State Medical Board of Ohio

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April 8, 1998

James C. Dickens, P.A.
1293 Westlake Avenue
Lakewood, OH 44107

Dear Mr. Dickens:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 8, 1998, 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 may be taken to the Franklin County Court of Common Pleas only.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas 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

Anand G. Garg, MD

Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. Z 233 839 009
RETURN RECEIPT REQUESTED

Mailed 4/13/98

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 April 8, 1998, 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 James C. Dickens, P.A., 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.

Anand G. Garg, M.D.
Secretary

(SEAL)

April 8, 1998
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

JAMES C. DICKENS, P.A. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on April 8, 1998.

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 certificate of registration of James C. Dickens, P.A., as a physician assistant in the State of Ohio shall be PERMANENTLY REVOKED.

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

Anand G. Garg, M.D.
Anand G. Garg, M.D.
Secretary

(SEAL)

April 8, 1998
Date

STATE MEDICAL BOARD
OHIO

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REPORT AND RECOMMENDATION
IN THE MATTER OF JAMES C. DICKENS, P.A.

The Matter of James C. Dickens, P.A., was heard by R. Gregory Porter, Esq., Attorney Hearing Examiner for the State Medical Board of Ohio, on January 22, 1998.

INTRODUCTION

I. Basis for Hearing

A. By letter dated November 12, 1997, the State Medical Board of Ohio [Board] notified James C. Dickens, P.A., that it proposed to take disciplinary action against or to refuse to register or reinstate his certificate of registration as a physician assistant. The Board alleged that:

"1. On or about March 24, 1996, [Mr. Dickens] performed a preadmission screening of Patient 1 (as identified on [a] Patient Key—Key confidential and not subject to public disclosure) at about 9:00 a.m. at Lakewood Hospital. [Mr. Dickens] noticed that Patient 1's chart reflected prior prescriptions for Tylenol with Codeine No. 3, a Schedule III controlled substance. That same afternoon, [Mr. Dickens] traveled to Patient 1's home with the intent to take any Tylenol with Codeine No. 3 that [he] could find. Upon arrival at Patient 1's home on March 24, 1996, [Mr. Dickens], using a ruse, switched non-narcotic Tylenol for Patient 1's Tylenol with Codeine No. 3. [Mr. Dickens] also, through deception, took Patient 1's prescription bottle for Tylenol with Codeine No. 3. Then on March 25, 1996, [Mr. Dickens] refilled that prescription bottle for 60 tablets of Tylenol with Codeine No. 3. To obtain the refill of the Tylenol with Codeine No. 3 prescription, [Mr. Dickens] signed Patient 1's name on a receipt.

"2. By judgment entry dated December 26, 1996, the Lakewood Municipal Court in Lakewood, Ohio, accepted [Mr. Dickens'] plea of no contest and found [him] guilty of Sections 2923.02 and 2925.11, Ohio Revised Code, Attempted Drug Abuse."

The Board alleged that Mr. Dickens' acts, conduct, and/or omissions, as stated in paragraph 1, above, individually and/or collectively, constituted: "'(s)oliciting patients or publishing a false, fraudulent, deceptive, or misleading statement,' as that clause is used in Section 4730.25(B)(8), Ohio Revised Code"; and/or "'(c)ommission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was

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committed,' as that clause is used in Section 4730.25(B)(12), Ohio Revised Code, to wit: Sections 2925.22(A) and (B)(2), Deception to Obtain a Dangerous Drug."

The Board further alleged that Mr. Dickens' acts, conduct, and/or omissions, as stated in paragraph 2, above, individually and/or collectively, constituted: "'a plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice,' as that clause is used in Section 4730.25(B)(13), Ohio Revised Code, to wit: Sections 2925.11, Possession of Drugs"; and or "'trafficking in drugs, or a plea of guilty to or a judicial finding of guilt of violating any state or federal law regulating the possession, distribution, or use of any drug,' as that clause is used in Section 4730.25(B)(17), Ohio Revised Code."

Finally, the Board advised Mr. Dickens of his right to request a hearing in this Matter. (State's Exhibit 1)

B. By letter received by the Board on December 5, 1997, Mr. Dickens requested a hearing. (State's Exhibit 2)

II. Appearances

A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by James McGovern, Assistant Attorney General.

B. On behalf of the Respondent: The Respondent did not appear at the hearing, in person or by representative, but instead presented his arguments and contentions in writing.

EVIDENCE EXAMINED

I. Testimony Heard

Presented by the State

Patrick Fiorilli

II. Exhibits Examined

In addition to State's Exhibits 1 and 2, noted above, the following exhibits were identified and admitted into evidence. Note that exhibits marked with an asterisk (*) have been sealed to protect patient confidentiality.

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A. Presented by the State

1. State's Exhibit 3: Copy of a December 8, 1997, letter to Mr. Dickens from the Board, advising that a hearing had been set for December 15, 1997, but further advising that the hearing had been postponed pursuant to Section 119.09, Ohio Revised Code.

2. State's Exhibit 4: Copy of a December 10, 1997, letter to Mr. Dickens from the Board, scheduling the hearing for January 22, 1998.

3. State's Exhibit 5: January 7, 1998, Entry, indicating that Mr. Dickens would be presenting his arguments and contentions in writing, and that the parties had agreed that Mr. Dickens would provide the State with an affidavit, in lieu of Mr. Dickens' personal appearance.

* 4. State's Exhibit 6: Patient Key.

5. State's Exhibit 7: Copy of a September 30, 1997, Prosecutor's Reporting Form from Kevin M. Spellacy, Prosecuting Attorney, Lakewood, Ohio, to the Board, notifying the Board of Mr. Dickens' conviction of criminal charges. (2 pp.)

6. State's Exhibit 8: Certified copies of documents filed in the Lakewood Municipal Court in the cases captioned *Lakewood v. Dickens,* Case Nos. 96-A-1245/1246. (16 pp.)

* 7. State's Exhibit 9: Copies of documents from the Lakewood Police Department concerning its investigation of Mr. Dickens. (18 pp.)

* 8. State's Exhibit 10: Copy of a September 21, 1996, Waiver of Rights and written statement of Mr. Dickens to the Lakewood Police Department. (2 pp.)

9. State's Exhibit 11: Excerpt from the Ohio Revised Code, Section 2925.11, entitled: *Possession of drugs.* (5 pp.)

B. Presented by the Respondent

Respondent's Exhibit A: Collection of documents submitted on Mr. Dickens' behalf, consisting of: January 14, 1998, cover letter; Mr. Dickens' January 14, 1998, statement offered in lieu of personal appearance at the hearing; copy of Mr. Dickens' December 2, 1997, hearing request (duplicate of State's Exhibit 2); copy of a December 2, 1996, letter to Thomas Buford, Esq., from Ken Nightingale, CCDCIII, Unbar Counselor, West Side Community Mental Health Center, concerning Mr. Dickens' recovery efforts; and a copy of a March 18, 1997, Certificate of

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Completion, certifying Mr. Dickens' successful completion of The Unbar's Outpatient Chemical Dependency Treatment Program.

SUMMARY OF THE EVIDENCE

All transcripts of testimony and exhibits, whether or not specifically referred to hereinafter, were thoroughly reviewed and considered by the Attorney Hearing Examiner prior to preparing this Report and Recommendation.

1. Detective Patrick Fiorilli testified that he has been employed by the Lakewood Police Department for nine years. Det. Fiorilli further testified that he has occupied the position of Narcotics Vice Officer for two years. Det. Fiorilli noted that, among his various responsibilities as Narcotics Vice Officer, he investigates drug complaints. (Transcript at page [Tr.] 8)

2. Det. Fiorilli testified that the Lakewood Police Department became involved in this matter when they were contacted by the daughter of Patient 1 concerning a physician assistant from Lakewood Hospital. Det. Fiorilli said that Patient 1's daughter had indicated that she and Patient 1 believed that this individual had taken Patient 1's Tylenol No. 3 and substituted non-narcotic Tylenol. Det. Fiorilli further testified as follows:

   - Patient 1, female, age 72, had gone to Lakewood Hospital on August 24, 1996, in preparation for cataract surgery. She was examined by a physician assistant who was subsequently identified as James C. Dickens, P.A.

   - Later that day, Patient 1 was visited at her apartment by Mr. Dickens. Mr. Dickens told Patient 1 that the purpose of his visit was to obtain a complete list of all of Patient 1's medications. He indicated to Patient 1 that he needed to do this because Patient 1 had been unable to remember all of her medications when she was examined at the hospital.

   - Mr. Dickens looked through Patient 1's prescription bottles. He asked Patient 1 if she was still taking Tylenol No. 3. Patient 1 replied that she was not because they had made her dizzy. Mr. Dickens then asked Patient 1 for a glass of water. While Patient 1 was getting Mr. Dickens' drink, Mr. Dickens exchanged the Tylenol No. 3 tablets in Patient 1's bottle with non-narcotic Tylenol 325 mg. that he had brought with him for this purpose.

   - When Patient 1 returned with Mr. Dickens' drink, Mr. Dickens told Patient 1 that she should discard the Tylenol No. 3 because she was not taking them. Patient 1 complied.

   (Tr. 10-13)

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3. Det. Fiorilli's written report stated as follows:

- After Patient 1 had discarded the pill bottle per Mr. Dickens' instructions, Mr. Dickens asked to see it again. Patient 1 recovered the bottle from the trash and handed it to Mr. Dickens. Patient 1 told Det. Fiorilli that Mr. Dickens then began to scratch at the label. When Patient 1 questioned Mr. Dickens about this, he told her that he was checking the numbers. Shortly thereafter, Mr. Dickens told Patient 1 that he had to visit someone else in the building, and left Patient 1's apartment.

- Patient 1 then called her daughter concerning Mr. Dickens' visit. Patient 1's daughter went to Patient 1's apartment later that day. Both Patient 1 and her daughter searched for the Tylenol No. 3 bottle but had been unable to find it. Patient 1 showed her daughter the pills that she had discarded, and they noted that the pills were Tylenol 325 mg. with the word "Hospital" printed on them. Patient 1 and her daughter contacted the Lakewood Police Department.

(State's Exhibit [St. Ex.] 9, pp. 2, 9-10)

4. Det. Fiorilli testified that he interviewed Mr. Dickens at the police station on August 30, 1996. Mr. Dickens waived his constitutional rights and agreed to speak to the police without an attorney. Det. Fiorilli further testified as follows concerning this first interview with Mr. Dickens:

- Mr. Dickens denied that he had done anything wrong. He stated that he had performed a preadmission screening on Patient 1 on August 24, 1996, and described Patient 1 as "elderly and forgetful." Mr. Dickens said that Patient 1 had been unable to remember all of her prescriptions. Mr. Dickens further said that he was a conscientious employee of the hospital, and felt obliged to complete the preadmission screening on his own. Mr. Dickens told the police that he decided to go to Patient 1's apartment on his own time and log all of her current medications.

- Mr. Dickens told the detectives that, while he was inside Patient 1's apartment, Mr. Dickens' wife and child waited outside in the car.

- Mr. Dickens told the detectives that when he asked Patient 1 if he could see her medication, she brought out a box of prescriptions and vitamins, and Mr. Dickens logged each one. Mr. Dickens further said that he had noticed that she was taking Tylenol No. 3, that he had asked Patient 1 about it, and that she replied that she no longer took them because they made her dizzy. Mr. Dickens said that he had told Patient 1 that she should discard them if she is not taking them, and that Patient 1 then discarded them. Mr. Dickens stated that he "felt odd" about having Patient 1 discard

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her medicine, so he asked her for the prescription bottle in order to take it to the pharmacy and refill it for her. Mr. Dickens told the detectives that he knew that Patient 1's daughter monitored Patient 1's medications.

(Tr. 14-16)

Det. Fiorilli testified that when he and his partner spoke to Patient 1, they did not find her to be the "forgetful" person that Mr. Dickens had characterized her to be. Det. Fiorilli testified that Patient 1 "really had it together for an elderly lady." (Tr. 29)

5. Det. Fiorilli testified that the police obtained information that indicated that Patient 1's prescription for Tylenol No. 3 had indeed been refilled. Det. Fiorilli stated that, on September 4, 1996, he visited the pharmacy where the prescription had been refilled, and spoke to the pharmacist. Concerning his interview with the pharmacist, Det. Fiorilli testified:

- The pharmacist recalled Mr. Dickens' asking to have a prescription refilled, and that the prescription bottle had someone else's name on it. Mr. Dickens told the pharmacist that the prescription was for a neighbor.

- The pharmacist noted that Mr. Dickens dropped off the prescription on August 24, 1996, and had told the pharmacist that he would return on August 25, 1996, to pick it up.

- The pharmacist said that Mr. Dickens returned on August 25, 1996, to pick up the prescription. Mr. Dickens signed the prescription receipt log under Patient 1's name rather than his own.

(Tr. 17-18) Det. Fiorilli testified that he obtained a copy of the signature receipt log bearing Mr. Dickens' signature of Patient 1's name. (St. Ex. 9, p. 12; Tr. 18-20)

The pharmacy's records indicated that a prescription for 60 tablets of acetaminophen with codeine No. 3 had been dispensed on August 24, 1996. (St. Ex. 9, p. 16)

6. Det. Fiorilli testified that he had spoken with Mr. Dickens' physician supervisor, Dr. Schopf, and that Dr. Schopf told him that Mr. Dickens was a good employee who had worked for the hospital for 20 years. (Tr. 24)

Det. Fiorilli said that he spoke with an attorney for Lakewood Hospital who informed him that Mr. Dickens had been suspended and would probably be terminated from his employment. (St. Ex. 9, p. 10; Tr. 30)

7. Det. Fiorilli testified that, on September 5, 1996, he interviewed Mr. Dickens for a second time. Det. Fiorilli further testified that, prior to this interview, Det. Fiorilli had talked to the prosecutor, Patient 1, and Patient 1's daughter, "and we were hoping that we could salvage

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this guy basically." He stated that he presented all of the evidence to Mr. Dickens, hoping that Mr. Dickens would "come clean so [they] could get him some help." Det. Fiorilli stated, however, that Mr. Dickens continued to insist that he had done nothing illegal. Moreover, Det. Fiorilli stated that Mr. Dickens agreed at that time to take a polygraph test, but later declined to do so on the advice of an attorney. (Tr. 24-25)

8. On September 18, 1996, Det. Fiorilli filed a complaint with the Lakewood Municipal Court charging Mr. Dickens with one count of violation of Section 2925.22, Ohio Revised Code, Deception to Obtain a Dangerous Drug. (St. Ex. 8)

   Det. Fiorilli testified that he arrested Mr. Dickens on September 21, 1996, and brought him to the police station for processing. Det. Fiorilli further testified that he and his partner "sat Mr. Dickens down," at which time Mr. Dickens "admitted everything in the complaint." Det. Fiorilli stated that, after they completed the oral interview, Det. Fiorilli typed out a written statement for Mr. Dickens to sign. (Tr. 30-32)

9. In his September 21, 1996, written statement, Mr. Dickens admitted, among other things, the following:

   - While Mr. Dickens was performing a pre-admission screening on Patient 1, Mr. Dickens noticed on Patient 1's chart that she had taken Tylenol No. 3 in the past—sometime around March 1996. When Mr. Dickens saw this, he devised a plan to visit Patient 1's residence under the guise of checking her medications, and to take her Tylenol No. 3 for his own use. After the examination was over, Patient 1 left the hospital and went home.

   - Mr. Dickens contacted Patient 1 by telephone and told her that he would "be in the area and would be stopping over to her house and acquiring her medication list."

   - Prior to leaving the hospital that day, Mr. Dickens removed eight non-narcotic Tylenol 325 mg. tablets from Dr. Schopf's medicine cabinet with the intention of switching those pills with the Tylenol No. 3 tablets of Patient 1.

   - After Patient 1 brought Mr. Dickens the prescription bottle for her Tylenol No. 3, Mr. Dickens asked Patient 1 for a glass of water "to distract her while [Mr. Dickens] switched the medications." Mr. Dickens then replaced the contents of Patient 1's Tylenol No. 3 bottle with the non-narcotic Tylenol that Mr. Dickens had brought with him. When Patient 1 returned with Mr. Dickens' drink, he told her to throw the contents of the Tylenol No. 3 bottle in the garbage. Mr. Dickens then asked her to bring him the empty bottle. He peeled away a warning label and noticed that there was a refill available. Mr. Dickens then decided to keep the bottle to refill for his own use, and pretended to throw it in the trash. Mr. Dickens then left Patient 1's residence with Patient 1's Tylenol No. 3 tablets and prescription bottle.

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- After leaving Patient 1's residence, Mr. Dickens went directly to the pharmacy to refill the prescription. Mr. Dickens told the pharmacist that the prescription was for a neighbor. Mr. Dickens returned to the pharmacy the following day to pick up the refilled prescription, and signed the name of Patient 1 in the pharmacy's prescription receipt log.

(St. Ex. 10)

10. On December 26, 1996, at a preliminary hearing in Lakewood Municipal Court, the charge against Mr. Dickens was amended, at the prosecutor's request, to violation of Section 2923.02, Ohio Revised Code, as that section applies to Section 2925.11, Ohio Revised Code, "Attempted Drug Abuse." Mr. Dickens pleaded no contest to the amended charge, and was subsequently found by the court to be guilty. The court referred Mr. Dickens to the probation department for a pre-sentence investigation, and denied Mr. Dickens' motion for Treatment in Lieu of Conviction. (St. Exs. 8 and 11)

    On March 3, 1997, the court sentenced Mr. Dickens to 90 days incarceration and fined him $750.00. The court suspended the period of incarceration and $650.00 of the fine and placed Mr. Dickens on probation for two years, subject to certain terms and conditions. (St. Ex. 8)

11. A December 2, 1996, letter to Mr. Dickens' criminal attorney from Ken Nightingale, CCDCIII, Unbar Counselor, West Side Community Mental Health Center, stated that Mr. Dickens had been a client of the Unbar Outpatient Chemical Dependency Treatment Program since November 7, 1996. The letter stated that Mr. Dickens was evaluated and found to be both alcohol and codeine dependent. The letter further stated that he had been regularly attending Alcoholics Anonymous [AA] meetings, and that Mr. Dickens had been cooperative and faithful to his recovery program. (Respondent's Exhibit [Resp. Ex.] A, p. 7)

12. In his December 2, 1997, letter to the Board requesting a hearing, Mr. Dickens stated that he had strictly adhered to Unbar's treatment program, which ended in March 1997. Moreover, Mr. Dickens wrote that he has remained active in AA and is dedicated to his own recovery and to helping others recover. He stated that he was elected as secretary to a "long-established meeting in May of 1997." (Resp. Ex. A, pp. 4-6)

    Mr. Dickens further stated that he suffers from "a long history of agonizing physical symptoms brought on by repeated injuries[,]" and that he underwent lower back operations in 1991 and 1996. He said that family pressures required him to work overtime which exacerbated his ailments. Mr. Dickens further wrote that he began using alcohol and prescription narcotics for pain suppression and to help him sleep. Moreover, Mr. Dickens wrote that he did not want anyone at his workplace to discover the extent of his physical problems, and that he therefore limited his requests for prescription medication.

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Mr. Dickens wrote, "Consequently, I begged, borrowed and then finally stole to maintain my habit." (Resp. Ex. A, p. 5)

Mr. Dickens wrote further that he has continued to have symptoms, and will require a third surgery that will entail "scar tissue removal, further disc material excision, a lumbar fusion at two levels and probable insertion of orthopedic hardware in the spine." (Resp. Ex. A, p. 6)

13. In his January 14, 1998, written statement in lieu of live testimony, Mr. Dickens wrote, "I not only broke the law but I disrupted lives, ended personal and professional relationships and darkened my own self-image with a heavy dose of moral degradation. I do not feel sorry for myself. I do feel genuine remorse for all of those who once sincerely trusted me." Mr. Dickens further wrote that chemical dependency is a sinister and insidious condition. He stated that he had succumbed to it even though he was aware of his strong family history of substance abuse, and even though he had had an opportunity to care for patients who suffered from drug and alcohol related health problems. In addition, Mr. Dickens wrote that his substance abuse problem had been triggered by serious and painful physical problems. Further, Mr. Dickens wrote that his physical disabilities have prevented him from working, and that he had made a moral decision not to return to work as a physician assistant until the Board grants its approval. Finally, Mr. Dickens wrote that he believes that, as a recovering health care professional, he has a lot to offer, and asked for the Board's understanding and forgiveness. (Resp. Ex. A, pp. 2-3)

FINDINGS OF FACT

The evidence is sufficient to support the following Findings:

1. On or about March 24, 1996, James C. Dickens, P.A., performed a preadmission screening of Patient 1, a 72-year-old female. The preadmission screening was performed in anticipation of planned cataract surgery. While Mr. Dickens performed this screening, he noticed that Patient 1's chart reflected prior prescriptions for Tylenol No. 3, a Scheduled III controlled substance containing codeine. That same afternoon, Mr. Dickens visited Patient 1's apartment intending to take any Tylenol No. 3 that he could find. To explain his visit, Mr. Dickens used the pretext of logging all of Patient 1's medications in order to complete the preadmission screening.

   While inspecting Patient 1's medication, Mr. Dickens, using a ruse, switched non-narcotic Tylenol for Patient 1's Tylenol No. 3. Moreover, Mr. Dickens, through deception, took Patient 1's prescription bottle for Tylenol No. 3, intending to have the prescription refilled for his own personal consumption. After leaving Patient 1's apartment, Mr. Dickens presented to a pharmacy to obtain a refill of 60 tablets of Tylenol No. 3, using Patient 1's prescription bottle, and told the pharmacist that he would return the following day to pick it

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up. Finally, on or about March 25, 1996, Mr. Dickens presented to the pharmacy to pick up the medication, and signed Patient 1's name on the pharmacy's prescription receipt log.

2. By judgment entry dated December 26, 1996, the Lakewood Municipal Court in Lakewood, Ohio, accepted Mr. Dickens' plea of no contest and found him guilty of violation of Section 2923.02, Ohio Revised Code, as that section applies to Section 2925.11, Ohio Revised Code, "Attempted Drug Abuse."

CONCLUSIONS OF LAW

1. As set forth in Findings of Fact 1, above, the acts, conduct, and/or omissions of James C. Dickens, P.A., individually and/or collectively, constitute "[s]oliciting patients or publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4730.25(B)(8), Ohio Revised Code.

2. As set forth in Findings of Fact 1, above, the acts, conduct, and/or omissions of Mr. Dickens, 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 used in Section 4730.25(B)(12), Ohio Revised Code, to wit: Sections 2925.22(A) and (B)(2), Deception to Obtain a Dangerous Drug.

3. As set forth in Findings of Fact 2, above, the acts, conduct, and/or omissions of Mr. Dickens, individually and/or collectively, constitute "a plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice," as that clause is used in Section 4730.25(B)(13), Ohio Revised Code, to wit: Section 2923.02, Ohio Revised Code, as that section applies to Section 2925.11, Ohio Revised Code, "Attempted Drug Abuse."

4. As set forth in Findings of Fact 2, above, the acts, conduct, and/or omissions of Mr. Dickens, individually and/or collectively, constitute "a plea of guilty to or a judicial finding of guilt of violating any state or federal law regulating the possession, distribution, or use of any drug," as that clause is used in Section 4730.25(B)(17), Ohio Revised Code.

* * * * *

Mr. Dickens presented mitigating evidence that, in an attempt to medicate painful and debilitating physical problems, he became dependent upon codeine and alcohol. In addition, Mr. Dickens presented evidence that he is committed to his recovery. Moreover, Mr. Dickens acknowledged his wrongdoing, and eloquently stated that he is truly remorseful for his behavior. Nevertheless, the State's evidence depicted conduct that was shocking and unprofessional, and which constituted a disturbing intrusion into a patient's privacy. The severity of this conduct outweighs the mitigating evidence that was presented.

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PROPOSED ORDER

It is hereby ORDERED that the certificate of registration of James C. Dickens, P.A., as a physician assistant in the State of Ohio shall be PERMANENTLY REVOKED.

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

R. Gregory Porter
Attorney Hearing Examiner

State Medical Board of Ohio

EXCERPT FROM THE DRAFT MINUTES OF APRIL 8, 1998

REPORTS AND RECOMMENDATIONS

Dr. Buchan announced that the Board would now consider the findings and orders appearing on the Board's agenda.

Dr. Buchan asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Tonya N. Croak; Hans Zwart, M.D. & Associates, Inc.; Carl Elgin Grinstead, II, M.D.; Sam Hill, D.O.; James L. Kegler, M.D.; Jeffrey E. Burwell, P.A.; and James C. Dickens, P.A. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Somani	- aye
	Mr. Sinnott	- aye
	Ms. Noble	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye
	Dr. Buchan	- aye

Dr. Buchan 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. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Somani	- aye
	Mr. Sinnott	- aye
	Ms. Noble	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye
	Dr. Buchan	- aye

In accordance with the provision in Section 4731.22(C)(1), 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.

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

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

.....

JAMES C. DICKENS, P.A.

.....

DR. BHATI MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JAMES C. DICKENS, P.A. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- nay
	Dr. Heidt	- nay
	Dr. Somani	- aye
	Mr. Sinnott	- aye
	Ms. Noble	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye
	Dr. Buchan	- aye

The motion carried.

STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614)466-3934

November 12, 1997

James C. Dickens, P.A.
1293 Westlake Avenue
Lakewood, OH 44107

Dear Mr. Dickens:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, or suspend your certificate of registration as a physician assistant, refuse to issue or reinstate your certificate, or to reprimand you or place you on probation for one or more of the following reasons:

1. On or about March 24, 1996, you performed a preadmission screening of Patient 1 (as identified on the attached Patient Key-Key confidential and not subject to public disclosure) at about 9:00 a.m. at Lakewood Hospital. You noticed that Patient 1's chart reflected prior prescriptions for Tylenol with Codeine No. 3, a Schedule III controlled substance. That same afternoon, you traveled to Patient 1's home with the intent to take any Tylenol with Codeine No. 3 that you could find. Upon arrival at Patient 1's home on March 24, 1996, you, using a ruse, switched non-narcotic Tylenol for Patient 1's Tylenol with Codeine No. 3. You also, through deception, took Patient 1's prescription bottle for Tylenol with Codeine No. 3. Then on March 25, 1996, you refilled that prescription for 60 tablets of Tylenol with Codeine No. 3. To obtain the refill of the Tylenol with Codeine No. 3 prescription, you signed Patient 1's name on a receipt.

2. By judgment entry dated December 26 1996, the Lakewood Municipal Court in Lakewood, Ohio, accepted your plea of no contest and found you guilty of Sections 2923.02 and 2925.11, Ohio Revised Code, Attempted Drug Abuse.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "(s)oliciting patients or publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4730.25(B)(8), Ohio Revised Code.

Further, 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 used in Section 4730.25(B)(12), Ohio Revised Code, to wit: Sections 2925.22 (A) and (B)(2), Deception to Obtain a Dangerous Drug.

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Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute "a plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice", as that clause is used in Section 4730.25(B)(13), Ohio Revised Code, to wit: Sections 2925.11, Possession of Drugs.

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute "trafficking in drugs, or a plea of guilty to or a judicial finding of guilt of violating any state or federal law regulating the possession, distribution, or use of any drug" as that clause is used in Section 4730.25(B)(17), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that 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 (30) 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 or suspend your certificate of registration as a physician assistant, refuse to issue or reinstate your certificate or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Thomas E. Gretter, M.D.
Secretary

TEG/par
Enclosures

CERTIFIED MAIL #P 152 984 780
RETURN RECEIPT REQUESTED