:

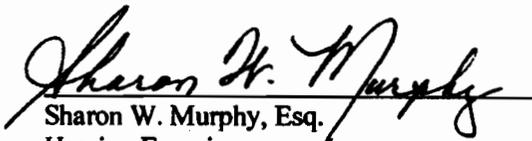
- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Frank Murray Strasek, D.P.M., to practice podiatric medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Strasek's certificate shall be SUSPENDED for an indefinite period of time, but not less than one year.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Strasek's certificate to practice podiatric medicine and surgery until all of the following conditions have been met:
  1. **Application for Reinstatement or Restoration:** Dr. Strasek shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  2. **Obey the Terms of Criminal Probation:** At the time he submits his application for reinstatement or restoration, Dr. Strasek shall provide acceptable documentation certifying that he has maintained full compliance with all terms imposed by the United States District Court, Northern District of Ohio, Eastern Division, in *United States v. Frank M. Strasek*, Case No. 1:04CR-250.
  3. **Billing/Coding Course:** At the time he submits his application for reinstatement or restoration, Dr. Strasek shall provide acceptable documentation of successful completion of a course or courses dealing with coding and billing. 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
  4. **Personal Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Strasek shall provide acceptable documentation of successful completion of a course or courses dealing with personal ethics. Dr. Strasek 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 acquisition period(s) in which they are completed.

5. **Professional Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Strasek 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 acquisition period(s) in which they are completed.
  6. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Strasek has not been engaged in the active practice of podiatric 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. Strasek's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:
1. **Obey the Law and Terms of Criminal Probation:** Dr. Strasek shall obey all federal, state and local laws, and all rules governing the practice of podiatric medicine and surgery in Ohio, and all terms imposed by the United States District Court, Northern District of Ohio, Eastern Division, in *United States v. Frank M. Strasek*, Case No. 1:04CR-250.
  2. **Declarations of Compliance:** Dr. Strasek 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. Strasek'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.
  3. **Personal Appearances:** Dr. Strasek 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. Strasek'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.
  4. **Tolling of Probationary Period While Out of State:** In the event that Dr. Strasek should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Strasek 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.

5. **Violation of Terms of Probation:** If Dr. Strasek violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Strasek's certificate will be fully restored.
- E. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Strasek shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Strasek shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
- F. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Strasek shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Strasek shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Strasek shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.

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

  
Sharon W. Murphy, 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 JULY 12, 2006

### REPORTS AND RECOMMENDATIONS

Dr. Robbins announced that the Board would now consider the findings and orders appearing on the Board's agenda. He asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Douglas Paul Bosack, M.D.; John R Hanagan, M.D.; Mitchell Edward Simons, M.D.; and Frank Murray Strasek, D.P.M. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Madia	- aye
	Dr. Steinbergh	- aye
	Dr. Robbins	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Madia	- aye
	Dr. Steinbergh	- aye
	Dr. Robbins	- aye

Dr. Buchan returned to the room at this time.

Dr. Robbins asked Dr. Buchan whether he had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Douglas Paul Bosack, M.D.; John R Hanagan, M.D.; Mitchell Edward Simons, M.D.; and Frank Murray Strasek, D.P.M. Dr. Buchan replied that he had.

Dr. Robbins asked Dr. Buchan whether he 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. Dr. Buchan stated that he does understand.

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

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

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

.....  
FRANK MURRAY STRASEK, D.P.M.

Dr. Robbins directed the Board's attention to the matter of Frank Murray Strasek, D.P.M. He advised that no objections were filed to Hearing Examiner Murphy's Report and Recommendation.

Dr. Robbins continued that documents have been submitted by Dr. Strasek, which the State is construing as a motion to admit additional evidence into the record. In response, the Assistant Attorney General has filed a "Memorandum in Opposition to Respondent's Motion to Admit Additional Evidence." Copies of Dr. Strasek's documents and the State's Memorandum were previously distributed to Board members. Dr. Robbins asked whether the Board wished to admit Dr. Strasek's additional evidence.

There was no motion to admit the additional evidence. Dr. Robbins advised that the materials will be excluded from the Board's consideration.

Dr. Robbins advised that a request to address the Board was filed on behalf of Dr. Strasek, but was not filed in a timely manner. He asked whether the Board wished to allow Dr. Strasek the opportunity to make an address.

**DR. EGNER MOVED TO ALLOW DR. STRASEK TO ADDRESS THE BOARD. DR. BUCHAN**

**SECONDED THE MOTION.** All members voted aye. The motion carried.

Dr. Robbins advised that five minutes would be allowed for that address.

Dr. Strasek thanked the Board for allowing the continuation he requested in June so that his attorney could be present. He also thanked the Board for allowing him to speak.

Dr. Strasek was accompanied by his attorney, William T. McGinty.

Dr. Strasek stated that he sits there as a felon, and he admits that he pled guilty. He admitted to mistakes and problems in his office that led to this. Dr. Strasek stated that he pled guilty for a few reasons: 1. At age 51 he had his first child, who is now six, and he had his family leveraged against him where he would not see his son. He was threatened with jail and the like. 2. He pled guilty because he was counseled, not only by his wife, but also by his attorney, to plead guilty. This was very emotional, with all things considered. 3. He pled guilty because of the chance to have a lower amount of penalty. It is part of his record that he was arraigned twice; and each time that he was arraigned, because there were extra charges put on, he pled absolutely not guilty. After nearly bankrupting himself and spending his money on attorneys and experts, some of which were compromised, he was left with no witnesses, no more money, no way to fight this, and the threat of not seeing his son. So he pled guilty.

Dr. Strasek stated that the amount that came across as \$105,000 was actually \$4,300 over ten years; but the OIG has a formula that increased the figure to \$105,000, which actually represented the amount of money that was being held in his Medicare suspension account. He added that he had continued to treat patients at that time.

Dr. Strasek stated that this was his 9/11. He had the FBI come to his office and put a gun to his chest on September 27. As a gentleman, he's not used to doing this. He sat in meetings with the Medical Board, but as a representative for his profession. He was president at his local academies, and he went through all the chairs in his state. He was appointed by two Governors to the Radiation Advisory Counsel, where he had to pass ethics. He helped write the rules to make Ohio a compliant state. He's very aware of rules. The reputation he has in his specialty has always been that he's forthright, and in over thirty years of practice he never had a mark on his record or his license. He was never suspended or came for disciplinary action in any of the areas. But on September 27 he was accused. After he went through five years of investigations, and at the end of all the machinations, he's left with the prospect of seeing his four-year-old son again. So he pled.

Dr. Strasek stated that he has never been a danger to his patients. He has never cheated anyone. There has been nothing but a speeding ticket on his record. How he got on the list for investigation is an entirely different subject. Dr. Strasek stated that he sits here, and he's pretty emotional about this, because he has been jailed, has had to wear an anklet. Even before he pled, he had to check in with the Court; he couldn't even travel out of northeast Ohio without filing papers. Dr. Strasek stated that he's had to respond to a probation officer. He's had everything possible. He followed the Court Orders; he was never anywhere

but where he was supposed to be. Dr. Strasek stated that the action the Board takes against him and against his license is important because if it comes to the point that the Board does suspend him, he fully intends to reapply. He also wants the Board to know that he was a good citizen and has taken his lumps without regret.

Dr. Strasek stated that this type of action has also led to a three-and-a-half-week-old divorce decree, so every part of his life has been attacked. Dr. Strasek stated that there's an old saying that his father used to tell him: "If you don't ask, you don't get a date." Dr. Strasek stated that what he's asking for is consideration of the suspension, because the one reason why he pled was because his son would be taken away from him in divorce court if he doesn't have his license and can't provide an income.

Dr. Strasek stated that he also has 300 hours of community service. He wanted to use his license to work that off at the free clinics or similar settings. This would be a way for the Board to see that he is a good citizen as a physician, and that he is doing the right thing.

Dr. Strasek stated that anybody could be accused. There isn't one person, any physician, that could avoid this. He's certainly not the only one and he's certainly not the only doctor who has come before the Board that's ever said that everything was harassed and that he pled because of the family. However, when it's true, it's true. This can happen to anyone. It happened to him. Dr. Strasek stated that, even though his professional life and reputation showed otherwise, he's a felon.

Dr. Strasek asked that the Board reconsider suspension and allow him to continue to practice, where he thinks his talent is.

Mr. McGinty stated that Dr. Strasek was served with divorce papers three and a half weeks ago. There has not been a decree yet. He hasn't even filed his answer yet.

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

Mr. Wilcox stated that, as the Board is aware in this case, back in January 2005, Dr. Strasek pled guilty in the United States District Court for the Northern District of Ohio to eleven felony counts of mail fraud and nine counts of health care fraud. He appeared before a federal judge in federal court and acknowledged that he understood the charges against him, and he acknowledged that he committed the violations of law knowingly and intelligently with intent to defraud.

Mr. Wilcox stated that, as a former prosecutor, he takes a dim view of people who plead guilty in open court. He advised that in plea hearings in federal court, they go over every single charge with you and they make sure that you understand everything in that plea agreement. He takes a dim view of people who plead guilty and then come and later say that they did it to avoid this or that. If someone stands up in federal court and tells the judge that he or she is guilty, then he or she is guilty of the crime. Mr. Wilcox added that there is a Board rule, OAC 4731-13-24, that states that a guilty plea is conclusive proof of all the elements of the crime.

Mr. Wilcox advised that a reading of the court documents in this case shows that Dr. Strasek participated in a pattern of deception whereby he would treat patients for routine foot care problems, and then he would upcode or fraudulently bill Medicare or Medicaid for more expensive procedures that he did not perform. Mr. Wilcox stated that at hearing Dr. Strasek claimed that the billing codes changed often and were difficult to understand, and that he and his staff had difficulty learning which codes are appropriate. Mr. Wilcox stated that he, personally, has never dealt with billing codes, so he doesn't know how hard it is to comply with the rules and regulations or procedures in question; but his impression from previous cases, and the Board has had several cases like this, is that the Medicare/Medicaid billing process is not as big a mystery as Dr. Strasek claimed at his hearing. Mr. Wilcox stated that he's sure that many of the Board members have dealt with these billing issues in their practices, and those Board members have the ability to evaluate whether Dr. Strasek's statements are accurate.

Mr. Wilcox stated that he will leave it to the Board to determine the appropriate penalty in this case.

**DR. KUMAR MOVED TO APPROVE AND CONFIRM MS. MURPHY'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER IN THE MATTER OF FRANK MURRAY STRASEK, D.P.M. DR. DAVIDSON SECONDED THE MOTION.**

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

Dr. Buchan stated that this was an interesting presentation by Dr. Strasek, and he appreciates Dr. Strasek's presence; but he's left with a few thoughts. First, he's disappointed in Dr. Strasek as a leader in the profession allowing this to come about. He's disappointed that Dr. Strasek would not have taken charge of his responsibilities in a different manner. Dr. Buchan noted that Dr. Strasek has taken leadership positions in so many other areas, how he allowed this to happen is extraordinary.

Dr. Buchan advised that, when he read the transcript and read Dr. Strasek's description of some of the confusion on the matter, he was disappointed again. When he personally thinks about routine foot care and what that means, there is nothing about that that means abscess or ulcer debridement, so why confuse that issue again? Dr. Buchan stated that he thinks that this was another opportunity for Dr. Strasek to be more forthright on the matter and not try to cloud the issue. Dr. Strasek simply took a different course throughout his billing process. Just because you get paid for an abscess, doesn't mean you bill an abscess. Dr. Strasek chose to do it differently. Dr. Buchan stated that, just because you get paid in some meeting or somebody else describes reimbursement in a fashion for a particular service, doesn't mean you do that service, if, indeed, you've done a lesser service. Dr. Buchan stated that he is disappointed that a man with such a leadership background and potential would allow his office to move in this direction and, secondly, that he would describe this as a confusing issue. Dr. Buchan stated that he does not see this as a confusing issue.

Dr. Buchan continued that some of what he sees works to Dr. Strasek's benefit. Dr. Strasek has been a leader, and he's taken a role in the community as a gentleman who has done great things for the people

whom he serves throughout the state.

Dr. Buchan stated that he was taken by Hearing Examiner Murphy's position of leniency, because, quite honestly, the Board has revoked licenses for this issue countless times. Dr. Buchan stated that he came here today registering the disappointment that he stated, but he is compelled by the record to listen to the Board members, but also to reflect on Hearing Examiner Murphy's recommendation to suspend this gentleman's license for the greater good of the community and the state. Dr. Buchan stated that he can make an argument to do that in this case.

Dr. Steinbergh stated that there are a couple of things she would like to note relating to the hearing record itself. She referred to footnote number ten on page four of the Report and Recommendation. She noted that the footnote states: "CPT Code 99213 is defined as a 'home visit for the evaluation and management of an established patient.'" She stated that the correct code for this is either CPT Code 99347, which is a problem focused code for a home visit for the evaluation and management of an established patient; CPT Code 99348, which is an expanded visit; CPT Code 99349, which is a detailed visit; or CPT Code 99350, which is comprehensive. Dr. Steinbergh indicated that she's not sure how to deal with this part of the record.

Dr. Steinbergh referred to paragraph four of the "Conditions for Reinstatement or Restoration," which requires Dr. Strasek to complete a personal ethics course, noting that it contains a line concerning professional ethics, which is duplicative of paragraph five, which requires Dr. Strasek to complete a professional ethics course. She suggested that the line from paragraph four be removed.

Dr. Steinbergh indicated that she appreciates Dr. Buchan's comments. She stated that she was, obviously, affected by Dr. Strasek's emotional plea. She added that, having been on the Board for a number of years, she's very much affected by how each of the Board's decisions does affect the licensee and his whole life. She stated that there's no question about Dr. Strasek's plea of guilt or his guilt. To her it's a question of recognizing what Dr. Strasek has done for his profession. She agreed that it is unfortunate and disappointing to see someone who has donated his time to his profession and then to have pled guilty in terms of this healthcare fraud. Dr. Steinbergh stated that she doesn't know where to go with the suspension issue, but she does feel touched.

Dr. Egner stated that Dr. Steinbergh's remarks on the coding reflect Dr. Strasek's argument that coding is very complicated and difficult. She stated that she thinks that all physician members of the Board have looked at code books and definitions and gone to seminars and found that one code doesn't always reflect what the physician thinks he or she does.

Dr. Egner continued that, that being said, Dr. Strasek did plead guilty in federal court, and that's what the Board is going to deal with. But she does think that there are some extenuating circumstances. The amount of money involved, to her, seems to be rather minimal, considering what the Board has seen in other cases of billing problems, and she has to take that into consideration. The Board has had these cases before many times result in permanent revocation recommended by the Hearing Examiner. This time the

Hearing Examiner does not even go near permanent revocation. Dr. Egner stated that she has to think that the Hearing Examiner saw other extenuating circumstances there.

Dr. Egner stated that she is personally in favor of the Report and Recommendation, or even a lesser suspension period.

Dr. Steinbergh stated that she didn't mean that she felt that coding is difficult. She added that she doesn't know why the Hearing Examiner used the improper code. It's an improper definition of the code she referenced. She added that she doesn't know if there should be another code there or not. She just thinks the record needs to be corrected.

Dr. Steinbergh stated that she disagrees with Dr. Egner's feelings about coding. She stated that she can't say 100% of the time that coding is an exact science or that physicians understand it, but she thinks it's clear that when a physician does a procedure in the office, he or she has to look at those things and determine the coding. That's the physician's responsibility. Dr. Steinbergh stated that she doesn't see it as being enormously difficult. She does see seminars all the time on how to get the most money out of your coding, and how to do it legitimately. Dr. Steinbergh stated that the book that they get seems to clarify those things in regard to CPT coding. If you pay attention to that, for most who practice in the primary care of podiatry, it becomes sort of a routine thing. There are some unusual circumstances. If you're doing more than one procedure, or if you're also doing an evaluation separate from that particular procedure, that you would use a modifier, but she doesn't see this as being difficult.

Dr. Steinbergh stated that she doesn't disagree with leniency in this case. She stated that she thinks that the Board should consider some form of leniency.

Mr. Browning stated that, as has been said many times, the Board can't retry these cases. There's been a conviction of felony offenses in the course of practice. There's no question about that. There's no question that this is reflective of broader concerns that all have as citizens and taxpayers, when people defraud the government. Mr. Browning stated that there should be some level of suspension. Whether it's a year or something less than that can be discussed; but he doesn't think that the extenuating circumstances are so significant that the Board should diminish this to next to nothing. He added that he's not suggesting that anyone is saying that, but his message is that the Hearing Examiner saw what the Board sees and reflected that in her recommendation of a one-year suspension. That seems reasonable. If the Board wants to do something somewhat less than that in recognition of the high price that's already been paid by the doctor, the Board should talk about it. However, on balance, the Hearing Examiner's recommendation is a solid one.

Dr. Kumar stated that he always has a problem in taking action solely on the issue of coding, if there was not a conviction associated with it. Coding is a difficult proposition, particularly for the evaluation and management services. You submit your documents to two certified coders and they will code it differently. It's not black and white. It's a lot more difficult than it appears on the surface. He stated that in his own procedure, they're designated as "minimum," "morbid," "maximum," "complex." How you

qualify which one becomes very difficult.

Dr. Kumar continued that the Board has a record before it, with a felony conviction. He referred to Dr. Egner's comments about the amount of restitution. The amount is \$4,000 or \$5,000, and the way it gets doubled and tripled over a period of years because of the way it's taken into account, needs to be looked at. There has to be some suspension, but he feels that one year is too long.

**DR. KUMAR MOVED TO AMEND THE PROPOSED ORDER BY CHANGING THE MINIMUM SUSPENSION PERIOD FROM ONE YEAR TO SIX MONTHS, AND BY REMOVING THE LANGUAGE RELATING TO PROFESSIONAL ETHICS COURSE FROM PARAGRAPH B.4. OF THE PROPOSED ORDER. DR. EGNER SECONDED THE MOTION.**

Dr. Steinbergh stated that she believes that the amendment also needs to address the clarification of the code listed in footnote 10.

Dr. Egner questioned how important that is. She stated that the problem is, the Board doesn't know which code is correct.

Mr. Whitehouse stated that his thought is that if it is of sufficient concern that it would affect the way the Board votes then the Board shouldn't proceed.

Dr. Egner stated that she would like Mr. Whitehouse' opinion as to whether he thinks this is significant enough that it needs to be changed.

Mr. Whitehouse suggested that any change could be done on the record now, through the Board's discussion, in order for the Board to proceed to vote. He added that he doesn't think that that discrepancy is sufficiently serious to put the Board in a position to not be able to vote.

Dr. Steinbergh agreed that the Board just needs to clarify the matter for the record, and added that she doesn't think that it in any way affects the ability to vote. She stated that she just thinks that it's important to present the record correctly.

Mr. Whitehouse stated that he's not sure about the practicality of changing the Report and Recommendation subsequent to a vote.

Dr. Steinbergh stated that she doesn't think that the Board needs to. It won't affect her vote one way or the other. This is simply an editorial change, as far as she can tell.

Dr. Kumar stated that his motion consists of two parts: Reducing the suspension period to six months, and removing the duplicate language in paragraph B.4. of the Proposed Order.

Dr. Steinbergh stated that she also agrees with Mr. Browning's comments. There's probably not a time

that the Board has come with a case like this that the Board doesn't see how challenging it is for the physician or licensee. It is very, very damaging. The Board has, in the past, looked at cases exactly like this where the suspension period was a year.

Dr. Robbins stated that he would like to say something on the coding. He stated that he couldn't agree more with Mr. Browning. Dr. Strasek has pled guilty, and that's the Board's overriding arch to move forward. He's not against some sympathy here. Dr. Robbins stated, however, that, generally, he couldn't agree more with Dr. Steinbergh. There are courses everywhere on how to upcode to get more money. Doctors in general, when faced with a difficult decision on code, if they downcode routinely, never get into trouble. The difficulty always comes with whether they can justify the higher reimbursement. Dr. Robbins stated that, as he counsels his group and other physicians, if you take the lower road, you never get into trouble. The difficulty is with all the pressures of constantly trying to justify that they did the higher code. The justification, in his mind, is monetary.

Dr. Talmage returned during the previous discussion.

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

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

The motion carried.

**DR. KUMAR MOVED TO APPROVE AND CONFIRM MS. MURPHY'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF FRANK MURRAY STRASEK, D.P.M. DR. BUCHAN SECONDED THE MOTION.**

Dr. Robbins indicated that he would now entertain further discussion in this matter.

Dr. Buchan stated that he feels some special responsibility, as he reviewed this case thoroughly; and he thinks that it's important for the record for the Board to suggest or relay to Dr. Strasek how fortunate he is if this amendment passes. His sense is that this is because of Dr. Strasek's past, his leadership responsibilities and the person that he is that he was granted some leniency in this case. Dr. Buchan stated that he's been here long enough to realize that the Board has objectively had harsher orders or agreements

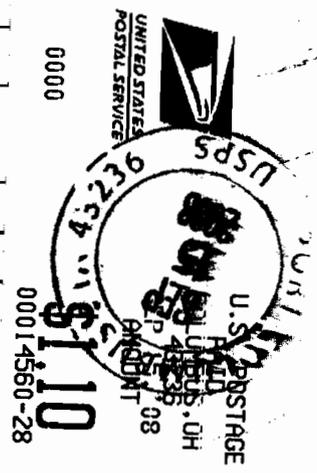
in such cases. Dr. Buchan stated that he hopes that Dr. Strasek's leadership and responsibility goes about to his colleagues throughout the state to prevent others from getting into this situation.

A vote was taken on Dr. Kumar's motion to approve and confirm, as amended:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Madia	- aye
	Dr. Steinbergh	- aye

The motion carried.

U.S. POSTAL SERVICE	CERTIFICATE OF MAILING
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER	
Received From:	
State Medical Board of Ohio	
30 E. Broad St. 3rd Floor	
Columbus, OH 43215-6127	
One piece of ordinary mail addressed to:	
Frank Murray Strasek, DPM	
20534 Lake Rd.	
Rocky River, OH 44116	



PS Form 3817, January 2001

# State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.  
Executive Director

(614) 466-3934  
med.ohio.gov



August 14, 2008

Frank Murray Strasek, D.P.M.  
20534 Lake Road  
Rocky River, OH 44116

RE: 08-CRF-067

Dear Doctor Strasek:

Please find enclosed a certified copy of the Findings, Order and Journal Entry approved and confirmed by the State Medical Board meeting in regular session on August 14, 2008.

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

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

Very truly yours,

*Lance A. Talmage MD*

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

LAT:jam  
Enclosures

CERTIFIED MAIL RECEIPT NO. 91 7108 2133 3934 3487 3054  
RETURN RECEIPT REQUESTED

*Re-mailed 9/15/08 via  
certificate of mailing*

*Mailed 8.14.08*

CERTIFICATION

I hereby certify that the attached copy of the Findings, Order and Journal Entry approved by the State Medical Board, meeting in regular session on August 14, 2008, constitutes a true and complete copy of the Findings, Order and Journal Entry in the Matter of Frank Murray Strasek, D.P.M., Case Number 08-CRF-067, as it appears in the Journal of the State Medical Board of Ohio.

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

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

(SEAL)

August 14, 2008  
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF :  
 :  
 : Case No. 08-CRF-067  
FRANK MURRAY STRASEK, D.P.M. :

**FINDINGS, ORDER AND JOURNAL ENTRY**

This matter came on for consideration before the State Medical Board of Ohio on August 14, 2008, pursuant to a Notice of Opportunity for Hearing issued to Frank Murray Strasek, D.P.M., on May 14, 2008. No request for hearing having been received within the statutorily mandated time period, Hearing Examiner Patricia A. Davidson, Esq., on behalf of the Board, reviewed and summarized evidence supporting the Notice, and prepared Proposed Findings and a Proposed Order.

WHEREFORE, having reviewed Ms. Davidson's Proposed Findings and Proposed Order, which is attached hereto and incorporated herein, the Board hereby adopts the Proposed Findings and Proposed Order.

Accordingly, it is hereby ORDERED that:

- A. Frank Murray Strasek, D.P.M., is hereby REPRIMANDED.
- B. The Board's Order dated July 12, 2006, in the *Matter of Frank Murray Strasek*, is hereby modified to this extent: the previously ordered minimum period of probation is extended by six months, for a total probationary period of at least three years and six months. All other terms, conditions, and limitations of the July 2006 Order remain in full force and effect.

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

*Lance A. Talmage MD*

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

(SEAL)

August 14, 2008  
\_\_\_\_\_  
Date

**PROPOSED FINDINGS AND PROPOSED ORDER  
IN THE MATTER OF FRANK MURRAY STRASEK, D.P.M  
Case No. 08-CRF-067**

The Matter of Frank Murray Strasek, D.P.M., was reviewed by Patricia A. Davidson, Hearing Examiner for the State Medical Board of Ohio.

**INTRODUCTION**

Basis for the Review

1. On May 14, 2008, the State Medical Board of Ohio [Board] issued a notice of opportunity for hearing [Notice] to Frank Murray Strasek, D.P.M., informing him that the Board intended to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate his certificate to practice podiatric medicine and surgery, or to reprimand him or place him on probation. The Board alleged, among other things, that Dr. Strasek had violated the terms of his probation as imposed by the Board in an Order issued in 2006. The Board charged that Dr. Strasek's conduct constitutes a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that language is used in Ohio Revised Code Section [R.C.] 4731.22(B)(15). Further, the Board notified Dr. Strasek that he was entitled to a hearing if he submitted a written request that was "received in the offices of the Board within thirty days of the time of mailing of [the] notice." (Ex. 1)
2. The Notice was mailed to Dr. Strasek on May 15, 2008, by certified mail to his most recent address of record. The U.S. Postal Service provided a receipt showing delivery of the Notice to that address on June 2, 2008. (Exs. 1, 4-5)
3. In a sworn declaration, the Board's Public Services Administrator stated that, as of June 26, 2008, Dr. Strasek had not submitted a written hearing request to the Board. (Ex. 4)
4. In a memorandum dated June 27, 2008, the Public Services Administrator requested that a Hearing Examiner review documentary evidence, as provided, in the *Matter of Frank Murray Strasek* and prepare proposed findings and a proposed order. (Ex. 6)

**EVIDENCE EXAMINED**

Exhibit 1: Notice of Opportunity for Hearing and attachments including the Board's 2006 Order and the 2006 Report and Recommendation of the Hearing Examiner.

Exhibit 2: Minutes of the July 2007 meeting in which the Board voted to reinstate Dr. Strasek's certificate, which had been suspended in 2006.

Exhibit 3: Affidavit of Daniel Zinsmaster, Enforcement Attorney for the Board, with attached exhibits:

Exhibit 3-1: Documents filed in *United States v. Frank M. Strasek*, Case No. 1:04CR-250, U.S. District Court for the Northern District of Ohio.

Exhibit 3-2: Transcript of Dr. Strasek's hearing in federal court in March 2008.

Exhibit 4: Affidavit of Public Services Administrator attesting that, as of June 26, 2008, the Board had not received a hearing request from Dr. Strasek.

Exhibit 5: Affidavit of Debra Jones, Continuing Medical Education and Renewal Officer, verifying Dr. Strasek's address of record.

Exhibit 6: Memorandum to the Chief Hearing Examiner requesting a review and report.

## SUMMARY OF THE EVIDENCE

### July 2006 Board Order

1. In an Order dated July 12, 2006, the Board found that Frank Murray Strasek, D.P.M., had pleaded guilty to, and been adjudicated guilty of, eleven felony counts of mail fraud in violation of 18 U.S.C. §1341 and nine felony counts of health-care fraud in violation of 18 U.S.C. §1347, in *United States v. Strasek*, Case No. 1:04CR-250 in the U.S. District Court for the Northern District of Ohio. The Board concluded that Dr. Strasek's plea and the adjudication constituted a "plea of guilty to [or] a judicial finding of guilt of \* \* \* a felony," under R.C. 4731.22(B)(9). (Ex. 1)<sup>1</sup>
2. The Board noted that the federal court's sentence had included the following: two months of community confinement, supervised release (probation) for a term of three years with home confinement for the first ten months under electronic monitoring, payment of the cost of the monitoring while on supervised release, 300 hours of community service, a special assessment in the amount of \$2,000, and payment of restitution in the amount of \$105,207.53. (Ex. 1)
3. The Board concluded in its 2006 Order that discipline was warranted under R.C. 4731.22(B)(9), and it imposed sanctions including a permanent revocation that was stayed, an indefinite suspension of not less than six months, reinstatement requirements, and a set of probationary terms, conditions, and limitations that would remain in effect for at least three years following reinstatement of the certificate. (Ex. 1)
4. The probationary terms imposed by the Board in its 2006 Order included the following:
  1. **Obey the Law and Terms of Criminal Probation**: Dr. Strasek shall obey all federal, state and local laws, and all rules governing the practice of podiatric medicine and surgery in Ohio, and all terms imposed by the United States District Court, Northern District of Ohio,

---

<sup>1</sup> The 2006 order incorrectly identified the respondent as "Frank Murray Strasek, M.D."

Eastern Division, in *United States v. Frank M. Strasek*, Case No. 1:04CR-250.

\* \* \*

5. **Violation of Terms of Probation:** If Dr. Strasek violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

(Ex. 1)

### **July 2007 Reinstatement of Dr. Strasek's Certificate**

5. On July 11, 2007, the Board considered Dr. Strasek's application for the reinstatement of his certificate. By a unanimous vote, the Board reinstated his certificate, subject to the probationary terms and conditions set forth in the 2006 Order. The probationary terms remain in effect and are binding to date. (Ex. 2)

### **Further Proceedings in Federal Court**

6. On December 19, 2007, Dr. Strasek's probation officer filed a report with the federal court stating that he believed Dr. Strasek was in violation of the Court's judgment, in that Dr. Strasek had failed to pay restitution and had failed to pay the cost of electronic monitoring for his period of home confinement, as ordered by the Court. (St. Exs. 3, 3-1)
7. The probation officer provided the following information to the Court:

**Failure to Pay Restitution:** This officer received a letter from the Department of Health and Human Services on August 29, 2006 indicating that a lump-sum payment was withheld [by] Medicare in the amount of \$84,820.83, and applied to the balance of the offender's restitution. Since that time, the offender has made one (1) \$10.00 payment, in September of 2007. He has not made a payment since.

Despite failing to make regular monthly restitution payments, it was discovered in April of 2007, that the offender is driving a 2007 Ford Edge that he claims he pays \$370.00 in monthly lease fees. He maintains that he needs a vehicle, and is making the payments based on loans he has received from friends and relatives. When advised that he would have to explain to the Court, he has stated that he is prepared to do so. The offender paid a \$2,000 Special Assessment Fee in full on July 1, 2005.

**Failure to Pay Cost of Home Confinement Program with/Electronic Monitoring Fee:** The offender completed the Home Confinement Program on May 20, 2006, however, he has not paid toward the cost of the program. He was denied waiver of the cost on January 19, 2006.

**300 Hours of Court Community Service:** The offender completed 300 hours of Court Community Service at the St. Augustine Hunger Center on October 26,

2006. According to the Director of the Hunger Center, Sister Corita Ambro, the offender's work was exemplary, and he continues to volunteer on occasion. Sister Corita maintains that the church is grateful for offender's work. He has completed over 200 hours of volunteer work in excess of his requirement. It should be noted that the offender borrowed over \$2,000.00 from St. Augustine Church. A conversation with Sister Corita revealed that she willingly lent the money to the offender. He advised this officer that he intends to pay the money back, but recently stated that he "worked the loan payment off." The offender reports that he and Sister Corita are attempting to open a medical clinic at the church on a part-time basis.

\* \* \*

**Residence:** Since October of this year, the offender has resided with his elderly mother in her single-family home located at \* \* \* Lake Road, Rocky River, Ohio. Also, living at the home are the offender's two adult sisters. He reports that his mother is currently helping him financially. Prior to this residence, he was residing at the home of a friend, [name and street address omitted], in Avon Lake, Ohio. [This friend] was frequently out of town on business and allowed the offender to reside at his home. He asked the offender to move out in October. The offender's wife filed for and was recently granted a divorce from the offender. He states there is a continuing custody case over their 7-year-old son.

**Employment:** The offender's medical license was reinstated at the end of July 2007. Prior to the reinstatement, the offender had not been employed. He reports that he has been occupied daily by continuing education for his practice, his recent divorce, community service and his continuing volunteer status at St. Augustine. The offender reports that all of his income has come in the form of loans from family and friends.

(Ex. 3-1 at pages 2-3)

8. In December 2007, the Court ordered a hearing for Dr. Strasek to address the alleged violations of his probation, and two hearings were held. At the first hearing, Dr. Strasek refused to admit that he had violated his probation, and the Court granted a postponement to allow the government to present additional evidence regarding Dr. Strasek's failure to make restitution, the amount of his expenses, and his failure to engage in active efforts to earn an income. At the second hearing, held on March 24, 2008, Dr. Strasek admitted that he had failed to pay the court-ordered restitution and costs of his home confinement. (Ex. 3-2 at 2-3)
9. At the March 2008 hearing, Dr. Strasek's attorney described the criminal conduct for which Dr. Strasek had been convicted, stating that Dr. Strasek had improperly billed Medicare/Medicaid by entering codes that were not the proper codes, which had caused him to receive higher payments than he was entitled to receive, and that, in essence, Dr. Strasek had billed the government for more services than he had actually performed. (Ex. 3-2 at 12)

10. With regard to his failure to pay restitution, Dr. Strasek emphasized that he had paid almost \$85,000 of the total amount of restitution, in a large lump-sum payment transferred from Medicare/Medicaid. He explained that, during the litigation of the government's fraud claims against him, funds lawfully owed to him by Medicare/Medicaid had not been paid to him, but were held in an escrow account pending resolution of the litigation. Upon his conviction, the monies duly owed to him were transferred to pay the court-ordered restitution and had satisfied about 80% of the total restitution. Dr. Strasek also asserted that that he had made sporadic payments totaling \$150 toward the cost of his home confinement. (Ex. 3-2 at 12-13, 26-27)
11. Dr. Strasek provided the Court with information about his other financial obligations. He emphasized that he had been paying \$337 per month in child support for his eight-year-old son and that he was current on that obligation. When the Court asked where Dr. Strasek had obtained the money to pay child support, he stated that he had been able to see a few patients since his reinstatement and that he had received some payments from past years, which he had applied to child support. He said that, on some occasions, his mother had given him money to make up shortages of ten or twenty dollars. Dr. Strasek told the Court that he was giving priority to his child-support obligation. (Ex. 3-2 at 16, 22-23)
12. Dr. Strasek added that the government had instituted a civil action against him concerning the same events that had resulted in his criminal conviction. He stated that a judgment had been rendered against him for treble damages, which meant that he now owed the government about \$315,000. He also stated that he has had to pay attorney fees for several lawsuits, including his divorce, and that he has credit-card debt and other bills. Dr. Strasek maintained that he was working diligently to get his practice up and running, and had gained access to his office and spent days cleaning it, but then he was locked out the next time he arrived, for reasons he did not know. He explained that he could not get into his office to get his accounts-receivable records, and he believed there was money owing to him that would pay off the amount he owed to the Court. His lawyer described Dr. Strasek as "overwhelmed." (Ex. 3-2 at 13-14, 20-21, 25-28)
13. Dr. Strasek acknowledged to the Court that he had taken loans from family members and from St. Augustine Church. He stated that he had submitted a letter from Sister Ambro<sup>2</sup> in which she stated that she had loaned him the money because he was struggling to get his life back together and she wanted to help him, not because she had been manipulated by him. Dr. Strasek stated that Sister Ambro had wanted to give him the money as a gift because he had helped her, but that he had insisted that he would pay the money back or work it off. Dr. Strasek told the Court that he had been living in his mother's basement for the past four months and that he had lived at a friend's house before moving to his mother's home. (Ex. 3-2 at 17-18, 24, 28, 40)
14. Regarding his search for sources of income, Dr. Strasek told the Court: "I'm pursuing the order for employment. I have not been sitting." He said he had been diligently contacting vendors and his accountant to get the supplies and the permits to reopen his practice. In addition, Dr. Strasek claimed that he had been writing "some books" that were about to be published and

---

<sup>2</sup> The transcript of the hearing refers to Sister Ambro as "Sister Ambrose." (Ex. 3-2)

that he had submitted applications for employment at Lowe's, for "internet jobs," and with a headhunter. He stated that he had received communications from people who were awaiting his return to practice. He urged the Court to believe that he was "on the verge" of being able to service his debts. (Ex. 3-2 at 25-28)

15. The government argued that Dr. Strasek's statements about being close to reopening his practice were unrealistic because he had been excluded from the Medicare/Medicaid system for 13 years, and private insurers were unlikely to look favorably on him. The government noted that the amounts supposedly owing to Dr. Strasek had not yet been billed and probably could not be billed at this point, years after the services were rendered. In addition, the government emphasized that Dr. Strasek had waited until three months before the end of his three-year term of supervised release to apply for any employment, and that he had not submitted applications until the Court scheduled a hearing on his violation of court-ordered terms. (Ex. 3-2 at 31-32)
16. The government presented Dr. Strasek's application to obtain the lease on his 2007 Ford Edge, in which he had stated that his gross monthly income was \$6,000. Dr. Strasek admitted that he had signed the application, but he claimed that he had stated that his monthly income was only \$3,000, an amount that he had estimated he would be able to make as soon as he got his practice up and running. He claimed that the salesperson had filled in some of the lease forms and that someone must have written a "6" over the "3" on his application. Dr. Strasek stated that he had never told anyone his monthly income would be \$6,000. He also asserted that the statement on the credit application that he was in the process of buying a home was incorrect. Dr. Strasek told the Court that he had needed a vehicle and that his Board license had just been reinstated when he signed the application, and that, when asked for an income amount, he had accounts receivable which totaled about \$3,000. He said that, at the time he completed the form, he had believed he could get his practice started again and that his income would be about \$3,000 a month once that happened. Dr. Strasek told the Court that he had turned the car back in and was now using the bus for transportation. (Ex. 3-2 at 4-10)
17. In response, the government pointed out that the pending Medicare payment was known at the time of Dr. Strasek's sentencing in March 2005, at which time the Court had imposed two months of incarceration followed by ten months of home confinement. The government stated that, since the sentencing in 2005, Dr. Strasek had made only one payment of ten dollars. The government disagreed that Dr. Strasek had paid \$150 toward the cost of his home confinement. (Ex. 3-2 at 30-32)
18. The Court found that Dr. Strasek was in violation of his probation:

THE COURT: \* \* \* At the time you're telling your probation officer that you have no money to pay any debts that you owe to the government, and at the time you're telling the probation officer that you're in substantial debt to family members and to the church, at the same time you are applying to pay \$400 a month for a car?

THE DEFENDANT: Yes. The application is that.

THE COURT: All right. Well, the Court finds that the defendant is obviously in violation of his obligations both to pay restitution and to pay for his electronic monitoring fees. The question is what is the most appropriate sentence for this defendant in these circumstances. The Guidelines recommend a three to nine month custody range and then the Court also would have the authority to reimpose a term of supervised release.

(Ex. 3-2 at 10)

19. Dr. Strasek urged the Court to be lenient, noting the following factors: “I don’t see a job in the near future that I would be able to service a \$3,000-a-month bill from the government to help pay the civil case. And I’m 59. I don’t have that many more years of practice.” Dr. Strasek noted that he had submitted a letter from his son’s counselor, who had advised that, if he were taken away from his son, the child would suffer. Dr. Strasek presented a timeline he had made that showed his various efforts to “get his life back in order.” (Ex. 3-2 at 28-29)
20. In considering whether to modify Dr. Strasek’s sentence, the federal judge summarized the history of this case, addressing Dr. Strasek and his attorney:

THE COURT: All right. Mr. Bryan, while you’re correct that normally this Court does not impose any custody terms because of a failure to pay restitution where there’s a clear inability to make those payments, this isn’t a normal case, and I think that some history of this defendant’s dealings with the Court and dealings with probation is appropriate. \* \* \* When this case first came to me \* \* \* this defendant appeared before me humble, contrite, tears in his eyes, said he wanted to prove that he was a good and honorable man, and, despite the fact that he had agreed to a plea agreement that should have imposed Bureau of Prisons custody upon him, I deviated from that agreement.

I said, “There’s no need to put this man in prison. He needs to make these payments. We could put him on home confinement. He could do more good in the community.”

So I structured a very ridiculously favorable deal, much to the chagrin of Ms. Hearey, who was the U.S. Attorney at the time, who was appalled that I didn’t make him abide by his original deal and put him in the custody of the Bureau of Prisons.

Then, within months, I started receiving letters from Mr. Strasek telling me how unfair the deal was to him. How imposing home confinement on him was just really unduly harsh and imposed an undue punishment and limited his ability to live his life and catch up and do all the things he wanted.

I sent word back through his counsel that I was shocked that he would ask for or complain about the deal of the century. And after his counsel sent that word to him, a few months later I get another letter saying, “Now it’s time for

you to let me off of supervised release because you're holding me back in my life.”

\*\*\* [A]nd in those letters, he continued to say why he wasn't really at fault for any of his behavior. It's clear this defendant never really accepted responsibility for his actions.

As it relates to the issue of payment of restitution and payment for his home confinement fees—which I thought was more than reasonable given that the home confinement was a gift—the defendant, he made one \$10 payment.

It's not like the defendant was out there and, you know, making all kinds of efforts to obtain employment. The only reason he applied to Lowe's this time is because, the last time he was here. I said he's never even so much as applied for a job as \*\*\* a Wal-Mart greeter or something.

In other words, this defendant is able-bodied and could have gotten a job at a retail establishment, could have gotten a job anywhere for the years that the probation officer and I have been patient with the defendant and while he did nothing.

His timeline talks about dealing with his lawsuits. As the government points out, the one lawsuit he didn't deal with at all.

It talks about dealing with emotional issues, but never reflects efforts to obtain employment.

He has in the past told me that he was spending all his time trying to rebuild his practice and going through files, and now I find out that he's been locked out of his office and doesn't even have access to those files.

He has made representations—he made representations to me that he was doing this additional community service out of the goodness of his heart and I should take that into consideration in releasing him from his supervised release, and it turns out that it wasn't out of the goodness of his heart. It was because he was getting the church to hand him money.

The defendant has manipulated the system. He's manipulated even the people I sent him to \*\*\* for purposes of community service. And it appears that he continues to take advantage of all around him.

Driving a car with a \$400 lease when you can't even make a \$10 payment on your restitution obligation is just completely inexcusable.

I note that the probation officer more than once offered to help Mr. Strasek find employment, offered to help Mr. Strasek by setting up a small monthly

payment obligation that he could satisfy, and each time this defendant rejected those efforts.

This probation officer was more than patient with this defendant. This is not a situation of someone who just simply can't make a restitution obligation and for whom some kind of confinement would be a debtor's prison.

This is an individual who has never accepted responsibility for his actions and never made an attempt to try to live up to those obligations by really responding to the obligations the Court put on him.

(Ex. 3-2 at 33-36)

21. Ultimately, the Court chose not to order Dr. Strasek into the custody of the Bureau of Prisons. Instead, the judge ordered Dr. Strasek to be put into a halfway house, with community confinement for the remainder of his supervised-release term of approximately 90 days. The judge stated that her ruling was, again, a gift to Dr. Strasek. (Ex. 3-2 at 37-40)

The Court provided that Dr. Strasek could leave confinement for employment purposes but clarified that "employment" does not include "this generalized description of his continuing effort to reinvent his practice, which has been now a couple years that he's been describing to me that he's in the process of, and it has resulted in no actual cash to him." (Ex. 3-2 at 37)

The Court stated that this placement would allow the Court to monitor Dr. Strasek's employment efforts and get him "in a position that he understands that employment is an important obligation, so that he can fulfill his obligations to the government, to his family, and hopefully make repayment to his 90-year-old mother of the monies he's been taking from her." The Court ordered the sentence to take effect as soon as Dr. Strasek's probation officer could find a placement for him at a community-corrections facility. (Ex. 3-2 at 37-38)

22. On March 26, 2008, the Court entered an Order placing Dr. Strasek in community confinement at Oriana House with work-release privileges for the remaining term of supervised release, a period of approximately 90 days. The Court provided that, on termination of his supervised release, the unpaid amount of restitution would be referred to the debt-collection division of the U.S. Attorney's office. (Ex. 3-1)

### **PROPOSED FINDINGS**

1. In an Order dated July 12, 2006 [2006 Order], the Board imposed discipline on Frank Murray Strasek, D.P.M., pursuant to R.C. 4731.22(B)(9), based on his plea of guilty to, and the adjudication of his guilt of, multiple felonies in *United States v. Frank M. Strasek*, Case No. 1:04CR-250, in the U.S. District Court for the Northern District of Ohio.

In its 2006 Order, the Board permanently revoked Dr. Strasek's certificate to practice podiatric medicine and surgery, stayed that revocation, and suspended his certificate for an indefinite period of not less than six months. The Board imposed terms and conditions for

reinstatement and set forth probationary terms, conditions, and limitations with which Dr. Strasek must comply for at least three years of probation, if and when his certificate was reinstated. The probationary terms imposed by the Board in its 2006 Order include the requirement that Dr. Strasek must obey all terms imposed by the federal district court in *U.S. v. Strasek*.

2. On July 11, 2007, Dr. Strasek's certificate to practice podiatric medicine and surgery was reinstated. Since that date, he has remained subject to the probationary terms, conditions, and limitations of the 2006 Board Order.
3. On March 26, 2008, the federal district court entered an order finding that Dr. Strasek was in violation of the court-ordered terms for supervised release. The Court modified Dr. Strasek's sentence, ordering among other things that he must serve approximately ninety days of community confinement at Oriana House, a community-corrections center.
4. The findings set forth above in Proposed Findings 1 through 3 establish that Dr. Strasek failed to comply with a probationary term imposed by the Board. Specifically, he violated the requirement that he must comply with all the terms and conditions imposed by the federal court.
5. Dr. Strasek's acts, conduct, and/or omissions, as set forth above in Proposed Findings 1 through 4 above, establish a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that language is used in R.C. 4731.22(B)(15).
6. In this administrative action, the Board issued a notice of opportunity for hearing to Dr. Strasek, which was duly served on him, and he did not request a hearing within 30 days. Therefore, the Board may consider the evidence and determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate his certificate to practice podiatric medicine and surgery, or to reprimand him or place him on probation.

\* \* \* \* \*

Several features in the record are noteworthy: that the federal court was very lenient in its initial sentencing order; that Dr. Strasek nonetheless sent letters to the Court seeking even more lenient treatment while failing to comply with the Court's terms for supervised release; and that Dr. Strasek has not been completely honest in his dealings with the Court. The federal court repeatedly instructed Dr. Strasek to secure some type of steady employment so that he could generate income, however small, to make regular payments on his court-ordered restitution and costs. He did not do this, choosing instead to borrow money from his friends, family, and church. During the March 2008 hearing, the Court expressly concluded that Dr. Strasek has failed to accept responsibility for his criminal conduct. The Hearing Examiner agrees.

However, it is important to recognize that the Court has already imposed punishment on Dr. Strasek for violating the terms of his federal sentence. He will not be able to demonstrate full compliance with the Court's sentencing order, and, hence, full compliance with the Board's probationary terms, until he shows full restitution and full payment of all the costs ordered by the Court.

It is clear that Dr. Strasek's violation of the Board's probationary term warrants discipline. However, as a practical matter, there are few administrative sanctions that match well with the circumstances. A permanent revocation has been stayed, but lifting the stay at this point appears harsh under all the circumstances. A suspension is warranted, but it would exacerbate Dr. Strasek's inability to pay child support, restitution, and other debts, and, in addition, he has not fully returned to practice since his certificate was reinstated in July 2007. Additional community service makes little sense because Dr. Strasek has already exceeded the hours imposed by the Court. In addition, the Board lacks statutory authority to impose a fine to recompense it for any part of the costs of the Board's investigation and review.

A reprimand from the Board is warranted at the very least. Further, the Board would be within its discretion to conclude that, because Dr. Strasek was not in compliance with his probationary terms for a number of months, he has not fully served his probation for a significant period. The Board would be justified in extending his probationary period by at least six months, or more, as a sanction for his violation. Indeed, the conduct described by the federal court indicates that Dr. Strasek needs further monitoring.

#### PROPOSED ORDER

It is ORDERED that:

- A. Frank Murray Strasek, D.P.M., is hereby REPRIMANDED.
- B. The Board's Order dated July 12, 2006, in the *Matter of Frank Murray Strasek*, is hereby modified to this extent: the previously ordered minimum period of probation is extended by six months, for a total probationary period of at least three years and six months. All other terms, conditions, and limitations of the July 2006 Order remain in full force and effect.

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

  
Hearing Examiner

# State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.  
Executive Director

(614) 466-3934  
med.ohio.gov



May 14, 2008

Case number: 08-CRF- 067

Frank Murray Strasek, D.P.M.  
21282 Erie Road  
Rocky River, Ohio 44116

Dear Doctor Strasek:

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

- (1) On or about July 12, 2006, by Order of the Board [2006 Board Order], you were found to be in violation of Section 4731.22(B)(9), Ohio Revised Code. The 2006 Board Order permanently revoked your certificate to practice podiatric medicine and surgery, stayed such revocation, and suspended your certificate for an indefinite period of time, but not less than six months. The 2006 Board Order also provided conditions for reinstatement, which upon completion, would allow for the reinstatement or restoration of your certificate subject to probationary terms, conditions, and limitations.

On or about July 11, 2007, your certificate to practice podiatric medicine and surgery was reinstated, and as of this date, you remain subject to the probationary terms, conditions, and limitations of the 2006 Board Order, a copy of which is attached hereto and incorporated herein.

- (2) Paragraph C.1. of the 2006 Board Order requires that you obey all federal, state, and local laws, and all rules governing the practice of podiatric medicine and surgery in Ohio, and all terms imposed by the United States District Court, Northern District of Ohio, Eastern Division, in *United States v. Frank M. Strasek*, Case No. 1:04CR-250.

On or about March 26, 2008, in the United States District Court, Northern District of Ohio, Eastern Division, you were found to be in violation of the probationary terms imposed by the Court in the abovementioned criminal case, and you were further sentenced, *inter alia*, to approximately ninety days confinement at the Oriana House, a community corrections center. You have failed to comply with the requirements of paragraph C.1. of the 2006 Board Order.

*Mailed 5-15-08*

Frank Murray Strasek, D.P.M.

Page 2

Your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

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

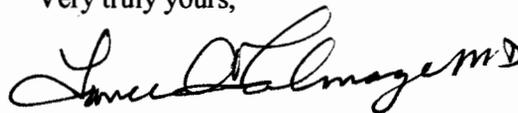
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.  
Secretary

LAT/DSZ/flb  
Enclosures

CERTIFIED MAIL #91 7108 2133 3934 3689 4002  
RETURN RECEIPT REQUESTED



# 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)

July 12, 2006

Frank Murray Strasek, D.P.M.  
21282 Erie Road  
Rocky River, OH 44116

Dear Doctor Strasek:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 12, 2006, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 7003 0500 0002 4329 8845  
RETURN RECEIPT REQUESTED

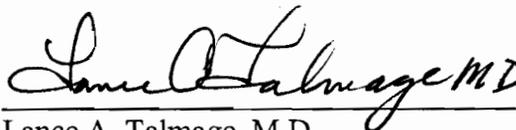
Cc: William J. McGinty, Esq.  
CERTIFIED MAIL NO. 7003 0500 0002 4329 9972  
RETURN RECEIPT REQUESTED

*Mailed 8-8-06*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 12, 2006, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Frank Murray Strasek, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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



\_\_\_\_\_  
Lance A. Talmage, M.D.  
Secretary

(SEAL)

\_\_\_\_\_  
July 12, 2006

Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF \*  
\*  
FRANK MURRAY STRASEK, M.D. \*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on July 12, 2006.

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

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Frank Murray Strasek, D.P.M., to practice podiatric medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Strasek's 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. Strasek's certificate to practice podiatric medicine and surgery until all of the following conditions have been met:
1. **Application for Reinstatement or Restoration:** Dr. Strasek shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  2. **Obey the Terms of Criminal Probation:** At the time he submits his application for reinstatement or restoration, Dr. Strasek shall provide acceptable documentation certifying that he has maintained full compliance with all terms imposed by the United States District Court, Northern District of Ohio, Eastern Division, in *United States v. Frank M. Strasek*, Case No. 1:04CR-250.

3. **Billing/Coding Course:** At the time he submits his application for reinstatement or restoration, Dr. Strasek shall provide acceptable documentation of successful completion of a course or courses dealing with coding and billing. 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
  
4. **Personal Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Strasek 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 acquisition period(s) in which they are completed.

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

5. **Professional Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Strasek 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 acquisition period(s) in which they are completed.

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

6. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Strasek has not been engaged in the active practice of podiatric 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. Strasek's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:

1. **Obey the Law and Terms of Criminal Probation:** Dr. Strasek shall obey all federal, state and local laws, and all rules governing the practice of podiatric medicine and surgery in Ohio, and all terms imposed by the United States District Court, Northern District of Ohio, Eastern Division, in *United States v. Frank M. Strasek*, Case No. 1:04CR-250.
2. **Declarations of Compliance:** Dr. Strasek 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. Strasek'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.
3. **Personal Appearances:** Dr. Strasek 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. Strasek'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.
4. **Tolling of Probationary Period While Out of State:** In the event that Dr. Strasek should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Strasek 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.
5. **Violation of Terms of Probation:** If Dr. Strasek violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

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

E. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Strasek shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or

appointments. Further, Dr. Strasek shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

**F. REQUIRED REPORTING TO OTHER STATE LICENSING**

**AUTHORITIES:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Strasek shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license.

Dr. Strasek shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration or restoration of any professional license. Further, Dr. Strasek shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.

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

(SEAL)



Lance A. Talmage, M.D.  
Secretary

July 12, 2006  
Date

2006 MAY 22 P 12: 11

**REPORT AND RECOMMENDATION  
IN THE MATTER OF FRANK MURRAY STRASEK, D.P.M.**

The Matter of Frank Murray Strasek, D.P.M., was heard by Sharon W. Murphy, Esq., Hearing Examiner for the State Medical Board of Ohio, on February 10, 2006.

**INTRODUCTION**

I. Basis for Hearing

- A. By letter dated May 18, 2005, the State Medical Board of Ohio [Board] notified Frank Murray Strasek, D.P.M., of proposed disciplinary action against his certificate to practice podiatric medicine and surgery in Ohio. The Board's action was based on allegations that Dr. Strasek had pleaded guilty to, and been found guilty of, multiple counts of mail fraud and health care fraud under federal law. The Board charged that Dr. Strasek's plea and the court's adjudication constitute a "plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code. Accordingly, the Board advised Dr. Strasek of his right to request a hearing in this matter. (State's Exhibit 1A)
- B. On June 17, 2005, Jay Milano, Esq., submitted a letter requesting a hearing on behalf of Dr. Strasek. (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: William T. McGinty, Esq.

**EVIDENCE EXAMINED**

I. Testimony Heard

Frank Murray Strasek, D.P.M.

## II. Exhibits Examined

### A. Presented by the State

1. State's Exhibits 1A through 1O: Procedural Exhibits
2. State's Exhibits 2-7: Certified copies of transcripts and documents filed in *United States v. Frank M. Strasek*, Case No. 1:04CR-250, in the United States District Court for the Northern District of Ohio.

### B. Presented by the Respondent

1. Respondent's Exhibit A: Curriculum vitae of Dr. Strasek.
2. Respondent's Exhibits B through G: Copies of notices from insurance companies and other third-party payors notifying Dr. Strasek that he was no longer eligible for reimbursement under their plans.
3. Respondent's Exhibits H and I: Copies of letters written in support of Dr. Strasek. (Note: These exhibits are sealed to protect patient confidentiality.)
4. Respondent's Exhibit J through M, and O: Copies of certificates of membership, fellowship, board certification, and training pertaining to Dr. Strasek.
5. Respondent's Exhibit N: Copy of a January 12, 1988, letter from Congressman Edward F. Feighan, United States House of Representatives, thanking Dr. Strasek for his insightful responses on a questionnaire regarding medical care for the homeless.
6. Respondent's Exhibit P: Copy of a November 14, 1996, letter from Governor Voinovich appointing Dr. Strasek to the Ohio Radiation Advisory Council.
7. Respondent's Exhibit Q and R: Copies of letters written in support of Dr. Strasek.

## SUMMARY OF THE EVIDENCE

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

1. Frank Murray Strasek, D.P.M., testified that he had received his degree in podiatric medicine and surgery in 1975 from the Ohio College of Podiatric Medicine in Cleveland, Ohio. Dr. Strasek testified that he had trained "at many facilities both in the United States and in Europe." For example, in 1978, Dr. Strasek studied at the University of Vienna in Austria, and

he also received a management fellowship certificate in 1997 from Case Western Reserve University. (Hearing Transcript [Tr.] at 10-12; Respondent's Exhibit [Resp. Ex.] A)

Dr. Strasek testified that he had received his Ohio license as a podiatrist in 1976 and then opened a private practice in Rocky River, Ohio, where he had had a successful practice for thirty years. Dr. Strasek stated that he has served as adjunct faculty at the College of Podiatric Medicine on the campus of the Cleveland Clinic. He testified further that he is board certified in podiatric medicine and surgery, and is a fellow of the American Academy of Podiatric Sports Medicine as well as the American Professional Wound Care Association. (Tr. at 9-12; Resp. Exs. J-L)

Dr. Strasek testified that he had also served as a team doctor for the U.S. Olympic trials and for high schools. He stated that he had consulted with professional sports teams in football, basketball, and baseball. In addition, Dr. Strasek testified that he had served as a lobbyist for his medical association in both Columbus and Washington, D.C., and that he had served all the chairs at the state podiatric medical association. Dr. Strasek further noted that he had been appointed by Governors Voinovich and Taft to the Radiation Advisory Council, where he helped write laws regarding radiation safety. Dr. Strasek testified that he had retired as of December 31, 2005. He explained that he is not treating patients but visits his office for administrative matters. (Tr. at 10-15, 26; Resp. Exs. P-Q)

## **The Criminal Proceedings**

2. Dr. Strasek testified that, on September 27, 2001, federal agents had come to his office with a warrant to seize his records, computers, and other materials. He was indicted in May 2004 on various fraud charges related to his billing. (Tr. at 16-18; State's Exhibits [St. Exs.] 2-4)

On August 4, 2004, a Superseding Indictment [the Indictment] was filed in the United States District Court for the Northern District of Ohio, Eastern Division, in *United States v. Frank M. Strasek*, Case No. 1:04CR-250. The Indictment charged Dr. Strasek with multiple counts of mail fraud and health care fraud in violation of 18 U.S.C. § § 1341 and 1347, respectively, based on coding violations over a period of eight years. (St. Ex. 3) The Indictment included allegations such as the following:

26. \* \* \* [T]he defendant removed simple nail specula, debrided nails, clipped nails and otherwise provided routine foot care, procedures that were reimbursable, if at all, under CPT Code 11719<sup>1</sup> or 11720,<sup>2</sup> but claimed payment from health care benefit programs for those services using CPT codes 10060,<sup>3</sup> 10061,<sup>4</sup> and 20000,<sup>5</sup>

---

<sup>1</sup> In the Superseding Indictment, CPT Code 11719 is defined as “trimming of nondystrophic nails, any number.” (St. Ex. 3 at 5)

<sup>2</sup> CPT Code 11720 is defined as “debridement of nail(s) by any method(s); one to five.” (St. Ex. 3 at 5)

<sup>3</sup> CPT Code 10060 is defined as “a surgical procedure, ‘incision and drainage of abscess (e.g., carbuncle, suppurative hidradenitis, cutaneous or subcutaneous abscess, cyst, furuncle, or paronychia) simple or single.’” (St. Ex. 3 at 5)

<sup>4</sup> CPT Code 10061 is defined as “10060, ‘complicated or multiple.’” (St. Ex. 3 at 5)

<sup>5</sup> CPT Code 20000 is defined as “a surgical procedure, ‘incision of soft tissue abscess (e.g., secondary to osteomyelitis); superficial.’” (St. Ex. 3 at 6)

representing that he had performed surgical procedures for incision and drainage of abscesses.

27. \* \* \* [T]he defendant debrided nails, clipped nails, removed corns and calluses, and otherwise provided routine foot care, procedures that were reimbursable if at all under CPT Code 11719 or 11720, but claimed payment from health care benefit programs for those services using CPT codes 11040<sup>6</sup> and 11041,<sup>7</sup> representing that he had performed skin debridement procedures.<sup>8</sup>

28. \* \* \* [T]he defendant claimed payment from health care benefit programs for evaluation and management services (office and home visits) using CPT Codes 99213<sup>9</sup> and 99213<sup>10</sup> when he had not rendered services significantly different, or separately identifiable, from procedures for which he had also claimed payment under CPT Codes 11040, 11041, 11060, 10061.

29. \* \* \* [T]he defendant claimed payment from health care benefit programs by adding the -25 modifier to CPT Codes, when he did not perform any separately reimbursable services.<sup>11</sup>

30. \* \* \* [T]he defendant, for the purposes of obtaining payment from health care benefit programs, and of concealing and covering up the scheme, placed false statements in patient records.

(St. Ex. 3 at 7-8)

---

<sup>6</sup> CPT Code 11040 is defined as “‘debridement; skin, partial thickness.’” (St. Ex. 3 at 5)

<sup>7</sup> CPT Code 11041 is defined as “‘debridement; skin, full thickness.’” (St. Ex. 3 at 5)

<sup>8</sup> The Superseding Indictment provides that, “In 1993, Nationwide notified physicians, including defendant, that effective July 1, reimbursement for skin debridement under CPT codes 11040 and 11041 required removal of a tissue ‘by cutting with the surgical instruments such as a scalpel, laser, curette, or a electric cautery,’ not merely ‘a cleansing [or] scraping.’”

<sup>9</sup> CPT Code 99213 is defined as “an ‘office or other outpatient visit for the evaluation and management of an established patient.’” (St. Ex. 3 at 6)

<sup>10</sup> CPT Code 99213 is defined as a “‘home visit for the evaluation and management of an established patient.’” (St. Ex. 3 at 6)

<sup>11</sup> In the Superseding Indictment, the following explanation was provided regarding “the -25 Modifier”:

Costs of pre- and post-operative visits were included in reimbursements for medical and surgical procedures. Health care benefit programs did not pay separately for visits provided on the same day as, or within a specified number of days of, a billed medical or surgical procedure for the same patient for the same condition. By adding two-digit Modifier-25 to the CPT code used to claim payment for a medical or surgical procedure, however, a physician could request payment for “a significant, separately identifiable evaluation and management service above and beyond the other service provided or beyond the usual preoperative and postoperative care associated with the procedure that was performed.’”

(St. Ex. 3 at 6-7)

3. Dr. Strasek entered into a plea agreement on January 3, 2005. (St. Ex. 4) That agreement included his stipulation to the following facts:

From December 21, 1993, through September 27, 2001, Defendant devised and intended to devise a scheme and artifice to defraud the federal Medicare, Railroad Medicare and Medicaid programs by charging those programs for services he did not provide, as outlined in the indictment and as follows:

A. Defendant claimed payment for surgical procedures for incision and drainage of abscesses, when in fact Defendant provided routine foot care that was reimbursable, if at all, at lower rates.

B. Defendant claimed payment for skin debridement procedures, when in fact Defendant provided routine foot care that was reimbursable, if at all, at lower rates.

C. Defendant claimed payment for office visits when in fact he had not performed any service significantly different from procedures for which he had already claimed payment.

D. Defendant claimed payment using two-digit numeric codes known as modifiers, when in fact he did not perform any reimbursable service.

E. Defendant placed false statement in patient records for the purpose of obtaining payment for services he did not render.

F. Defendant claimed payment for services for which there was no written substantiation.

(St. Ex. 4 at 6-7)

4. On January 3, 2005, Dr. Strasek appeared in federal district court to enter his plea of guilty to eleven felony counts of mail fraud and nine counts of health care fraud. Dr. Strasek testified at that hearing that he understood the elements of the fraud charges and had committed the violations knowingly and intentionally with the intent to defraud. He agreed that the restitution amount of \$105,207.53 was appropriate and said he understood that the court was required to order incarceration. (St. Ex. 6 at 3-19)

In the Plea Agreement, it was acknowledged that Dr. Strasek had accepted personal responsibility for the violations. Moreover, the prosecution acknowledged that Dr. Strasek had “met with law enforcement officers and provided truthful information regarding [his] involvement and timely notified the government of [his] intent to plead guilty. (St. Ex. 4 at 8-9)

5. At the sentencing hearing on March 21, 2005, Dr. Strasek testified about his current situation, among other things. Dr. Strasek stated that he was essentially indigent. He stated that he owned no real estate and was leasing his car, and that he had been obliged to borrow money against his dower interest in his wife's house to pay his attorney. He testified that he had no stocks or certificates of deposit. Dr. Strasek testified that he had closed his business and surrendered his DEA certificate. He stated that he had not been able to plan operations due to the uncertainties of the criminal prosecution and due to his expected incarceration. He explained that, since 2001, he had been providing medical services to Medicare patients without receiving reimbursement, to pay back what he owed. Based on all these factors, Dr. Strasek said that his income in the past four years had dropped to one third of its former level.<sup>12</sup> (St. Ex. 7)
6. The court sentenced Dr. Strasek to two months of custody in a community confinement facility followed by home confinement with electronic monitoring as the first ten months of a three-year term of supervised release. The court ordered Dr. Strasek to perform three hundred hours of community service and to pay restitution of \$105,207.53 at the rate of ten percent of his gross monthly income. No fine was ordered, although there was a \$2,000 special assessment. (St. Exs. 5, 7 at 14-17)

#### **Dr. Strasek's Testimony Regarding His Billing Practices**

7. At hearing, Dr. Strasek testified that, between 1993 and 2001, billing codes and nomenclature had changed repeatedly. He continued:

There was a constant flux in the codes for those. The diagnoses that were used for an abscess was a different code than for paronychia. The only place in the whole CPT book where paronychia was written as an applicable diagnosis, my office manager told me, was on the 10060 or 61.

She would call Medicare and ask what to do, and she faxed them copies of the codebook, of course Medicare knew, and she would show that the diagnostic codes on the insurance that was submitted was for paronychia, which by definition is an inflammation with or without an abscess. Which an ingrown tale, if you have ever had a red toe, that is an inflammation. That was used as a secondary diagnosis. But the coding problem is matching up the diagnostic code with the procedure codes. Therein lies the problem. So then she would call, "Should I use this code or not?"

I sent my staff across the country to seminars. Without any question, even in the medical journals, any expert that gives advice on coding puts a disclaimer that this may or may not be good in your state, across the country. So in due process, in due diligence to call and tried to hash through this, they did what they felt was right, and I got accused of fraud.

---

<sup>12</sup>In his Board hearing, Dr. Strasek presented documents showing that, in 2005, insurance companies and other third-party payors terminated his participation as a provider under their health-care plans. (Resp. Exs. B-G)

The 11719 number was not used in my office until I think 2001. Frankly, my office staff did not know what the heck to use when this thing came down. The 10060 and 10061, if you have two ingrown toenails, that is 61. Anything more than one is the next number up. So like 11720 becomes 11721. But how it was billed changed over that 10-year period of time. It was forever being changed.

And every billing course would always have a disclaimer like I said. So you are left to do what you could do. So to match up a diagnosis with a procedure code, the way that these computers work is that there are certain diagnostic codes that are applied to a code and more than one applied. \* \* \* So was there confusion, yes. Could this explanation be longer, absolutely. Would it be still is confusing, absolutely.

(Tr. at 36-38)

### **Letters in Support of Dr. Strasek**

8. Dr. Strasek presented letters from colleagues and community members regarding his admirable skill as a physician, leadership in the community, high ethical principles, and compassion. (Resp. Exs. H-I, Q-R)

### **FINDINGS OF FACT**

On January 3, 2005, in the United States District Court for the Northern District of Ohio, Frank Murray Strasek, D.P.M., pleaded guilty to eleven felony counts of mail fraud in violation of 18 U.S.C. §1341, and nine felony counts of health care fraud in violation of 18 U.S.C. §1347. Pursuant to a hearing on March 21, 2005, the court entered a judgment on March 29, 2005, adjudicating Dr. Strasek guilty of these felonies. The court ordered the following sentence: two months to be served in a community confinement facility; supervised release for a term of three years with home confinement for the first ten months under electronic monitoring; three hundred hours of community service; a special assessment in the amount of \$2,000.00; and restitution in the amount of \$105,207.53.

### **CONCLUSION OF LAW**

The guilty plea of Frank Murray Strasek, D.P.M., and the court's adjudication of guilt, as set forth above in the Findings of Fact, constitute a "plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

\* \* \* \* \*

Dr. Strasek admitted to having committed serious felonies. Although he testified that his office staff tried its best to submit proper codes for proper diagnoses, he admitted his guilt to all elements of these crimes. In mitigation, however, Dr. Strasek has no other criminal or disciplinary history. Prior to these events, he had practiced for thirty years without incident, and

had volunteered his time to the public good. Further, Dr. Strasek is remorseful; he is extremely unlikely to ever commit a crime, or to violate any Board rule, in the future.

### **PROPOSED ORDER**

It is hereby ORDERED that:

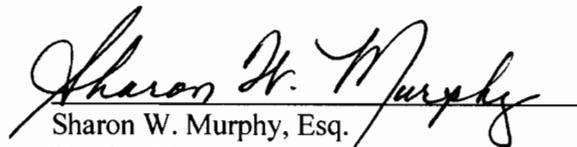
- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Frank Murray Strasek, D.P.M., to practice podiatric medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Strasek's certificate shall be SUSPENDED for an indefinite period of time, but not less than one year.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Strasek's certificate to practice podiatric medicine and surgery until all of the following conditions have been met:
1. **Application for Reinstatement or Restoration:** Dr. Strasek shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  2. **Obey the Terms of Criminal Probation:** At the time he submits his application for reinstatement or restoration, Dr. Strasek shall provide acceptable documentation certifying that he has maintained full compliance with all terms imposed by the United States District Court, Northern District of Ohio, Eastern Division, in *United States v. Frank M. Strasek*, Case No. 1:04CR-250.
  3. **Billing/Coding Course:** At the time he submits his application for reinstatement or restoration, Dr. Strasek shall provide acceptable documentation of successful completion of a course or courses dealing with coding and billing. 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
  4. **Personal Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Strasek shall provide acceptable documentation of successful completion of a course or courses dealing with personal ethics. Dr. Strasek 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 acquisition period(s) in which they are completed.

5. **Professional Ethics Course**: At the time he submits his application for reinstatement or restoration, Dr. Strasek 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 acquisition period(s) in which they are completed.
  6. **Additional Evidence of Fitness To Resume Practice**: In the event that Dr. Strasek has not been engaged in the active practice of podiatric 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. Strasek's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:
1. **Obey the Law and Terms of Criminal Probation**: Dr. Strasek shall obey all federal, state and local laws, and all rules governing the practice of podiatric medicine and surgery in Ohio, and all terms imposed by the United States District Court, Northern District of Ohio, Eastern Division, in *United States v. Frank M. Strasek*, Case No. 1:04CR-250.
  2. **Declarations of Compliance**: Dr. Strasek 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. Strasek'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.
  3. **Personal Appearances**: Dr. Strasek 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. Strasek'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.
  4. **Tolling of Probationary Period While Out of State**: In the event that Dr. Strasek should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Strasek 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.

5. **Violation of Terms of Probation:** If Dr. Strasek violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Strasek's certificate will be fully restored.
- E. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Strasek shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Strasek shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
- F. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Strasek shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Strasek shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Strasek shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.

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

  
Sharon W. Murphy, 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 JULY 12, 2006

### REPORTS AND RECOMMENDATIONS

Dr. Robbins announced that the Board would now consider the findings and orders appearing on the Board's agenda. He asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Douglas Paul Bosack, M.D.; John R Hanagan, M.D.; Mitchell Edward Simons, M.D.; and Frank Murray Strasek, D.P.M. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Madia	- aye
	Dr. Steinbergh	- aye
	Dr. Robbins	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Madia	- aye
	Dr. Steinbergh	- aye
	Dr. Robbins	- aye

Dr. Buchan returned to the room at this time.

Dr. Robbins asked Dr. Buchan whether he had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Douglas Paul Bosack, M.D.; John R Hanagan, M.D.; Mitchell Edward Simons, M.D.; and Frank Murray Strasek, D.P.M. Dr. Buchan replied that he had.

Dr. Robbins asked Dr. Buchan whether he 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. Dr. Buchan stated that he does understand.

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

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

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

.....  
FRANK MURRAY STRASEK, D.P.M.

Dr. Robbins directed the Board's attention to the matter of Frank Murray Strasek, D.P.M. He advised that no objections were filed to Hearing Examiner Murphy's Report and Recommendation.

Dr. Robbins continued that documents have been submitted by Dr. Strasek, which the State is construing as a motion to admit additional evidence into the record. In response, the Assistant Attorney General has filed a "Memorandum in Opposition to Respondent's Motion to Admit Additional Evidence." Copies of Dr. Strasek's documents and the State's Memorandum were previously distributed to Board members. Dr. Robbins asked whether the Board wished to admit Dr. Strasek's additional evidence.

There was no motion to admit the additional evidence. Dr. Robbins advised that the materials will be excluded from the Board's consideration.

Dr. Robbins advised that a request to address the Board was filed on behalf of Dr. Strasek, but was not filed in a timely manner. He asked whether the Board wished to allow Dr. Strasek the opportunity to make an address.

**DR. EGNER MOVED TO ALLOW DR. STRASEK TO ADDRESS THE BOARD. DR. BUCHAN**

**SECONDED THE MOTION.** All members voted aye. The motion carried.

Dr. Robbins advised that five minutes would be allowed for that address.

Dr. Strasek thanked the Board for allowing the continuation he requested in June so that his attorney could be present. He also thanked the Board for allowing him to speak.

Dr. Strasek was accompanied by his attorney, William T. McGinty.

Dr. Strasek stated that he sits there as a felon, and he admits that he pled guilty. He admitted to mistakes and problems in his office that led to this. Dr. Strasek stated that he pled guilty for a few reasons: 1. At age 51 he had his first child, who is now six, and he had his family leveraged against him where he would not see his son. He was threatened with jail and the like. 2. He pled guilty because he was counseled, not only by his wife, but also by his attorney, to plead guilty. This was very emotional, with all things considered. 3. He pled guilty because of the chance to have a lower amount of penalty. It is part of his record that he was arraigned twice; and each time that he was arraigned, because there were extra charges put on, he pled absolutely not guilty. After nearly bankrupting himself and spending his money on attorneys and experts, some of which were compromised, he was left with no witnesses, no more money, no way to fight this, and the threat of not seeing his son. So he pled guilty.

Dr. Strasek stated that the amount that came across as \$105,000 was actually \$4,300 over ten years; but the OIG has a formula that increased the figure to \$105,000, which actually represented the amount of money that was being held in his Medicare suspension account. He added that he had continued to treat patients at that time.

Dr. Strasek stated that this was his 9/11. He had the FBI come to his office and put a gun to his chest on September 27. As a gentleman, he's not used to doing this. He sat in meetings with the Medical Board, but as a representative for his profession. He was president at his local academies, and he went through all the chairs in his state. He was appointed by two Governors to the Radiation Advisory Counsel, where he had to pass ethics. He helped write the rules to make Ohio a compliant state. He's very aware of rules. The reputation he has in his specialty has always been that he's forthright, and in over thirty years of practice he never had a mark on his record or his license. He was never suspended or came for disciplinary action in any of the areas. But on September 27 he was accused. After he went through five years of investigations, and at the end of all the machinations, he's left with the prospect of seeing his four-year-old son again. So he pled.

Dr. Strasek stated that he has never been a danger to his patients. He has never cheated anyone. There has been nothing but a speeding ticket on his record. How he got on the list for investigation is an entirely different subject. Dr. Strasek stated that he sits here, and he's pretty emotional about this, because he has been jailed, has had to wear an anklet. Even before he pled, he had to check in with the Court; he couldn't even travel out of northeast Ohio without filing papers. Dr. Strasek stated that he's had to respond to a probation officer. He's had everything possible. He followed the Court Orders; he was never anywhere

but where he was supposed to be. Dr. Strasek stated that the action the Board takes against him and against his license is important because if it comes to the point that the Board does suspend him, he fully intends to reapply. He also wants the Board to know that he was a good citizen and has taken his lumps without regret.

Dr. Strasek stated that this type of action has also led to a three-and-a-half-week-old divorce decree, so every part of his life has been attacked. Dr. Strasek stated that there's an old saying that his father used to tell him: "If you don't ask, you don't get a date." Dr. Strasek stated that what he's asking for is consideration of the suspension, because the one reason why he pled was because his son would be taken away from him in divorce court if he doesn't have his license and can't provide an income.

Dr. Strasek stated that he also has 300 hours of community service. He wanted to use his license to work that off at the free clinics or similar settings. This would be a way for the Board to see that he is a good citizen as a physician, and that he is doing the right thing.

Dr. Strasek stated that anybody could be accused. There isn't one person, any physician, that could avoid this. He's certainly not the only one and he's certainly not the only doctor who has come before the Board that's ever said that everything was harassed and that he pled because of the family. However, when it's true, it's true. This can happen to anyone. It happened to him. Dr. Strasek stated that, even though his professional life and reputation showed otherwise, he's a felon.

Dr. Strasek asked that the Board reconsider suspension and allow him to continue to practice, where he thinks his talent is.

Mr. McGinty stated that Dr. Strasek was served with divorce papers three and a half weeks ago. There has not been a decree yet. He hasn't even filed his answer yet.

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

Mr. Wilcox stated that, as the Board is aware in this case, back in January 2005, Dr. Strasek pled guilty in the United States District Court for the Northern District of Ohio to eleven felony counts of mail fraud and nine counts of health care fraud. He appeared before a federal judge in federal court and acknowledged that he understood the charges against him, and he acknowledged that he committed the violations of law knowingly and intelligently with intent to defraud.

Mr. Wilcox stated that, as a former prosecutor, he takes a dim view of people who plead guilty in open court. He advised that in plea hearings in federal court, they go over every single charge with you and they make sure that you understand everything in that plea agreement. He takes a dim view of people who plead guilty and then come and later say that they did it to avoid this or that. If someone stands up in federal court and tells the judge that he or she is guilty, then he or she is guilty of the crime. Mr. Wilcox added that there is a Board rule, OAC 4731-13-24, that states that a guilty plea is conclusive proof of all the elements of the crime.

Mr. Wilcox advised that a reading of the court documents in this case shows that Dr. Strasek participated in a pattern of deception whereby he would treat patients for routine foot care problems, and then he would upcode or fraudulently bill Medicare or Medicaid for more expensive procedures that he did not perform. Mr. Wilcox stated that at hearing Dr. Strasek claimed that the billing codes changed often and were difficult to understand, and that he and his staff had difficulty learning which codes are appropriate. Mr. Wilcox stated that he, personally, has never dealt with billing codes, so he doesn't know how hard it is to comply with the rules and regulations or procedures in question; but his impression from previous cases, and the Board has had several cases like this, is that the Medicare/Medicaid billing process is not as big a mystery as Dr. Strasek claimed at his hearing. Mr. Wilcox stated that he's sure that many of the Board members have dealt with these billing issues in their practices, and those Board members have the ability to evaluate whether Dr. Strasek's statements are accurate.

Mr. Wilcox stated that he will leave it to the Board to determine the appropriate penalty in this case.

**DR. KUMAR MOVED TO APPROVE AND CONFIRM MS. MURPHY'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER IN THE MATTER OF FRANK MURRAY STRASEK, D.P.M. DR. DAVIDSON SECONDED THE MOTION.**

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

Dr. Buchan stated that this was an interesting presentation by Dr. Strasek, and he appreciates Dr. Strasek's presence; but he's left with a few thoughts. First, he's disappointed in Dr. Strasek as a leader in the profession allowing this to come about. He's disappointed that Dr. Strasek would not have taken charge of his responsibilities in a different manner. Dr. Buchan noted that Dr. Strasek has taken leadership positions in so many other areas, how he allowed this to happen is extraordinary.

Dr. Buchan advised that, when he read the transcript and read Dr. Strasek's description of some of the confusion on the matter, he was disappointed again. When he personally thinks about routine foot care and what that means, there is nothing about that that means abscess or ulcer debridement, so why confuse that issue again? Dr. Buchan stated that he thinks that this was another opportunity for Dr. Strasek to be more forthright on the matter and not try to cloud the issue. Dr. Strasek simply took a different course throughout his billing process. Just because you get paid for an abscess, doesn't mean you bill an abscess. Dr. Strasek chose to do it differently. Dr. Buchan stated that, just because you get paid in some meeting or somebody else describes reimbursement in a fashion for a particular service, doesn't mean you do that service, if, indeed, you've done a lesser service. Dr. Buchan stated that he is disappointed that a man with such a leadership background and potential would allow his office to move in this direction and, secondly, that he would describe this as a confusing issue. Dr. Buchan stated that he does not see this as a confusing issue.

Dr. Buchan continued that some of what he sees works to Dr. Strasek's benefit. Dr. Strasek has been a leader, and he's taken a role in the community as a gentleman who has done great things for the people

whom he serves throughout the state.

Dr. Buchan stated that he was taken by Hearing Examiner Murphy's position of leniency, because, quite honestly, the Board has revoked licenses for this issue countless times. Dr. Buchan stated that he came here today registering the disappointment that he stated, but he is compelled by the record to listen to the Board members, but also to reflect on Hearing Examiner Murphy's recommendation to suspend this gentleman's license for the greater good of the community and the state. Dr. Buchan stated that he can make an argument to do that in this case.

Dr. Steinbergh stated that there are a couple of things she would like to note relating to the hearing record itself. She referred to footnote number ten on page four of the Report and Recommendation. She noted that the footnote states: "CPT Code 99213 is defined as a 'home visit for the evaluation and management of an established patient.'" She stated that the correct code for this is either CPT Code 99347, which is a problem focused code for a home visit for the evaluation and management of an established patient; CPT Code 99348, which is an expanded visit; CPT Code 99349, which is a detailed visit; or CPT Code 99350, which is comprehensive. Dr. Steinbergh indicated that she's not sure how to deal with this part of the record.

Dr. Steinbergh referred to paragraph four of the "Conditions for Reinstatement or Restoration," which requires Dr. Strasek to complete a personal ethics course, noting that it contains a line concerning professional ethics, which is duplicative of paragraph five, which requires Dr. Strasek to complete a professional ethics course. She suggested that the line from paragraph four be removed.

Dr. Steinbergh indicated that she appreciates Dr. Buchan's comments. She stated that she was, obviously, affected by Dr. Strasek's emotional plea. She added that, having been on the Board for a number of years, she's very much affected by how each of the Board's decisions does affect the licensee and his whole life. She stated that there's no question about Dr. Strasek's plea of guilt or his guilt. To her it's a question of recognizing what Dr. Strasek has done for his profession. She agreed that it is unfortunate and disappointing to see someone who has donated his time to his profession and then to have pled guilty in terms of this healthcare fraud. Dr. Steinbergh stated that she doesn't know where to go with the suspension issue, but she does feel touched.

Dr. Egner stated that Dr. Steinbergh's remarks on the coding reflect Dr. Strasek's argument that coding is very complicated and difficult. She stated that she thinks that all physician members of the Board have looked at code books and definitions and gone to seminars and found that one code doesn't always reflect what the physician thinks he or she does.

Dr. Egner continued that, that being said, Dr. Strasek did plead guilty in federal court, and that's what the Board is going to deal with. But she does think that there are some extenuating circumstances. The amount of money involved, to her, seems to be rather minimal, considering what the Board has seen in other cases of billing problems, and she has to take that into consideration. The Board has had these cases before many times result in permanent revocation recommended by the Hearing Examiner. This time the

Hearing Examiner does not even go near permanent revocation. Dr. Egner stated that she has to think that the Hearing Examiner saw other extenuating circumstances there.

Dr. Egner stated that she is personally in favor of the Report and Recommendation, or even a lesser suspension period.

Dr. Steinbergh stated that she didn't mean that she felt that coding is difficult. She added that she doesn't know why the Hearing Examiner used the improper code. It's an improper definition of the code she referenced. She added that she doesn't know if there should be another code there or not. She just thinks the record needs to be corrected.

Dr. Steinbergh stated that she disagrees with Dr. Egner's feelings about coding. She stated that she can't say 100% of the time that coding is an exact science or that physicians understand it, but she thinks it's clear that when a physician does a procedure in the office, he or she has to look at those things and determine the coding. That's the physician's responsibility. Dr. Steinbergh stated that she doesn't see it as being enormously difficult. She does see seminars all the time on how to get the most money out of your coding, and how to do it legitimately. Dr. Steinbergh stated that the book that they get seems to clarify those things in regard to CPT coding. If you pay attention to that, for most who practice in the primary care of podiatry, it becomes sort of a routine thing. There are some unusual circumstances. If you're doing more than one procedure, or if you're also doing an evaluation separate from that particular procedure, that you would use a modifier, but she doesn't see this as being difficult.

Dr. Steinbergh stated that she doesn't disagree with leniency in this case. She stated that she thinks that the Board should consider some form of leniency.

Mr. Browning stated that, as has been said many times, the Board can't retry these cases. There's been a conviction of felony offenses in the course of practice. There's no question about that. There's no question that this is reflective of broader concerns that all have as citizens and taxpayers, when people defraud the government. Mr. Browning stated that there should be some level of suspension. Whether it's a year or something less than that can be discussed; but he doesn't think that the extenuating circumstances are so significant that the Board should diminish this to next to nothing. He added that he's not suggesting that anyone is saying that, but his message is that the Hearing Examiner saw what the Board sees and reflected that in her recommendation of a one-year suspension. That seems reasonable. If the Board wants to do something somewhat less than that in recognition of the high price that's already been paid by the doctor, the Board should talk about it. However, on balance, the Hearing Examiner's recommendation is a solid one.

Dr. Kumar stated that he always has a problem in taking action solely on the issue of coding, if there was not a conviction associated with it. Coding is a difficult proposition, particularly for the evaluation and management services. You submit your documents to two certified coders and they will code it differently. It's not black and white. It's a lot more difficult than it appears on the surface. He stated that in his own procedure, they're designated as "minimum," "morbid," "maximum," "complex." How you

qualify which one becomes very difficult.

Dr. Kumar continued that the Board has a record before it, with a felony conviction. He referred to Dr. Egner's comments about the amount of restitution. The amount is \$4,000 or \$5,000, and the way it gets doubled and tripled over a period of years because of the way it's taken into account, needs to be looked at. There has to be some suspension, but he feels that one year is too long.

**DR. KUMAR MOVED TO AMEND THE PROPOSED ORDER BY CHANGING THE MINIMUM SUSPENSION PERIOD FROM ONE YEAR TO SIX MONTHS, AND BY REMOVING THE LANGUAGE RELATING TO PROFESSIONAL ETHICS COURSE FROM PARAGRAPH B.4. OF THE PROPOSED ORDER. DR. EGNER SECONDED THE MOTION.**

Dr. Steinbergh stated that she believes that the amendment also needs to address the clarification of the code listed in footnote 10.

Dr. Egner questioned how important that is. She stated that the problem is, the Board doesn't know which code is correct.

Mr. Whitehouse stated that his thought is that if it is of sufficient concern that it would affect the way the Board votes then the Board shouldn't proceed.

Dr. Egner stated that she would like Mr. Whitehouse' opinion as to whether he thinks this is significant enough that it needs to be changed.

Mr. Whitehouse suggested that any change could be done on the record now, through the Board's discussion, in order for the Board to proceed to vote. He added that he doesn't think that that discrepancy is sufficiently serious to put the Board in a position to not be able to vote.

Dr. Steinbergh agreed that the Board just needs to clarify the matter for the record, and added that she doesn't think that it in any way affects the ability to vote. She stated that she just thinks that it's important to present the record correctly.

Mr. Whitehouse stated that he's not sure about the practicality of changing the Report and Recommendation subsequent to a vote.

Dr. Steinbergh stated that she doesn't think that the Board needs to. It won't affect her vote one way or the other. This is simply an editorial change, as far as she can tell.

Dr. Kumar stated that his motion consists of two parts: Reducing the suspension period to six months, and removing the duplicate language in paragraph B.4. of the Proposed Order.

Dr. Steinbergh stated that she also agrees with Mr. Browning's comments. There's probably not a time

that the Board has come with a case like this that the Board doesn't see how challenging it is for the physician or licensee. It is very, very damaging. The Board has, in the past, looked at cases exactly like this where the suspension period was a year.

Dr. Robbins stated that he would like to say something on the coding. He stated that he couldn't agree more with Mr. Browning. Dr. Strasek has pled guilty, and that's the Board's overriding arch to move forward. He's not against some sympathy here. Dr. Robbins stated, however, that, generally, he couldn't agree more with Dr. Steinbergh. There are courses everywhere on how to upcode to get more money. Doctors in general, when faced with a difficult decision on code, if they downcode routinely, never get into trouble. The difficulty always comes with whether they can justify the higher reimbursement. Dr. Robbins stated that, as he counsels his group and other physicians, if you take the lower road, you never get into trouble. The difficulty is with all the pressures of constantly trying to justify that they did the higher code. The justification, in his mind, is monetary.

Dr. Talmage returned during the previous discussion.

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

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

The motion carried.

**DR. KUMAR MOVED TO APPROVE AND CONFIRM MS. MURPHY'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF FRANK MURRAY STRASEK, D.P.M. DR. BUCHAN SECONDED THE MOTION.**

Dr. Robbins indicated that he would now entertain further discussion in this matter.

Dr. Buchan stated that he feels some special responsibility, as he reviewed this case thoroughly; and he thinks that it's important for the record for the Board to suggest or relay to Dr. Strasek how fortunate he is if this amendment passes. His sense is that this is because of Dr. Strasek's past, his leadership responsibilities and the person that he is that he was granted some leniency in this case. Dr. Buchan stated that he's been here long enough to realize that the Board has objectively had harsher orders or agreements

in such cases. Dr. Buchan stated that he hopes that Dr. Strasek's leadership and responsibility goes about to his colleagues throughout the state to prevent others from getting into this situation.

A vote was taken on Dr. Kumar's motion to approve and confirm, as amended:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Madia	- aye
	Dr. Steinbergh	- aye

The motion carried.



# 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)

May 18, 2005

Frank Murray Strasek, D.P.M.  
21282 Erie Road  
Rocky River, Ohio 44116

Dear Doctor Strasek:

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 podiatric medicine and surgery, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) On or about January 3, 2005, in the United States District Court, Northern District of Ohio, Eastern Division, you pleaded guilty to eleven (11) felony counts of Mail Fraud, in violation of 18 U.S.C. §1341, and nine (9) felony counts of Health Care Fraud, in violation of 18 U.S.C. §1341. On or about March 29, 2005, you were adjudged guilty of the above, and sentenced to two (2) months to be served in a community confinement facility; upon release from imprisonment, to be on supervised release for a term of three (3) years, with electronic monitoring for a period of ten (10) months; to perform 300 hours of community service; and to pay criminal monetary penalties of an Assessment in the amount of \$2,000.00 and Restitution in the amount of \$105,207.53.

Pursuant to Rule 4731-13-24, Ohio Administrative Code, a certified copy of a plea of guilty to, or a judicial finding of guilt, of any crime in a court of competent jurisdiction is conclusive proof of the commission of all of the elements of that crime.

The conduct underlying the above plea of guilty, and judicial finding of guilt, is provided in detail in the Superseding Indictment, Plea Agreement and Judgment in a Criminal Case, copies of which are attached hereto and incorporated herein.

Your plea of guilty to, and/or the judicial finding of guilt, as alleged in paragraph one (1) above, individually and/or collectively, constitute "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony," as that clause is used in R.C. 4731.22(B)(9).

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

MAILED 5-19-05

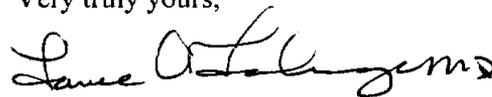
before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

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, suspend, refuse to register or reinstate your certificate to practice podiatric medicine and surgery or to reprimand you or place you on probation.

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.  
Secretary

LAT/cw  
Enclosures

CERTIFIED MAIL # 7003 0500 0002 4340 6523  
RETURN RECEIPT REQUESTED

Duplicate Mailing:

Frank Murray Strasek, D.P.M.  
Lake County Jail  
104 East Erie Street  
Painesville, OH 44057

CERTIFIED MAIL # 7003 0500 0002 4340 6530  
RETURN RECEIPT REQUESTED

FILED  
2004 AUG -4 PM 1:02  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	<b><u>SUPERSEDING INDICTMENT</u></b>
	)	
Plaintiff,	)	CASE NO. <i>1:04CR 250</i>
	)	
v.	)	JUDGE:
	)	
	)	Title 18 United States Code
FRANK M. STRASEK,	)	Sections 287, 1035, 1341, 1347
	)	
Defendant.	)	

GENERAL ALLEGATIONS

COUNTS 1-11

Mail Fraud, 18 U.S.C. §1341

The Grand Jury Charges:

Introduction

At all times material herein:

Medicare

1. The Medicare Program was enacted by Congress on July 30, 1965, under

This document is a true and correct copy of the electronically filed original. #9 8/4/04  
Court Clerk, Smith, Clerk  
U.S. District Court  
Northern District of Ohio

*Penny Johnson*

Title XVIII of the Social Security Act. Medicare provided medical insurance benefits to any person age 65 or older, to certain disabled persons and to those with chronic renal disease who elected coverage. Medicare was a health care benefit program within the meaning of 18 U.S.C. §§ 24(b), 287, 1035 and 1347.

2. The Centers for Medicare and Medicaid Services (CMS), formerly known as the Health Care Finance Administration (HCFA), was the agency of the United States Department of Health and Human Services (HHS) delegated with administering the Medicare program.

3. Medicare paid benefits to physicians, on the basis of reasonable charges for covered services provided to beneficiaries, pursuant to provider agreements entered into between Medicare and participating physicians.

4. Nationwide Mutual Insurance Company (Nationwide) was the Medicare Part B contractor in Ohio. Contractors were private organizations under contract with CMS to review, process and pay Medicare claims on a reasonable charge basis.

5. Physicians who provided services in Ohio under Medicare Part B made claims for payments to Nationwide on Medicare health insurance claim forms (Form HCFA 1500). Nationwide reviewed and processed the claims and issued checks to physicians for claims that met Medicare criteria.

6. On each Form HCFA 1500, the physician certified and acknowledged the following:

**NOTICE: Any person who knowingly files a statement of claim containing any misrepresentation or any false, incomplete or misleading information may be guilty of a**

**criminal act punishable under law and may be subject to civil penalties.**

\* \* \* \*

I certify that the services shown on this form were medically indicated and necessary for the health of the patient and were personally furnished by me or were furnished incident to my professional service by my employee under my immediate personal supervision.

\* \* \* \*

NOTICE: Any one who misrepresents or falsifies essential information to receive payment from Federal funds requested by this form may upon conviction be subject to fine and imprisonment under applicable Federal laws.

Railroad Retirement Medicare

7. The Railroad Retirement Board was an independent agency in the Executive Branch of the federal government that administered retirement benefits, including Medicare Part B, for railroad retirees and their dependents. The Railroad Medicare Program was a health care benefit program within the meaning of 18 U.S.C. §§ 24(b), 287, 1035 and 1347.

8. Palmetto Government Benefits Administrators (Palmetto) was the nationwide Railroad Medicare Part B contractor. Palmetto reviewed and processed claims and issued checks to physicians for claims that met Medicare criteria. Physicians who provided services under provider agreements with the Railroad Medicare Part B program made claims for payment to Palmetto on Form HCFA 1500.

Medicaid

9. The Medicaid program provided medical insurance coverage for individuals of low income. Medicaid was a health care benefit program within the

meaning of 18 U.S.C. §§ 24(b), 287, 1035 and 1347.

10. The federal government funded approximately sixty percent of Ohio's Medicaid program. The Ohio Department of Job and Family Services (ODJFS) administered Ohio's Medicaid program. ODJFS reviewed and processed claims and issued checks to physicians for claims that met Medicaid criteria. Physicians who submitted claims for services rendered to persons eligible for both Medicare and Medicaid received payment from Medicaid for the amount that Medicare did not pay, known as a "crossover" payment.

11. Physicians who provided services under provider agreements with Ohio Medicaid made claims for crossover payments on Form HCFA 1500. In addition to the language quoted at Paragraph 6 above, physicians made the following statement on each Form HCFA 1500 claim submitted to Medicaid:

I hereby agree to keep such records as are necessary to disclose fully the extent of services provided to individuals under the State's Title XIX plan and to furnish information regarding any payments claimed for providing such services as the State Agency or Dept. of Health and Human Services may request.

\* \* \* \*

**SIGNATURE OF PHYSICIAN (OR SUPPLIER):** I certify that the services listed above were medically indicated and necessary to the health of this patient and were personally furnished by me or my employee under my personal direction.

**NOTICE:** This is to certify that the foregoing information is true, accurate and complete. I understand that payment and satisfaction of this claim will be from Federal and State funds, and that any false claims, statements, or documents, or concealment of a material fact, may be prosecuted under applicable Federal or State laws.

Current Procedure Terminology (CPT) Codes

12. The American Medical Association (AMA) assigned five-digit numerical

codes, known as Current Procedural Terminology (CPT) codes. The CPT codes, published annually by the AMA, were a systematic listing and coding of procedures and services performed by physicians. The CPT book included codes for office and home visits, known as evaluation and management (E&M) services, and for surgical and medical procedures, based on complexity, severity and the average time required to perform the service. Physicians and health care benefit programs used the CPT Codes to describe the services and procedures for which the physicians claimed and received payment. Each health care benefit program established fee reimbursements for each procedure and service described by a CPT code.

13. CPT Code 11719 was "trimming of nondystrophic nails, any number."

14. CPT Code 11720 was "debridement of nail(s) by any method(s); one to five." CPT Code 11721 was the same procedure for "six or more" nails.

15. CPT Code 11040 was "debridement; skin, partial thickness." CPT Code 11041 was "debridement, skin, full thickness."

16. In 1993, Nationwide notified physicians, including defendant, that effective July 1, reimbursement for skin debridement under CPT Codes 11040 and 11041 required removal of dead tissue "by cutting with a surgical instrument such as a scalpel, laser, curette, or electrocautery," not merely "by cleansing [or] scraping."

17. CPT Code 10060 was a surgical procedure, "incision and drainage of abscess (e.g., carbuncle, suppurative hidradenitis, cutaneous or subcutaneous abscess, cyst, furuncle, or paronychia) simple or single." CPT Code 10061 was defined as 10060, "complicated or multiple."

18. Effective July 1, 1993, Nationwide notified physicians, including defendant, of the following:

In the case of inflammation adjacent to a nail or hangnail, if the only service provided is trimming the edge of the nail, the incision and drainage codes should not be used, as this is part of the evaluation and management service. Trimming the nail to prevent recurrences of paronychia is considered to be routine foot care which has limited coverage.

19. Effective February 1, 1998, Nationwide again notified physicians, including defendant, of the policy in the previous paragraph. Nationwide also told physicians that:

When a paronychia is treated by trimming of the nail plate by shortening, thinning, removing the ingrown and infected nail margin(s), or removal of a simple nail spicule from the inflamed and/or infected paronychia tissue, CPT code 11719 (or HCPCS code M0101 for dates of service prior to January 1, 1998) must be billed.

20. CPT Code 20000 was a surgical procedure, "incision of soft tissue abscess (e.g., secondary to osteomyelitis); superficial."

21. CPT Code 99213 was an "office or other outpatient visit for the evaluation and management of an established patient."

22. CPT Code 99349, which replaced CPT Code 99351, was a "home visit for the evaluation and management of an established patient."

23. Costs of pre- and post-operative visits were included in reimbursements for medical and surgical procedures. Health care benefit programs did not pay separately for visits provided on the same day as, or within a specified number of days of, a billed medical or surgical procedure for the same patient for the same condition. By adding a two-digit **Modifier -25** to the CPT Code used to claim payment for a medical or surgical procedure, however, a physician could request payment for "a significant, separately

identifiable evaluation and management service above and beyond the other service provided or beyond the usual preoperative and postoperative care associated with the procedure that was performed.”

The Defendant

24. The defendant, FRANK M. STRASEK, was a doctor of podiatry licensed to practice in the State of Ohio. He maintained a practice at 22255 Center Ridge Road, Rocky River, Ohio, within this district.

The Scheme

25. From on or about December 21, 1993, through on or about September 27, 2001, in the Northern District of Ohio, Eastern Division, and elsewhere, the defendant did devise and intend to devise a scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses, representations and promises.

26. It was a part of the scheme to defraud that the defendant removed simple nail spicula, debrided nails, clipped nails and otherwise provided routine foot care, procedures that were reimbursable, if at all, under CPT Code 11719 or 11720, but claimed payment from health care benefit programs for those services using CPT Codes 10060, 10061 and 20000, representing that he had performed surgical procedures for incision and drainage of abscesses.

27. It was a further part of the scheme to defraud that the defendant debrided nails, clipped nails, removed corns and calluses, and otherwise provided routine foot care, procedures reimbursable if at all under CPT Code 11719 or 11720, but claimed payment from health care benefit programs for those services using CPT Codes 11040

and 11041, representing that he had performed skin debridement procedures.

28. It was a further part of the scheme to defraud that the defendant claimed payment from federal health care benefit programs for evaluation and management services (office and home visits) using CPT Codes 99213 and 99349 when he had not rendered services significantly different, or separately identifiable, from procedures for which he had also claimed payment under CPT Codes 11040, 11041, 10060 and 10061.

29. It was a further part of the scheme to defraud that the defendant claimed payment from health care benefit programs by adding the -25 modifier to CPT Codes, when he did not perform any separately reimbursable services.

30. It was a further part of the scheme and artifice that the defendant, for the purposes of obtaining payment from health care benefit programs, and of concealing and covering up the scheme, placed false statements in patient records.

31. It was a further part of the scheme and artifice that the defendant claimed payment from federal health care benefit programs for the services and procedures described above, without maintaining written substantiation of the claimed services.

32. On or about the dates listed below, in the Northern District of Ohio, and elsewhere, the defendant, having devised or intended to devise the scheme and artifice to defraud and to obtain money and property by means of the false and fraudulent pretenses, representations and promises described above, did knowingly cause to be delivered by U.S. mail, according to the direction thereon, certain matters and things described below, consisting of checks mailed to defendant at 22255 Center Ridge Rd. #105, Rocky River, Ohio 44116-3950, in payment for podiatry services for beneficiaries of federal health care programs, all for the purpose of executing the scheme and artifice described above.

Count	Date	Amount Billed	Payor/Beneficiary	Mailed From	Mailed To
1	8/20/99	\$220	Medicare Jane Doe 1	<i>Nationwide</i> Columbus, Ohio	Defendant Rocky River, Ohio
2	11/29/99	\$150	Medicare Jane Doe 2	<i>Nationwide</i> Columbus, Ohio	Defendant Rocky River, Ohio
3	4/18/00	\$110	Medicare Jane Doe 2	<i>Nationwide</i> Columbus, Ohio	Defendant Rocky River, Ohio
4	3/21/00	\$160	Medicare Jane Doe 3	<i>Nationwide</i> Columbus, Ohio	Defendant Rocky River, Ohio
5	10/13/00	\$230	Medicare Jane Doe 4	<i>Nationwide</i> Columbus, Ohio	Defendant Rocky River, Ohio
6	11/08/00	\$230	Medicaid Jane Doe 4	Auditor, State of Ohio Columbus, Ohio	Defendant Rocky River, Ohio
7	5/1/01	\$185	Medicare Jane Doe 5	<i>Nationwide</i> Columbus, Ohio	Defendant Rocky River, Ohio
8	5/16/01	\$185	Medicaid Jane Doe 5	Auditor, State of Ohio Columbus, Ohio	Defendant Rocky River, Ohio
9	5/21/01	\$235	Railroad Med. Jane Doe 6	Palmetto GBA Augusta, GA	Defendant Rocky River, Ohio
10	5/23/01	\$160	Railroad Med. John Doe 1	Palmetto GBA Augusta, GA	Defendant Rocky River, Ohio
11	9/04/01	\$170	Medicare Jane Doe 7	<i>Nationwide</i> Columbus, Ohio	Defendant Rocky River, Ohio

All in violation of Title 18, United States Code, Section 1341.

Counts 12-20

Health Care Fraud, 18 U.S.C. §1347

The Grand Jury Further Charges:

33. Paragraphs 1 through 24 and 26 through 31 are re-alleged and incorporated by reference as if fully set forth herein.

34. From on or about August 21, 1996, and continuing through on or about September 27, 2001, in the Northern District of Ohio, Eastern Division, and elsewhere, the defendant, FRANK M. STRASEK, knowingly and willfully executed, and attempted to execute, a scheme and artifice to defraud the health care benefit programs listed above, and to obtain, by means of the false and fraudulent pretenses, representations and promises described herein, money and property owned by, and under the custody and control of, a health care benefit program, including but not limited to Medicare, Railroad Medicare, and Ohio Medicaid, in connection with the delivery of or payment for health care benefits, items and services.

35. On or after the dates listed below, in the Northern District of Ohio and elsewhere, the defendant, having knowingly and willfully executed and attempted to execute the scheme and artifice to defraud the health care benefit programs described above, and to obtain, by means of the false and fraudulent pretenses, representations and promises described above, did so execute and attempt to execute the scheme by submitting the claims for reimbursement set forth below, all for the purpose of executing said scheme and artifice:

Count	Date of Claim	Amount of Claim	Health Care Benefit Program / Beneficiary
12	August 2, 2000	\$220	Medicare / Jane Doe 1
13	December 5, 2000	\$235	Railroad Medicare / Jane Doe 6
14	April 17, 2001	\$185	Medicare, Medicaid / Jane Doe 5
15	April 25, 2001	\$160	Medicare / John Doe 2
16	April 25, 2001	\$160	Medicare / Jane Doe 8
17	June 13, 2001	\$110	Medicare / Jane Doe 9
18	June 14, 2001	\$160	Medicare / John Doe 3
19	July 20, 1999 September 3, 1999 November 29, 1999 April 18, 2000	\$160 \$150 \$150 \$110	Medicare / Jane Doe 2
20	October 2, 2000 December 7, 2000 December 28, 2000 January 31, 2001 April 11, 2001 June 29, 2001	\$195 \$170 \$135 \$125 \$160 \$160	Railroad Medicare / John Doe 1

All in violation of Title 18, United States Code, Section 1347.

U.S. SENTENCING GUIDELINES ALLEGATIONS

1. The General Allegations and Counts 1-22 are realleged and incorporated by reference herein for purposes of alleging facts under the United States Sentencing Guidelines.

2. The following additional allegations are set forth with respect to all counts for the purpose of applying the U.S.S.G.

3. The actual loss to federal health benefit programs resulting from the offenses was more than \$70,000 but less than \$120,000. 2000 U.S.S.G. § 2F1.1(a) and (b).

4. The intended loss to federal health benefit programs resulting from the offenses was more than \$500,000 but less than \$800,000. 2000 U.S.S.G. § 2F1.1(a) and (b).

5. The offenses involved more than minimal planning, or a scheme to defraud more than one victim. 2000 U.S.S.G. § 2F1.1(b)(2).

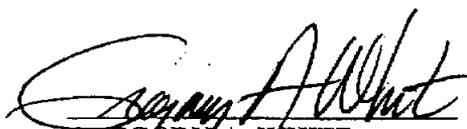
6. The offenses exploited vulnerable victims. 2000 U.S.S.G. § 3A1.1(b).

7. The defendant was an organizer, leader, manager, or supervisor in the offenses. 2000 U.S.S.G. § 3B1.1(c).

8. The defendant abused a position of public or private trust or used a special skill in a manner that significantly facilitated the commission or concealment of the offenses. 2000 U.S.S.G. § 3B1.3.

A TRUE BILL

  
Foreperson

  
GREGORY A. WHITE  
UNITED STATES ATTORNEY

FILED  
05 JAN -3 PM 4:30  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO. 1:04CR250
	)	
Plaintiff,	)	JUDGE KATHLEEN M. O'MALLEY
	)	
v.	)	
	)	
FRANK M. STRASEK,	)	
	)	<u>PLEA AGREEMENT</u>
Defendant.	)	

Pursuant to Rule 11(c)(1) of the Federal Rules of Criminal Procedure, and in consideration of the mutual promises set forth below, the United States Attorney's Office for the Northern District of Ohio (hereinafter "USAO"), by and through its undersigned attorney, and the defendant, (hereinafter "Defendant"), agree as follows:

#16 1/3/05

*Penry Johnson*

Defendant's Initials: *FS*

**MAXIMUM PENALTIES AND OTHER  
CONSEQUENCES OF PLEADING GUILTY**

1. **Waiver of Constitutional Trial Rights.** Defendant understands that Defendant has the right to plead not guilty and go to trial. At trial, Defendant would be presumed innocent, have the right to trial by jury or the Court, with the consent of the United States, the right to the assistance of counsel, the right to confront and cross-examine adverse witnesses and subpoena witnesses to testify for the defense, and the right against compelled self-incrimination. Defendant understands that Defendant has the right to an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent Defendant. Defendant understands that, if Defendant pleads guilty and that plea is accepted by the Court, there will not be a further trial of any kind, so that by pleading guilty Defendant waives the right to a trial.

2. **Maximum Sentence.** The statutory maximum sentences for the counts to which Defendant agrees to plead guilty is/are as follows:

<u>Counts</u>	<u>Statute</u>	<u>Maximum sentence per count</u>	
1-11	18 U.S.C. § 1341 (Mail Fraud)	Imprisonment:	20 years
		Fine:	\$250,000
		Supervised release:	3 years
12-20	18 U.S.C. § 1347 (Health Care Fraud)	Imprisonment:	10 years
		Fine:	\$250,000
		Supervised release:	3 years

3. **Alternative Maximum Fine.** The maximum fine that the Court may impose is the greater of the statutory maximum stated above or twice the gross pecuniary loss or gain from the offense of conviction.

4. **Sentencing Guidelines.** In imposing sentence, the Court will be required to consider any applicable Sentencing Guidelines but may depart from those Guidelines under some circumstances. The Defendant understands that he may, but does not necessarily, possess a constitutional right to have certain factors under the U.S. Sentencing Guidelines decided by a jury under a proof beyond a reasonable doubt standard. Defendant knowingly, intelligently and voluntarily waives any right he may possess to have such factors determined by a jury. Defendant understands that, by virtue of this waiver, his sentence, and the existence of factors which may increase or affect his sentence, may be decided by the district court, without a jury. Defendant understands that the district court may rely upon stipulations in this plea agreement as well as any other reliable evidence, including hearsay, in making those determinations and in imposing sentence. Defendant understands that he will be sentenced under the U.S. Sentencing Guidelines and waives any constitutional challenge to those Guidelines and/or to the imposition of sentence under the Guidelines. Defendant acknowledges discussing this

waiver and its consequences with counsel and understands the nature and consequences of this waiver.

5. **Special Assessment.** Defendant will be required to pay a mandatory special assessment of \$2,000, due immediately upon sentencing.

6. **Costs.** The Court may order Defendant to pay the costs of prosecution and sentence, including but not limited to imprisonment, community confinement, home detention, probation, and supervised release.

7. **Restitution.** The Court may order Defendant to pay restitution as a condition of the sentence, probation, and/or supervised release. The parties agree that the amount of restitution in this case is \$105,207.53; however, Defendant understands that the amount of restitution, if any, will be determined by the Court at the time of sentencing.

8. **Violation of Probation/Supervised Release.** If Defendant violates any term or condition of probation or supervised release, such violation could result in a period of incarceration or other additional penalty as imposed by the Court. In some circumstances, the combined term of imprisonment under the initial sentence and additional period of incarceration could exceed the maximum statutory term.



**ELEMENTS OF THE OFFENSES**

9. The elements of the offenses to which Defendant will plead guilty are:

<b>18 U.S.C. § 1341: Mail Fraud</b>	
<b>One:</b>	The Defendant knowingly devised or knowingly participated in a scheme or artifice to defraud or knowingly devised or knowingly participated in a scheme or artifice to obtain money or property by means of false or fraudulent pretenses, representations, or promises;
<b>Two:</b>	The scheme or artifice to defraud or pretenses, representations, or promises were material, that is it would reasonably influence a person to part with money or property;
<b>Three:</b>	The Defendant did so with the intent to defraud; and
<b>Four:</b>	In advancing, or furthering, or carrying out this scheme to defraud or scheme to obtain money or property by means of false or fraudulent pretenses, representations, or promises, the Defendant used the mails, that is, either the U.S. Postal Service or a private or commercial interstate carrier, or caused them to be used.
<b>18 U.S.C. § 1347: Health Care Fraud</b>	
<b>One:</b>	The Defendant executed or attempted to execute a scheme or artifice to: 1) defraud any health care benefit program; or 2) obtain by means of false or fraudulent pretenses, representations, or promises any of the money or property owned by or under the custody or control of any health care benefit program;
<b>Two:</b>	The Defendant knowingly and willfully participated in the scheme or artifice;
<b>Three:</b>	The scheme or artifice was executed in connection with the delivery or payment for health care benefits, items or services.

**AGREEMENTS AND STIPULATIONS OF THE PARTIES**

**GUILTY PLEAS / OTHER CHARGES**

10. **Agreement to Plead Guilty.** Defendant agrees to plead guilty to counts 1 through 20 of the indictment in this case.

11. **Dismissal of Counts.** Upon sentencing, the USAO will move to dismiss counts 21 and 22 of the indictment in this case.

12. **Agreement Not to Bring Certain Other Charges.** The USAO will not bring any other criminal charges against Defendant with respect to conduct charged in the indictment based on facts currently within the knowledge of the USAO.

**FACTUAL BASIS**

13. The parties stipulate to the following facts, which satisfy all of the elements of the offenses to which Defendant agrees to plead guilty:

Defendant is a podiatrist with a practice in Rocky River, Ohio. From December 21, 1993 through September 27, 2001, Defendant devised and intended to devise a scheme and artifice to defraud the federal Medicare, Railroad Medicare and Medicaid programs by charging those programs for services he did not provide, as outlined in the indictment and as follows:



A. Defendant claimed payment for surgical procedures for incision and drainage of abscesses, when in fact defendant provided routine foot care that was reimbursable, if at all, at lower rates.

B. Defendant claimed payment for skin debridement procedures, when in fact Defendant provided routine foot care that was reimbursable, if at all, at lower rates.

C. Defendant claimed payment for office visits when in fact he had not performed any service significantly different from procedures for which he had already claimed payment.

D. Defendant claimed payment using two-digit numeric codes known as modifiers, when in fact he did not perform any reimbursable service.

E. Defendant placed false statements in patient records for the purpose of obtaining payment for services he did not render.

F. Defendant claimed payment for services for which there was no written substantiation.

#### **WAIVER OF APPEAL AND POST-CONVICTION ATTACK**

14. Defendant acknowledges having been advised by counsel of Defendant's rights, in limited circumstances, to appeal the conviction or sentence in this case, including the appeal right conferred by 18 U.S.C. § 3742, and to challenge the conviction or sentence collaterally through a post-conviction proceeding, including a proceeding under 28 U.S.C. § 2255. The Defendant expressly waives those rights, except as reserved below. Defendant reserves the right to appeal: (a) any punishment in excess of the statutory maximum; (b) any punishment to the extent it constitutes an upward departure

from the Sentencing Guideline range deemed most applicable by the Court. Nothing in this paragraph shall act as a bar to the Defendant perfecting any legal remedies Defendant may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct.

**SENTENCING STIPULATIONS AND AGREEMENTS**

15. **Stipulated Guideline Computation.** The parties agree that the following calculation, using the Guidelines Manual effective November 1, 2000, represents the correct computation of the applicable offense level in this case, prior to any adjustment for acceptance of responsibility. The parties agree that no other Sentencing Guideline adjustments apply.

<b>Counts 1 through 20</b>	<b>Guideline §</b>	
Base offense level	6	2F1.1(b)(1)
Loss between \$70,000 and \$120,000	6	2F1.1(b)(1)(G)
More than minimal planning or more than one victim	2	2B1.1(b)(2)
<b>Subtotal before Acceptance of Responsibility</b>	<b>14</b>	

16. **Acceptance of Responsibility.** The USAO has no reason to believe at this time that Defendant has not clearly and affirmatively accepted personal responsibility for Defendant's criminal conduct. Defendant understands, however, that the Court will

determine acceptance of responsibility based on Defendant's overall conduct as of the date of sentencing.

17. For the purpose of determining whether or not Defendant may be entitled to a two (2) level reduction in Defendant's offense level for acceptance of responsibility under §3E1.1(a), the government agrees to advise the Court, at the time of sentencing, that the defendant met with law enforcement officers and provided truthful information regarding Defendant's involvement and timely notified the government of Defendant's intent to plead guilty. However, Defendant understands that the decision regarding acceptance of responsibility rests with the discretion of the Court and will be determined by the Court following an investigation by the U.S. Probation Office and in accordance with all applicable guideline provisions set forth in the Application Notes to §3E1.1.

18. **Agreement Not to Seek Departures.** The parties agree that there are no bases for either an upward or downward departure from the Sentencing Guidelines and agree not to seek any such departure.

19. **Criminal History Category.** The parties have no agreement as to the Criminal History Category applicable in this case. Defendant understands that the Criminal History Category will be determined by the Court after the completion of a Pre-Sentence Investigation by the U.S. Probation Office.

**OTHER PROVISIONS**

20. **Agreement Silent as to Matters Not Expressly Addressed.** This agreement is silent as to all aspects of the determination of sentence not expressly addressed herein, and the parties are free to advise the Court of facts and to make recommendations to the Court with respect to all aspects of sentencing not agreed to herein.

21. **Sentencing Recommendations Not Binding on the Court.** Defendant understands that the recommendations of the parties will not be binding upon the Court, that the Court alone will decide the applicable sentencing range, whether there is any basis to depart from that range, and what sentence to impose. Defendant further understands that once the Court has accepted Defendant's guilty pleas, Defendant will not have the right to withdraw such pleas if the Court does not accept any sentencing recommendations made on Defendant's behalf or if Defendant is otherwise dissatisfied with the sentence.

22. **Consequences of Breaching the Plea Agreement.** Defendant understands that if Defendant breaches any promise in this agreement or if Defendant's guilty pleas or conviction in this case are at any time rejected, vacated, or set aside, the USAO will be released from all of its obligations under this agreement and may institute or maintain any

charges and make any recommendations with respect to sentencing that would otherwise be prohibited under the terms of the agreement. Defendant understands, however, that a breach of the agreement by Defendant will not entitle Defendant to withdraw, vacate, or set aside Defendant's guilty pleas or conviction.

23. **Agreement not Binding on other Jurisdictions and Agencies.** Defendant understands that this plea agreement is binding only on the United States Attorney's Office for the Northern District of Ohio (USAO). It does not bind any other United States Attorney, any other federal agency, or any state or local government.

24. **Defendant is Satisfied with Assistance of Counsel.** Defendant makes the following statements: I acknowledge receiving the assistance of counsel from attorney concerning this plea agreement. I have fully discussed with my attorney all of my Constitutional trial and appeal rights, the nature of the charges, the elements of the offenses the United States would have to prove at trial, the evidence the United States would present at such trial, the Sentencing Guidelines, and the potential consequences of pleading guilty in this case. I have had sufficient time and opportunity to discuss all aspects of the case in detail with my attorney and have told my attorney everything I know about the charges, any defense that I may have to those charges, and all personal and financial circumstances in possible mitigation of sentence. My attorney has done everything I have asked my attorney to do and I am satisfied with the legal services and



advice provided to me by my attorney and believe that my attorney has given me competent and effective representation.

25. **Agreement Is Complete and Voluntarily Entered.** Defendant and Defendant's undersigned attorney state that this agreement constitutes the entire agreement between Defendant and the USAO and that no other promises or inducements have been made, directly or indirectly, by any agent or representative of the United States government concerning any plea to be entered in this case. In particular, no promises or agreements have been made with respect to any actual or prospective civil or administrative proceedings or actions involving Defendant, except as expressly stated herein. In addition, Defendant states that no person has, directly or indirectly, threatened or coerced Defendant to do or refrain from doing anything in connection with any aspect of this case, including entering a plea of guilty.

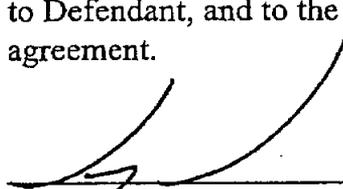
### SIGNATURES

**Defendant:** I have read this entire plea agreement and have discussed it with my attorney. I have initialed each page of the agreement to signify that I have read, understood, and approved the provisions on that page. I am entering this agreement voluntarily and of my own free will. No threats have been made to me, nor am I under the influence of anything that could impede my ability to understand this agreement.

  
\_\_\_\_\_  
Frank M. Strasek

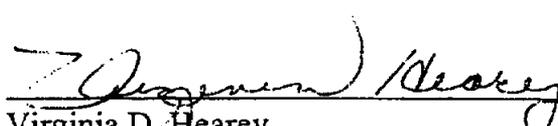
1/3/05  
\_\_\_\_\_  
Date

**Defense Counsel:** I have read this plea agreement and concur in Defendant pleading in accordance with terms of the agreement. I have explained this plea agreement to Defendant, and to the best of my knowledge and belief, Defendant understands the agreement.

  
\_\_\_\_\_  
JAY MILANO, ESQ.  
Attorney for Defendant

1-3-05  
\_\_\_\_\_  
Date

**United States Attorney's Office:** I accept and agree to this plea agreement on behalf of the United States Attorney for the Northern District of Ohio.

  
\_\_\_\_\_  
Virginia D. Hearey  
Assistant U/S. Attorney (0025773)  
United States Court House  
801 West Superior Avenue, Suite 400  
Cleveland, Ohio 44113-1852  
(216) 622-3785; (216) 522-2403 (facsimile)  
E-mail: virginia.hearey@usdoj.gov

1-3-05  
\_\_\_\_\_  
Date

**APPROVED:**

\_\_\_\_\_  
HON. KATHLEEN M. O'MALLEY  
UNITED STATES DISTRICT JUDGE

\_\_\_\_\_  
Date

UNITED STATES DISTRICT COURT

FILED  
05 MAR 29 PM 4:23  
VSO

NORTHERN

District of

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

FRANK M. STRASEK

Case Number: 1:04CR250-01

USM Number: 39770-060

Jay Milano  
Defendant's Attorney

CLEVELAND OHIO

THE DEFENDANT:

X pleaded guilty to count(s) 1 through 20 of the Indictment.

pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. 1341	Mail fraud	09/01/2001	1-11
18 U.S.C. 1347	Health care fraud	06/29/2001	12-20

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) \_\_\_\_\_

X Count(s) 21 and 22 of the Indictment  is X are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

March 21, 2005  
Date of Imposition of Judgment

s/ Kathleen M. O'Malley  
Signature of Judge

KATHLEEN M. O'MALLEY, United States District Judge  
Name and Title of Judge

March 29, 2005  
Date

I hereby certify that this instrument is a true and correct copy of the original on file in my office.  
Attest: Geri M. Smith, Clerk  
U.S. District Court  
Northern District of Ohio  
By Gerry Johnson  
Clerk

OHIO STATE MEDICAL BOARD

APR - 4 2005

DEFENDANT: FRANK M. STRASEK  
CASE NUMBER: 1:04CR250-01

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

Two (2) months to be served at a community confinement facility.

The court makes the following recommendations to the Bureau of Prisons:

The defendant shall be designated to serve his term of custody at a community confinement facility.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on \_\_\_\_\_

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

OHIO STATE MEDICAL BOARD

APR - 4 2005

DEFENDANT: FRANK M. STRASEK  
CASE NUMBER: 1:04CR250-01

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

Three (3) years.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: FRANK M. STRASEK  
CASE NUMBER: 1:04CR250-01

### SPECIAL CONDITIONS OF SUPERVISION

- The defendant shall provide the probation officer with access to any requested financial information.
- The defendant shall participate in the Home Confinement Program with electronic monitoring for a period of ten (10) months, beginning no later than 30 calendar days from release from custody. The defendant is required to remain at residence unless given written permission to be elsewhere. The defendant may leave residence to work, to receive medical treatment and to attend religious services. The defendant shall wear an electronic monitoring device, follow electronic monitoring procedures and submit to random drug/alcohol test as specified by the Probation Officer. The defendant may participate in the Earned Leave Program. The defendant is to pay the cost of the program. Payment is to be made as directed by the Supervising Home Confinement Officer
- The defendant shall perform 300 hours of community service as directed by the Probation Officer.

DEFENDANT: FRANK M. STRASEK  
CASE NUMBER: 1:04CR250-01

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 2,000.00	\$	\$ 105,207.53

- The determination of restitution is deferred until \_\_\_\_\_, An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
CMS Office of Financial Mgmt. 7500 Security Blvd. Baltimore, MD 21244		\$ 97,638.00	
Railroad Medicare Program P.O. Box 367 Augusta, GA 30999		\$ 4,811.00	
Medicaid Ohio P.O. Box 182367 Columbus, OH 43218		\$ 2,758.53	

<b>TOTALS</b>	\$ _____	\$ 105,207.53
---------------	----------	---------------

- Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
  - the interest requirement is waived for the  fine  restitution.
  - the interest requirement for the  fine  restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

OHIO STATE MEDICAL BOARD

APR - 4 2005

DEFENDANT: FRANK M. STRASEK  
CASE NUMBER: 1:04CR250-01

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A  Lump sum payment of \$ \_\_\_\_\_ due immediately, balance due  
 not later than \_\_\_\_\_, or  
 in accordance  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties:  
A special assessment of \$ 2,000.00 is due in full immediately as to count(s) 1 through 20 of the Indictment.  
Restitution to be paid in installments at a rate of not less than ten percent (10%) of defendant's gross monthly income.  
**PAYMENT IS TO BE MADE PAYABLE AND SENT TO THE CLERK, U.S. DISTRICT COURT.**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.