

**CONSENT AGREEMENT
BETWEEN
KYLE ELLIOT HOOGENDOORN, D.P.M.
AND
THE STATE MEDICAL BOARD OF OHIO
Case No. 08-CRF-090
Case N. 08-CRF-119**

This Consent Agreement is entered into by and between Kyle Elliot Hoogendoorn, D.P.M., [Dr. Hoogendoorn] and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

Dr. Hoogendoorn enters into this Consent Agreement being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

- A. The Board is empowered by R.C. 4731.22(B), to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for any of the enumerated violations.
- B. The Board and Dr. Hoogendoorn enter into this Consent Agreement in lieu of further formal proceedings based upon the allegations set forth in the Notice of Opportunity for Hearing issued on July 9, 2008, attached hereto as Exhibit A and incorporated herein by this reference. The Board expressly reserves the right to institute additional formal proceedings based upon any other violations of R.C. Chapter 4731, whether occurring before or after the effective date of this Consent Agreement.
- C. Further, the Board and Dr. Hoogendoorn enter into this Consent Agreement in order to fully and finally resolve the additional matter pending before the Board as Case No. 08-CRF-119, Motion for Attorneys' Fees, filed on Dr. Hoogendoorn's behalf. Dr. Hoogendoorn agrees that the Motion for Attorneys' Fees shall be dismissed with prejudice upon ratification of this Consent Agreement by the Board. A copy of the above Motion is attached hereto as Exhibit B and incorporated herein by this reference.
- D. Dr. Hoogendoorn holds an inactive certificate to practice podiatric medicine and surgery in the State of Ohio, # 36-003064, which expired on October 1, 2008. Dr. Hoogendoorn also holds a license to practice podiatric medicine and surgery in the State of Texas.

- E. Dr. Hoogendoorn admits to the factual and legal allegations, as set forth in paragraph 1 and paragraph 2(e) of the Notice of Opportunity for Hearing dated July 9, 2008, including that he used rote documentation of progress notes and/or operative reports in his patient charts for patients 1-8 that was not appropriately specific to each patient and procedure. The use of such rote documentation was the practice of podiatric medicine and surgery below the minimal standard of care in violation of R.C. 4731.22(B)(6).

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of further formal proceedings at this time, Dr. Hoogendoorn knowingly and voluntarily agrees with the Board to the following terms, conditions and limitation:

REPRIMAND

1. Dr. Hoogendoorn is hereby **REPRIMANDED** for his conduct as set forth in Paragraph E, above.

PROBATIONARY CONDITIONS:

2. Dr. Hoogendoorn's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:
 - a. **Records Keeping Course:** Within one year of the effective date of this Consent Agreement, or as otherwise approved by the Board, Dr. Hoogendoorn shall provide acceptable documentation of successful completion of a course or courses on maintaining adequate and appropriate medical records. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Hoogendoorn submits the documentation of successful completion of the course or courses on maintaining adequate and appropriate medical records, 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.

- b. **Obey Laws:** Dr. Hoogendoorn shall obey all federal, state, and local laws; and all rules governing the practice of podiatric medicine in the state in which he is practicing.
- c. **Quarterly Declarations:** Dr. Hoogendoorn shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. 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 the Consent Agreement becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
- d. **Personal Appearances:** Dr. Hoogendoorn shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Consent Agreement becomes effective, or as otherwise directed by the Board. Dr. Hoogendoorn shall also appear upon his request for termination of the probationary period, and/or as otherwise requested by the Board.
- e. **Required Reporting by Licensee:** Within thirty days of the effective date of this Consent Agreement, Dr. Hoogendoorn shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services (including but not limited to third party payors) or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Hoogendoorn shall promptly provide a copy of this Consent Agreement 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. Further, Dr. Hoogendoorn shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.
- f. Within thirty days of the effective date of this Consent Agreement, Dr. Hoogendoorn shall provide a copy of this Consent Agreement to the proper

licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Dr. Hoogendoorn further agrees to provide a copy of this Consent Agreement at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Hoogendoorn shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed.

MODIFICATION OF TERMS:

3. Dr. Hoogendoorn shall not request modification of the terms, conditions, or limitations of probation for at least 1 year after imposition of these probationary terms, conditions, and limitations.
4. Dr. Hoogendoorn shall notify the Board in writing of any change of principal practice address or residence address within thirty days of such change.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Hoogendoorn appears to have violated or breached any term or condition of this Consent Agreement, the Board reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Hoogendoorn acknowledges that he has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

Dr. Hoogendoorn hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. Hoogendoorn acknowledges that his social security number will be used if this information is so reported and agrees to provide his social security number to the Board for such purposes.

EFFECTIVE DATE

It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the date of the last signature below.



KYLE ELLIOT HOOGENDOORN, D.P.M.



LANCE TALMAGE, M.D., *rw*
Secretary

3.5.09

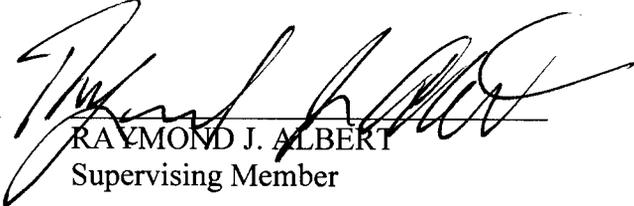
DATE

3/12/09

DATE



ELIZABETH COLLIS
Attorney for Dr. Hoogendoorn



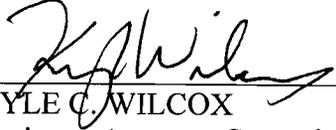
RAYMOND J. ALBERT
Supervising Member

3-8-09

DATE

3/16/09

DATE



KYLE C. WILCOX
Assistant Attorney General

3-9-09

DATE



Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

July 9, 2008

Case number: 08-CRF- 090

Kyle Elliott Hoogendoorn, D.P.M.
2968 Shady Knoll Lane
Hilliard, OH 43026

Dear Doctor Hoogendoorn:

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

- (1) During the time period of in or about 2006 to in or about June 2008, you provided care in the routine course of your practice for Patients 1 through 8 as identified on the attached Patient Key (Patient Key confidential and to be withheld from public disclosure).
- (2) In your treatment of Patients 1-8, you practiced below minimal standards of care, including, but not limited to, the following:
 - (a) You failed to exhaust and/or failed to document the exhaustion of conservative treatments prior to performing surgery on Patients 1, 2, 3, 4, 7 and 8;
 - (b) You performed surgery on Patients 1-8 despite the lack of appropriate clinical indication for the surgery;
 - (c) You performed surgery on Patient 1 without obtaining and/or documenting that you obtained appropriate informed consent;
 - (d) You failed to properly document surgical procedures that you performed on Patients 1 and 2;
 - (e) You used rote documentation of progress notes and/or operative reports in your patient charts for Patients 1-8 that was not appropriately specific to each patient and procedure.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Mailed 7-10-08

Kyle Elliott Hoogendoorn, D.P.M.

Page 2

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.

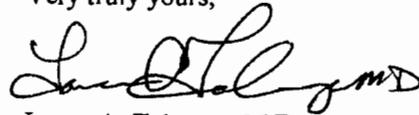
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at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

CERTIFIED MAIL #91 7108 2133 3934 3691 3239
RETURN RECEIPT REQUESTED

cc: Elizabeth Y. Collis, Esq.
1650 Lake Shore Drive
Suite 225
Columbus, OH 43204

CERTIFIED MAIL #91 7108 2133 3934 3691 3246
RETURN RECEIPT REQUESTED

STATE MEDICAL BOARD OF OHIO
30 E. BROAD STREET, 3RD FLOOR
COLUMBUS, OHIO 43215

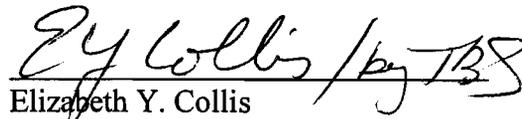
EXHIBIT B

In the matter of:)
) Hearing Examiner
) R. Gregory Porter, Esq.
 Kyle Elliott Hoogendoorn, D.P.M.)

MOTION FOR ATTORNEYS' FEES

Respondent, Kyle E. Hoogendoorn, D.P.M., by and through counsel, moves pursuant to R.C. 119.092 for the awarding of attorneys' fees in the instant case in the amount of \$65,728.96. As will be more fully outlined in the attached Memorandum in Support, Dr. Hoogendoorn is entitled to the award of attorneys' fees based on the fact that the Medical Board position in this matter was not substantially justified, and no action should have been initiated against Dr. Hoogendoorn. Nevertheless, the Medical Board issued a citation against Dr. Hoogendoorn on August 9, 2006, despite the clear evidence at that time that he was not in violation of the Board's laws or rules. Based on the fact that the Medical Board's position was not substantially justified, Dr. Hoogendoorn is entitled to be reimbursed for his attorneys' fees.

Respectfully submitted,



Elizabeth Y. Collis
Collis, Smiles & Collis, LLC
1650 Lake Shore Drive, Suite 225
Columbus, OH 43204
Tele: 614/486-3909
Fax: 614/486-2129
E-mail: beth@collislaw.com
Counsel for Respondent
Kyle E. Hoogendoorn, D.P.M.

HEALTH & HUMAN
SEP 17 2008
SERVICES SECTION

MEMORANDUM IN SUPPORT

Pursuant to R.C. 119.092, Respondent, Kyle E. Hoogendoorn, D.P.M., moves for the awarding of attorneys' fees in the above referenced case. Under R.C. 119.092,

“if an agency conducts an adjudication hearing under this chapter, the prevailing eligible party is entitled , upon a filing of a motion, . . . to compensation for fees incurred by that party in connection with the hearing.” R.C. 119.092 (B)(1).

Pursuant to this statute, Dr. Hoogendoorn, is entitled to the award of his attorneys' fees unless, the Medical Board can affirmatively establish that it was substantially justified in its position. R.C. 119.092(B)(2) (“the agency involved . . . has the burden of proving that its position in initiating the matter in controversy was substantially justified”). In this case, the Medical Board's lack of review or understanding of its statutes or rules or its lack of review of the manner in which its licensees are trained do not constitute “substantial justification.” Accordingly, as demonstrated more specifically below, Dr. Hoogendoorn is entitled to an award of the attorneys' fees he expended in this matter.

A. ELIGIBLE PARTY.

Dr. Hoogendoorn is an “eligible party” as defined in R.C. 119.092. A Notice of Opportunity for Hearing was issued to Dr. Hoogendoorn on August 9, 2006. An administrative hearing regarding the issues related to Dr. Hoogendoorn's case was then held over a three-week period in May and June 2007. Thus, Dr. Hoogendoorn is a non-agency “party to an adjudication hearing.” R.C. 119.092(A)(1). Furthermore, his net worth did not exceed one million dollars nor is he owner of a business that has net in excess of five million dollars or had more than five

hundred employees. R.C. 119.092(A)(1)(b)-(d). Therefore, Dr. Hoogendoorn is an eligible party.

B. PREVAILING ELIGIBLE PARTY.

On August 13, 2008, the State Medical Board of Ohio journalized a final order, which stated the following:

“The allegations against Kyle Hoogendoorn, DPM, set forth in the August 9, 2006, notice of opportunity for hearing, are dismissed”. Final order.

Accordingly, Dr. Hoogendoorn is a prevailing eligible party as defined by R. C. 119.092(A)(4) ("an eligible party that prevails after an adjudication hearing, as reflected in an order entered in the journal of the agency").

C. THE MEDICAL BOARD WAS NOT SUBSTANTIALLY JUSTIFIED IN INITIATING THIS ACTION.

Although the Medical Board has the burden of proving its position in pursuing this case was substantially justified, a review of the history and facts of this matter demonstrate that its position was NOT justified.

In August 2006, the Medical Board charged Dr. Hoogendoorn with violating R.C. 4731.22(B)(10) and R.C. 4731.41 for allegedly practicing medicine without a license between 2000 to 2001. The Medical Board cited Dr. Hoogendoorn in 2006, after it had conducted a five-year investigation into the matter.

In the spring of 2001, the Medical Board sent its investigator, Shawn McGafferty, to interview Dr. Hoogendoorn at his place of employment. At that time, Dr. Hoogendoorn was participating in a pain management fellowship at Pain Control Consultants (“PCC”) under the supervision of Doctors Leak and Griffin. During that interview, Mr. McGafferty questioned Dr.

Hoogendoorn about his work at PCC and was advised by Dr. Hoogendoorn that while he was licensed as a podiatrist in Ohio, that he was working at PCC as a fellow and learning how to manage patients with chronic pain.

On April 17, 2001, the Medical Board conducted extensive investigative depositions of both Doctors Leak and Griffin. During these depositions, both doctors were repeatedly questioned about Dr. Hoogendoorn, the work that he participated in at PCC, the scope of his training at PCC, and the supervision that he received. Extensive questions were also asked about the fellowship program and its accreditation.

On September 5, 2001, an investigative deposition was conducted of Dr. Hoogendoorn by David Katko, Medical Board enforcement attorney. Again, during this deposition, extensive questions were asked of Dr. Hoogendoorn about the scope of his practice while in the fellowship program, the nature of the fellowship, the supervision that he received, and whether the program was accredited by any certifying body. After that meeting, on September 19, 2001, counsel for Dr. Hoogendoorn at that time, Timothy Rankin, sent a follow up letter to Mr. Katko at the Medical Board that included the following supplementary information:

- 1) Application from Pain Control Consultants and Dr. Kyle Hoogendoorn for accreditation as a fellowship program through the American Podiatric Medical Association;
- 2) Letter from Dr. Vincent Hetherington of the Ohio College of Podiatric Medicine;
- 3) A letter and enclosures from Gary Fetgetter of the Ohio Podiatric Medical Association.

Each of these documents provided evidence to the Medical Board as to the fact that PCC had applied for accreditation of its fellowship program with the American Podiatric Medical Association and regarding the scope of practice of podiatrists during their training. These

documents, as well as the deposition testimony, evidenced that at all times Dr. Hoogendoorn was practicing within the scope of his licensure and that his activities were permitted.

Although there was no conflicting information in its investigation, the Medical Board still cited Dr. Hoogendoorn with practicing medicine without a license. Thus, the issuance of the citation was not justified.

Furthermore, throughout the investigative and hearing process, the Medical Board took steps to extend the hearing process and to confuse the issues before the Board. Specifically, when retaining expert witnesses to make a determination as to whether Dr. Hoogendoorn was practicing outside of the scope of his license as a podiatrist, the Medical Board failed to inform either expert that Dr. Hoogendoorn was participating in a fellowship program. At hearing, the experts for the State testified that if they had known that Dr. Hoogendoorn had been involved in a fellowship program, that their opinion regarding Dr. Hoogendoorn's practice may have been different.

As part of the Medical Board's investigation, the Medical Board never called a podiatrist to testify as to the scope of practice of a podiatrist while in training. This is information that clearly should have been obtained by the Medical Board as a part of its five-year investigation.

Finally, during the investigation the Medical Board never determined whether it would constitute the unlicensed practice of medicine if a podiatrist participated in an unaccredited fellowship program. At the hearing, one of the issues that was consistently raised by the State was the fact that during part of the time that Dr. Hoogendoorn participated in the fellowship, that it was not accredited by any certifying body and therefore the fellowship was a "sham". However, testimony was provided at the hearing from Dr. Weiner, a licensed podiatrist, and Dr. Thomas, a licensed physician, who are each responsible for managing residency or fellowship

programs in Ohio, that often new fellowships are not accredited in their first years of operation. In fact, they testified that a fellowship typically must be in place for several years before it can apply for accreditation. This lack of accreditation does not affect the ability of podiatrists to participate.

Whether a fellowship program had to be accredited before a podiatrist may participate in it is something that could have easily been determined by the Medical Board during its five-year investigation. The failure of the Medical Board to find out this basic information as a part of its investigation is additional evidence that the Board took actions that unreasonably complicated and protracted the final resolution in this matter.

At its essence, the issue before the Board was whether a podiatrist, while in training, may conduct medical procedures that are otherwise outside of the scope of their license. The State legislature specifically placed a podiatrist on the Medical Board so that they could provide their expertise regarding the education, training and practice of podiatry in Ohio. Thus, this question could have easily been determined by the Board by researching how podiatrists are trained in Ohio or simply by asking the podiatry member of the Board. The specific facts of this case were not relevant to the answer to that question. The three week hearing held in this matter was neither justified or necessary to determine that podiatry residents and fellows are regularly educated and trained in all areas of the human body, not just from the knee down. This case did not present a unique set of facts that only the Board members themselves could have ruled upon only after an exhaustive hearing.

Accordingly, the facts of this case demonstrate that the Medical Board was not substantially justified in its position in this matter. Therefore, Dr. Hoogendoorn is entitled to an award of his attorneys' fees.

D. AMOUNT OF FEES SOUGHT.

During the investigation stage and at the time that the Medical Board cited Dr. Hoogendoorn, he was represented by Timothy Rankin, Esq. As outlined in the attached letter, fees in the amount of \$13,422.27 were charged by Mr. Rankin to Dr. Hoogendoorn to represent him in this matter (attached as Ex. A). In January 2007, the law firm of Collis, Smiles and Collis, LLC was retained to represent Dr. Hoogendoorn before the State Medical Board of Ohio. Dr. Hoogendoorn paid fees to the Collis firm in the amount of \$52,306.69 (see attached statement, Ex. B). Accordingly, the total legal fees expended by Dr. Hoogendoorn in his defense in this matter, and the amount he is requesting in an award of attorneys' fees is \$65,728.96.

CONCLUSION

In this case, Dr. Hoogendoorn is a prevailing eligible party, and State Medical Board of Ohio was not substantially justified its position. Accordingly, Dr. Hoogendoorn moves for the awarding of attorneys' fees from the State Medical Board in the total amount of \$65,728.96.

Respectfully submitted,


Elizabeth Y. Collis
Collis, Smiles & Collis, LLC
1650 Lake Shore Drive, Suite 225
Columbus, OH 43204
Tele: 614/486-3909
Fax: 614/486-2129
E-mail: beth@collislaw.com
Counsel for Respondent
Kyle E. Hoogendoorn, D.P.M.

CERTIFICATE OF SERVICE

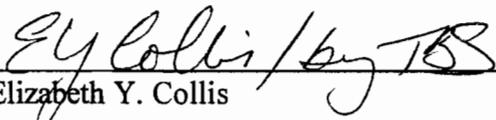
The undersigned hereby certifies that a true copy of the foregoing *Motion for Attorneys'*

Fees was served hand delivery, this 12th day of September, 2008, upon:

State Medical Board of Ohio
30. E. Broad Street, 3rd Floor
Columbus, Ohio 43215 and

Via first class mail, postage pre-paid to:

Assistant Attorney General
Kyle Wilcox
30 E. Broad Street, 26th Floor, HHS
Columbus, Ohio 43215



Elizabeth Y. Collis



Onda, LaBuhn, Rankin & Boggs
A Legal Professional Association

Timothy S. Rankin
Attorney at Law
tsr@olrlaw.com
Direct Dial 614/716-0501

September 12, 2008

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

Re: Kyle Hoogendoorn, DPM

Dear Members of the State Medical Board:

Please be advised that the law firm of Onda, LaBuhn, Rankin & Boggs Co., LPA was retained to represent Kyle Hoogendoorn before the State Medical Board of Ohio on August 11, 2006. To date, the following charges and expenses have been incurred to represent Dr. Hoogendoorn before the Medical Board:

- Total number of hours charged by attorney 35.3 at the hourly rate of \$185.00 for a total of \$6,530.50;
- Total number of associate attorney hours 75.40 at the hourly rate of \$90.00 for a total of \$6,790.00;
- Total amount of expenses charged \$101.77;
- Total paid to expert witnesses: N/A .

Grand total \$13,422.27

Very truly yours,

ONDA, LaBUHN, RANKIN & BOGGS CO., LPA

Timothy S. Rankin

TSR/bs

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September 12, 2008

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

Re: Kyle Hoogendoorn, DPM

Dear Members of the State Medical Board:

Please be advised that the law firm of Collis, Smiles & Collis, LLC was retained to represent Kyle Hoogendoorn before the State Medical Board of Ohio in January 2007. To date, the following charges and expenses have been incurred to represent Dr. Hoogendoorn before the Medical Board:

- | | |
|-----------------------------------------------------------------------------------------------------|--------------------|
| • Total number of hours charged by attorney 117.15
at the hourly rate of \$250.00 for a total of | \$29,287.50; |
| • Total number of attorney hours charged 76.55
at the rate of \$225.00 for a total of | \$17,223.75; |
| • Total number of support staff hours 1.40
at the hourly rate of \$90.00 for a total of | \$126.00; |
| • Total amount of expenses charged (including copying/printing) | \$285.74; |
| • Total amount of postage: | \$210.15; |
| • Total paid to expert witnesses | \$5,173.55. |
| Grand total: | \$52,306.69 |

Sincerely,

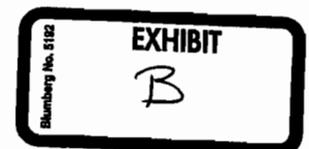
Elizabeth Y. Collis

Todd W. Collis
 todd@collislaw.com

Terri-Lynne B. Smiles
 terri@collislaw.com

Elizabeth Y. Collis*
 beth@collislaw.com

*Also admitted to practice in the District of Columbia and Florida





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 13, 2008

Kyle Elliott Hoogendoorn, D.P.M.
2968 Shady Knoll Lane
Hilliard, OH 43026

Dear Doctor Hoogendoorn:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on August 13, 2008, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

Such an appeal 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. 91 7108 2133 3934 3690 5876
RETURN RECEIPT REQUESTED

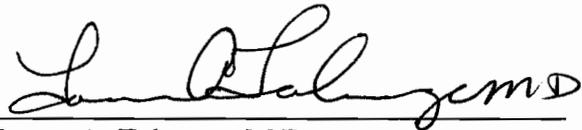
CC: Elizabeth Y. Collis, Esq.
CERTIFIED MAIL NO. 91 7108 2133 3934 3690 5883
RETURN RECEIPT REQUESTED

Mailed 8-15-08

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on August 13, 2008, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Kyle Elliott Hoogendoorn, D.P.M., as it appears in the Journal of the State Medical Board of Ohio.

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



Lance A. Talmage, M.D.
Secretary

(SEAL)

August 13, 2008

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

KYLE ELLIOTT
HOOGENDOORN, D.P.M.

*

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on August 13, 2008.

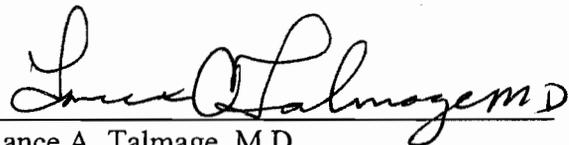
Upon the Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the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

It is hereby ORDERED that:

The allegations against Kyle Elliott Hoogendoorn, D.P.M., set forth in the August 9, 2006, notice of opportunity for hearing, are DISMISSED.

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

(SEAL)



Lance A. Talmage, M.D.
Secretary

August 13, 2008
Date

**REPORT AND RECOMMENDATION
IN THE MATTER OF KYLE ELLIOTT HOOGENDOORN, D.P.M.**

The Matter of Kyle Elliott Hoogendoorn, D.P.M., was heard by R. Gregory Porter, Hearing Examiner for the State Medical Board of Ohio, on May 14 through 18, 21, 23 through 25, and June 11, 12, 14, 15, and 18 through 21, 2007.¹

INTRODUCTION

Basis for Hearing

By letter dated August 9, 2006, the State Medical Board of Ohio [Board] notified Kyle Elliott Hoogendoorn, D.P.M., that it had proposed to take disciplinary action against his certificate to practice podiatric medicine and surgery in Ohio. The Board based its proposed action on an allegation that Dr. Hoogendoorn had unlawfully practiced medicine and surgery in his treatment of 19 patients identified on a confidential Patient Key. The Board alleged that Dr. Hoogendoorn’s conduct constitutes: “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 4731.41, Ohio Revised Code, Practice of medicine or surgery without certificate. Pursuant to Section 4731.99(A), Ohio Revised Code, violation of Section 4731.41, Ohio Revised Code, constitutes a felony offense.”

The Board advised Dr. Hoogendoorn of his right to request a hearing, and received his written request for hearing on September 6, 2006. (State Exhibits 54B, 54L)

Appearances

Nancy Hardin Rogers, Attorney General, by Damion M. Clifford and Kyle C. Wilcox, Assistant Attorneys General, for the State.

Elizabeth Y. Collis, Esq., for Dr. Hoogendoorn.

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EVIDENCE EXAMINED

Testimony Heard

A. Presented by the State

Mark V. Boswell, M.D.
Kyle E. Hoogendoorn, D.P.M., as upon cross-examination
David Shawn McCafferty
Murray Kopelow, M.D.
W. David Leak, M.D., as upon cross-examination
Brian F. Griffin, M.D., as upon cross-examination
Bashar Katirji, M.D.
Thomas C. Chelimsky, M.D.

B. Presented by the Respondents

David R. Longmire, M.D.
Richard Weiner, D.P.M.
Kyle E. Hoogendoorn, D.P.M.
James P. Bressi, D.O.
Todd C. Loftus, D.P.M.
Andrew Thomas, M.D.
David S. Bastawros, D.P.M.
W. David Leak, M.D.
Gary W. Jay, M.D.
Brian F. Griffin, M.D.

Exhibits Examined

(Exhibits marked with an asterisk [*] have been sealed to protect confidentiality.)

A. Presented by the State

* State's Exhibits 1 through 24: Copies of medical records for Patients 1 through 24.

* State's Exhibit 26: Patient Key.

State's Exhibits 27 and 27A: Curriculum vitae of Thomas C. Chelimsky, M.D.

* State's Exhibits 28 and 29: Copies of written reports prepared by Dr. Chelimsky dated January 31, 2005, and May 2, 2006, respectively.

State's Exhibit 30: Curriculum vitae of Bashar Katirji, M.D.

* State's Exhibit 31: Copy of August 8, 2006, report prepared by Dr. Katirji.

State's Exhibit 32: Copy of August 31, 2001, letter to Board enforcement staff from Murray Kopelow, M.D., Chief Executive, Accreditation Council for Continuing Medical Education [ACCME], Chicago, Illinois.

State's Exhibit 33: Copy of document published on the Internet by the Accreditation Council for Graduate Medical Education [ACGME] entitled Section II: Essentials of Accredited Residencies in Graduate Medical Education, printed October 18, 2001, <<http://www.acgme.org/GmeDir/Sect2.asp>>.

State's Exhibit 36: Excerpt from transcript of August 17, 2001, Board investigative deposition of Dr. Leak.

State's Exhibit 41: Copy of Dr. Leak's responses to the Board's Second Set of Interrogatories.

State's Exhibit 42: Copy of Dr. Leak's responses to the Board's Third Set of Interrogatories.

State's Exhibits 44 and 44A: Copies of current and previous versions of Section 4731.51, Ohio Revised Code, Defining Practice of Podiatric Medicine and Surgery.

State's Exhibit 45: Copy of April 7, 2001, letter to Dr. Hoogendoorn from Dr. Leak, and attached materials concerning the fellowship offered by Pain Control Consultants.

State's Exhibit 46: Curriculum vitae of Mark V. Boswell, M.D., Ph.D.

State's Exhibit 47: Section 4731.41, Ohio Revised Code, Practicing Medicine without Certificate

State's Exhibits 48A and 48B: Previous versions of Section 4731.143, Ohio Revised Code, Notice of Lack of Coverage of Medical Malpractice Insurance, as effective April 10, 2001, and December 30, 2004, respectively.

State's Exhibit 49: Section 2923.03, Ohio Revised Code, Complicity.

State's Exhibit 53: Copy of April 27, 2007, letter to Damion M. Clifford, Assistant Attorney General, from Dr. Chelimsky, with portions redacted.

State's Exhibits 54A through 54WWW: Procedural exhibits. [State's Exhibits 54JJ and 54KK have been sealed to protect patient confidentiality.]

State's Exhibit 55: Printed copy of April 2, 2007, email from Mr. Clifford to counsel for Drs. Leak, Griffin, and Hoogendoorn.

State's Exhibit 57: Copy of document published on the Internet by the American Board of Medical Specialties [ABMS] concerning Dr. Griffin's board certification, indicating that he has been certified in Emergency Medicine by the American Board of Emergency Medicine, and that he holds subspecialty certification in Pain Medicine from the American Board of Physical Medicine and Rehabilitation, printed June 4, 2007, <<http://www.abms.org/searchdetail.asp?key=323675>>.

State's Exhibit 58: Copy of document published on the Internet by the ABMS concerning the American Board of Anesthesiology and the specialty and subspecialty certifications it offers, printed June 4, 2007, <http://www.abms.org/Who_We_Help/Consumers/About_Physician_Specialties/anesthesiolo... [remainder of citation not included in original]>.

State's Exhibit 59: Copy of document published on the Internet by the ABMS concerning Dr. Leak's board certification, indicating that he has been certified in Anesthesiology by the American Board of Anesthesiology, printed June 4, 2007, <<http://www.abms.org/searchdetail.asp?key=57133>>.

State's Exhibit 60: State's Closing Argument. [This exhibit was marked by the Hearing Examiner and admitted post-hearing.]

State's Exhibit 61: State's Rebuttal Argument. [This exhibit was marked by the Hearing Examiner and admitted post-hearing.]

B. Presented by the Respondent

Respondents' Exhibit 103H: Curriculum vitae of Kyle E. Hoogendoorn, D.P.M.

Respondents' Exhibit 104H: Curriculum vitae of W. David Leak, M.D.

Respondents' Exhibit 105A-G: Curriculum vitae of Brian F. Griffin, M.D.

Respondents' Exhibit 106G: Curriculum vitae of James Patrick Bressi, D.O.

Respondents' Exhibit 109H: Curriculum vitae of David S. Bastawros, D.P.M.

Respondents' Exhibit 110H: Course Curriculum published by the Ohio College of Podiatric Medicine concerning the four-year curriculum and the five-year extended curriculum, <http://www.ocpm.edu/students/course_curriculum/> (March 19, 2007).

Respondents' Exhibit 111H: Copy of January 1999 *CPME 320: Standards, Requirements, and Guidelines for Approval of Residencies in Podiatric Medicine*, approved by the Council on Podiatric Medical Education [CPME], October 1998.

Respondents' Exhibits 112H and 112aH: Copy and original of October 1999 *CPME 330: Procedures for Approval of Residencies in Podiatric Medicine*, approved by the Council on Podiatric Medical Education [CPME], October 1999.

Respondents' Exhibit 114H: Copy of an April 7, 2001, letter to Dr. Hoogendoorn from Dr. Leak.

Respondents' Exhibit 115H: Copy of Pain Net Inc.'s Fellowship Guidelines for Pain Control Consultants.

Respondents' Exhibits 117H and 118H: Copies of letters to Dr. Hoogendoorn from Vincent J. Hetherington, D.P.M., Vice President and Dean of Academic Affairs, OCPM.

Respondents' Exhibit 119H: Copy of September 19, 2001, Memorandum of Affiliation between The Ohio College of Podiatric Medicine and Pain Control Consultants, Inc.

Respondents' Exhibit 121H: Copy of January 8, 2002, letter to Dr. Leak from Alan Tinkleman, Director, CPME.

Respondents' Exhibit 122H: Copies of various certificates of Dr. Hoogendoorn.

Respondents' Exhibit 156: Copy of March 21, 2007, written report of Gary W. Jay, M.D.

Respondent's Exhibit 157: Copy of the written report of David R. Longmire, M.D.

Respondents' Exhibit 165: Curriculum vitae of Dr. Jay.

Respondents' Exhibit 201: Copies of documents from a seminar entitled "Prescription Paradigm Shift: Kroger Pharmacy and Pain Net," offered by Pain Net, Inc., Pain Control Consultants, Inc., and Kroger Pharmacies on February 13, 2002.

Respondents' Exhibit 202: Copy of document entitled "Building Blocks of Evidence Based Medicine," from Pain Net Technology, LLC.

Respondents' Exhibit 203: Copy of JRRC Application for New Fellowship Program.

Respondents' Exhibit 213L: Longmire D.R.: "An Electrophysiological Approach to the Evaluation of Regional Sympathetic Dysfunction: A Proposed Classification." *Pain Physician* 2006;9:69-82, 2006.

Respondents' Exhibit 214: Ochoa, J.L.: "Chronic Pains Associated with Positive and Negative Sensory, Motor, and Vasomotor Manifestations: CPSMV (RSD;CRPS?).

Heterogeneous Somatic Versus Psychopathologic Origins.” <<http://mitpress.mit.edu/e-journals/JCN/articles/002/Ochoa.html>> (August 14, 1997).

Respondent’s Exhibit 214L: Curriculum Vitae of Dr. Longmire.

Respondents’ Exhibits 215 and 215A: Copies of documents from a seminar entitled “Clinical Development for Chronic Pain Therapeutics,” offered by Marcus Evans Conferences on March 29 and 30, 2007.

Respondents’ Exhibit 216: Luis Garcia-Larrea, *Handbook of Clinical Neurology, Volume 81, 3rd Series, Neurophysiological Examinations in Neuropathic Pain, Chapter 30, Evoked Potentials in the Assessment of Pain*. (Elsevier B.V., 2006)

Respondents’ Exhibit 217: Burneo, J.G., Barkley, G.L.: “Somatosensory Evoked Potentials: Clinical Applications.” <<http://www.emedicine.com/neuro/topic344.htm>> (May 23, 2007).

Respondents’ Exhibit 218: Copies of various certification documents for Dr. Leak.

Respondents’ Exhibits 219 through 221: Closing arguments of Drs. Griffin, Hoogendoorn, and Leak, respectively. [Note: These exhibits were marked and admitted by the Hearing Examiner post-hearing.]

C. Presented by the Hearing Examiner

Board Exhibit A: June 27, 2007, Entry establishing schedule for filing written closing arguments.

Board Exhibit B: Copy of the Respondents’ joint motion to extend time for filing written closing arguments.

Board Exhibit C: Copy of September 13, 2007, Entry granting the Respondents’ motion to extend time for filing written closing arguments.

Board Exhibit D: Copy of the Respondents’ second joint motion to extend time for filing written closing arguments.

Board Exhibit E: Copy of September 28, 2007, Entry granting the Respondents’ second joint motion to extend time for filing written closing arguments.

Board Exhibit F: Transcript of April 24, 2007, pre-hearing conference.

Board Exhibit G: Copy of the State’s October 9, 2007, emailed request to extend time for filing rebuttal closing argument, and responses.

Board Exhibit G1: Copy of October 10, 2007, Entry granting the State's request for an extension of time.

Board Exhibit H: Patient Key conversion chart for the Master Patient Key (Board Exhibit I) and Dr. Katirji's written report.

Board Exhibit I: Master Patient Key which cross references the patient numbers used in Dr. Leak's notice letter (which is identical to the Master Patient Key), Dr. Griffin's notice letter (which differs from the patient numbers used in the Master Patient Key and Dr. Leak's notice letter), and Dr. Hoogendoorn's notice letter (which differs from the patient numbers used in the Master Patient Key, Dr. Leak's notice letter, and Dr. Griffin's notice letter).

PROFFERED EXHIBITS

The following documents were neither admitted to the record nor considered as evidence. However, they have been sealed from public disclosure and will be held as proffered material:

State's Exhibit 25: Copies of Dr. Leak's billing records. (See Hearing Transcript [Tr.] at 2019-2022)

State's Exhibit 43: Copy of the Board's May 13, 1998, Position Paper concerning the Delegation of Medical Tasks. (See Tr. at 2044-2045)

State's Exhibits 50 through 52: Excerpts from the Ohio Administrative Code. (See Tr. at 2051-2055)

State's Exhibit 53: Unredacted April 27, 2007, letter to Mr. Clifford from Dr. Chelimsky. (See Tr. at 2055-2062)

Respondents' Exhibit 113H: Copy of a March 22, 2001, letter to Dr. Hoogendoorn from Dr. Leak. (See Procedural Matters 3.d, below.)

Respondents' Exhibit 120H: Copy of October 29, 2001, letter to the Joint Residency Review Committee [JRRC] from Dr. Leak. (See Procedural Matters 3.e, below.)

PROCEDURAL MATTERS

1. On August 9, 2006, the Board issued notices of opportunity for hearing to Dr. Leak, Dr. Griffin, and Dr. Hoogendoorn. Each requested a hearing. Subsequently, by Entry dated October 12, 2006, and with the agreement of all parties, the matters of Dr. Leak, Dr. Griffin, and Dr. Hoogendoorn were consolidated for purposes of the administrative hearing. (State's Exhibits 54A, 54B, 54C, 54E, 54G, 54L, and 54BB)

2. The record in this matter was held open until October 15, 2007, to give the parties an opportunity to file written closing arguments. These documents were timely filed and admitted to the record as State's Exhibits 60 and 61, and Respondents' Exhibits 219 through 221.
3. At hearing, the final determination regarding the admissibility of the following exhibits was deferred:
 - a. St. Ex. 32: This exhibit was to be admitted on the condition that it had been identified at hearing by Murray Kopelow, M.D. (Hearing Transcript [Tr.] at 2032-2035) The hearing record indicates that Dr. Kopelow identified the document. (Tr. at 359) Accordingly, the document is admitted to the hearing record.
 - b. St. Ex. 33: This document was to be removed from the record if all witnesses agreed that there was no ACGME²-approved fellowship available in pain management until 2002. If any witness testified to the contrary, the document was to be admitted to the hearing record. (Tr. at 2032-2035) The hearing record indicates that Mark V. Boswell, M.D., testified that the pain medicine fellowship at Case Western Reserve University School of Medicine had obtained ACGME accreditation in 1996 through the American Board of Anesthesiology. (Tr. at 18) Accordingly, this document is admitted to the hearing record.
 - c. St. Ex. 36: This exhibit was to be admitted on the condition that it was used by the State for the purpose of impeaching Dr. Leak's testimony. (Tr. at 2035-2041) The hearing record indicates that pages 93 through 106 of this document had been used by the State for that purpose. (Tr. at 416-423, 471-473) Accordingly, pages 1, 2, and 93-106 of this document are admitted to the hearing record. (This ruling concerns the admissibility of the document only and does not reflect the Hearing Examiner's opinion concerning the success or lack of success of the State's effort to impeach.)
 - d. Respondent's Exhibit 113H: This document was to be admitted on the condition that it had been referenced during hearing. (Tr. at 3120-3121) The Hearing Examiner could find no reference to this exhibit in the hearing record. Accordingly, it will be removed from the record and held as proffered material for the Respondents.
 - e. Respondent's Exhibit 120H: This document was to be admitted on the condition that it had been referenced during hearing. (Tr. at 3123-3124) The Hearing Examiner could find no reference to this exhibit in the hearing record. Accordingly, it will be removed from the record and held as proffered material for the Respondents.
4. Dr. Leak made an objection at hearing, and the ruling was deferred. (See Tr. at 951-952) The objection is overruled. Mr. Clifford's characterization of Dr. Griffin's previous testimony during his questioning of Dr. Longmire was accurate. (See Tr. at 663-665)

² Accreditation Council for Graduate Medical Education.

5. Any other objections where rulings were deferred are hereby overruled. Further, any motions to strike where rulings were deferred are hereby denied.

SUMMARY OF THE EVIDENCE

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

Background Information – Respondents

Kyle E. Hoogendoorn, D.P.M.

1. Kyle Elliott Hoogendoorn, D.P.M., obtained his podiatric medical degree in 1997 from the Ohio College of Podiatric Medicine in Cleveland, Ohio. From 1997 through 1998, Dr. Hoogendoorn participated in a primary podiatric medical residency at Richmond Heights Hospital³ in Richmond Heights, Ohio. Subsequently, from August 2000 to February 2003, Dr. Hoogendoorn participated in a pain management fellowship through Pain Control Consultants, Inc., in Columbus, Ohio (Respondent's Exhibits [Resp. Ex.] 103H; Hearing Transcript [Tr.] at 81-84, 411, 2181-2182)

Since 1997, Dr. Hoogendoorn has been licensed by the Board to practice podiatric medicine and surgery in Ohio. (Resp. Ex. 103H)

2. Dr. Hoogendoorn has been certified by the American Board of Orthopedic and Primary Podiatric Medicine and the American Academy of Wound Management. (Resp. Ex. 103H)

In addition, Dr. Hoogendoorn testified that he has been certified by the American Academy of Pain Management, and that he sits on the academy's committee for continuing education. Dr. Hoogendoorn noted that M.D.s, D.O.s, D.P.M.s, and dentists who practice pain management are eligible for membership in that organization, and that they all take the same certifying examination. (Tr. at 2215-2216)

3. Dr. Hoogendoorn currently practices at Pro-Active Wound Care Clinics, Inc., in Hilliard, Ohio, and the Foot and Ankle Health Center, Inc., in Grove City, Ohio. (Resp. Ex. 103H)

W. David Leak, M.D.

4. W. David Leak, M.D., obtained his medical degree in 1979 from the Wake Forest University, Bowman-Gray School of Medicine, in Winston-Salem, North Carolina. From 1979 through 1980, Dr. Leak participated in a rotating internship in the Department of Anesthesia at the Ohio State University Hospitals in Columbus, Ohio. From 1981 through 1983, Dr. Leak participated in a residency in anesthesiology at the Hospital of the

³ Dr. Hoogendoorn testified that Richmond Heights Hospital is now known as PHC-Mt. Sinai East Hospital. (Tr. at 82-83)

University of Pennsylvania in Philadelphia, Pennsylvania. From 1983 through 1984, Dr. Leak participated in a clinical and research fellowship in cardiovascular and regional anesthesia and pain management at that same institution. Finally, from April through June 1984, Dr. Leak completed his fellowship at the Pain Control Center at the University of Cincinnati in Cincinnati, Ohio. (Resp. Ex. 104H at 1; Tr. at 380-381, 2680-2683)

Dr. Leak's curriculum vitae states that, in 1984, he was certified in anesthesiology by the American Board of Anesthesiology. In 1992, Dr. Leak became a diplomate of the American Board of Pain Medicine. In 1993, Dr. Leak was awarded a certificate of added qualifications in pain medicine from the American Board of Anesthesiology.⁴ In 1995, Dr. Leak became a fellow of the American Academy of Pain Management. (Resp. Ex. 104H; Tr. at 2683-2685)

Dr. Leak testified that he has published articles and book chapters on the subject of pain management, and has made numerous presentations and lectures on that subject throughout his career. (Resp. Ex. 104H; Tr. at 2691)

5. From 1984 through the time of the hearing, Dr. Leak has been the Medical Director of Pain Control Consultants, Inc., [PCC], in Columbus, Ohio, where he practices interventional pain medicine. (Resp. Ex. 104H; Tr. at 2687) From approximately 1998, through Pain Control Consultants, Inc., Dr. Leak ran a fellowship in pain management. Dr. Leak testified that the PCC fellowship is currently inactive and has "not taken a fellow for quite a few years." (Tr. at 408; Tr. at 2689)

Dr. Leak testified that he currently holds privileges at Morrow County Hospital. Dr. Leak further testified that Morrow County Hospital is located about 30 minutes north of the "Polaris" development in southern Delaware County, north of Columbus, Ohio. Dr. Leak indicated that he does not have privileges at any hospital in Columbus, stating:

Hospitals [in Columbus] usually require physicians who are anesthesiologists to be part of the anesthesia department. They don't have what's known as open staff. And most of the anesthesiologists that do pain end up working either out of their offices or at hospitals where they have open staff. Morrow County has open staff.

(Tr. at 2897-2898)

Brian F. Griffin, M.D.

6. Brian F. Griffin, M.D., obtained his medical degree in 1978 from the University of Cincinnati College of Medicine. From 1978 to 1979 he participated in a one-year internship at Good Samaritan Hospital in Cincinnati, Ohio. Dr. Griffin testified that he did

⁴ Dr. Leak testified that he has not recertified his added qualifications in pain medicine, and that it expired in 2003. (Tr. at 2684, 3145-3146)

not participate in a residency. He was licensed to practice medicine and surgery in Ohio in 1979. (Resp. Ex. 105a-g at 12; Tr. at 634-635, 2978)

Dr. Griffin testified that, following his internship, he completed a year of training in hospital administration where he “served as a liaison between the medical staff and hospital administration at Providence Hospital in Cincinnati.” Dr. Griffin then became the Director of the Emergency Department at Adams County Hospital where he practiced emergency medicine for two years. He then moved to Portsmouth where he practiced emergency medicine at both Scioto Memorial and Mercy Hospitals for two years. Next, Dr. Griffin moved to Columbus where he practiced emergency medicine at Grant Hospital, Riverside Hospital, Doctors North Hospital, and Doctors West Hospital. In 1994, Dr. Griffin took a position in the emergency department at Columbus Community Hospital [CCH]. Dr. Griffin testified that he had worked in the emergency department at CCH for four years. (Tr. at 634-640)

Dr. Griffin testified that, while he was employed at CCH, Dr. Leak had offered to him a position in an unaccredited pain medicine fellowship at PCC, where Dr. Leak was the owner and medical director. Dr. Griffin testified that he had accepted the offer, entered the fellowship in 1999, and completed two years of fellowship. Dr. Griffin testified that, after his fellowship ended in 2001, he had continued as an employee of PCC until 2003. In December 2003, Dr. Griffin left PCC and opened his own practice of pain medicine in Hilliard, Ohio. (Resp. Ex. 105a-g; Tr. at 640-641, 633, 644, 2978-2979)

7. Dr. Griffin testified that, since late 2003, he has been the president and owner of Interventional Pain Solutions in Columbus. Dr. Griffin testified that Interventional Pain Solutions is “a practice solely devoted to patients in pain, and I do both the clinical side of pain management and the surgical side of pain medicine or management, depending on what phrase you like.” Dr. Griffin testified that his practice employs two registered nurses, a licensed practical nurse, a medical assistant, a front desk clerk, and an office manager. Dr. Griffin further testified that he has over 1,200 patient charts on file, although not all of those patients are active. (Tr. at 2988-2990)

Dr. Griffin testified that he draws patients from all over Ohio, but primarily from Franklin County and nearby counties. However, Dr. Griffin testified that he has patients from other states as well, and has one patient from Florida. When asked why a patient would travel from Florida to see him, Dr. Griffin replied that he has more fellowship training than many other pain physicians. Dr. Griffin further testified that he knows some physicians in Florida who are familiar with his practice and refer patients to him. (Tr. at 2990-2991)

8. Dr. Griffin was certified by the American Board of Emergency Medicine in 1988 and recertified in 1998. In 2001, Dr. Griffin was certified by the American Academy of Pain Management. (Resp. Ex. 1051a-g)

Dr. Griffin’s curriculum vitae states that, in 2004, Dr. Griffin was certified by the American Board of Anesthesiology with subspecialty certification in pain medicine. (Resp. Ex. 105a-g at 1) However, a document presented by the State indicates that

Dr. Griffin actually holds subspecialty certification in pain medicine from the American Board of Physical Medicine and Rehabilitation [ABPMR]. (State's Exhibit [St. Ex.] 57) Dr. Griffin denied that he holds his subspecialty certification through the ABPMR, and that that had just been the board through whom he had taken the certification examination. Nevertheless, Dr. Griffin acknowledged that he does not hold subspecialty certification through the American Board of Anesthesiology. (Tr. at 3088-3090)

Dr. Griffin testified that all of his certifications are current. (Tr. at 2980-2981)

9. Dr. Griffin testified that he writes and publishes extensively. (Resp. Ex. 105a-g; Tr. at 2994-2995)
10. Dr. Griffin testified that, since 2001, he has been the executive director for the medical team at the annual Arnold Schwarzenegger Classic. (Resp. Ex. 105a-g at 2; Tr. at 2985-2986)
11. Dr. Griffin testified that, aside from his medical practice, from 1981 to 2002 he had worked about 20 hours per week as a volunteer deputy for the Adams County Sheriff's Department. Dr. Griffin further testified that, for three of those years, he had worked as a squad leader for the S.W.A.T. team of the Delaware County Sheriff's Office. (Resp. Ex. 105a-g at 10; Tr. at 2979-2980, 2983-2984)

Background Information – Expert Witnesses

Thomas C. Chelimsky, M.D.

12. Thomas C. Chelimsky, M.D., testified as an expert on behalf of the State. Dr. Chelimsky obtained his medical degree in 1983 from Washington University in St. Louis, Missouri. From 1983 through 1986, Dr. Chelimsky participated in a residency in internal medicine at the Mayo Clinic in Rochester, Minnesota, and, from 1986 through 1989, he participated in a residency in neurology at the same institution. In addition, from 1986 through 1987, Dr. Chelimsky participated in a fellowship in autonomic research at the Mayo Clinic. Finally, from 1989 through 1990, Dr. Chelimsky participated in a six-month fellowship in electromyography at the same institution. (St. Ex. 27A; Tr. at 1487-1491)

Dr. Chelimsky was certified by the American Board of Internal Medicine in 1986 and by the American Board of Electrodiagnostic Medicine in 1992. He was also certified in neurology by the American Board of Psychiatry and Neurology [ABPN] in 1992. Subsequently, in 1994, Dr. Chelimsky obtained an added qualification in clinical neurophysiology from the ABPN and, in 2000, he obtained an added qualification in pain management from the ABPN. (St. Ex. 27A; Tr. at 1491-1493)

Since 1990, Dr. Chelimsky has served in academic capacities at CWRU and is currently a Professor of Neurology. In addition, since 1990, Dr. Chelimsky has been a member of the attending staff, a member of the staff at the EMG laboratory, and Director of the Division of Autonomic Disorders at University Hospitals of Cleveland. In addition, from 1994

through 2000 and from 2001 through 2004, Dr. Chelimsky was Director of the Pain Center at University Hospitals of Cleveland. (St. Ex. 27A; Tr. at 1499)

13. Dr. Chelimsky testified that, as director of the pain center, he had supervised an active fellowship program in pain medicine. The fellows were usually neurologists, and they were trained in both interventional and non-interventional techniques.⁵ (Tr. at 1508)
14. Dr. Chelimsky has participated in many presentations and lectures throughout the United States and has authored numerous articles and book chapters. (St. Ex. 27A)
15. Dr. Chelimsky has been licensed to practice medicine in Ohio since 1990. (Tr. at 1491)
16. Dr. Chelimsky testified that about 50 percent of his current medical practice consists of pain management and the other 50 percent consists of evaluating patients in the autonomic laboratory and doing research in that area. Dr. Chelimsky noted that he performs all his work as a member of the faculty at CWRU and that he has no private practice. (Tr. at 1493-1494, 1498)
17. Dr. Chelimsky testified that he has taught podiatric students; however he has not worked with podiatric students or residents in a clinical setting. (Tr. at 1557-1560)

Dr. Chelimsky's Pain Medicine Practice

18. Dr. Chelimsky testified that, from 1994 through 2004, with the exception of one year between 2000 and 2001, he had directed the Pain Center at University Hospitals of Cleveland. Dr. Chelimsky further testified:

The Pain Center is no longer in existence. It was an interdisciplinary center that included anesthesiology, neurology, and psychology, as well as P.T. and O.T. And the amount of money being spent on rehabilitating the patients with this—it was a very intense program, five days a week, eight hours a day, for four weeks. And the insurers were no longer paying for that kind of support, so the hospital administration decided to, to use a polite term, axe it.

(Tr. at 1499) Dr. Chelimsky testified that Mark V. Boswell, M.D., an anesthesiology-trained pain management physician who also testified during the hearing, had done most of the anesthesiology work for the Pain Center. (Tr. at 1500)

19. Dr. Chelimsky testified that he currently has a grant that allows him “to teach primary care physicians the management of chronic pain and to support them with ancillary services.” Dr. Chelimsky testified that he goes to the physicians’ offices, asks the physicians to choose two of their most difficult chronic pain patients, and teaches them how to manage the chosen patients. Dr. Chelimsky further testified that he has a team that consists of

⁵ Dr. Chelimsky testified that interventional pain medicine techniques include any kind of injection, such as nerve blocks, as well as radiofrequency lesioning and surgical procedures. (Tr. at 1506)

physical therapists, an occupational therapist, and a psychologist that works closely with the physicians. (Tr. at 1496-1497)

Dr. Chelimsky testified that he teaches all aspects of pain management, including interventional pain management. Dr. Chelimsky further testified that the interventional techniques that he performs are trigger point injections, injections into the bursa, and local nerve injections. (Tr. at 1506-1507)

Dr. Chelimsky testified that, in conjunction with his education program, he currently performs approximately two nerve blocks, three trigger point injections, and one joint injection per month. (Tr. at 1548)

20. Dr. Chelimsky testified that, in addition to his education program, he also runs a clinic that includes an anesthesiologist and a psychologist to treat patients who suffer from complex regional pain syndrome (formerly called reflex sympathetic dystrophy). (Tr. at 1498)

James P. Bressi, D.O.

21. James P. Bressi, D.O., testified as an expert on behalf of the Respondents. Dr. Bressi obtained his osteopathic medical degree in 1987 from the Ohio University College of Osteopathic Medicine. From 1987 to 1988, he participated in a rotating internship at Warren General Hospital (St. Joseph Health Center) [Warren General] in Warren, Ohio. From 1988 to 1989, Dr. Bressi worked as an emergency department staff physician at Warren General. From 1989 to 1992, Dr. Bressi participated in an anesthesiology residency at Warren General. In 1992, Dr. Bressi participated in a six month pain medicine fellowship at the University of Rochester Medical Center, Strong Memorial Hospital, in Rochester, New York. Dr. Bressi is currently the Director of the Falls Pain Management Center at Cuyahoga Falls General Hospital in Cuyahoga Falls, Ohio, and has served in that capacity since 1998. (Resp. Ex. 106G)

Dr. Bressi was certified in Anesthesiology by the American Osteopathic Board of Anesthesiology in 1993, and obtained added qualifications in pain management from that board in 1996. Dr. Bressi was also certified by the American Academy of Pain Management. (Resp. Ex. 106G)

22. Dr. Bressi testified that he has lectured, and continues to lecture, on the subject of interventional pain management. Dr. Bressi further testified that he has written on the subject as well. (Resp. Ex. 106G; Tr. at 2259-2260)

Dr. Bressi's Pain Medicine Practice

23. Dr. Bressi testified that his current practice as the director of Falls Pain Management Center is devoted entirely to the treatment of chronic pain, "both interventional and pain medicine." He explained that "[i]nterventional pain medicine requires a specialist trained for more invasive-type procedures" such as placement of spinal cord stimulators or

intrathecal or spinal pumps, spinal blocks, and injections such as trigger point injections and peripheral nerve blocks. (Resp. Ex. 106G at 2; Tr. at 2250-2253)

Dr. Bressi testified that, besides himself, his practice consists of a partner who is also an interventionalist, a family doctor, two physician assistants, a nurse practitioner, many nurses and medical assistants, and clerical staff. He further testified that his practice is “blended into the hospital pain clinic[.]” Dr. Bressi testified that a large physical therapy/occupational therapy facility is across the hall from the pain clinic. (Tr. at 2255-2257)

24. Dr. Bressi testified that the pain center currently serves 6,000 patients, and draws patients from the Akron area and from three counties around Summit County. Dr. Bressi testified that he treats patients ranging from 18 years old to 102, and that all suffer from chronic pain that impacts their lives in a negative way. Dr. Bressi stated that most of his patients are employed and need treatment to allow them to continue working and being productive. (Tr. at 2250, 2255-2256)
25. Dr. Bressi testified that residents and medical students from the area hospitals rotate through his pain center. In addition, Dr. Bressi testified that nurses and pharmacists come to the pain center for lectures and to observe. (Tr. at 2260-2261)
26. Dr. Bressi testified that about 90 percent of his time involves the clinical care of patients. (Tr. at 2262-2264)

Bashar Katirji, M.D.

27. Dr. Katirji did not testify concerning issues relevant to the matter of Dr. Hoogendoorn.

David R. Longmire, M.D.

28. Dr. Longmire did not testify concerning issues relevant to the matter of Dr. Hoogendoorn.

Gary W. Jay, M.D.

29. Dr. Jay did not testify concerning issues relevant to the matter of Dr. Hoogendoorn.

Background Information – Fact Witness – Mark V. Boswell, M.D., Ph.D.

30. Mark V. Boswell, M.D., Ph.D., testified as a fact witness on behalf of the State. In 1982, Dr. Boswell obtained a Doctor of Philosophy degree in experimental pathology from CWRU in Cleveland, Ohio. In 1984, he obtained a medical degree from CWRU. From 1984 through 1985, he participated in a general surgery categorical internship at the Oregon Health Sciences University in Portland, Oregon. From 1985 through 1987, he participated in an anesthesiology residency at CWRU. Finally, from 1987 through 1988, Dr. Boswell participated in a fellowship in anesthesiology in “Clinical Scientist Track (Neuroscience)” at CWRU. (St. Ex. 46; Tr. at 12)

Dr. Boswell was certified by the American Board of Anesthesiology in 1988, and he obtained subspecialty certification in pain medicine from the same board in 1993. Further, in 1995, Dr. Boswell was certified by the American Board of Pain Medicine, for which he recertified in 2004. Finally, in 2005, Dr. Boswell became a Fellow in Interventional Pain Practice. (St. Ex. 46)

Dr. Boswell testified that he is licensed to practice medicine in Ohio, Texas, Oregon, and Arizona. (Tr. at 17)

31. Since 1988, Dr. Boswell has held academic appointments. These include academic appointments at CWRU and University Hospitals of Cleveland from 1990 through 2005. In 1990, Dr. Boswell joined the faculty as an Assistant Professor and Chief of the Pain Medicine Service in the Department of Anesthesiology. Further, in 1996, he obtained appointments as Associate Professor in the Department of Anesthesiology and Director of the Pain Medicine Fellowship. In 2005, Dr. Boswell left CWRU and University Hospitals of Cleveland for Texas Tech University Health Sciences Center in Lubbock, Texas. At the time of the hearing, Dr. Boswell was Professor and Chair of the Department of Anesthesiology and Director of the Messer Racz Pain Center at that institution. (St. Ex. 46)
32. Dr. Boswell testified concerning the interventional pain management program at Texas Tech University. Dr. Boswell testified that the founding chairman of the Department of Anesthesiology at Texas Tech had been Gabor Racz, M.D. Dr. Boswell testified that Dr. Racz “was the founding chairman, I believe, in about 1977, and he was a pioneer in pain medicine and anesthesiology.” Dr. Boswell further testified:

[Dr. Racz] was involved in, as far as I could tell, in the same pain medicine community that ultimately founded the American Board of Pain Medicine, was involved with that group and with Dr. Leak as well. * * * [Dr.] Racz developed a well recognized pain medicine program at Texas Tech, lectured widely * * * and developed an international following with the program.

(Tr. at 37)

33. Dr. Boswell testified that the pain medicine program at Texas Tech is one of the top ten pain medicine programs in the country. (Tr. at 38)

Subspecialty Certification in Pain Medicine

34. Three ABMS-member certifying boards offer subspecialty certification in pain medicine: the American Board of Anesthesiology, the American Board of Psychiatry and Neurology, and the American Board of Physical Medicine and Rehabilitation. However, Dr. Chelimsky testified that the same certifying examination is used by each board. (Tr. at 1536-1537)

Dr. Leak's Medical Practice: PCC and Pain Net*Pain Control Consultants*

35. From 1984 through the time of the hearing, Dr. Leak was the Medical Director of Pain Control Consultants, Inc. [PCC] (Resp. Ex. 104H at 5)
36. Dr. Leak testified that his practice is limited to “pain medicine and pain management[.]” Dr. Leak further testified, “given my background and training, the emphasis is on interventional methodologies, but we do offer a balanced service for our patients.” (Tr. at 2688)
37. Dr. Griffin testified that “interventional pain management” refers to the treatment of pain with invasive modalities such as epidural injections, nerve blocks, and partial nerve destruction. (Tr. at 2986-2987)

Testimony of Dr. Leak Regarding the PCC Fellowship Program

38. Dr. Leak testified that during his career he had gained a reputation for his ability to diagnose and treat patients with “otherwise intractable painful conditions.” He stated that physicians from all over the country had come to Columbus to observe his work. Dr. Leak further testified that, in the early 1990s, he along with others formed organizations called Pain Net and Pain Net Education, which he described as “a network to communicate with physicians.” (Tr. at 2694-2695)

Dr. Leak testified that “[t]he dearth of knowledge about [pain] medicine needed to be filled, so we wanted to have some didactic information. So we first embarked on looking at procedure-based training. We would teach people how to do a procedure and how to do that procedure right * * *.” However, Dr. Leak testified that it had been ineffective. Dr. Leak stated that they had physicians come in, do a “weekend warrior course,” and then return to their practices and perform procedures “on people that they had no business operating on* * *.” Accordingly, Dr. Leak testified that, around 1991 or 1992, he and Dr. Longmire developed an outline for fellowship training in pain medicine. That eventually became the 75-page Pain Net Fellowship Guidelines for Pain Control Consultants [Fellowship Guidelines]. Finally, Dr. Leak testified that the PCC began a fellowship program in around 1998. (Resp. Ex. 115H; Tr. at 2695-2698)

39. Dr. Leak testified that fellows in the PCC program worked from 10 to 14 hours per day seeing patients, doing paperwork, and doing clinical research. Their duties also included reading a number of relevant journals and writing for publication. Further, their duties included making presentations during grand rounds. (Tr. at 2720, 2729-2730, 2733-2734)

Dr. Leak testified that his fellows worked very hard. Dr. Leak further testified:

It was not uncommon to hear statements such as, to work around there, you needed to be a cyborg. It was demanding and we had a lot of information to cover. The service demands were high. The academic and the didactic demands were high. And we had to make up for everything that had been missed [concerning the treatment of pain] in medical school, residency, and postgraduate experience.

(Tr. at 2721-2722)

40. Dr. Leak testified that the PCC fellowship program took approximately 14 months for a full-time fellow to complete because of the volume of material covered. Dr. Leak further testified that the curriculum was also designed for part-time fellows to complete in 36 months. (Tr. at 2699)
41. Dr. Leak testified that, during the time he offered the fellowship, which lasted through at least 2003, a total of about 12 fellows completed the program, including Dr. Griffin and Dr. Hoogendoorn. Dr. Leak testified that all but two of the fellows who completed the PCC fellowship obtained subspecialty certification in pain medicine from ABMS-approved boards. Dr. Leak noted that one fellow who did not, Dr. Hoogendoorn, did not meet ABMS requirements because he was a podiatrist; however, Dr. Hoogendoorn obtained certification from the American Academy of Pain Management. (Tr. at 2698, 2701-2703)
42. Dr. Leak testified that the PCC fellowship had not been accredited by the Accreditation Council for Graduate Medical Education [ACGME], and that he had not contacted the ACGME prior to establishing the PCC fellowship. However, Dr. Leak further testified that he had applied for and received accreditation from the Accreditation Council for Continuing Medical Education [ACCME] so that his fellows could get CME credit for grand rounds. (Tr. at 413-414, 2702, 2734-2735)

Testimony of Dr. Boswell Concerning Dr. Leak's Fellowship Program

43. Dr. Boswell testified that Pain Net had been a program created by Dr. Leak that included the leaders in pain medicine. Dr. Boswell further testified that he had first spoken at a Pain Net program in Dallas in 1995, and that he had been "honored to be in that program" because he had been just an assistant professor at the time. Dr. Boswell testified that he has worked with Pain Net almost every year since that time. (Tr. at 41-42)
44. Dr. Boswell further testified that Dr. Leak had had a faculty appointment at CWRU which permitted CWRU's fellows to spend some time at Dr. Leak's facility. Dr. Boswell noted that Dr. Leak had sought to formally affiliate his program with CWRU; however, that never came to fruition. (Tr. at 25-28)

Dr. Boswell testified that he had thought that Dr. Leak had a good program. Moreover, Dr. Boswell testified that Dr. Leak "was doing some of the invasive techniques that are now fairly commonplace, actually. But he was doing them back in '96, so it was a very attractive opportunity for the residents." (Tr. at 29-30)

45. Dr. Boswell testified that Dr. Leak's program was not accredited. Dr. Boswell stated that both accredited and non-accredited pain medicine fellowship programs offer the same clinical training opportunities and level of education, but an accredited program allows the fellow to sit for the pain medicine subspecialty examination. Nevertheless, Dr. Boswell testified that there are "some potential advantages to a non-accredited program." He stated that more emphasis can be placed on interventional techniques and other areas of interest to someone focusing on interventional pain management. Dr. Boswell testified that, by contrast, "[w]e have to teach a lot of things in the accredited program that might be of, say, tangential interest to some residents." (Tr. at 50-52, 75)

Dr. Boswell testified that, other than obtaining board certification, the general purpose for taking a fellowship is to acquire additional knowledge and skills. Dr. Boswell stated that that can happen in both accredited and non-accredited programs. (Tr. at 78-79)

Dr. Griffin's Participation in the PCC Fellowship

46. According to Dr. Griffin, he had entered the PCC fellowship program in August 1999 and completed it two years later in 2001. (Tr. at 800, 3004) Dr. Griffin's participation in the fellowship will be described in greater detail later in this report.

Dr. Hoogendoorn's Participation in the PCC Fellowship

47. Dr. Hoogendoorn testified that he had entered the PCC fellowship in August 2000. He remained in the program until around November 2003. (Tr. at 2498, 2528)
Dr. Hoogendoorn's participation in the fellowship will be described in greater detail later in this report.

Allegations (1), (1)(a):

48. In its August 9, 2006, notice of opportunity for hearing, the Board alleged, in part, as follows:

Allegation (1):

From in or about 2000 to in or about 2001, [Dr. Hoogendoorn] undertook the treatment of [nineteen patients as identified on a confidential Patient Key.] During the period in or about August 2000 through in or about November 2001, [Dr. Hoogendoorn]: [Specific allegations were numbered (1)(a) and (1)(b).]

Allegation (1)(c):

administered chemoneurolytic and other injections into the splenius capitis, levator scapulae, trapezius, superior trapezius, cervical erector spinae, thoracic erector spinae, lumbar erector spinae, latissimus dorsi, paraspinial, and/or

rhomboid muscles, and/or the intraspinous ligament, and/or greater trochanter, and/or gluteal area, and/or zygapophyseal joint of Patients 1-5, 7-9, 11, 14, 17, 20-22.⁶

(St. Ex. 54B)

Procedures Performed by Dr. Hoogendoorn – Trigger Point Injections

49. Dr. Chelimsky testified that a trigger point is a place on the body that, if pressed, triggers pain that is felt in a different area than that being pressed. For example, a trigger point in the shoulder, if pressed, can cause pain that travels into the elbow and finger. Dr. Chelimsky testified that a trigger point injection is an injection of anesthetic, and possibly a steroid or other anti-inflammatory agent, into a trigger point. Dr. Chelimsky further testified that a physician needs to perform a physical examination to find trigger points. The physician palpates areas that are likely to have trigger points, which includes the shoulder areas, over the shoulder blades, along the mid-portion of the spine, and the hip and buttock regions. The physician can distinguish between trigger points and tender points by asking the patient if the pain travels. Further, Dr. Chelimsky testified that a trigger point “will usually have a little bit of an indurated feel to it.” (Tr. at 1572-1574)

Dr. Chelimsky testified that trigger points are different from tender points. Tender points are areas of localized pain that, if pressed, do not produce pain in other areas of the body. Dr. Chelimsky believes that many of the procedures documented as trigger point injections in the patient records were actually tender point injections. (Tr. at 1573, 1618-1619)

Testimony of Dr. Bressi

50. The testimony of Dr. Bressi concerning the issue of trigger points versus tender points was largely consistent with that of Dr. Chelimsky. Dr. Bressi also testified that trigger points are typically near the places where muscles insert onto bone. (Tr. at 2250-2251)

Dr. Bressi testified that tender points are more often felt in the belly of a muscle rather than near an insertion point. Dr. Bressi noted that tender points are characteristic of fibromyalgia, which is a syndrome that “is still very controversial in the medical field.” Dr. Bressi stated that the techniques for performing trigger point and tender point injections are essentially the same. (Tr. at 2318-2319, 2440-2441)

⁶ The notice letters issued to Dr. Leak, Dr. Griffin, and Dr. Hoogendoorn were based upon different patient keys. Dr. Leak’s patient key named 24 patients, numbered 1 through 24; Dr. Griffin’s named 23 patients, numbered 1 through 23, and Dr. Hoogendoorn’s named 19 patients, numbered 1 through 19. Dr. Griffin’s patient key was a subset of Dr. Leak’s, and Dr. Hoogendoorn’s patient key was a subset of Dr. Leak’s and Dr. Griffin’s. Prior to the hearing, the Hearing Examiner ordered that Dr. Leak’s patient key be used as a master patient key, and that all patients in the consolidated hearing be referenced using the patient number from the master patient key. In this report, all patient references in the Summary of the Evidence refer to the master patient key. (See State’s Exhibit 26 and Board Exhibit I)

Testimony of Dr. Leak

51. When asked for a description of a tender point, Dr. Leak replied:

A tender point is a—an amorphously described area when people don't agree on whether it's a trigger point or not. Trigger points have not exactly been ubiquitous in their definition. And when people talk about tender point versus trigger point, contrary to some, the treatment is pretty much the same.

(Tr. at 2921)

Dr. Leak further testified that it is “absolutely” appropriate to inject tender points “if it takes the pain away[.]” (Tr. at 2921)

Testimony of Dr. Griffin

52. Dr. Griffin testified that the term “trigger point injection” as used in the patient records had been “used a little bit loosely.” Dr. Griffin further testified that, although there are actual trigger points, the term was also used to describe injections into tender muscle areas. The purpose was to anesthetize the chronic pain area and stop the “pain cycle.” (Tr. at 670)

Procedures Performed by Dr. Hoogendoorn – Chemoneurolytic Injections

Testimony of Dr. Chelimsky

53. Dr. Chelimsky testified that chemoneurolysis is the use of agents to destroy nerve tissue. Dr. Chelimsky further testified: “It's sometimes used for an attempt to relieve pain, the concept being that if the pain is actually being generated by the nerve, destruction of the nerve would make the pain go away.” (Tr. at 1574)

Testimony of Dr. Leak

54. Dr. Leak testified concerning Sarapin, the agent used when Dr. Hoogendoorn performed chemoneurolytic injections. Dr. Leak testified that Sarapin “is a slow, slow-moving agent that goes with local anesthetic. And it's just like—it's literally an intramuscular injection that will hopefully neutralize the nerve fibers that penetrate the muscle.” Dr. Leak compared its action to anesthetics like lidocaine, as opposed to the more destructive chemoneurolytic agents such as phenol, which Dr. Hoogendoorn did not use. (Tr. at 446-448)

Testimony of Dr. Griffin

55. Dr. Griffin testified that Sarapin is derived from the pitcher plant and is “the most benign chemoneurolytic agent[.]” Dr. Griffin further testified that it is supposed to destroy nerve tissue, but that “it's not aggressive enough to suit [him].” When asked if Sarapin actually destroys nerve tissue, Dr. Griffin replied, “It is supposed to.” (Tr. at 701)

Medical Records of Procedures Performed by Dr. Hoogendoorn

56. The medical records indicate that Dr. Hoogendoorn administered chemoneurolytic and other injections into areas of patients' bodies that would not be within the scope of practice of podiatric medicine, as follows:

Pt	Date	Procedure Type/ Medication	Physician(s)	Location of Procedure	Medical Rcd. Pg.
1	08/22/01	Trigger point injection/ <i>bupivacaine</i>	Hoogendoorn/ Griffin	Bilateral deltoids, superior margin of trapezius, splenius capitis, levator scapulae bilaterally	144
	10/02/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Dorsal cutaneous innervation of splenius capitis, levator scapula, trapezius, and erector spinae	108
2	03/06/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Levator scapulae bilaterally	289
	04/04/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	“[R]ight levator scapulae muscle”	186
	10/16/01	Trigger point injection/ <i>bupivacaine</i>	Hoogendoorn/ Griffin	Lumbar erector spinae, latissimus dorsi	177
3	10/17/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Erector spinae and latissimus dorsi, right	156
	11/13/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Thoracic and lumbar latissimus dorsi	152
4	02/14/01	Trigger point injection/ <i>bupivacaine</i>	Hoogendoorn/ Leak	Intraspinal, ⁷ paraspinal muscles	153
	03/02/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Erector spinae muscle group, bilaterally	146
	03/16/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Erector spinae muscle groups, lumbar	145
5	06/01/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Paraspinal muscles of the thoracic region	164
	06/08/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Cutaneous nerves to the erector spinae muscle complex and intraspinal ligament	163
	06/15/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Dorsal cutaneous nerves of the erector spinae, paraspinal muscles, levator scapula, and splenius capitis	162

⁷ Dr. Hoogendoorn disagreed with a statement in the procedure report, which he testified had been dictated by Dr. Leak (although Dr. Hoogendoorn's name and initials are printed at the bottom). Dr. Hoogendoorn acknowledged that he had performed trigger point injections into the *paraspinal* muscles, but denied that he had performed injections into the *intraspinal* muscles. Dr. Hoogendoorn further testified that, although he has no memory of this particular procedure, he remembers that he had “never injected any intrathecal or intraspinal medications.” (Tr. at 144-150)

Pt	Date	Procedure Type/ Medication	Physician(s)	Location of Procedure	Medical Rcd. Pg.
	06/29/01	Chemoneurolytic injection/ <i>Sarapin, Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Cutaneous nerves of the erector spinae group, lumbar region	160
	10/10/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Dorsal cutaneous innervation of left thoracic erector spinae musculature	158
	10/19/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Dorsal cutaneous innervation to thoracic erector spinae muscle group	157
7	06/19/01	Trigger point injection/ <i>bupivacaine</i>	Hoogendoorn/ Leak	Bilateral erector spinae and latissimus dorsi, lumbar region	158
	07/18/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Dorsal cutaneous nerves of the erector spinae and latissimus dorsi, right lumbar region	154
	08/01/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Leak	Dorsal cutaneous innervation of the left latissimus dorsi and erector spinae muscle group	153
	08/14/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Dorsal cutaneous innervation of the interspinous ligament, erector spinae, and paraspinal musculature, left	152
	09/21/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Erector spinae and latissimus dorsi, lumbar region	150
	10/02/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Dorsal cutaneous innervation of the lumbar erector spinae and latissimus dorsi	149
8	10/26/01	Trigger point injection/ <i>bupivacaine</i>	Hoogendoorn/ Griffin	Splenius capitis, levator scapula	261
9	02/09/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Right greater trochanter area	260
	02/16/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Leak	Right greater trochanter area and gluteal area	170
	03/09/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Right greater trochanter area	169
11	05/28/01	Trigger point injection/ <i>Sarapin, Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Erector spinae complex, thoracic region	246
	06/08/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Erector spinae muscle group, lumbar thoracic region	245
	06/19/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Dorsal cutaneous nerves of the erector spinae group	244
	08/28/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Right erector spinae, trapezius	239
	10/02/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	"Dorsal cutaneous innervation of thoracic, erector spinae, and trapezius"	238
14	05/01/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Right erector spinae complex, rhomboids, and trapezius	103
	05/08/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Right trapezius, erector spinae, and rhomboid	102

Pt	Date	Procedure Type/ Medication	Physician(s)	Location of Procedure	Medical Rcd. Pg.
	05/22/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Right levator scapula, rhomboids, and trapezius	101
	06/15/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Right levator scapula, latissimus dorsi, splenius capitis, and rhomboid	100
	06/22/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Levator scapula, erector spinae, rhomboid, and trapezius, right	99
17	01/19/01	Trigger point injection/ <i>bupivacaine</i>	Hoogendoorn/ Griffin	Paraspinal muscles, thoracic region	113a, 175
	01/26/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Erector spinae muscle groups bilaterally, thoracic lumbar region	110a, 174
	02/06/01	Chemoneurolytic injection ⁸ / <i>Sarapin, Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	"Trigger point injections with Sarapin, thoracic and lumbar spine, most specifically the erector spinae muscles"	173
	02/09/01	Chemoneurolytic injection/ <i>Sarapin, DepoMedrol, bupivacaine</i>	Hoogendoorn/ Griffin	Erector spinae muscle group bilaterally	171
	02/16/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Leak	Paraspinal muscle group	170
	02/23/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Bilateral erector spinae musculature from midscapular to lumbosacral region	169
	03/02/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Erector spinae muscle groups bilaterally	167
	03/09/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Erector spinae muscle group	166
	04/04/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Erector spinae muscle group	162
	04/11/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Erector spinae muscle complex, thoracic and lumbar region	161
	04/18/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Erector spinae muscle group	160
	04/25/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Erector spinae muscle complex bilaterally	159
	05/04/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Erector spinae muscle complex, lumbar and thoracic regions bilaterally	158
	05/16/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Erector spinae muscle complex, lumbar and thoracic regions bilaterally	157
	06/20/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Dorsal cutaneous nerves of the erector spinae muscle groups, lumbar and thoracic regions	156
	06/29/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Dorsal cutaneous nerves of the erector spinae muscle groups, lumbar and thoracic region, bilaterally	155

⁸ Many of the procedural notes for Patient 17 indicate that a trigger point injection was performed; however, Sarapin, a mild chemoneurolytic agent, was used. Accordingly, these procedures have been identified in this table as chemoneurolytic injections. (St. Ex. 17 at 173; see also pages 169-171)

Pt	Date	Procedure Type/ Medication	Physician(s)	Location of Procedure	Medical Rcd. Pg.
	07/09/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Dorsal cutaneous nerves of the paraspinals in the erector spinae muscle complex bilaterally, thoracic and lumbar regions	154
	07/24/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Leak	Dorsal cutaneous innervation of the erector spinae complex, lumbar, cervical, and thoracic regions	152
	08/07/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Dorsal cutaneous innervation of the erector spinae complex, low cervical, thoracic, and lumbar regions	151
	09/28/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	“[E]rector spinae in the cervical, lumbar and thoracic regions as well as trapezius, rhomboids, and latissimus dorsi, their dorsal cutaneous innervation”	149
21	05/23/01	Trigger point injection/ <i>bupivacaine</i>	Hoogendoorn/ Griffin	Splenius capitis, erector spinae, and levator scapula, bilaterally	328
	06/01/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Levator scapula, splenius capitis, and trapezius, right side	327
	06/08/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Levator scapula, splenius capitis, and trapezius, bilaterally	326
	07/13/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Dorsal cutaneous nerves of the splenius capitis and superior trapezius, bilaterally	324
	09/28/01	Trigger point injection/ <i>bupivacaine</i>	Hoogendoorn/ Griffin	Levator scapula and splenius capitis, right	319
22	07/25/01	Trigger point injection/ <i>bupivacaine</i>	Hoogendoorn/ Leak	Thoracic and cervical trapezius and erector spinae muscle group	188
	07/31/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Leak	Rhomboid's and erector spinae groups, bilaterally	187
	09/07/01	Trigger point injection/ <i>bupivacaine</i>	Hoogendoorn/ Griffin	Bilateral splenius capitis, erector spinae, levator scapula, and trapezius	185
	09/19/01	Trigger point injection/ <i>bupivacaine</i>	Hoogendoorn/ Griffin	Thoracic erector spinae, rhomboids, and trapezius	94a, 183
	09/28/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Thoracic rhomboid, erector spinae, and trapezius	182
	10/19/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Bilateral erector spinae, latissimus dorsi, and trapezius, thoracic region	181

57. No evidence was presented that Dr. Hoogendoorn administered chemoneurolytic or other injections to Patient 20. (St. Ex. 20)

Further, no evidence was presented that Dr. Hoogendoorn administered chemoneurolytic or other injections into a zygapophyseal joint of any patient. (St. Exs. 1-24)

Testimony and January 31, 2005, Report of Dr. Chelimsky

58. Dr. Chelimsky testified that Dr. Hoogendoorn had performed procedures that were beyond the scope of practice of a podiatric physician. Dr. Chelimsky testified that chemoneurolytic and trigger point injections require the exercise of judgment based on medical knowledge. Dr. Chelimsky further testified that they require an individual assessment of each patient because trigger points vary in location from patient to patient, the risks are different from patient to patient, “and the agent choice will vary from one patient to the next.” Dr. Chelimsky further testified that they cannot be performed without a need for complex observations or critical decisions. Finally, such procedures “require repeated medical assessments to look at the results of the injection as far as pain is concerned, and also to make sure there hasn’t been a serious complication.” (Tr. at 1634, 1657-1665)

Finally, Dr. Chelimsky testified concerning Dr. Hoogendoorn’s performance of injection procedures that his opinion does not change if Dr. Hoogendoorn had been performing these injections as a fellow because “that would imply he’s training to perform it, eventually.

* * * The point of a fellowship program is to train somebody to do what they’re eventually going to do.” (Tr. at 1648-1649)

Testimony of Dr. Bressi

59. Dr. Bressi believes that it had been appropriate for Dr. Hoogendoorn to administer trigger point and chemoneurolytic injections in the context of his pain fellowship. Dr. Bressi testified: “For podiatry it is extremely important that they get a handle on chronic pain because * * * many, if not the bulk, of their problems deal with pain in the feet. But not all the pain in the feet comes from the feet, and they have to be familiar with generalized systems.” (Tr. at 2320-2323, 2479-2480)
60. Dr. Bressi testified that trigger point injections “could be catastrophic if you’re not careful.” For example, “in the thoracic area you have to watch that you don’t go too deep because you can collapse a lung[.]” Further, “[y]ou don’t want to get a [blood] vessel. You can have a seizure or somebody can stroke.” Dr. Bressi further testified that either Dr. Leak or Dr. Griffin had to have been in the room with Dr. Hoogendoorn at first to show him how they are done and observe his performance. After that, they would not necessarily have to be in the room with him. (Tr. at 2480-2482)

Dr. Bressi further testified that, in his opinion, Dr. Hoogendoorn had been competent to perform trigger point injections and chemoneurolytic injections under the supervision of Dr. Leak or Dr. Griffin. (Tr. at 2486)

61. Dr. Bressi testified that, in his opinion, Dr. Hoogendoorn had not practiced medicine without a certificate by performing injections under the supervision of Dr. Leak or Dr. Griffin. Dr. Bressi testified that the basis of that opinion was that Dr. Hoogendoorn had been in a fellowship at the time he engaged in those activities. (Tr. at 2486-2487)

Testimony of Dr. Griffin

62. Dr. Griffin testified that Dr. Hoogendoorn had joined the fellowship when Dr. Griffin was a second-year fellow. Dr. Griffin testified that Dr. Leak had asked him, as a second-year fellow, to supervise and teach Dr. Hoogendoorn about pain medicine. Dr. Griffin noted that he had been aware that Dr. Hoogendoorn was a podiatrist. (Tr. at 3005-3007)

Dr. Griffin testified that he had supervised Dr. Hoogendoorn's performance of procedures because Dr. Hoogendoorn had been a fellow and was there to learn about pain medicine. Dr. Griffin further testified that he had done so based on "many, many discussions with Dr. Leak[,]” whom Dr. Griffin testified "ran a pretty tight ship.” (Tr. at 647-648, 3006-3008)

Dr. Griffin added: "We were trying to teach him about pain management, [the] pharmacological side, and the interventional side as far as he could take it, with the idea that it was his choice as to how to implement that into a podiatry practice.” (Tr. at 815-816)

Testimony of Dr. Hoogendoorn

63. Dr. Hoogendoorn testified that he had believed that the procedures he performed that were beyond his podiatric scope of practice had been performed under the scope of practice of the attending physician. Dr. Hoogendoorn further testified that he had recognized both Dr. Leak and Dr. Griffin as his attending physicians. (Tr. at 278)

Dr. Hoogendoorn further testified that every podiatric residency program in Ohio and in the country includes rotations through services that would be beyond the scope of podiatry, such as surgery, general medicine, and anesthesiology. Dr. Hoogendoorn added that residents in these programs are not just permitted but are required to scrub in on surgeries for non-podiatric conditions. Dr. Hoogendoorn testified that, although podiatrists' practices are limited in scope, they need to become familiar with the body as a whole to recognize non-podiatric conditions that their patients may suffer from. (Tr. at 281-287)

64. Dr. Hoogendoorn testified as follows concerning the training he received at PCC prior to being allowed to perform injection procedures:

During that first period of several months of shadowing and even before—even after that, before any invasive procedure was ever done, whether a trigger point or chemoneurolytic injection, the attending would show me exactly how to do it; what we would have to know; what he would expect me to know; what medications were going in; why we were using those; why we were using certain local anesthetics versus others; if we're adding anything to it, like a steroid, why that was being done; placement, choice of placement

along the muscle or muscle belly or the insertion; how to prep the patients; gauge of syringe and needle to use. We'd go over it from top to bottom.

(Tr. at 2512)

65. Dr. Hoogendoorn testified that he had injected only soft tissue during his fellowship. Dr. Hoogendoorn further testified that he never performed spinal injections beyond the muscles that surround the spinal column. (Tr. at 2516-2517)

Dr. Hoogendoorn also testified that he never performed epidurals or placed spinal stimulators, although he had assisted in such procedures. When asked why he had been taught to perform some interventional pain management procedures but not others, Dr. Hoogendoorn replied:

Trigger point and chemoneurolytic injections are easily transferred from the back into the foot and ankle area in the soft tissues. The same principles apply. * * *

It was never intended that for any reason I was going to be doing epidurals, sympathetic blocks; implant stimulators * * *. * * * It was more for me to learn technique, instrumentation, to develop that and bring it down to the foot and ankle where appropriate.

(Tr. at 2518-2519)

Level of Supervision of Dr. Hoogendoorn during Procedures

Testimony of Dr. Leak

66. Dr. Leak testified that it is possible that Dr. Hoogendoorn had been allowed to perform chemoneurolytic injections using Sarapin as the chemoneurolytic agent without an attending present in the same room. Dr. Leak further testified that Sarapin "is a slow, slow-moving agent that goes with local anesthetic. And it's just like—it's literally an intramuscular injection that will hopefully neutralize the nerve fibers that penetrate the muscle." (Tr. at 446-448)

Later in the hearing, Dr. Leak testified that he had been present with Dr. Hoogendoorn whenever Dr. Hoogendoorn was performing trigger point or chemoneurolytic injections. Dr. Leak further testified that Dr. Griffin had spent more time with Dr. Hoogendoorn, and that Dr. Leak had left to Dr. Griffin's judgment how Dr. Griffin "would staff" Dr. Hoogendoorn. (Tr. at 2768)

Testimony of Dr. Griffin

67. Dr. Griffin testified that, when he had supervised Dr. Hoogendoorn during a procedure, he had been "at [Dr. Hoogendoorn's] elbow." Dr. Griffin further testified that he doubts that

there was any occasion when he had supervised a procedure performed by Dr. Hoogendoorn when he had not been present in the room. (Tr. at 671-672, 3059-3060)

68. Dr. Griffin added that, having had years of experience as a deputy sheriff, he had “absolutely not” believed that he was aiding and abetting Dr. Hoogendoorn in the commission of a crime. Moreover, Dr. Griffin testified that if he *had* been aware that he was aiding and abetting the commission of a crime he would not have supervised Dr. Hoogendoorn, even if that had meant leaving the fellowship. (Tr. at 3007-3009)

Testimony of Dr. Hoogendoorn

69. Dr. Hoogendoorn testified that Dr. Leak or Dr. Griffin had been in the room with him when he had performed a procedure “[t]he first couple times.” Dr. Hoogendoorn stated that after he had been “found to be capable of doing them from a prior experience,” then he would be permitted to perform such procedures without Dr. Leak or Dr. Griffin in the room. However, Dr. Hoogendoorn testified that at least one of them had always been present in the clinic when he performed non-podiatric procedures. (Tr. at 97-99)

Later in the hearing, however, Dr. Hoogendoorn testified that, whenever Dr. Griffin had supervised Dr. Hoogendoorn in performing an injection, Dr. Griffin had been at Dr. Hoogendoorn’s elbow. Dr. Hoogendoorn further testified that, whenever Dr. Leak had supervised him performing an injection, Dr. Leak had been in the room with him. (Tr. at 2514-2515)

Allegation (1)(b):

70. In its August 9, 2006, notice of opportunity for hearing, the Board alleged in Allegation (1)(b) as follows:

During the period in or about August 2000 through in or about November 2001, [Dr. Hoogendoorn] prescribed controlled and noncontrolled medications, including, but not limited to, Nicotrol, Wellbutrin, Neurontin, Propranolol, Vioxx, Zyprexa, Ultram, Oxycontin, Clonazepam, Duragesic, Depakote, Senokot, Trazadone, hydrocodone, methadone, Transderm Scop, Celebrex, Zanaflex, Catapres, Zithromax, propoxyphene, oxazepam and/or methylphenidate to Patients 2, 7, 11-14, 18, 20, 21, 23 and 24.

(St. Ex. 54C)

Dr. Hoogendoorn’s Prescribing of Medications for Non-Podiatric Patients

71. The medical records indicate that Dr. Hoogendoorn issued the following prescriptions to patients for non-podiatric conditions:

Pt	Date	Supervising Physician	Discharge Summary Signed?/Name/ Page Number	Medication and Strength	Medical Rcd. Pg.
2	01/23/01	Griffin ⁹	Yes/Griffin/148a	propranolol HCL 10 mg #60	79, 148a
				Neurontin 300 mg #360	80, 148a
				Vioxx 25 mg #60	80, 148a
				Zyprexa 5 mg #60	81, 148a
				Ultram 50 mg #80	81, 148a
	03/06/01	Griffin	Yes/Griffin/136a	"Nicotrol 15MG/16HR PT24" #1 box of 14 patches	75, 289
				Wellbutrin SR 150 mg #60	76, 289
7	02/20/01	Griffin	No	OxyContin 40 mg #90	37, 164
				clonazepam 0.5 mg #30	37, 164
11	10/18/00	Griffin ¹⁰	Yes/Griffin/154	Zithromax 250 mg #2 Z-Paks	64, 154
12	11/16/00	Griffin	Yes/Griffin/139a	Neurontin 100 mg #60	70, 203
	01/18/01	Griffin	Yes/Griffin/118a	hydrocodone APAP 10/325 mg #16	53, 191
	02/08/01	Griffin	Yes/Griffin/110a	OxyContin 80 mg #42	47, 188
				OxyContin 20 mg #30	46, 188
	02/16/01	Griffin	Yes/Leak/108a	Duragesic 50 mcg/hr #1 box of 5 patches	34, 186
	02/19/01	Leak	Yes/Leak/106a	Duragesic 50 mcg/hr #1 box of 5 patches	46, 184
				Trazodone HCL 50 mg #60	45, 184
				Senokot Xtra 374 mg tabs #120	45, 184
				Vioxx 50 mg #30	44, 184
				propranolol HCL 10 mg #30	44, 184
				Neurontin 100 mg #240	43, 184
				Depakote 250 mg #90	43, 184
13	02/16/01	Leak	No	methadone HCL 10 mg #60	16, 99
14	02/23/01	Griffin	Yes/Leak/86a	Vioxx 12.5 mg #30	36, 108
				Duragesic 25 mcg/hr #2 boxes of 5 patches	37, 108
				Neurontin 300 mg #126	37, 108
				Zyprexa 2.5 mg #40	38, 108
18	02/14/01	Leak	Yes/Leak/70a	Zyprexa 2.5 mg #30	38, 119
				OxyContin 10 mg #45	38, 119
				OxyContin 40 mg #45	39, 119

⁹ Although Dr. Hoogendoorn's January 23, 2001, progress note does not mention a supervisor, the discharge summary appears to bear Dr. Griffin's initial "G." (St. Ex. 1 at 148a, 189)

¹⁰ Although Dr. Hoogendoorn's October 18, 2000, progress note does not mention a supervisor, the discharge summary appears to bear Dr. Griffin's initial "G." Further, Dr. Hoogendoorn testified that Dr. Griffin had directed him to issue this prescription. (St. Ex. 1 at 154, 265; Tr. at 202)

Pt	Date	Supervising Physician	Discharge Summary Signed?/Name/ Page Number	Medication and Strength	Medical Rcd. Pg.
				Zanaflex 2 mg #30	39, 119
20	02/19/01	Leak	No discharge summary found – prescriptions were called in	Catapres TTS 0.1 mg #1 box of 4 patches	38, 186
				propranolol HCL 10 mg #14	39, 186
				propoxyphene N-APAP 100/650 mg #28	40, 186
				oxazepam 30 mg #7	41, 186
23	02/14/01	Leak	Yes/Leak/59a	Celebrex 200 mg #40	28, 70
				hydrocodone APAP 10/325 mg #60	28, 70
				Neurontin 300 mg #126	27, 70
				Zyprexa 2.5 mg #20	27, 70
	03/05/01	Griffin	Yes/Griffin/53a	hydrocodone APAP 10/325 #90	26, 68
				Neurontin 300 mg #240	26, 68
				Celebrex 200 mg #60	25, 68
				Zyprexa 2.5 #30	25, 68
24	01/25/01	Griffin	Yes/Griffin/47a	methylphenidate 10 mg #20	34, 47a, 88
	02/09/01	Griffin	No	Zanaflex 2 mg #10	33, 86
	02/16/01	Leak	Yes/Leak/43a	Duragesic 50 mcg/hr #3 boxes of 5 patches	32, 85
				Zanaflex 2 mg #30	32, 85

No refills were authorized for any prescription listed above.

Testimony of Investigator McCafferty

72. David Shawn McCafferty testified that he is an Investigator for the Board, and that he has been so employed for over twelve years. He testified that his duties include investigating complaints against the Board's licensees. (Tr. at 295-296)

Investigator McCafferty testified concerning his investigation of Dr. Hoogendoorn:

[On April 6, 2001], I met with Dr. Hoogendoorn and discussed his prescribing of Zyprexa, Ritalin, Oxycontin, and Methadone. Dr. Hoogendoorn advised me that he would prescribe Zyprexa for pain. He would also prescribe Ritalin for pain due to depression.

He would further prescribe Methadone as part of a weaning pack in an effort to control people from abusing drugs or people that he felt were misusing

controlled medications. He would then turn around and then provide them with a wean pack to wean them off, which may include Methadone.

Dr. Hoogendoorn advised that he was doing this under a pain fellowship with Pain Net Incorporated. We concluded our conversation by him advising that he would send documentation to the Medical Board of his fellowship with Pain Net Incorporated, which he did at a later date.

(Tr. at 296-297)

73. Investigator McCafferty testified that Dr. Hoogendoorn advised that he had treated patients for various pain conditions under the supervision of Dr. Leak and Dr. Griffin as part of the PCC fellowship. (Tr. at 321-322)

Testimony of Dr. Chelimsky Concerning Medications Prescribed by Dr. Hoogendoorn

74. Dr. Chelimsky testified as follows concerning some of the medications that Dr. Hoogendoorn prescribed at PCC:
- Wellbutrin is used to treat depression, and the treatment of depression is beyond the scope of the practice of podiatry. Although some antidepressants are effective in treating chronic pain, Wellbutrin is not. (Tr. at 1675-1678)
 - Neurontin is an anti-epileptic medication that can be used to manage pain, and its use constitutes the practice of medicine. (Tr. at 1678-1679)
 - Zyprexa is a mild, sedating anti-psychotic medication used primarily to treat patients who suffer from hallucination. It is also useful as a sleep aid for chronic pain patients. Dr. Chelimsky is not aware of any use for Zyprexa to treat podiatric conditions. (Tr. at 1679-1680)
 - Transderm-Scop is a medication used to treat nausea. Its use is not within the scope of practice for podiatry. (Tr. at 1741-1742)
 - Duragesic patch contains the opiate Fentanyl, and is prescribed to relieve pain. (Tr. at 1743)
 - “Zanaflex is an anti-spastic agent that’s sometimes used for chronic pain, sometimes used for migraine.” It could be used for podiatric conditions such as a muscle spasm in the foot or ankle. However, Dr. Chelimsky found no such symptoms in the medical records for Patients 18 and 20, the patients who had received Zanaflex from Dr. Hoogendoorn. (Tr. at 1754-1755)
 - Catapres is a transdermal preparation of clonidine, an antihypertensive medication that Dr. Hoogendoorn had prescribed to Patient 9. Its use would be beyond the scope

of podiatry unless prescribed for a neuroma in the foot or hand. This patient had no such complaint. (Tr. at 1763-1764)

- Propranolol is an antihypertensive medication which is used almost exclusively for the control of high blood pressure. Its use is beyond the scope of practice of podiatry. (Tr. at 1764)
- Methylphenidate is the generic for Ritalin, an amphetamine-like substance used to treat attention deficit disorder and narcolepsy. Its use is beyond the scope of practice of podiatry. (Tr. at 1787-1788)

Testimony of Dr. Hoogendoorn

75. Dr. Hoogendoorn testified that Catapres was used by PCC “for patients who were taken off their meds to transition from one med to another, to help decrease symptoms.” Dr. Hoogendoorn further testified that he has not utilized Catapres in his podiatric practice. (Tr. at 247-248)

Dr. Hoogendoorn testified that Zithromax is a brand name for azithromycin, an antibiotic. Dr. Hoogendoorn testified that Dr. Griffin had directed him to prescribe two packages of Zithromax (Z-Paks) to Patient 11 to treat Lyme’s disease. Dr. Hoogendoorn noted that he has prescribed Zithromax to his podiatric patients for podiatric conditions since leaving the fellowship. (Tr. at 202-203, 206-207, 2525)

Dr. Hoogendoorn testified that Neurontin is a “neuromembrane stabilizer.” Dr. Hoogendoorn further testified that “[i]t works to dampen the nervous system, in a sense, so it takes more stimulation for you to feel pain.” Dr. Hoogendoorn also stated that it is a centrally-acting drug that can affect memory and balance. He testified that he has prescribed Neurontin since leaving his fellowship for the purpose of controlling neuropathic pain in the foot and ankle. (Tr. at 118-119)

Dr. Hoogendoorn testified that Depakote is an anti-seizure medication. He stated that he has not utilized Depakote in his podiatric practice. (Tr. at 209)

Dr. Hoogendoorn testified that Senokot is a stool softener used to help patients on long-term medications avoid constipation. Dr. Hoogendoorn testified that he believes he has prescribed Senokot to his podiatric patients following surgery. (Tr. at 210-211)

Dr. Hoogendoorn testified that Trazodone is a medication used to control cramping or as a sleep aid. Dr. Hoogendoorn testified that he may have used Trazodone in his podiatric practice if a patient suffered from muscle spasms of the foot and ankle. (Tr. at 211)

Dr. Hoogendoorn testified that hydrocodone APAP is generic Vicodin, a combination of hydrocodone and acetaminophen, used to control pain. Dr. Hoogendoorn testified that he does utilize hydrocodone APAP in his podiatric practice to treat podiatric conditions. (Tr. at 213-214)

76. Dr. Hoogendoorn testified that, prior to issuing a prescription, he had seen and evaluated the patient and made recommendations to Dr. Leak or Dr. Griffin. He stated that Dr. Leak or Dr. Griffin had approved in advance all prescriptions that he issued. In addition, Dr. Hoogendoorn testified that either Dr. Leak or Dr. Griffin had reviewed each printed prescription to be sure it was printed correctly prior to the prescription being handed to a patient. (Tr. at 2508-2509)

Moreover, Dr. Hoogendoorn testified that one can tell from the medical record that either Dr. Leak or Dr. Griffin had approved a prescription by reviewing the discharge summary for the patient visit. Dr. Hoogendoorn testified that the discharge summaries had been countersigned by either Dr. Leak or Dr. Griffin. (Tr. at 2509)

Further Testimony of Dr. Chelimsky

77. Dr. Chelimsky testified that the medical records reflect that Dr. Hoogendoorn had prescribed or changed medications that were utilized for non-podiatric conditions. Dr. Chelimsky further testified that, although Dr. Hoogendoorn had in many cases dictated progress notes indicating that he had prescribed these medications under the direct supervision of Dr. Leak or Dr. Griffin, there were no signatures on those progress notes from Dr. Leak or Dr. Griffin documenting their agreement with the new treatment. Dr. Chelimsky opined that Dr. Hoogendoorn had thus engaged in practice that was beyond the scope of his practice as a podiatrist. (St. Ex. 28 at 4-5; Tr. at 1632-1643)

Dr. Chelimsky subsequently testified that, in cases where Dr. Leak signed the discharge summary for a patient visit where Dr. Hoogendoorn had treated a patient, he would not consider it inappropriate. However, Dr. Chelimsky further testified that, if Dr. Griffin had signed the note and had also been a fellow at that time, he considers it inappropriate because the issuance of the prescription must be approved by an attending physician in charge of the patient. Dr. Chelimsky testified that one fellow cannot sign another fellow's notes. (Tr. at 2001-2003) Dr. Chelimsky further testified:

Either you have a fellowship with clearly defined fellows and clearly defined attendings and the attendings are teaching the fellows. If you have a fellowship program and a second-year fellow is signing a first-year fellow's note, that's not appropriate.

(Tr. at 2003)

Testimony of Dr. Bressi

78. Dr. Bressi testified that, as a fellow, if Dr. Hoogendoorn had recommended a particular prescription and gained approval from Dr. Griffin or Dr. Leak, Dr. Hoogendoorn could have signed the prescription himself because he was a licensed physician with a DEA registration. Dr. Bressi further testified that he did not find that to be inappropriate. (Tr. at 2478-2479)

Dr. Bressi further testified that he had reviewed the list of medications contained in the Board's notice letters to Dr. Leak, Dr. Griffin, and Dr. Hoogendoorn. Dr. Bressi testified that he did not find that any of those medications would have been inappropriate for Dr. Hoogendoorn to have prescribed under the supervision of Dr. Leak or Dr. Griffin in the context of Dr. Hoogendoorn's fellowship. (Tr. at 2482-2486)

Testimony of Dr. Leak

79. With regard to the supervision Dr. Hoogendoorn received when he wrote prescriptions for non-podiatric conditions, Dr. Leak testified:

Dr. Hoogendoorn would present a patient and make recommendations. That's the nature of training. If the attending makes all the decisions, there is very little hope that the trainee will absorb much of anything. So they—he would present and, if supported by the attending, those were the prescriptions that were written.

(Tr. at 448-449)

Dr. Leak further testified that Dr. Hoogendoorn had received training concerning the medications he prescribed and how they affected the body. (Tr. at 449)

Testimony of Dr. Griffin

80. With regard to Dr. Hoogendoorn's issuance of prescriptions for non-podiatric conditions, Dr. Griffin testified: "The patient would come into the clinic. The nursing staff would do vital signs, put them in a room. If [Dr. Hoogendoorn] saw the patient, he would go see the patient, do a history and physical, form a treatment plan, which included medications on occasion. And then he would bring it to me." Dr. Griffin would then examine the patient and, if he agreed with Dr. Hoogendoorn's treatment plan and choice of medication, he would approve the prescription(s) that Dr. Hoogendoorn had suggested. Dr. Griffin testified that Dr. Hoogendoorn had not issued prescriptions for non-podiatric conditions until Dr. Griffin or Dr. Leak had had a chance to examine the patient and determine whether the prescription was acceptable, and that, if a prescription "made it out of the building," either Dr. Leak or Dr. Griffin had approved it. (Tr. at 676, 807-809)
81. Dr. Griffin testified that, for a short time Dr. Hoogendoorn had issued prescriptions under his own name, after the prescriptions had been approved by Dr. Griffin or Dr. Leak. Dr. Griffin further testified that, after about two weeks, during a regular meeting at PCC, Dr. Leak and Dr. Griffin determined they would rather issue the prescriptions under their names "because certainly we were responsible anyway[.]" (Tr. at 3051-3053)

Further Testimony of Dr. Hoogendoorn

82. Dr. Hoogendoorn testified that PCC had used a computerized prescription program and that his name had been added to the computer for only a short time, which allowed prescriptions to be issued under his name. Dr. Hoogendoorn testified that his name was later removed, however, because pharmacists had called the clinic wondering why the medication was being prescribed by a podiatrist. (Tr. at 2506-2507) Dr. Hoogendoorn further testified:

[T]hey were confused on why a podiatrist would be writing for—because it designated me as Kyle Hoogendoorn, D.P.M. They were confused on why a podiatrist would be writing some of the medications that they directed me to write for. When they called the office, my understanding is they talked with the office manager or one of the attendings and explained, you know, he's a pain fellow, he's in a training program, that's what this is for.

And it seemed to cause a little bit of an issue. So rather than have that hold up clinic and people not get their prescriptions filled possibly and that kind of thing, they decided that we'd discontinue that form of training.

(Tr. at 2510)

Dr. Hoogendoorn testified that he had signed prescriptions for only a short time, in or about February and March 2001. After he discontinued, all prescriptions had been issued by Dr. Leak or Dr. Griffin. (Tr. at 2510)

83. No evidence was presented that Dr. Hoogendoorn had prescribed Diflucan to Patients 2, 7, 11-14, 18, 20, 23, or 24. (St. Exs. 2, 7, 11-14, 18, 20, 23, 24)

Dr. Griffin's Participation in the PCC Fellowship

Testimony of Dr. Griffin

84. Dr. Griffin testified that he had developed an interest in pain medicine as an emergency medicine physician. He further testified that he had made an effort to learn about that field and applied some of the techniques while practicing in the ER. Dr. Griffin stated that when he received the offer to join Dr. Leak's fellowship, he had "jumped on it." Dr. Griffin entered the fellowship in August 1999. Dr. Griffin further testified that, after he had completed his first year of fellowship, he had "begged" to stay a second year. Dr. Griffin testified that he remained in the fellowship until 2001. (Tr. at 800, 2995-2998, 3004)

Dr. Griffin testified that he had mostly received surgical training during his second year, which he described as the "true interventional side. * * * I really wanted what Dr. Leak was able to give me, which is truly an international level, expert level of pain management and interventional pain management." (Tr. at 3005)

85. Dr. Griffin testified that he had used the fellowship training he received at PCC to obtain ABMS-recognized specialty certification in pain medicine. (Tr. at 800-802)

As discussed earlier in this report, information obtained by the State from the ABMS World Wide Web site indicates that Dr. Griffin holds subspecialty certification in pain medicine through the American Board of Physical Medicine and Rehabilitation. (St. Ex. 57)

Testimony of Dr. Hoogendoorn

86. Dr. Hoogendoorn testified that, to his knowledge, Dr. Griffin had been a fellow in the PCC program from August 2000, when Dr. Hoogendoorn entered the fellowship, through November 2001. (Tr. at 2530)

Testimony of Dr. Katirji

87. Dr. Katirji was unaware that Dr. Griffin had been a fellow in Dr. Leak's program until being so advised during cross-examination at hearing. When asked whether his opinion concerning Dr. Griffin would change if the evidence shows that Dr. Griffin had been a fellow in Dr. Leak's program from 1999 to 2001, Dr. Katirji replied, "Well, if he's a fellow, he's technically following orders, I guess, somehow." (Tr. at 1286-1287)

Dr. Hoogendoorn's Participation in the PCC Fellowship

Testimony of Dr. Hoogendoorn Concerning Podiatric Residency Training

88. Dr. Hoogendoorn opined that his performance during the PCC fellowship should be likened to podiatric residency training. Dr. Hoogendoorn testified that, during podiatric residency training, residents rotate through various services and participate in the management of patients who suffer from non-podiatric conditions. (Tr. at 85-92)

Dr. Hoogendoorn stated that, during his residency, he had rotated through various services including internal medicine, dermatology, anesthesiology, wound care, emergency medicine, and podiatric surgery. Dr. Hoogendoorn further stated that he had managed patients suffering from a variety of non-podiatric conditions, including emphysema and congestive heart failure. Moreover, Dr. Hoogendoorn testified that, during rotations at Columbus Community Hospital [CCH], he had performed a general surgery rotation wherein that he had assisted in various procedures such as laparoscopic "[g]allbladder excisions" during which he created portals, inserted instruments, stapled off arteries, and closed. Dr. Hoogendoorn added that he had assisted in thoracotomy. When asked what a thoracotomy is, Dr. Hoogendoorn replied: "It's an open heart procedure. The chest is actually opened. The ribs are separated. The pleural cavity is exposed." Dr. Hoogendoorn stated: "When we got to that level, I helped retract. I also closed on leaving. So [I] sutured ribs back together, deep tissues, skin." (Tr. at 85-92) (Note that Dr. Hoogendoorn spent only one year in podiatric residency. [Resp. Ex. 103H])

89. Dr. Hoogendoorn testified that, during his residency, he had been expected to do the same work during rotations as the allopathic and osteopathic residents. (Tr. at 2184-2185)

Testimony of Dr. Weiner Concerning Podiatric Residency Training

90. Richard D. Weiner, D.P.M., testified on behalf of the Respondents. Dr. Weiner obtained his podiatric medical degree from the Ohio College of Podiatric Medicine. He performed his residency at the California College of Podiatric Medicine, which is affiliated with the University of Southern California Medical Center in Los Angeles. Since about 1997, Dr. Weiner has been the director of the podiatric residency program at OhioHealth Grant Medical Center in Columbus, and is also in private practice. (Tr. at 2089-2090, 2164)
91. Dr. Weiner testified that the Council of Podiatric Medical Education [CPME] mandates that podiatric residents be given exposure to a variety of medical conditions rather than limiting their training to conditions of the foot and ankle. (Tr. at 2094) Dr. Weiner explained: “The rationale is because the foot and ankle is connected to the rest of the body. It’s not an isolated structure. So in order to competently treat that, one must understand how what they’re doing affects the rest of the body.” (Tr. at 2120-2121)
92. Dr. Weiner testified that podiatric residency training in Ohio currently consists of either a two-year or three-year program. Dr. Weiner testified that, the first year, residents rotate through a number of different areas such as family medicine, internal medicine, radiology, emergency medicine, and endocrinology. During the second year the residents focus on foot and ankle both clinically and surgically, and also continue generalized rotations such as plastics and orthopedics. The third year is a continuation of the second and may include electives such as general surgery. (Tr. at 2091-2092)

Dr. Weiner testified that, when performing rotations, the residents function under the direct supervision of the podiatric, osteopathic, or allopathic physician who is in charge of the rotation. The residents also answer to the hospital’s graduate medical education committee and the bylaws of the hospital. (Tr. at 2093)

93. Dr. Weiner testified that all podiatric residents receive some training in either general surgery or some other surgical field such as vascular surgery or orthopedic surgery, depending on the institution. Moreover, Dr. Weiner testified that podiatric residents assist in all surgical procedures that their rotations cover, including non-podiatric surgeries. (Tr. at 2101-2102)

Testimony of Dr. Loftus Concerning Podiatric Residency Training

94. Todd C. Loftus, D.P.M., testified on behalf of the Respondents. Dr. Loftus obtained his podiatric medical degree in 2000 from the Ohio College of Podiatric Medicine. From 2000 to 2003, Dr. Loftus participated in a podiatric residency at Salt Lake City Veterans Hospital in Salt Lake City, Utah. Dr. Loftus testified that his residency had consisted of 12 months

of medicine and 24 months of surgery. Dr. Loftus currently practices as a junior associate in a four-partner podiatric practice. (Tr. at 2544-2545)

Dr. Loftus testified that he is past central chapter president of the Ohio Podiatric Medical Association [OPMA]. Dr. Loftus further testified that he is familiar with the laws and rules that govern the practice of podiatry in Ohio. (Tr. at 2554)

95. Dr. Loftus' testimony concerning his training as a podiatric resident was consistent with the testimony of Dr. Hoogendoorn and Dr. Weiner. (Tr. at 2551-2554)

Testimony of Dr. Bastawros Concerning Podiatric Fellowship Training

96. David S. Bastawros, D.P.M., testified on behalf of the Respondents. Dr. Bastawros testified that he had obtained his podiatric medical degree from the Ohio College of Podiatric Medicine in 1997, and, from 1997 to 1998, participated in a podiatric residency at the Veterans Administration Medical Center in Boston, Massachusetts. Dr. Bastawros further testified that his residency program had been affiliated with Harvard Medical School and Brigham and Women's Hospital. (Tr. at 2640-2641)

Dr. Bastawros testified that he is currently engaged in the solo practice of podiatric medicine and surgery in Richardson, Texas. In addition to his private practice, Dr. Bastawros is also a Physician Investigator for the Texas State Board of Podiatric Medical Examiners [Texas Board]. Dr. Bastawros has worked with the Texas Board since June 2002. Moreover, Dr. Bastawros is Chairman of the Patient Safety Committee at Richardson Regional Medical Center, and a member of the Executive Advisory Board for the North Texas Healthcare Fraud Working Group. (Resp. Ex. 109H; Tr. at 2640-2645)

Dr. Bastawros testified that he is licensed to practice podiatric medicine and surgery in Texas. (Tr. at 2643)

97. Dr. Bastawros testified that the scope of podiatric practice in Texas is limited to the treatment of the bone and joints in the foot and ankle and soft tissues "all the way up into the leg area." Dr. Bastawros further testified that, unlike Ohio, Texas podiatrists cannot treat superficial lesions of the hand. Moreover, Dr. Bastawros testified that he gained familiarity with the scope of podiatric practice in Ohio through his education at the Ohio College of Podiatric Medicine.¹¹ (Tr. at 2647-2648)

¹¹ During the hearing, counsel for the State raised an objection that the statute defining the scope of practice of podiatric medicine and surgery in Ohio, R.C. 4731.51, had been amended since Dr. Bastawros finished medical school in Ohio in 1998. (Tr. at 2648-2649)

The current version of R.C. 4731.51 became effective on April 10, 2001. The only changes from the previous version of the statute, which had been in effect since December 14, 1967, were to change "podiatry" to "podiatric medicine and surgery," and to change "he" to "the applicant." No substantive change was made to the scope of practice. (See Sub. H.B. 585, 123rd General Assembly [148 v H 585])

98. Dr. Bastawros testified that he is familiar with podiatric fellowship programs. Dr. Bastawros further testified that they have unaccredited as well as accredited podiatric fellowships in Texas, and that the issue of podiatrists training in an unaccredited fellowship has never been a basis for concern with the Texas Board. Dr. Bastawros indicated that it would not be of concern as long as the podiatric fellow is appropriately supervised. (Tr. at 2656-2660)

Dr. Bastawros testified concerning “appropriate supervision” of a podiatric fellow:

[A]s long as the fellow is being appropriately supervised by their attending, whether it’s another podiatrist, whether it’s a medical doctor, whether it’s a doctor of osteopathic medicine, that fellow must work under the direct orders of that physician. And as a fellow, they’re receiving further training. They many times will be performing or providing care outside their initial scope of practice because they’re working—if they’re working under a medical doctor, as long as that medical doctor is comfortable and as long as that medical doctor is providing supervision and providing orders and feels comfortable with their care, then that fellow can—they’re delegated the authority to provide whatever treatments are necessary, once again, as long as they’re being appropriately supervised.

(Tr. at 2663-2664) Furthermore, Dr. Bastawros testified that the attending physician would decide the level of supervision required, such as direct or on-site. (Tr. at 2664-2665)

Dr. Bastawros further explained that, when a podiatrist is providing services as a fellow, he or she is actually practicing under the license of the attending physician, whether the physician is an allopath, osteopath, or podiatrist. (Tr. at 2665)

99. On cross-examination, Dr. Bastawros acknowledged that he and Dr. Hoogendoorn are good friends. Dr. Bastawros further acknowledged that he had gone to podiatric medical school with Dr. Hoogendoorn and that he talks to Dr. Hoogendoorn about once or twice per week. (Tr. at 2668-2669)

The PCC Fellowship

Testimony of Dr. Hoogendoorn

100. Dr. Hoogendoorn testified that he had been offered a position in the PCC fellowship in 2000. Dr. Hoogendoorn testified that Dr. Griffin, who was himself a fellow at that time, had recommended Dr. Hoogendoorn for the program. (Tr. at 2208-2209, 2215)
101. Dr. Hoogendoorn testified that he had entered the PCC fellowship in August 2000. He remained in the program until around November 2003. (Tr. at 2498, 2528)
102. When asked why he had been interested in joining the fellowship program, Dr. Hoogendoorn replied:

One, it was a fantastic opportunity for myself. Podiatry has always struggled to be accepted amongst M.D.s and D.O.s, and I worked with a lot of M.D.s while I was at the program and gained their confidence and worked with them very closely. So it kind of was exciting to be brought into that.

Also, there's a lot of things that they've done or currently still do that they may do in the low back; but I've also taken it now and do it down in the foot and ankle, which has proved to be very successful. The training was at that point one of a kind, so to speak; and I thought it was an excellent opportunity to increase my base knowledge of pain and expand on it in the private practice within the podiatric scope.

(Tr. at 2209-2210)

103. Dr. Hoogendoorn testified that, after he entered the PCC program, he had sought and obtained accreditation for the program from the Council on Podiatric Medical Education [CPME]. Dr. Hoogendoorn further testified that CPME accreditation had required linking the program with the Ohio College of Podiatric Medicine. PCC and the OCPM entered into an agreement to that effect, dated September 13, 2001. (Resp. Ex. 119H; Tr. at 2218-2221)

By letter dated January 8, 2002, the CPME notified Dr. Leak that, effective January 1, 2002, the PCC fellowship program had been granted approval as a podiatric fellowship in pain management. (Resp. Ex. 121H)

104. Dr. Hoogendoorn testified that the CPME would not recognize or give credit for the time he had spent in the fellowship prior to January 8, 2002. Therefore, he repeated that time and remained in the fellowship until September 2003. (Tr. at 2222-2224, 2535)
105. Dr. Hoogendoorn testified that there had been no difference in the training he received at the PCC fellowship between the times prior to and after CPME accreditation. (Tr. at 2224)
106. Dr. Hoogendoorn described at length his responsibilities during the fellowship and his purpose in participating in the fellowship:

This was harder than my residency. You were required to have self-directed learning on top of directed learning. You were to evaluate as many patients as you can in clinic and present them to the attending and then the attending would ask you questions and then you would be given direction to look up new educational information or techniques or other things.

You would have to know pharmacology. You'd have to know nerve blocks, nerve roots, dermatomes, sclerotomes, why certain medications work and why some don't, some drug interactions. You would have to do research on topics.

You were required—I believe I was required every two or three weeks to give a presentation and it was a PowerPoint presentation that you had to produce, a publication that had to be done by the end of your fellowship program or presented for publication, pretty much you had to know as much as you possibly could.

You also had to understand patient relations in the sense of, you know, not everybody [who] goes to a pain clinic is 100 percent legit; and we try to focus on how do we spot people who are faking, basically. Had to know why you ordered certain diagnostics, you had to know what certain diagnostics to order and when. You had to know how to come up with a treatment plan; how, you know, pain presents in the different ways and why. So it's a very hard question to put a net around because the typical patient that would come to a pain management group has already seen at least four or five other people; and, surprisingly, I would say it was not—it wasn't far off—20 percent of them had chronic foot and ankle painful conditions.

So it's one of these things where it definitely had relevance to podiatry, definitely had application. It might—you know, doing this whole program, it was never the intent for me to come out after I was done to give epidurals, injections above and beyond the scope of practice for podiatry. It was to learn what they do; evaluate what can be brought down to the foot and ankle that we currently aren't using; for better techniques to treat patients with chronic painful conditions; and advance podiatry, so to speak, take it to another level that is currently not there.

And that's what I expected to learn and expected to do in this. You know, neither David Leak, Brian Griffin, or anybody else in the facility ever thought for a second I was going to come out and start doing epidural injections or selective nerve root injections or anything above and beyond the scope and practice of podiatry.

(Tr. at 2212-2214)

Testimony of Dr. Leak

107. Dr. Leak testified that, during the time that Dr. Hoogendoorn rotated through CCH as a podiatric resident, he had worked with Dr. Hoogendoorn and been impressed by Dr. Hoogendoorn's curiosity and desire to learn. He eventually invited Dr. Hoogendoorn to join the PCC fellowship. Dr. Leak testified that, after Dr. Hoogendoorn joined the PCC fellowship, Dr. Hoogendoorn had been limited in his activities only to the degree that he had wanted to be limited. Dr. Leak testified that, for example, Dr. Hoogendoorn had not been interested in learning how to implant spinal cord stimulators because he would not be doing those in his practice as a podiatrist. Aside from that, Dr. Hoogendoorn was put through the same curriculum as the other fellows. (Tr. at 384-386, 2762-2764)

When asked whether he had had any concerns that, while in the fellowship, Dr. Hoogendoorn would be practicing outside the scope of podiatry, Dr. Leak likened fellowship training to podiatric residency training wherein podiatric residents receive training that is beyond the scope of podiatry. Dr. Leak noted that he had gained exposure to podiatric residency training at CCH and that podiatric residents rotated through various services including anesthesiology and general surgery. Moreover, Dr. Leak testified that he had reviewed the curriculum for podiatric residents at CCH. Dr. Leak testified that that curriculum “was broad enough to include our service * * *” and that CCH administrators had asked that podiatric residents be allowed to rotate through Dr. Leak’s pain medicine service. (Tr. at 385-386, 401-407) Dr. Leak further testified:

As a physician, in our world, it was a seamless progression, because the hospital which was in our community and accredited—we were working literally in the same place, so it did not occur that if he was operating with us and within our clinic on March 31st that he would not be able to operate in our clinic on April 5th, because it was the same continuum, same physical facility, and just more information that should have resulted in a better trained and educated individual.

We did have an expectation and an understanding that, just like all the other podiatry residents and surgical residents, that once they completed training with us, that they would then go back to what they understood and what we understood to be their scope of practice once they were outside our venue.

(Tr. at 385-386)

108. Dr. Leak testified that Dr. Hoogendoorn had been the only podiatrist who participated in the PCC fellowship. (Tr. at 384, 2767)

Testimony of Dr. Griffin

109. Dr. Griffin testified that when Dr. Hoogendoorn entered the PCC fellowship, Dr. Griffin had been a second-year fellow. Dr. Griffin acknowledged that he had supervised Dr. Hoogendoorn in the performance of tasks that were outside the scope of practice of podiatric medicine. However, Dr. Griffin testified that it had been his understanding that, while training as a fellow at PCC, Dr. Hoogendoorn had been allowed to perform medical tasks that were outside the scope of practice for podiatric medicine. (Tr. at 824)

With regard to his supervision of Dr. Hoogendoorn, Dr. Griffin testified:

It’s tradition in teaching. It’s just always been that way. It was that way for me. You start at the bottom and you’ve got to work your way up. They start off by doing histories and physicals, and then as they get—show [in]dependence, they get a little more involved with the patients. But we all went through that training process where you’re low man on the totem pole

until you step up a step, internship, residency, and then you teach the guy beneath you.

(Tr. at 824)

Testimony of Dr. Chelimsky

110. Dr. Chelimsky testified that he had had trouble understanding why Dr. Hoogendoorn was in the PCC fellowship because fellows “normally would be trained to do things they’re going to do in the future.” However, Dr. Chelimsky testified that a podiatrist would not perform trigger point injections because there are no trigger points in the foot or the supporting structures of the foot. Dr. Chelimsky further testified that, if a technique would be beyond the scope of a podiatrist’s eventual practice, the podiatrist should not be taught that technique in a fellowship. Moreover, Dr. Chelimsky testified that the standard of practice is that a fellowship teaches only those things that may be used by the fellow in his or her area of licensure. (Tr. at 1838-1839, 1894, 1983)

In addition, Dr. Chelimsky testified that, if Dr. Griffin or Dr. Leak had always been at Dr. Hoogendoorn’s side when he performed a procedure and had always reviewed and approved Dr. Hoogendoorn’s treatment plans, it would not change his opinion concerning Dr. Hoogendoorn’s participation in the fellowship. Dr. Chelimsky testified:

I think the fundamental question I have is was this just a way of getting more procedures done and just get more money passed through, or was there a true fellowship program happening with true education, some percentage of time allotted to Dr. Hoogendoorn that would be his fellowship time? The whole thing has a very unusual appearance to it, as best I can gauge from the notes, from ’99 to 2001.

(Tr. at 1992)

Furthermore, Dr. Chelimsky testified that, the only attestation in the patient records concerning supervision had been a line dictated by Dr. Hoogendoorn that Dr. Leak or Dr. Griffin had been supervising. Dr. Chelimsky testified that “that would be entirely inadequate in any medical record review.” Dr. Chelimsky testified that an attestation is required by the supervising physician that he or she was present at the time of the procedure. Ideally, the supervising physician’s note would also include information concerning the patient’s progress or “[s]ome evidence that there was some thought put in by the person doing the training.” (Tr. at 1831-1834)

111. With regard to Dr. Chelimsky’s knowledge of the PCC fellowship program, the following exchange took place:

Q. [By Mr. Graff] The fellowship program hours of Dr. Griffin were accepted by the American Board of Anesthesia for the purposes of board certification examination in pain medicine. Are you aware of that?

* * *

A. [By Dr. Chelimsky] No.

* * *

Q. That, in fact, the fellowship program of Dr. Leak was used for the purposes of providing the educational hours necessary for the subspecialty of pain medicine; are you aware of that?

A. I was not aware of that.

Q. And that those hours as certified during the period that is under review are those that were the basis to allow a physician to sit for examination who is now certified in the subspecialty of pain medicine; are you aware of that?

A. I thought I just said that.

Q. Are you aware that the same program without change was certified the following year as an accredited fellowship by the Ohio College of Podiatric Medicine and certified the hours of Dr. Hoogendoorn?

A. I was not aware of that.

Q. Having this additional information available to you now, does it change your opinion?

A. I think I would still need to look at the structure of the program to understand what the program's about and what the teaching hours were and so on.

Q. So that your opinion as expressed in your testimony to date is lacking the foundation necessary, in your opinion, of the fellowship program itself to being fully accurate?

A. As far as the structure of the fellowship program.

Q. Correct.

A. Yes.

(Tr. at 2008-2010)

Testimony of Dr. Bressi

112. Dr. Bressi testified that he does not believe that it had been inappropriate for Dr. Griffin, a second year fellow in Dr. Leak's program, to have supervised Dr. Hoogendoorn, a first year fellow, even though Dr. Hoogendoorn was a podiatrist. Dr. Bressi testified that "[i]t's perfectly reasonable and it does not deviate from any standard of care." (Tr. at 2432-2433)

Signed Discharge Summaries for Procedures

113. The following table lists the invasive procedures performed by Dr. Hoogendoorn, whether the discharge summary was signed, by whom it was signed,¹² and the medical record page number for the discharge summary:

¹² An example of Dr. Leak's signature appears at State's Exhibit 41 at 8. (Tr. at 455-460) An example of Dr. Griffin's signature appears at State's Exhibit 2 at 326. (Tr. at 673) An example of Dr. Hoogendoorn's signature appears at St. Ex. 9 at 97a, to the left of Dr. Griffin's initial "G." (Tr. at 200)

Pt	Date	Procedure Type/ Medication	Physician(s)	Discharge Summary Signed By Dr. Leak or Dr. Griffin?/ Name	Dch.Sum at Page
1	08/22/01	Trigger point injection/ <i>bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	67a
	10/02/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	68a
2	03/06/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	136a
	04/04/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	No	121a
	10/16/01	Trigger point injection/ <i>bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	95a
3	10/17/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	87a
	11/13/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	76a
4	02/14/01	Trigger point injection/ <i>bupivacaine</i>	Hoogendoorn/ Leak	Yes/Leak	214a
	03/02/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	85a
	03/16/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	83a
5	06/01/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	No	93a
	06/08/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	No	90a
	06/15/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	No	87a
	06/29/01	Chemoneurolytic injection/ <i>Sarapin, Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	No	78a
	10/10/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	65a
	10/19/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	59a
7	06/19/01	Trigger point injection/ <i>bupivacaine</i>	Hoogendoorn/ Leak	No	92a
	07/18/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	86a
	08/01/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Leak	Yes/Leak	84a
	08/14/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	82a
	09/21/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	75a
	10/02/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	73a

Pt	Date	Procedure Type/ Medication	Physician(s)	Discharge Summary Signed By Dr. Leak or Dr. Griffin?/ Name	Dch.Sum at Page
8	10/26/01	Trigger point injection/ <i>bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	127a
9	02/09/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	76a
	02/16/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Leak	Yes/Griffin and Leak	74a
	03/09/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	72a
11	05/28/01	Trigger point injection/ <i>Sarapin, Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	No	132a
	06/08/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	No	129a
	06/19/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	No	127a
	08/28/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	113a
	10/02/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	109a
14	05/01/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	No	62a
	05/08/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Possibly/Griffin	60a
	05/22/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	No	58a
	06/15/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	No	54a
	06/22/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	No	52a
17	01/19/01	Trigger point injection/ <i>bupivacaine</i>	Hoogendoorn	Yes/Griffin	113a
	01/26/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn	Yes/Griffin	110a
	02/06/01	Chemoneurolytic injection ¹³ / <i>Sarapin, Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Leak	107a
	02/09/01	Chemoneurolytic injection/ <i>Sarapin, Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	104a
	02/16/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Leak	Possibly/Leak	101a

¹³ Many of the procedural notes for Patient 17 indicate that a trigger point injection was performed; however, Sarapin, a chemoneurolytic agent, was used. Accordingly, these procedures have been identified in this table as chemoneurolytic injections. (St. Ex. 17 at 173; see also pages 169-171)

Pt	Date	Procedure Type/ Medication	Physician(s)	Discharge Summary Signed By Dr. Leak or Dr. Griffin?/ Name	Dch.Sum at Page
	02/23/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Possibly/Leak	98a
	03/02/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Possibly/Leak	96a
	03/09/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Leak	94a
	04/04/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	90a
	04/11/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	No	88a
	04/18/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	No	86a
	04/25/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	84a
	05/04/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	No	82a
	05/16/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	80a
	06/20/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	77a
	06/29/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	75a
	07/09/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	No	73a
	07/24/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Leak	Possibly/Leak	69a
	08/07/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	67a
	09/28/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	54a
21	05/23/01	Trigger point injection/ <i>bupivacaine</i>	Hoogendoorn/ Griffin	No	170a
	06/01/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	No	166a
	06/08/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	No	163a
	07/13/01	Chemoneurolytic injection/ <i>Sarapin, bupivacaine</i>	Hoogendoorn/ Griffin	No	154a
	09/28/01	Trigger point injection/ <i>bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	139a
22	07/25/01	Trigger point injection/ <i>bupivacaine</i>	Hoogendoorn/ Leak	Possibly/Griffin	110a
	07/31/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Leak	Yes/Leak	107a
	09/07/01	Trigger point injection/ <i>bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	98a
	09/19/01	Trigger point injection/ <i>bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	94a

Pt	Date	Procedure Type/ Medication	Physician(s)	Discharge Summary Signed By Dr. Leak or Dr. Griffin?/ Name	Dch.Sum at Page
	09/28/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	92a
	10/19/01	Trigger point injection/ <i>Depo-Medrol, bupivacaine</i>	Hoogendoorn/ Griffin	Yes/Griffin	90a

Additional Information

Testimony of Dr. Boswell Concerning Dr. Leak

114. Dr. Boswell testified that he has a very good opinion of Dr. Leak's knowledge base and clinical skills in interventional pain medicine. (Tr. at 50)

Dr. Boswell testified that he has been on lectures with Dr. Leak and has shared a podium with him. Dr. Boswell further testified that he had been an editor of a textbook in which Dr. Leak had written a chapter. (Tr. at 34-36)

Testimony of Dr. Griffin

115. Dr. Griffin offered the following opinion concerning Dr. Leak:

[Dr. Leak is] brilliant. Doesn't always run the clinic the way I would. He's amazing with his hands and has the ability to correctly adjust in O.R. I've seen him invent new procedures on the spot to counter a problem that the patient had anatomically. It was—every time you work with the guy is a learning experience.

(Tr. at 3077)

Dr. Hoogendoorn's Use of Knowledge Gained in Fellowship

116. Dr. Hoogendoorn testified that he is board-certified by the American Academy of Pain Management, and explained how he has used the knowledge gained during the fellowship. Dr. Hoogendoorn stated:

I sit on their education advisory committee. Since then I've applied it to the foot and ankle. I've written—I'm published. I've written textbook chapters on pain management for major podiatry texts. I lecture for a spinal cord stimulator company to podiatrists so they understand how this can build—not build but help their patient population and what to look for. I've lectured for drug companies that are used for chronic pain from the podiatrist's perspective. I've made the most of what could possibly be made from that

educational experience, and I have a constant referral source for chronic painful conditions of the foot and ankle only.

(Tr. at 2519-2520)

117. Dr. Hoogendoorn testified that, since completing his fellowship, he has developed a “niche practice” treating chronic podiatric pain. Dr. Hoogendoorn further testified that it is a referral-based practice from other physicians, allopaths, osteopaths, and podiatrists.

(Tr. at 2528-2529)

FINDINGS OF FACT

1. From in or about 2000 to in or about 2001, Kyle Elliott Hoogendoorn, D.P.M., undertook the treatment of nineteen patients¹⁴ as identified on a confidential Patient Key. During the period in or about August 2000 through in or about November 2001, Dr. Hoogendoorn:
 - (a) Administered chemoneurolytic and other injections into the splenius capitis, levator scapulae, trapezius, superior trapezius, cervical erector spinae, thoracic erector spinae, lumbar erector spinae, latissimus dorsi, paraspinal, and/or rhomboid muscles, and/or the interspinous ligament, and/or greater trochanter, and/or gluteal area of Patients 1-5, 7-9(6-8), 11(9), 14(12), 17(13), and 21-22(16-17).

The evidence is insufficient to support a finding that Dr. Hoogendoorn administered chemoneurolytic or other injections to Patient 20.

Further, the evidence is insufficient to support a finding that Dr. Hoogendoorn administered chemoneurolytic or other injections into a zygapophyseal joint of any patient.
 - (b) Prescribed controlled and noncontrolled medications, including, but not limited to, Nicotrol, Wellbutrin, Neurontin, Propranolol, Vioxx, Zyprexa, Ultram, OxyContin, Clonazepam, Duragesic, Depakote, Senokot, Trazadone, hydrocodone, methadone, Transderm Scop, Celebrex, Zanaflex, Catapres, Zithromax, propoxyphene, oxazepam and/or methylphenidate to Patients 2, 7(6), 11-14(9-12), 18(14), 20(15), 23(18), and 24(19) for the treatment of non-podiatric conditions.
2. The Respondents presented evidence that, during the period in question, Dr. Hoogendoorn had been engaged in a pain medicine fellowship run by Dr. Leak. Although the wisdom of a podiatrist engaging in such a fellowship may be questionable, the evidence shows that it is more likely than not that the fellowship at PCC was a legitimate fellowship. Moreover, the Respondents presented convincing evidence that, in January 2002, Dr. Leak’s fellowship program received approval as a podiatric fellowship by the Council for Podiatric

¹⁴ Patient numbers in this section are referred to by their number in the Master Patient Key. If the patient number on Dr. Hoogendoorn’s patient key differed, that patient number is noted in parentheses. See Board Exhibit I.

Medical Education [CPME]. In addition, unrefuted testimony indicates that there was no change in the structure or content of the fellowship after CPME approval was granted. Furthermore, unrefuted testimony indicates that ten physicians, including Dr. Griffin, who completed the fellowship, obtained subspecialty certification in pain medicine through an ABMS-approved board. The evidence also shows that, during residency training, and under the supervision of allopathic or osteopathic physicians, podiatrists venture into areas that would be beyond their scope of practice outside of the training program. Testimony from one witness suggests that this may occur in podiatric fellowships as well. Finally, it is clear from the evidence that Dr. Leak, Dr. Griffin, and Dr. Hoogendoorn believed that the fellowship program was legitimate.

CONCLUSIONS OF LAW

Based upon the facts described in Findings of Fact 2, the conduct of Kyle Elliott Hoogendoorn, D.P.M., as set forth in Findings of Fact 1 does *not* constitute “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 4731.41, Ohio Revised Code, Practice of medicine or surgery without certificate. Pursuant to Section 4731.99(A), Ohio Revised Code, violation of Section 4731.41, Ohio Revised Code, constitutes a felony offense.” Nevertheless, because the unusual nature of Dr. Hoogendoorn’s fellowship presented a case of first impression for the Board, the Board was substantially justified in pursuing this allegation.

PROPOSED ORDER

It is hereby ORDERED that:

The allegations against Kyle Elliott Hoogendoorn, D.P.M., set forth in the August 9, 2006, notice of opportunity for hearing, are DISMISSED.

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



R. Gregory Porter
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



EXCERPT FROM THE DRAFT MINUTES OF AUGUST 13, 2008

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Varyani announced that the Board would now consider the Proposed Findings and Proposed Orders appearing on its agenda. He asked whether each member of the Board had received, read and considered the hearing record; the findings of fact, conclusions and proposed orders; and any objections filed in the matters of: Shelly Bade, M.D.; Eugene Allan Brewer, M.D.; William David Leak, M.D.; Brian Frederic Griffin, M.D.; Kyle Elliott Hoogendoorn, D.P.M.; Parisa Khatibi, M.D.; and William W. Nucklos, M.D.; and the Proposed Findings and Proposed Orders in the matters of John A. Halpin, 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. Suppan	- aye
Dr. Madia	- aye
Mr. Browning	- aye
Mr. Hairston	- aye
Dr. Stephens	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- aye
Dr. Varyani	- aye

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

ROLL CALL:

Mr. Albert	- aye
Dr. Egner	- aye
Dr. Talmage	- aye
Dr. Suppan	- aye
Dr. Madia	- aye
Mr. Browning	- aye
Mr. Hairston	- aye

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

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

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

.....

KYLE ELLIOTT HOOGENDOORN, D.P.M.

.....

Mr. Albert left the meeting during the previous discussion.

DR. SUPPAN MOVED TO APPROVE AND CONFIRM MR. PORTER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF KYLE ELLIOTT HOOGENDOORN, D.P.M. MR. BROWNING SECONDED THE MOTION.

.....

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

ROLL CALL:	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Browning	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- nay

Dr. Steinbergh - nay
Dr. Varyani - nay

The motion carried.

State Medical Board of Ohio

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



Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

July 9, 2008

Case number: 08-CRF- 090

Kyle Elliott Hoogendoorn, D.P.M.
2968 Shady Knoll Lane
Hilliard, OH 43026

Dear Doctor Hoogendoorn:

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

- (1) During the time period of in or about 2006 to in or about June 2008, you provided care in the routine course of your practice for Patients 1 through 8 as identified on the attached Patient Key (Patient Key confidential and to be withheld from public disclosure).
- (2) In your treatment of Patients 1-8, you practiced below minimal standards of care, including, but not limited to, the following:
 - (a) You failed to exhaust and/or failed to document the exhaustion of conservative treatments prior to performing surgery on Patients 1, 2, 3, 4, 7 and 8;
 - (b) You performed surgery on Patients 1-8 despite the lack of appropriate clinical indication for the surgery;
 - (c) You performed surgery on Patient 1 without obtaining and/or documenting that you obtained appropriate informed consent;
 - (d) You failed to properly document surgical procedures that you performed on Patients 1 and 2;
 - (e) You used rote documentation of progress notes and/or operative reports in your patient charts for Patients 1-8 that was not appropriately specific to each patient and procedure.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

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Kyle Elliott Hoogendoorn, D.P.M.

Page 2

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.

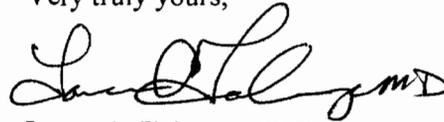
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at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

CERTIFIED MAIL #91 7108 2133 3934 3691 3239
RETURN RECEIPT REQUESTED

cc: Elizabeth Y. Collis, Esq.
1650 Lake Shore Drive
Suite 225
Columbus, OH 43204

CERTIFIED MAIL #91 7108 2133 3934 3691 3246
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

August 9, 2006

Kyle Elliott Hoogendoorn, D.P.M.
2968 Shady Knoll Lane
Hilliard, OH 43026

Dear Doctor Hoogendoorn:

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

- (1) From in or about 2000 to in or about 2001, you undertook the treatment of Patients 1-19 as identified on the attached Patient Key (key confidential to be withheld from public disclosure). During the period in or about August 2000 through in or about November 2001, you:
 - (a) administered chemoneurolytic and other injections into the splenius capitis, levator scapulae, trapezius, superior trapezius, cervical erector spinae, thoracic erector spinae, lumbar erector spinae, latissimus dorsi, paraspinal, and/or rhomboid muscles, and/or the intraspinous ligament, and/or greater trochanter, and/or gluteal area, and/or zygapophyseal joint of Patients 1-9, 12, 13, and 15-17;
 - (b) prescribed controlled and noncontrolled medications, including, but not limited to, Nicotrol, Wellbutrin, Neurontin, Propranolol, Vioxx, Zyprexa, Ultram, Oxycontin, Clonazepam, Duragesic, Depakote, Senokot, Trazadone, hydrocodone, methadone, Transderm Scop, Celebrex, Zanaflex, Catapres, Zithromax, propoxyphene, oxazepam and/or methylphenidate to Patients 2, 6, 9, 10, 11, 12, 14, 15, 18 and 19 for the treatment of non-podiatric conditions.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” as that clause is

Mailed 8-10-06

used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 4731.41, Ohio Revised Code, Practice of medicine or surgery without certificate. Pursuant to Section 4731.99(A), Ohio Revised Code, violation of Section 4731.41, Ohio Revised Code, constitutes a felony offense.

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,

A handwritten signature in black ink, appearing to read "Lance A. Talmage M.D.", written in a cursive style.

Lance A. Talmage, M.D.
Secretary

LAT/blt

Kyle Elliott Hoogendoorn, D.P.M.

Page 3

CERTIFIED MAIL # 7004 2510 0006 9801 7541
RETURN RECEIPT REQUESTED

cc: Timothy S. Rankin, Esq.
673 South Mohawk Street
Fourth Floor
Columbus, OH 43206

CERTIFIED MAIL # 7004 2510 0006 9801 7527
RETURN RECEIPT REQUESTED