



# State Medical Board of Ohio

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March 13, 2002

Thomas A. Hunter, P.A.  
9511 Sweetwater Court  
New Haven, IN 46774

Dear Mr. Hunter:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on March 13, 2002, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO

Anand G. Garg, M.D.  
Secretary

AGG:jam  
Enclosures

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5146 4397  
RETURN RECEIPT REQUESTED

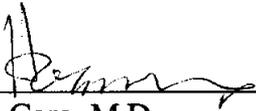
Cc: Anne Marie Sferra Vorys and James F. Flynn, Esqs.  
CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5146 4380  
RETURN RECEIPT REQUESTED

*Mailed 3-26-02*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on March 13, 2002, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Thomas A. Hunter, 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)

March 13, 2002  
\_\_\_\_\_  
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF

\*

\*

THOMAS A. HUNTER, P.A.

\*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on March 13, 2002.

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

It is hereby ORDERED that:

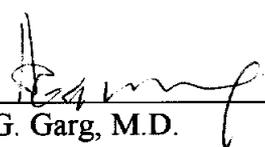
- A. **SUSPENSION, PARTIALLY STAYED:** The certificate of Thomas A. Hunter, P.A., to practice as a physician assistant in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than one year. All but fifteen (15) days of the suspension is **STAYED**.
  
- B. **PROBATION:** Upon reinstatement or restoration, Mr. Hunter's certificate shall be subject to the following **PROBATIONARY** terms, conditions, and limitations for a period of at least three years:
  - 1. **Modification of Terms:** Mr. Hunter shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.
  
  - 2. **Obey the Law:** Mr. Hunter shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.

3. **Declarations of Compliance:** Mr. Hunter shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
4. **Personal Appearances:** Mr. Hunter shall appear in person for quarterly interviews before the Board or its designated representative, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
5. **Tolling of Probationary Period While Out of State:** In the event that Mr. Hunter should leave Ohio for three consecutive months, or reside or practice outside the State, Mr. Hunter must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.
6. **Record Services Provided by Physician Assistant:** Mr. Hunter shall document with specific detail in the patient medical record the services he provides. Mr. Hunter shall ensure that these records are available to the Board upon request.
7. **Examination on Law Relating to Practice of Physician Assistants:** Before the end of the first year of probation, or as otherwise approved by the Board, Mr. Hunter shall take and pass an examination to be administered by the Board or its designee related to the content of the Revised Code and the Administrative Code relating to the practice of physician assistants in Ohio.
8. **Refrain From Teaching Physician Assistants:** Mr. Hunter shall refrain from teaching physician assistants, unless otherwise determined by the Board.
9. **Violation of Terms of Probation:** If Mr. Hunter violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may set aside the stay order and impose the one year suspension of Mr. Hunter's certificate.

- C. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Mr. Hunter's certificate will be fully restored.
- D. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Mr. Hunter shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Mr. Hunter shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
- E. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Mr. Hunter shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Mr. Hunter shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration or restoration of any professional license. Further, Mr. Hunter shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.

This Order shall become effective thirty days from the date of mailing of notification of approval by the Board.

(SEAL)

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

March 13, 2002  
\_\_\_\_\_  
Date

**REPORT AND RECOMMENDATION  
IN THE MATTER OF THOMAS A. HUNTER, P.A.**

The Matter of Thomas A. Hunter, P.A., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio, on October 1 through 5, 9, 18, 19, and 24, 2001.

**INTRODUCTION**

**I. Basis for Hearing**

A. By letter dated June 13, 2001, the State Medical Board of Ohio [Board] notified Thomas A. Hunter, P.A., that it had proposed to take disciplinary action against his certificate to practice as a physician assistant in Ohio. The Board based its proposed action on allegations relating to Mr. Hunter's practice as a physician assistant under the terms of a supervision agreement between Mr. Hunter and James Harold Gray, Jr., D.O. The Board alleged that Mr. Hunter's conduct constitutes:

- “[f]ailure to practice in accordance with the conditions under which the supervising physician’s supervision agreement with the physician assistant was approved, including the requirement that when practicing under a particular supervising physician, the physician assistant must practice only according to the standard or supplemental utilization plan the board approved for that physician,” as that clause is used in Section 4730.25(B)(1), Ohio Revised Code.
- “[f]ailure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board,” as that clause is used in Section 4730.25(B)(2), Ohio Revised Code, to wit: Section 4730.02(F), Ohio Revised Code.
- “[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4730.25(B)(15), Ohio Revised Code, to wit: Section 4730.02(F), Ohio Revised Code. Pursuant to Section 4730.99, Ohio Revised Code, violation of Section 4730.02, Ohio Revised Code, constitutes a misdemeanor offense.

- “[f]ailure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board,” as that clause is used in Section 4730.25(B)(2), Ohio Revised Code, to wit: Rule 4731-4-03(C), Ohio Administrative Code, as in effect prior to September 1, 2000.
- “[f]ailure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board,” as that clause is used in Section 4730.25(B)(2), Ohio Revised Code, to wit: Rule 4731-4-04(C), Ohio Administrative Code.
- “[f]ailure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board,” as that clause is used in Section 4730.25(B)(2), Ohio Revised Code, to wit: Rule 4731-4-02(A), Ohio Administrative Code, as in effect prior to September 1, 2000.
- “[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: Section 4729.51(C), Ohio Revised Code, Persons who may sell, purchase, distribute, or deliver dangerous drugs.
- “[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: 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.

Accordingly, the Board advised Mr. Hunter of his right to request a hearing in this matter. (State’s Exhibit 5F).

- B. On July 11, 2001, James F. Flynn, Esq., submitted a written hearing request on behalf of Mr. Hunter. (State’s Exhibit 5G).

## II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Mary K. Crawford, Assistant Attorney General.
- B. On behalf of the Respondent: Anne Marie Sferra Vorys and James F. Flynn, Esqs.

## EVIDENCE EXAMINED

### I. Testimony Heard

#### A. Presented by the State

1. James Harold Gray, Jr., D.O., as on cross-examination
2. Thomas A. Hunter, P.A., as on cross-examination
3. Larry Wayne Thornhill
4. Kelly Sherry, L.P.N.
5. Michael S. Baggish, M.D.
6. Jeanette Brooks
7. Rose Monger, R.N.
8. Patricia Madison, R.N.
9. Cathy Hacker

#### B. Presented by the Respondent

1. Mother of Patients 2 and 3
2. Thomas A. Hunter, P.A.
3. Joel Mariotti
4. David Derck
5. Lori Lynn Hockenberry
6. Fred Abramovitz, M.D.
7. Gary Wayne Adkins
8. David Eugene Bagley
9. Cathy Hacker
10. James Harold Gray, Jr., D.O.
11. David Paul Schlueter, M.D.
12. Brian L. Bachelder, M.D.
13. Jeffrey Dale Bachtel, M.D.

### II. Exhibits Examined

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

#### A. Presented by the State

- \* 1. State's Exhibits 1, 2, and 3: Copies of medical records maintained by Dr. Gray for Patients 1, 2, and 3, respectively.

- \* 2. State's Exhibit 4: Confidential patient key.
3. State's Exhibits 5A through 5AA: Procedural exhibits.
4. State's Exhibit 6: Withdrawn.
5. State's Exhibit 7: Copy of a Physician's Assistant Utilization Request filed with the Board by Dr. Gray in July 1991.
6. State's Exhibit 8: Copy of a Notice of Employment of Physician's Assistant filed in August 1991 by Dr. Gray on behalf of Thomas L. Gemmer, P.A.
7. State's Exhibit 9: Copy of Dr. Gray's July 21, 1999, Physician Assistant Utilization Plan.
8. State's Exhibit 10: Copy of an application for hospital privileges submitted by Mr. Hunter to Paulding County Hospital.
9. State's Exhibits 11, 12, and 13: Redacted copies of minutes from Paulding County Hospital's Medical Staff Executive Committee Meetings held on April 21, September 3, and September 15, 1997, respectively.
10. State's Exhibit 14: Copy of a Paulding County Hospital policy entitled "Students, Physician Assistant - Approved Clinical Rotations and Observer-Only Status" effective September 25, 1997.
11. State's Exhibit 15: Copy of a Physician Assistant Utilization Plan filed with the Board by Dr. Gray on July 21, 1999.
12. State's Exhibit 16: Curriculum vitae of Michael Simeon Baggish, M.D.
13. State's Exhibit 17: Withdrawn.
14. State's Exhibit 18: Diagram of the procedure used to perform a circumcision.
15. State's Exhibits 19 and 20: Excerpts regarding circumcision from *Taber's Cyclopedic Medical Dictionary* and *Mosby's Medical, Nursing, and Allied Health Dictionary*.
16. State's Exhibit 21: A leaflet entitled, "Circumcision: Information for Parents," produced by the American Academy of Pediatrics.

17. State's Exhibit 22: Withdrawn.
18. State's Exhibit 23: Copy of a transcript of an April 13, 2001, deposition of Mr. Hunter.
19. State's Exhibits 24, 25 and 26: Copies of documents pertaining to Dr. Gray's 1991 Physician's Assistant Utilization Request.
20. State's Exhibit 27: Copy of a transcript of an April 13, 2001, deposition of Dr. Gray.
21. State's Exhibit 28: Excerpt of testimony provided by Brian L. Bachelder, M.D., before an unrelated Board hearing.

B. Presented by the Respondent

1. Respondents' Exhibit A: Map of Paulding County, Ohio, and vicinity.
2. Respondents' Exhibit B: Copy of a February 2, 2000, letter to Mr. Hunter from Larry W. Thornhill, Chief Executive Officer of Paulding County Hospital.
- \* 3. Respondents' Exhibit C: Copy of a signed Consent for Invasive Medical Procedure pertaining to the circumcision of Patient 2.
4. Respondents' Exhibit D: Copy of a June 27, 2000, letter to Dr. Gray from the Medical Executive Committee of Paulding County Hospital.
5. Respondents' Exhibit E: Copy of a June 27, 2000, letter to Mr. Hunter from the Medical Executive Committee of Paulding County Hospital.
6. Respondents' Exhibit F: Copy of a September 6, 2000, letter to Mr. Hunter from Mr. Thornhill.
7. Respondents' Exhibit G: Copy of a September 6, 2001, expert report by Fred Abramovitz, M.D.
8. Respondents' Exhibit H: Copy of a September 10, 2001, expert report by Jeffrey D. Bachtel, M.D.
9. Respondents' Exhibit I: Copy of an undated expert report by Brian L. Bachelder, M.D.

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10. Respondents' Exhibit J: Curriculum vitae of Dr. Gray.
11. Respondents' Exhibit K: Curriculum vitae of Dr. Abramovitz.
12. Respondents' Exhibit L: Curriculum vitae of Dr. Bachtel.
13. Respondents' Exhibit M: Curriculum vitae of Dr. Bachelder.
14. Respondents' Exhibit N: Copy of an April 10, 2001, letter confirming the designation of Paulding County as a Primary Medical Care Health Professional Shortage Area.
15. Respondents' Exhibit O: Copy of a document entitled "Physician Assistant Information - Important Notice."
16. Respondents' Exhibit P: Excerpt from the Board's current Standard Physician Assistant Utilization Plan.
17. Respondents' Exhibit Q: Affidavit of Mr. Gemmer. See Proffered Exhibits, below.
- \* 18. Respondents' Exhibit R-1: Proffered. See Proffered Exhibits, below.
19. Respondents' Exhibit R-2: September 17, 2001, affidavit of David P. Schlueter, M.D., as redacted. See Proffered Exhibits, below.
20. Respondents' Exhibits S through Z: Letters of support written on behalf of Dr. Gray.
21. Respondents' Exhibit AA: Videotape of a news documentary pertaining to Dr. Gray as a rural family practitioner. (Note: Exhibit will be maintained in the Board's offices for review by Board members.)
22. Respondents' Exhibit BB: Copy of a September 20, 2001, memorandum by Dr. Abramovitz responding to the expert report of Dr. Baggish.
23. Respondents' Exhibit CC: Copy of a subpoena *duces tecum* issued to Cathy Hacker.
24. Respondents' Exhibit DD: Copy of a June 8, 2001, request for an Ohio Department of Health J-1 Visa Waiver for Virginia Halachanova, M.D., sponsored by Paulding County Hospital.

25. Respondents' Exhibit EE: Copy of the September 18, 2001, Ohio Department of Health J-1 Visa Waiver Physician Sponsorship Policy.
26. Respondents' Exhibit FF: Chart of Physicians and other Health Professional Placements by the Primary Care and Rural Health Program from 1995 to 2000.
27. Respondents' Exhibit GG: Copy of a January 31, 2001, Ohio Department of Health request for designation of Paulding County as a Primary Care Health Professional Shortage Area.
28. Respondents' Exhibit HH: Copy of a September 27, 2001, letter from the Board to State Senator Lynn R. Wachtmann, with attached letter to the Board from Sen. Wachtmann.
29. Respondents' Exhibit II: Copy of a Paulding County Hospital policy entitled "Students, Physician Assistant - Approved Clinical Rotations" revised in May 1999.
30. Respondents' Exhibit JJ: Copy of a Paulding County Hospital policy entitled "Students, Physician Assistant - Approved Clinical Rotations" revised in March 2001.
31. Respondents' Exhibit KK: Copy of a March 3, 1998, letter to Dr. Gray from the Lutheran College of Health Professions regarding Mr. Hunter.
32. Respondents' Exhibit LL: University of Saint Francis Physician Assistant Rotation Guidelines for Family Medicine.
33. Respondents' Exhibit MM: University of Saint Francis Physician Assistant Rotation Guidelines for Obstetrics & Gynecology.
34. Respondents' Exhibit NN: Copy of a June 26, 2000, letter to Ms. Hacker from Dr. Gray requesting that Mr. Hunter be granted approval for assisting in surgery.
35. Respondents' Exhibit OO: Copy of a June 26, 2000, letter to Ms. Hacker from Dr. Gray informing the Board of Dr. Gray's absence from his office.
36. Respondents' Exhibit PP: Copy of the Board's May 13, 1998, Delegation of Medical Tasks position paper.

37. Respondents' Exhibit QQ: Summary of financial and admitting statistics for Paulding County Hospital.
38. Respondents' Exhibit RR: Copies of Board meeting minutes and other documents pertaining to the approval of tasks to be performed by physician assistants.

C. Presented by the Attorney Hearing Examiner

- \* Board Exhibit A: Proffered. See Proffered Exhibits, below.

D. Presented by the Parties Post-Hearing

1. Presented by the State

- a. State's Exhibit 29: State's Response to Respondents' Motion to Supplement the Record, filed November 19, 2001.
- b. State's Exhibit 30: State's Closing Argument, filed November 28, 2001.
- c. State's Exhibit 31: State's Reply to Respondents' Post-Trial Brief/Closing Argument, filed December 18, 2001.

2. Presented by the Respondent

- a. Respondents' Exhibit SS: Undated letter to Respondent's counsel from Gary Adkins, Chief Executive Officer, Paulding County Hospital, indicating that Dr. Evarista Nnadi had tendered her resignation effective February 1, 2002.
- b. Respondents' Exhibit TT: Respondents' Motion to Supplement the Record, filed November 12, 2001.
- c. Respondents' Exhibit UU: Post-Hearing Brief of Respondents, filed December 13, 2001.

### PROFFERED EXHIBITS

1. Respondents' Exhibit Q: The Respondents moved for admission of a September 6, 2001, affidavit of Thomas Gemmer, R.N., P.A. The State objected to its admission if for the truth

- of the matters asserted. The Hearing Examiner sustained the State's objection, but agreed to admit the exhibit for the limited purpose of reviewing it as a document relied upon by the Respondents experts. The Attorney Hearing Examiner further agreed, however, to proffer the document for the truth of the statements contained therein. (See Hearing Transcript at 1341-1347). Should the Board choose to do so, however, the Board may vote to overrule the decision of the Hearing Examiner, and admit Respondents' Exhibit Q into evidence without restriction.
2. Respondents' Exhibit R-1: Mr. Hunter moved for admission of a September 17, 2001, affidavit of David P. Schlueter, M.D. The State objected to admission of portions of the exhibit as these portions contain expert opinion and Mr. Hunter had not provided the State with an expert report prior to hearing. The Hearing Examiner sustained the State's objection, and agreed to strike those portions of the affidavit. The redacted copy of the exhibit was admitted to the record, and the original was proffered on behalf of Mr. Hunter. (See Respondents' Exhibit R-2; Hearing Transcript at 1348-1349). Should the Board choose to do so, however, the Board may vote to overrule the decision of the Hearing Examiner, and admit Respondents' Exhibit R-1 into evidence.
  3. Board Exhibit A: At hearing, the parties agreed that certain testimony should be stricken from the record. Accordingly, the parties obtained excerpts from the transcript and jointly marked the portions that they desired to be stricken. Post-hearing, the Hearing Examiner made the redactions from the record. Board Exhibit A contains the excerpts from the transcript with the parties' jointly-made markings indicating the portions that they desired to have stricken.

### PROCEDURAL MATTERS

1. On June 13, 2001, the Board issued notices of opportunity for hearing to Mr. Hunter and to James Harold Gray, Jr., M.D. Both requested a hearing. In addition, both requested consolidation of the matters because the allegations in each notice of opportunity were substantially similar. The State did not object to consolidation. Accordingly, by Entry dated July 20, 2001, the Hearing Examiner granted the Respondents' motions to consolidate for purposes of the administrative hearing. (See State's Exhibits 5B, 5E and 5G).
2. On September 19, 2001, Mr. Hunter filed a request for subpoenas and subpoenas *duces tecum*. One of Mr. Hunter's requests asked that Cathy Hacker, an employee of the Board, produce various documents related to Mr. Hunter, Dr. Gray, and/or physician assistant policies and procedures. On September 25, 2001, the State filed a Motion to Quash Subpoena Request in Part, arguing that a number of the documents requested were confidential pursuant to statute. By Entry dated September 27, 2001, the Hearing Examiner

granted the State's motion "to the extent that the documents requested [were] confidential pursuant to Section 4731.22(F)(5) of the Revised Code." (See State's Exhibits 5W, 5X, and Respondents' Exhibit CC).

On September 28, 2001, Mr. Hunter filed a Memorandum Contra of Dr. Gray and Mr. Hunter To State's Motion to Quash Subpoena or, in the Alternative, Motion for Reconsideration. The Hearing Examiner denied Mr. Hunter's motion. (See State's Exhibit 5Z and Hearing Transcript at 1357-1358).

3. The allegations in this matter involve two infant males. The notice of opportunity for hearing issued to Mr. Hunter identifies the infants as Patient 1 and Patient 2. (See State's Exhibit 5F). Moreover, the notice of opportunity for hearing issued to Dr. Gray identifies the infants as Patient 2 and Patient 3 (See State's Exhibit 5A). Finally, the Confidential Patient Key identifies both infants as Patient 2. (See State's Exhibit 4).

Therefore, to minimize confusion and to maintain consistency between the reports and recommendations for Mr. Hunter and Dr. Gray, Patients 1 and 2, as identified in the notice of opportunity for hearing issued to Mr. Hunter, have been identified as Patients 2 and 3, respectively, throughout the hearing record and in this report and recommendation.

4. With the agreement of the parties, the Hearing Examiner stated that she would strike from the hearing transcript the following testimony:
  - a. The last name of the mother of Patients 2 and 3. (See Hearing Transcript at 523-524, 1360-1361).
  - b. Portions of Mr. Thornhill's testimony from pages 232 through 242. (See Hearing Transcript at 1360-1361. See also Proffered Exhibits, paragraph 3).
  - c. Portions of Dr. Gray's testimony from pages 1131 and 1132. (See Hearing Transcript at 1360-1361. See also Proffered Exhibits, paragraph 3).
5. For each volume of the transcript, there is a corresponding condensed transcript. In all but one of the nine volumes, the pages are numbered identically in the original transcript and in the condensed transcript. In Volume VI, however, the pages are not numbered identically. Accordingly, for each citation to Volume VI, a citation to the original transcript and to the condensed transcript has been provided.
6. At the close of the hearing, the parties agreed to submit written closing arguments, and the hearing record was held open for that purpose. Pursuant to a schedule set forth by the Hearing Examiner, the final written argument was filed on December 18, 2001. The hearing record closed at that time. (See Hearing Transcript at 1362-1363).

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Nevertheless, the hearing record was reopened to admit an oral stipulation of the parties. (See paragraph 7, below). The hearing record closed again on February 8, 2002.

7. On January 31, 2002, the Hearing Examiner initiated a telephone conference with counsel for the parties. At that time, the Hearing Examiner asked the parties to consider the allegations made in the notice of opportunity for hearing which pertained to Section 4731.41, Ohio Revised Code, "Practice of medicine or surgery without certificate," in light of Section 4731.43, Ohio Revised Code, "Practice of osteopathy without certificate."

On February 8, 2002, counsel for the parties contacted the Hearing Examiner. Counsel for the parties advised that they were waiving any objection to the potential misapplication of Section 4731.41, Ohio Revised Code. The hearing record was reopened to admit the parties' oral stipulation, and closed again on February 8, 2002.

### SUMMARY OF THE EVIDENCE

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

#### **Thomas A. Hunter, P.A.**

1. Thomas A. Hunter, P.A., testified that he lives in New Haven, Indiana, which is a suburb of Fort Wayne. He is employed as a physician assistant by James Harold Gray, Jr., D.O., in Antwerp, Ohio. Mr. Hunter testified that Antwerp is approximately thirty minutes from his home. (Hearing Transcript [Tr.] at 546-547).

Mr. Hunter testified that he had graduated from Indiana University in 1983 with a bachelor degree in respiratory therapy. Thereafter, Mr. Hunter attended the Lutheran College in Fort Wayne, Indiana, to learn physician assisting. Midway through his courses, the Lutheran College was purchased by the University of St. Francis. Mr. Hunter stated that he completed a two year program that led to a bachelor degree. In 1999, Mr. Hunter graduated with a bachelor degree in physician assisting. (Tr. at 549, 561).

Mr. Hunter testified that, during his physician assistant training, he had completed eleven rotations which included family practice, internal medicine, emergency medicine, pediatrics, surgery, OB-GYN, and psychiatry. He stated he had completed three rotations with Dr. Gray. Each rotation was a calendar month. He also completed a surgical rotation with a physician in Indiana. (Tr. at 550; Respondent's Exhibits [Resp. Exs.] KK, LL, MM).

Mr. Hunter testified that he had started working with Dr. Gray as a physician assistant student in October 1998. Thereafter, Mr. Hunter started working for Dr. Gray on a part-time basis when he received his temporary license in September 1999. Finally, Mr. Hunter started working for Dr. Gray as a physician assistant on a full-time basis in November 1999, after Mr. Hunter completed his physician assistant board examinations. (Tr. at 137, 564-565, 606-607).

**James Harold Gray, Jr., D.O.**

2. Dr. Gray testified that he had received a doctor of osteopathic medicine degree from the New York College of Osteopathic Medicine–New York Institute of Technology in Old Westbury, New York, in 1983. In 1984, Dr. Gray completed a rotating internship at Massapequa General Hospital in Seaford, New York. From 1984 through 1985, Dr. Gray participated in a residency at Doctors Hospital in Columbus, Ohio. (Tr. at 983, 988-990; Resp. Ex. J).

Dr. Gray practices in a solo practice in Antwerp, Ohio, which is located in Paulding County. Dr. Gray testified that he practices family medicine, including pediatrics and obstetrics, in a very rural area of Ohio. Dr. Gray testified that he also performs surgery, including cesarean sections, tubal ligations, emergency appendectomies, colonoscopies, endoscopies, and obstetric and gynecologic surgeries. Dr. Gray stated that he also sees patients in their homes and in nursing homes. (Tr. at 19, 21; Resp. Ex. J).

Dr. Gray is licensed to practice osteopathic medicine and surgery in Ohio and in Indiana. He was board certified in 1985 by the American Osteopathic Board of Family Physicians. Dr. Gray testified that if a physician is board certified in family practice, the physician is board certified for life. Nevertheless, Dr. Gray testified that he has voluntarily retaken his boards to assure that he remains “up to snuff.” (Tr. at 19, 990-991; Resp. Ex. J).

**Expert Witnesses**

3. Michael S. Baggish, M.D. testified at hearing, by telephone, on behalf of the State. Dr. Baggish testified that he is employed at the Department of Gynecology and Obstetrics at Good Samaritan Hospital in Cincinnati, Ohio. He received his medical degree from the University of Louisville in 1961. Thereafter, Dr. Baggish went to The Johns Hopkins Hospital in Baltimore, Maryland. Dr. Baggish participated in a surgical residency for one year. Subsequently, he transferred to a program in obstetrics and gynecology and completed that program in 1968. During his residency, from 1965 to 1966, Dr. Baggish was a Fellow of the American Cancer Society and worked in Singapore studying cardio-carcinoma. (Tr. at 283-284; State’s Exhibit [St. Ex.] 16).

After finishing his residency, Dr. Baggish served as a Commander at the United States Navy Hospital at Portsmouth, Virginia, for two years. He then returned to The John Hopkins Hospital as an assistant professor of obstetrics and gynecology. In 1972, Dr. Baggish went to Hartford, Connecticut, as the Chief of OB-GYN at Mount Sinai Hospital and as an associate professor of OB-GYN at the University of Connecticut. In 1973, he went to Syracuse, New York, as a professor and chairman of the Department of Obstetrics and Gynecology at the State University of New York Health Science Center in Syracuse. In 1991, Dr. Baggish went to London, England, to the St. Georges Medical School for a sabbatical in urogynecology. (Tr. at 284-285; St. Ex. 16).

In 1993, Dr. Baggish accepted positions as Chairman of the Department of OB-GYN at Good Samaritan Hospital in Cincinnati, Ohio, and as professor at the University of Cincinnati. He has remained in those positions since that time. (Tr. at 284-285; St. Ex. 16).

Dr. Baggish is a diplomate of the American Board of Obstetrics and Gynecology and a fellow of the American College of Surgeons and the American College of Obstetricians and Gynecologists. Dr. Baggish has authored and co-authored a number of textbooks in obstetrics and gynecology. (St. Ex. 16).

4. Fred Abramovitz, M.D., testified at hearing, by telephone, on behalf of Mr. Hunter. Dr. Abramovitz received his medical degree from The Ohio State University College of Medicine in 1973. He completed a residency in obstetrics and gynecology at the University of North Carolina in 1977. Dr. Abramovitz is certified by the American Board of Obstetrics and Gynecology. (Tr. at 739-741; Resp. Ex. K).

After completing his residency, Dr. Abramovitz entered a private group practice in Columbus, Ohio. He also accepted a position as the Director of Medical Education at Grant Hospital, which is a teaching program affiliated with The Ohio State University. As the Director of Medical Education, Dr. Abramovitz was responsible for curriculum preparation in obstetrics and gynecology, teaching obstetrics and gynecology to OB-GYN and family practice residents, and supervising a faculty of fifteen other OB-GYN physicians. (Tr. at 739-741; Resp. Ex. K).

After ten years in that position, Dr. Abramovitz resumed full time private practice in Columbus. He has privileges at Grant Hospital, Mount Carmel East Hospital and East Side Surgery Center, all located in Columbus. Dr. Abramovitz works with a nurse practitioner. (Tr. at 739-740; Resp. Ex. K).

5. Brian L. Bachelder, M.D., testified at hearing on behalf of Mr. Hunter. Dr. Bachelder received a medical degree from the University of Cincinnati College of Medicine in 1981. In 1984, he completed a residency in family practice at the University of Minnesota. The following year, Dr. Bachelder completed a master's degree in family practice at the

University of Minnesota. He is certified by the American Board of Family Physicians. (Tr. at 1174-1176; Resp. Ex. M).

Dr. Bachelder has practiced in Mount Gilead, Ohio, in Morrow County, since 1984. Dr. Bachelder testified that Morrow County is a rural county with a population of approximately 30,000. He stated that Mount Gilead has a population of 3,000, and is designated as a medically underserved area. (Tr. at 1178, 1181).

Dr. Bachelder testified that he cares for patients from birth to death. His practice includes obstetrics and newborn care. Dr. Bachelder also performs circumcisions, performs minor surgeries in his office, and assists in major surgeries at the hospital. Furthermore, Dr. Bachelder employs a physician assistant. He testified that his physician assistant does not participate in any obstetric cases. (Tr. at 1179, 1189-1190).

Dr. Bachelder further testified that he had provided testimony before the Board during hearings on revisions to rules governing physician assistants. Dr. Bachelder stated that he had testified at a Board rules hearing on behalf of the Ohio Academy of Family Physicians. (Tr. at 1189).

6. Jeffrey Dale Bachtel, M.D., testified at hearing on behalf of Mr. Hunter. Dr. Bachtel received a medical degree from the Northeastern Ohio Universities College of Medicine in 1981. In 1984, Dr. Bachtel completed a family practice residency at Akron General Medical Center in Akron, Ohio. Dr. Bachtel is certified by the American Academy of Family Physicians. Furthermore, he is currently the vice-president of the Ohio Academy of Family Physicians. (Tr. at 1275-1277; Resp. Ex. L).

Since 1984, Dr. Bachtel has maintained a private practice in Tallmadge, Ohio. Dr. Bachtel testified that he employs two physician assistants. He stated that he utilizes his physician assistants exclusively in the office. (Tr. at 1278-1279).

Dr. Bachtel testified that he had testified before the Board when the current physician assistant rules were being considered. He testified on behalf of the Ohio Academy of Family Physicians and as a liaison to the Ohio Association of Physician Assistants. (Tr. at 1289).

### **Paulding County**

7. Antwerp, Ohio, where Dr. Gray and Mr. Hunter practice, is located in Paulding County. Paulding County is located in northwest Ohio, along Ohio's border with Indiana. (Resp. Ex. A).

8. Joel Mariotti testified at hearing, pursuant to subpoena, on behalf of Mr. Hunter. Mr. Mariotti is the Program Administrator for the Ohio Department of Health. He is responsible for the Office of Primary Care and Rural Health, which is part of the Bureau of Community Health Services and Systems Development. (Tr. at 657-658).

Mr. Mariotti testified that the Office of Primary Care and Rural Health is comprised of approximately thirteen programs. Part of the office's responsibilities are directed to the provision of primary care in the State of Ohio. Among those programs is the Office of Primary Care, which includes the Division of Shortage Designation which is responsible for determining health professional shortage areas. The functions of the Office of Primary Care and Rural Health that focus on delivery of primary care also include the Primary Care Search Program, which finds clinical rotations in underserved areas for second and third year medical students. Finally, the primary care focus of the Office of Primary Care and Rural Health includes the National Health Service Corp Scholarship Program and the National Service Loan Repayment Program. (Tr. at 658-659).

Mr. Mariotti further testified that the Office of Primary Care and Rural Health also focuses on rural health issues. Mr. Mariotti testified that these programs include the State Office of Rural Health. The functions of the Office of Primary Care and Rural Health that focus on rural health also include the Critical Access Hospital Program, which is a certification program for rural hospitals. (Tr. at 659).

Mr. Mariotti testified that a "health professional shortage area" [HPSA] is a geographic area defined by a community that wants to have an area so designated. Once a community is designated as a HPSA, the state and federal government can assist the community with placement of health care professionals. The criteria for acceptance into the program are prescribed by the federal government by the Division of Shortage Designation. The designation is based on a number of demographic characteristics. The primary consideration is the physician to population ratio—if an area has few physicians, then it is likely to be designated as a HPSA. Other factors considered include morbidity rate, mortality rate, birth rate, and Medicaid data. In addition, age distribution of the population is considered. Nevertheless, Mr. Mariotti testified that the most important consideration is the physician to population ratio. He stated that it is directed at primary care physicians including, but not limited to, family medicine, internal medicine, obstetrics, and pediatrics. (Tr. at 661-662).

9. Mr. Mariotti testified that, in April 2001, the Division of Shortage Designation had reinstated Paulding County as a HPSA. (Tr. at 665-666; Resp. Ex. GG; Resp. Ex. N). Mr. Mariotti testified that the designation indicates that there is less than one physician per 3,500 residents. (Tr. at 666).

Mr. Mariotti testified that designation as a HPSA allows Mr. Mariotti's office and other offices to assist the area with placement of health professionals. Mr. Mariotti testified that

the National Health Service Corporation allows Mr. Mariotti's agency to place physicians within Paulding County, either scholarship students or loan repayment students, or physician assistants and other allied health professionals. It also allows Mr. Mariotti's agency to place physicians under the Ohio Physicians Loan Repayment Program. Mr. Mariotti explained that the Ohio Physicians Loan Repayment Program requires that ten dollars of each medical license renewal fee be earmarked for this program. In return, the agency forgives loans of physicians who agree to work in HPSAs in Ohio. (Tr. at 666-667).

10. Mr. Mariotti testified that his agency is also responsible for recommending applicants for the J-1 Visa Waiver Program for approval from the Immigration and Naturalization Service in Washington, D.C. Mr. Mariotti testified that the J-1 Visa Waiver Program deals with physicians from foreign countries who desire to remain in the United States. Physicians who receive a J-1 Visa Waiver are permitted to stay in the country for a specified period of time so long as they agree to practice medicine in a HPSA. It is a highly sought-after privilege and each year the number of applicants increases. (Tr. at 667-670; Resp. Ex. JJ).

Mr. Mariotti testified that the goal of these programs is to better allocate the health care professional resources in Ohio. The intent is to help facilitate the placement of physicians, social workers, nurses, nurse practitioners, and physician assistants to underserved parts of the state. He added that the most recent budget bill in Ohio provided for a task force to study the shortage of health care workers. (Tr. at 674-675).

11. Larry Wayne Thornhill testified at hearing on behalf of the State. Mr. Thornhill testified that he was the Chief Executive Officer at Paulding County Hospital from August 1999 through August 2001. He was responsible for the day-to-day operations of the facility. (Tr. at 177-178).

Mr. Thornhill stated that Paulding County is a rural county with an indigent population; he believes the median income is \$19,000 per year. Mr. Thornhill testified that Paulding is one of the poorest counties in the state. He further testified that there are no four-lane roads in Paulding County and travel is difficult. Moreover, growth in Paulding County has been stagnant over the last 125 years. (Tr. at 189-191, 193).

Mr. Thornhill testified that, in 1999, Paulding County Hospital was classified as a fifty-seven bed hospital. Nevertheless, the hospital rarely had more than seven or eight beds occupied at any given time. In January 2001, however, due to financial difficulties, the hospital was converted to a critical access hospital. Converting to a critical access hospital allowed Paulding County Hospital to gain cost-based reimbursement from Medicare. As a result, the hospital became financially viable. (Tr. at 189-191).

Mr. Thornhill testified that a critical access hospital is a concept that resulted from the Balanced Budget Act of 1997. It is a designation by the State that a facility is a rural facility critical to the continued access of care by the residents of that area. Mr. Thornhill testified that, in order to receive designation as a critical access hospital, there must be a significant distance to the next largest hospital, a limited highway system, a certain population served, and a limited number of physicians in the county in relation to the population and remoteness of the area. In addition, there can be no more than twenty-five beds in the hospital. Therefore, Paulding County Hospital chose to decrease its size from fifty-seven to twenty-five beds in order to receive the critical access designation. (Tr. at 192-193).

Mr. Thornhill testified that Paulding County is also a HPSA. He stated that the HPSA designation is unrelated to the critical access area hospital designation. (Tr. at 193-195). Mr. Thornhill testified that one of the criteria for designation as a HPSA area is that the area has previously made and failed at attempts to recruit American-born physicians. (Tr. at 196-198; Resp. Ex. DD). Mr. Thornhill testified that Paulding County Hospital has advertised in magazines; sent representatives to medical schools and open houses; and submitted numerous letters to medical schools, but has received no response. (Tr. at 198).

12. Mr. Thornhill testified that the active medical staff at Paulding County Hospital consists of no specialists. The active medical staff is a group of general practice physicians: Dr. Gray, Dr. Fishbaugh, Dr. Nnadi, Dr. Kuhn, Dr. Robinson and Dr. Teets. (Tr. at 201-203).

Mr. Thornhill stated that Dr. Nnadi has been working in Paulding County through the J-1 Visa Program, and has practiced in the area for six years. Dr. Nnadi is a family practice physician who practices OB as well. He stated that Dr. Nnadi serves a large Medicaid population. (Tr. at 199-203).

Mr. Thornhill further testified that Dr. Kuhn's practice is closed to new patients. Mr. Thornhill believes that Dr. Robinson and Dr. Teets may still be accepting new patients. He concluded, however, that Dr. Gray has the largest practice, in part, because he employs a physician assistant. (Tr. at 202-203).

13. David Randall Derck testified at hearing on behalf of Mr. Hunter. Mr. Derck testified that he was born in Antwerp sixty years ago. He has lived in Antwerp for his entire life. Mr. Derck testified that he is married, has three children, and runs an insurance agency in Antwerp. (Tr. at 688-689; Resp. Ex. U).

Mr. Derck testified that he became active in the Chamber of Commerce more than thirty years ago. The Chamber of Commerce started a Community Improvement Corporation in Antwerp and he has been the president since its inception. Mr. Derck testified that the Community Improvement Corporation is a structure created by the State of Ohio to promote economic and industrial development in the community. Mr. Derck further testified that, in

the early 1990's, the Chamber of Commerce formed another board called the Paulding County Economic Development Board. Mr. Derck is also the president of that board. Mr. Derck testified that the Paulding County Economic Development Board works closely with the commissioners and employs a full time economic developer. (Tr. at 689-691).

Mr. Derck testified that the village of Antwerp is situated approximately two miles from the Indiana border; twenty-five miles from Fort Wayne, Indiana; eighty miles from Toledo; and 120 miles from Columbus. He stated that Antwerp is a very small, rural village, but it is the second largest village in Paulding County. (Tr. at 691).

Mr. Derck testified that the county of Paulding is very rural and depends on farming. There is not much industry. One of the largest employers in the county is Paulding County Hospital. The hospital employs approximately two hundred people. (Tr. at 692).

Mr. Derck testified that the population of Paulding County is aging. He stated that Paulding County offers so little employment that young people who go to college never come back. The people who remain are generally high school graduates and older people who have lived in the county all of their lives. The income level is low to medium. Most of the jobs in the county are minimum wage. In addition, there is a large population of farmers, who have difficulty maintaining an income. (Tr. at 693-694).

Mr. Derck testified that, as part of his commitment to community service, he participated in physician recruitment for Paulding County. He found, however, that it was a very expensive task. He also found that many of the physicians he interviewed were more interested in going to dinner and to the nearest golf course than they were in practicing in Paulding County. Mr. Derck testified that most physicians are not interested in practicing in a rural area. Physicians come from cities and prefer to practice in cities. The choices of schools and education in rural areas is limited. Moreover, there are no specialists practicing in Paulding County, although a few come to the hospital one day a week. (Tr. at 695, 699-700).

Mr. Derck testified it was through the physician recruiting process that he became familiar with Dr. Gray. Mr. Derck stated that he learned of Dr. Gray while Dr. Gray was still in Columbus. Mr. Derck called Dr. Gray and invited Dr. Gray and his family to Antwerp. The community was impressed with Dr. Gray. (Tr. at 697-698).

14. David Eugene Bagley testified at hearing on behalf of Mr. Hunter. Mr. Bagley testified that he is the Superintendent of Schools of the Antwerp Local School District. He has been the superintendent for fourteen years. (Tr. at 831; Resp. Ex. T).

Mr. Bagley testified that Antwerp is eleven miles from Paulding County Hospital. He stated that the school district is a fifty-seven square mile district and there are eight hundred students in the district. The school has one facility, kindergarten through twelfth grade.

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Mr. Bagley testified that the school district is poor and ranks 110 from the bottom of 612 school districts in the state of Ohio. The district receives state financial support because of their impoverished status. (Tr. at 832-833; Resp. Ex. T).

### **Dr. Gray's Practice**

15. Dr. Gray testified that his practice serves between four and five thousand patients. He stated that these patients come from all over Paulding County, and some travel from as far as Fort Wayne, Indiana. Dr. Gray testified that his payroll mix is forty percent Medicare, thirty or forty percent commercial insurance, and twenty percent Medicaid and self-pay. He stated that, for patients who cannot pay, outstanding debts are often forgiven at Christmas time. (Tr. at 1000, 1010, 1011).

Dr. Gray testified that his office is open on Monday for approximately ten or eleven hours, and on Tuesday for approximately eight hours. The office is closed on Wednesday. On Thursday, the office is open for eight or nine hours, and on Friday sometimes less than eight hours. The office is closed on Saturday and Sunday. (Tr. at 31-32).

Dr. Gray testified that he has also been treating patients in their homes since the inception of his practice. He stated that he makes house calls for very ill patients, and during inclement weather when elderly patients might slip and fall. Dr. Gray testified that he is also involved with care of the children in the Children's Home and with the Crippled Children's Society. (Tr. at 1002, 1005-1006).

16. Dr. Gray stated that he has been trying to recruit a partner for approximately twelve years. He has gone as far as St. Louis to a recruiting seminar. He stated that family doctors do not want to practice in a rural area because they do not want to work so much. He stated that patients in a rural area come to the physician's house and a physician can not turn those people away. He further stated that doctors in Fort Wayne charge twice as much as he for an initial office visit. Dr. Gray concluded that new family practitioners prefer big groups where they can be on call less and make twice as much as they would in a rural area. (Tr. at 1010).

Dr. Gray testified that, after failing to recruit another physician, he decided to try recruiting physician assistants. Therefore, he became involved with the training of physician assistants from Fort Wayne. Dr. Gray testified that, since 1997, he has allowed physician assistant students to rotate through his practice. Dr. Gray testified that he allows only one student at a time, and limits the rotations to three to four per year. Each student usually performs a four to six week rotation. (Tr. at 22-23, Tr. at 1017-1018).

Dr. Gray testified that he has employed only two physician assistants since 1991. One was Thomas L. Gemmer, P.A., and the other was Mr. Hunter. Dr. Gray testified that he had

hired Mr. Hunter because Mr. Hunter was the brightest physician assistant student Dr. Gray has ever had. He stated that Mr. Hunter treats patients similarly to the way Dr. Gray treats patients. Finally, Dr. Gray stated that the patients liked Mr. Hunter and Dr. Gray did not want to let him get away. (Tr. at 29-30, 1014-1015).

17. Mr. Hunter testified that he decided to work for Dr. Gray because Dr. Gray and Mr. Hunter got along well, not only on a professional level, but also on a personal level. Mr. Hunter stated Dr. Gray's office exudes a family atmosphere, where people laugh and have fun. Mr. Hunter further testified that Dr. Gray is unique in the way he thinks: he's supportive, easy going, and spends time teaching. (Tr. at 555-557).

### **Paulding County Hospital Policies**

18. On April 21, 1997, the Paulding County Hospital Medical Staff Executive Committee met. Dr. Gray was not present at that meeting. The minutes from that meeting indicate that the status of physician assistant students was discussed. The committee agreed that "a student's privileges cannot be more that those of a licensed physician assistant." (St. Ex. 11).

Dr. Gray acknowledged that minutes from the Medical Staff Executive Committee meeting on April 21, 1997, state that a physician assistant student's privileges may not be more than those of a licensed physician assistant. (Tr. at 102; St. Ex. 11).

19. The Medical Staff Executive Committee met again on September 3, 1997. Dr. Gray was the presiding officer. The minutes from that meeting indicate that "[a] question of whether students can assist in delivery [of] OB patients and circumcisions was raised." A member of the committee agreed to investigate the issue. (St. Ex. 12).

Dr. Gray testified that he had been present at the medical staff executive committee discussion on September 3, 1997. He stated that he had requested clarification on policies pertaining to medical and physician assistant students. In addition, Dr. Gray had questioned whether his physician assistant could assist in the delivery of OB patients and in the performance of circumcisions. (Tr. at 99-100; St. Ex. 12).

20. The Medical Staff Executive Committee met again on September 15, 1997. Dr. Gray was present at that meeting. The minutes indicate that, in the discussion,

It was clarified that physician assistant students may assist the sponsoring or consenting physician but may not perform surgical or obstetrical procedures. Assisting is limited to holding retractors in OR. These limitations comply

with state laws regarding physician assistants per research by [a committee member].

There is no indication in the minutes that the committee voted on the policy. (St. Ex. 13).

Dr. Gray testified that he had been present at the Medical Staff Executive Committee meeting on September 15, 1997. Dr. Gray noted that it had been clarified that physician assistant students may not perform surgical or obstetrical procedures and that assisting is limited to holding retractors in the operating room. (Tr. at 100-101; St. Ex. 13).

21. In September 1997, officials of Paulding County Hospital signed a policy entitled "Students, Physician Assistant-Approved Clinical Rotations and Observer-Only Status." The policy provides, under "Specific Limitations," that "Physician Assistant students may assist the sponsoring physician or consenting physician in procedures but may not perform surgical procedures or obstetrical deliveries." Under "General Rules for Physician Assistant Students," the policy provides that "Students may observe in the OR and may hold retractors at the discretion of the operating surgeon or OR supervisor." Finally, the policy provides a list of functions that may be performed by a physician assistant at Paulding County Hospital. (St. Ex. 14; St. Ex. 9).

Dr. Gray acknowledged that this was a formal policy adopted by the medical staff. (Tr. at 100-101).

### **The Standard Utilization Plan Governing Mr. Hunter**

22. On July 21, 1999, Dr. Gray filed a standard physician assistant utilization plan with the Board. In the utilization plan, Dr. Gray requested the Board's authorization to employ a physician assistant and agreed to limit the tasks the physician assistant would perform to the following:

Under 'supervision, on-site supervision, or direct supervision:'

- Obtaining comprehensive patient histories;
- Taking patient histories; performing physical examinations, including audiometry screening, routine visual screening, and pelvic, rectal, and genital-urinary examinations when indicated;
- Initiating, requesting and/or performing routine laboratory, radiologic and diagnostic studies as indicated;
- Identifying normal and abnormal findings on histories, physical examinations, and commonly performed initial laboratory studies;
- Assessing patients for development of treatment plans;

- Implementing treatment plans that have been reviewed and approved by the supervising physician;
- Monitoring the effectiveness of therapeutic interventions;
- Providing patient education;
- Instituting and changing orders on patient charts as directed by the supervising physician, with any such orders written by the physician assistant to be reviewed by a supervising physician within twenty-four (24) hours after the order is written and countersigned if the order is appropriate;
- Screening patients to aid the supervising physician in determining the need for further medical attention;
- Performing developmental screening examinations on children as relating to nervous, motor, and mental functions;
- Performing care and suturing of minor lacerations;
- Applying cast or splint;
- Administering medication and intravenous fluids upon order of the supervising physician;
- Removing superficial foreign bodies;
- Inserting a catheter in the urinary bladder;
- Performing cardio-pulmonary resuscitation, and

Under “on-site” or “direct supervision,”

- Initiating treatment plans that have been reviewed and approved by the supervising physician for new patients or for existing patients with new conditions;
- Carrying out or relaying the supervising physician’s order for medication, to the extent permitted under laws pertaining to drugs.

(St. Ex. 9 at 3).

Dr. Gray did not request privileges for his physician assistant to assist him in surgery. Had he done so, Dr. Gray would have checked a box in the utilization plan which would have indicated his request for a physician assistant to perform the following:

Assisting in surgery in a hospital, as defined in Section 3727.01 of the Ohio Revised Code, or an outpatient surgical care center affiliated with the hospital  
\* \* \* provided that these physician-supervised procedures have been delineated within the scope of practice of a physician assistant and approved by the appropriate committee of the hospital or outpatient surgical care center where such services are to be rendered.

(St. Ex. 9 at 3). The Board approved Dr. Gray’s standard utilization plan. (St. Ex. 9).

23. On September 11, 1999, Dr. Gray submitted a Physician Assistant Supervision Agreement, advising that Mr. Hunter had agreed to work with Dr. Gray under the terms of the standard utilization plan approved by the Board for Dr. Gray. (St. Ex. 9).

**Mr. Hunter's Privileges at Paulding County Hospital**

24. On August 18, 1999, Mr. Hunter filed an application at Paulding County Hospital for Allied Health Professional Privileges. Paulding County Hospital granted a variety of privileges to Mr. Hunter. The hospital denied, however, Mr. Hunter privileges to perform the following:
- a. "Life-threatening emergency. At the time of a clinical emergency any practitioner may render whatever care he believes to be indicated."
  - b. "Assist in surgery. Position, drape, dressings, set up and pass instruments."

(St. Ex. 10). The hospital's Credentials Committee noted that privileges had been granted "with the exception of assistance in surgery since not requested/approved by State in utilization plan." (St. Ex. 10).

By letter dated February 2, 2000, Mr. Thornhill notified Mr. Hunter that his request for provisional physician assistant privileges had been granted "consistent with the standard utilization plan approved by the Ohio State Medical Board." (Resp. Ex. B). By letter dated September 6, 2000, Mr. Thornhill advised Mr. Hunter,

[T]he results of quality assurance monitoring during your six-month provisional status period for Affiliate Physician Assistant privileges have been positive. Effective August 31, 2000, provisional status was lifted by our Board of Trustees at the recommendation of the Medical Staff.

(Resp. Ex. F).

**The Circumcision**

25. Patients 2 and 3, twin males, were born at Paulding County Hospital on May 10, 2000. Patient 2 weighed five pounds, twelve ounces; Patient 3 weighed five pounds, four ounces. The patients' mother signed a "Consent for Invasive Medical Procedure, Circumcision," to be performed "under the direction of" Dr. Gray. (St. Exs. 2 & 3 at 1, 2, 8; Resp. Ex. C).

26. *Taber's Cyclopedic Medical Dictionary* defines circumcision as the “[s]urgical removal of the end of the prepuce of the penis.” (St. Ex. 19). *Mosby's Medical, Nursing, and Allied Health Dictionary* defines circumcision as “a surgical procedure in which the prepuce of the penis \* \* \* is excised.” (St. Ex. 20). *The Medline Medical Encyclopedia* defines circumcision as “the surgical removal of the foreskin of the penis.” (St. Ex. 18). Finally, a pamphlet produced by the American Academy of Pediatrics defines circumcision as “a surgical procedure in which the skin covering the end of the penis is removed.” (St. Ex. 21).
27. Dr. Gray testified that he had performed four to five hundred circumcisions during his practice of medicine. He stated that the most frequent complication of circumcision is bleeding; the second most frequent is infection. (Tr. at 1049).
28. The nurses' notes for Patient 3 on May 11, 2000, at 8:05 a.m., indicate, “Circumcision done per Dr. Gray [with] Tom Hunter, P.A., assisting. Circ done [with] 1.1 cm plastibell.” (St. Ex. 3 at 17).

The nurses' notes for Patient 2 on May 11, 2000, at 8:20 a.m., indicate, “Circumcision done per Tom Hunter, P.A. [with] Dr. Gray assisting. Circ done [with] 1.1 cm plastibell.” (St. Ex. 2 at 17).

29. In a Summary Report for Patient 3, Dr. Gray wrote, “[Patient 3] had a circumcision on 5/11 and this went without incident. I had Tom Hunter, PAC, glove and assist me on the circumcision of these twins since they were smaller and would slip out of the circ board.” (St. Ex. 2 at 38).

In a Summary Report for Patient 2, Dr. Gray wrote, “This patient had a newborn circumcision done by me and since this twin and his brother were small and would wriggle out of the circ board Tom Hunter, PAC assisted me with the circumcision.” (St. Ex. 2 at 38).

30. Dr. Gray also completed a Progress Note for Patient 3 on May 11, 2001. He stated, “Doing well. Phys. exam normal. Circ today.” Dr. Gray signed the note. (St. Ex. 3 at 37).

Dr. Gray also completed a Progress Note for Patient 2 on May 11, 2001. He stated, “Doing well. Phys. exam normal. Circ today.” Dr. Gray signed the note under this statement, toward the right side of the page. To Patient 2's note, however, in compressed handwriting between the left margin and his signature, Dr. Gray wrote, “Tom Hunter assisted [with] circ. since babies smaller were squirming out of circ board so needed him.” (St. Ex. 2 at 37).

31. Dr. Gray completed a Newborn Circumcision Report for Patient 2, as follows:

The patient was prepped and draped in the usual manner after being placed on the circ board. Great care was taken to avoid pinching any tissue while

placing the baby on to the circ board. The foreskin and scrotal area were cleansed with phisoderm and the neonate was draped with sterile drapes from the circ kit. After this was performed, the lateral foreskin was grasped with two straight stats. A third straight stat was used to release adhesions between the glans penis and the foreskin. A straight stat was used to clamp the dorsal foreskin. This was left on for approximately 30 seconds and then a dorsal slit was made. The foreskin was then retracted proximally to the glans penis and all adhesions were wiped away. A 1.1 cm centimeter [sic] plastibel was then placed over the glans penis and the foreskin was retracted distally to this. The ligature was then tied over the foreskin to the plastibel and all excess foreskin was trimmed away. The neonate tolerated the procedure very well and hemostasis was achieved without problems. This neonate was sent to his mother's room without incident and in excellent condition.

Tom Hunter, P.A., assisted me with this circumcision. The procedure went well.

(St. Ex. 2 at 33). This report was similar to the note written for Patient 3, but Patient 3's note did not contain the reference to Mr. Hunter. (St. Ex. 3 at 33).

32. Dr. Gray testified that, in May 2000, the circumcision room at Paulding County Hospital was a small room next to the nursery. There was a large picture window between the nursery and the circumcision room. The circumcision room was approximately nine by twelve feet. Just below the large picture window was a circumcision table. The circumcision table was approximately thirty by thirty-six inches, and was set eight to ten inches below the picture window. Dr. Gray further testified that the door from the nursery into the circumcision room was approximately twenty-six inches from the circumcision table. (Tr. at 1039-1041).

Dr. Gray testified that, when performing a circumcision, the baby is placed on a "circ board." He testified that a circ board is a small plastic board with Velcro straps to immobilize the baby's extremities. He stated that the purpose is to keep the child stationary. Dr. Gray stated that babies who are smaller than the average baby can wriggle out of a circ board. He further stated that, on occasion, it helps to have another person assist by holding the baby. Dr. Gray explained that there are smaller circ boards available, but Paulding County Hospital is not a wealthy hospital and could only afford circ boards built for full term infants. (Tr. at 74-75).

33. Dr. Gray testified that Patients 2 and 3 were small and, since the circ board was for full term babies, the babies were "wriggling all over the place." Dr. Gray testified that he had asked Mr. Hunter to help him keep the babies on the circ board. He stated that, during the first circumcision, involving Patient 3, Dr. Gray had performed the procedure. He stated

that Mr. Hunter had kept the baby on the circ board and held some instruments.  
(Tr. at 78-80).

Dr. Gray described the circumcision of Patient 2. Dr. Gray stated that he and Mr. Hunter had stood at the foot of the table. Mr. Hunter performed the steps of the procedure as Dr. Gray directed him. Dr. Gray stated that Mr. Hunter had used no independent judgment during the procedure. Dr. Gray testified that Mr. Hunter had grasped the lateral foreskin on each side with a hemostat. Mr. Hunter held the hemostat on one side and Dr. Gray held the hemostat on the other. Mr. Hunter then put the third hemostat between the foreskin and the glans penis to lyse adhesions. Dr. Gray testified that he believes that he, himself, had placed the hemostat to devascularize the foreskin and had cut the dorsal slit. He further stated that he believes that Mr. Hunter had placed the plastibell over the head of the penis and tied the string. (Tr. at 1042-1044).

Dr. Gray testified that, during the course of the circumcision of Patient 2, Patricia Madison, R.N., the Director of Nursing at Paulding County Hospital, had come into the circumcision room and yelled "Stop this procedure." Dr. Gray stated that Ms. Madison had "scared the living daylights out of [him]." Dr. Gray stated that he had asked Ms. Madison to leave the room because he was doing a procedure. Dr. Gray admitted that he had not spoken to her calmly and that a confrontation had ensued. Dr. Gray stated that, during the confrontation between him and Ms. Madison, Mr. Hunter had asked Dr. Gray to take over the procedure. (Tr. at 78-80, 1045).

Dr. Gray testified that he very clearly remembers Ms. Madison coming into the room because this was the only occasion in sixteen years that "something has come out of the blue and scared the living daylights out of me during a procedure." Nevertheless, at another time, Dr. Gray testified that he is unclear as to when Ms. Madison had entered the room. He stated that he believes it was toward the middle or end of the procedure, but he is not sure. Moreover, he stated that he is not clear as to what happened before or after the time Ms. Madison entered the room. (Tr. at 1045, 1101-1102).

Dr. Gray testified that, after Ms. Madison had left the room, Mr. Hunter also left. Mr. Hunter then contacted the Board, and left a message for Cathy Hacker, the P.A. Program Administrator for the Board. Dr. Gray believes that Mr. Hunter told Ms. Hacker that there had been a problem with doing a circumcision and that Dr. Gray would be calling her shortly. (Tr. at 88-89).

Dr. Gray testified that, after finishing the procedure, he had gone to the office of Mr. Thornhill, then the Chief Executive Officer at Paulding County Hospital. Dr. Gray stated that he had been "very upset" at that time. Dr. Gray told Mr. Thornhill that Mr. Hunter had been assisting him with a circumcision when Ms. Madison entered the room and demanded that they stop the procedure. (Tr. at 83-84).

Dr. Gray noted that Mr. Thornhill had asked him to identify the parts of the procedure that Mr. Hunter had performed. Dr. Gray testified that he had lied to Mr. Thornhill, telling him that Mr. Hunter had cut nothing but the string. Dr. Gray stated that, at that time, he had believed that Mr. Hunter had trimmed the skin off the plastibell at the end of the procedure. (Tr. at 83-84).

Dr. Gray stated that, after leaving Mr. Thornhill's office, he had contacted Ms. Hacker. He told her that he and his physician assistant had done a circumcision and that he needed clarification of his utilization plan. Dr. Gray believes that he had described the procedure to Ms. Hacker and advised her that Mr. Hunter had cut skin. Dr. Gray stated that Ms. Hacker had responded that, if that what he told her was true, Dr. Gray had violated his utilization plan. (Tr. at 88-89; 1046).

Dr. Gray testified that, the following day, Mr. Thornhill advised Dr. Gray that Mr. Thornhill had also spoken with Ms. Hacker. Mr. Thornhill told Dr. Gray that Ms. Hacker had stated that Dr. Gray had admitted that Mr. Hunter had cut skin. Mr. Thornhill asked Dr. Gray why he had made different statements to Ms. Hacker and to Mr. Thornhill. Dr. Gray responded that, "There must have been some miscommunication." At hearing, Dr. Gray testified that he had lied to Mr. Thornhill a second time because he had had "some misguided reason for protecting my employee – but it was very stupid of me." (Tr. at 89-90).

34. Mr. Hunter testified that Dr. Gray had performed the circumcision of Patient 3, and that Mr. Hunter had assisted. Mr. Hunter further testified that, after Patient 3's circumcision was complete, Patient 2 was prepared for his circumcision. Dr. Gray and Mr. Hunter switched places at the foot of the table, and Mr. Hunter performed the circumcision of Patient 2. Mr. Hunter testified that Dr. Gray had "walked him through" each step of the procedure, telling him what to do, and Mr. Hunter had followed Dr. Gray's instructions. (Tr. at 159-160).

Mr. Hunter stated that, at some point during the circumcision, Ms. Madison had opened the door and shouted for them to stop the procedure. He stated that Dr. Gray had asked Ms. Madison to leave them alone. Mr. Hunter testified that, when Ms. Madison opened the door, it was within inches from him. He stated that he had had to move his elbow to avoid being bumped. (Tr. at 159-160, 568-569).

Mr. Hunter testified that Ms. Madison had advised Dr. Gray that Mr. Hunter was not authorized to perform the procedure. Dr. Gray responded that Mr. Hunter was Dr. Gray's "student" and that Mr. Hunter's performing the procedure was appropriate. Mr. Hunter stated that, at some point, he had put down the instruments and asked Dr. Gray to finish the procedure. (Tr. at 159-160).

Mr. Hunter testified that he had left the room when the procedure was complete. Mr. Hunter called Ms. Hacker in an attempt to get clarification on what he was allowed to do. Mr. Hunter stated that Ms. Hacker had returned the call later in the afternoon and spoken with Dr. Gray. (Tr. at 571-572, 574-575).

35. At hearing, Dr. Gray was unable to recall who had cut the dorsal slit on Patient 2. Moreover, despite his admission that he had lied to Mr. Thornhill about Mr. Hunter not cutting skin, at hearing, Dr. Gray could not remember if Mr. Hunter had cut any skin at all. (Tr. at 1044).

When asked if he would have known at the time he spoke to Mr. Thornhill or Ms. Hacker whether Mr. Hunter had made the dorsal slit, Dr. Gray admitted that he probably would have known then but that he was not certain now. (Tr. at 91).

Moreover, Dr. Gray acknowledged that he had discussed the circumcisions of Patients 2 and 3 in a deposition before the Board on April 13, 2001. Dr. Gray stated that he had testified in his deposition that he had cut the dorsal slit himself. Dr. Gray acknowledged, at the hearing, that Mr. Hunter had remembered the incident differently. (Tr. at 72, 81).

36. At hearing, Mr. Hunter was able to recall clamping the foreskin and breaking adhesions at the head of the penis during the circumcision of Patient 2. Mr. Hunter stated that he believes he also cut the dorsal slit. He stated that, at the time Ms. Madison opened the door, he had been either making the cut or was about to make the cut. Mr. Hunter testified that he had performed all of the steps of Patient 2's circumcision prior to Ms. Madison's entrance. (Tr. at 159-160, 615-616, 618).

Mr. Hunter acknowledged that he had discussed the circumcisions of Patients 2 and 3 in a deposition before the Board on April 13, 2001. Mr. Hunter stated that he had testified in his deposition that he had cut the dorsal slit, placed the plastibell, and tied the string during the circumcision of Patient 2. At the deposition, Mr. Hunter also testified that he had been getting ready to cut the foreskin when Ms. Madison entered the room. Mr. Hunter testified that, since his deposition testimony had been closer to the date of the event, his memory at the time of the deposition had probably been more accurate than his memory at the time of the hearing. Mr. Hunter explained that, since he has had time to reflect on the events under less duress, he truthfully cannot remember if he cut the dorsal slit. He clarified, however, that he was not denying having done it. (Tr. at 161-162, 615-616).

Mr. Hunter further testified that, when Ms. Madison walked into the room, he had been "absolutely flustered." He stated he had never been in such a situation. Mr. Hunter testified that, during the confrontation between Dr. Gray and Ms. Madison, his hands had started shaking and he had been unable to finish the procedure. Mr. Hunter testified, "I wish I could remember it all. But it's just like being hit by a train or a car wreck." When

asked what had changed between the time of his deposition and the time of the hearing to affect his memory, Mr. Hunter responded, “more facts, more paperwork, and more everything.” He stated that the event was “a nightmare” he wanted to forget. (Tr. at 617-618).

37. Kelly Sherry, LPN, testified at hearing by telephone on behalf of the State. Ms. Sherry testified that she has worked at Paulding County Hospital since 1993. She stated that she works in the OB department and that one of her responsibilities is to be present at circumcisions. (Tr. at 243-244).

Ms. Sherry stated that the circumcision room at Paulding County Hospital is a small room next to the nursery. Between the two rooms, there is a door and a large window. She stated someone standing in the nursery can see clearly into the circumcision room. Ms. Sherry further testified that someone standing in the nursery can see the circumcision table which is next to the large window. (Tr. at 256, 267).

Ms. Sherry testified that in May 2000 the same circ board was used for all babies regardless of their size. If the baby was smaller, one would adjust the straps to hold the baby tighter. Ms. Sherry stated that she has never held a baby’s arms and legs to assist in performing a circumcision. She further stated that she has never seen a situation where a second person has had to restrain the baby. (Tr. at 246-247).

38. Ms. Sherry testified that she had been present at the circumcisions of Patients 2 and 3 on May 11, 2000. Ms. Sherry testified that, prior to the circumcisions that morning, Ms. Munger, the Manager of the OB department at Paulding County Hospital, had told her “to watch what is going on in there.” (Tr. at 262-263).

Ms. Sherry testified that Dr. Gray had performed the circumcision of Patient 3 with Mr. Hunter at his side. She stated that, after Patient 3’s circumcision, Ms. Sherry brought Patient 2 into the room. During Patient 2’s circumcision, Mr. Hunter was standing at the baby’s feet. Dr. Gray stood next to Mr. Hunter or walked around him. Ms. Sherry stated that she had been standing diagonally behind Mr. Hunter and could see his arms moving during the course of the procedure. Ms. Sherry stated that she did not remember Dr. Gray holding instruments. (Tr. at 252-255, 266, 269-270, 275).

Ms. Sherry stated that she had heard Dr. Gray instructing Mr. Hunter regarding the steps of the circumcision. Moreover, she had seen the instruments in Mr. Hunter’s hands. Although she could not see the steps of the procedure, Ms. Sherry stated that she believed Mr. Hunter had cut the dorsal slit. Ms. Sherry testified that she had seen Mr. Hunter’s arms moving when Patient 2 let out a sharp cry. Ms. Sherry stated that she has been present at a number of circumcisions and the sound of a baby’s scream when skin is cut is much more intense than the baby’s normal cry. (Tr. at 254-255, 275).

39. Ms. Sherry stated that, during the course of the circumcision of Patient 2, she had seen Ms. Munger looking through the window from the nursery into the circumcision room. Ms. Sherry stated that Ms. Munger had appeared to be angry, and had quickly left the nursery. (Tr. at 256-257).

Shortly thereafter, Ms. Madison entered the circumcision room. Ms. Sherry testified that Ms. Madison's coming into the circumcision room had not surprised her because she had seen Ms. Madison through the nursery window. Ms. Sherry stated that Ms. Madison had opened the door, and that she had not been yelling when she entered the room. Ms. Sherry further stated that Ms. Madison had simply told Mr. Hunter to stop what he was doing because he was not allowed to perform circumcisions. Thereafter, however, Ms. Madison and Dr. Gray engaged in a loud, angry exchange. Ms. Sherry did not remember who started yelling loudly first. (Tr. at 258, 272-273).

40. Ms. Sherry testified that she did not recall anyone restraining Patient 2 or 3 during the circumcisions. She stated that it would be unusual to see someone restraining a baby's arms and legs in the process of a circumcision. She further stated that one would have to go under the sterile drapes in order to do that. She stated that if it had happened during the circumcisions of Patients 2 and 3, she would remember it. (Tr. at 248-249).
41. Ms. Sherry stated that, after the circumcision of Patient 2, Dr. Gray had approached Ms. Munger in a "very upset" manner. She testified that he had slammed a chart on the desk and said "Thanks a lot." (Tr. at 281).
42. Rose Munger, R.N., testified at hearing on behalf of the state. Ms. Munger testified that she has been employed by Paulding County Hospital for twenty-three years. She has been the manager of the OB department for the past seven years. (Tr. at 444-445).

Ms. Munger testified that on May 11, 2000, she had walked into the nursery and looked into the circumcision room. Ms. Munger stated that she had been able to see the circumcision table very clearly from where she was standing. (Tr. at 464-465).

Ms. Munger testified that she had seen Mr. Hunter standing over Patient 2. It had appeared to Ms. Munger that Mr. Hunter was performing the circumcision. Ms. Munger testified that Mr. Hunter had had scissors in his hand, that the scissors had been bloody, and that the baby's penis had been cut. She further stated that Dr. Gray had been standing next to Mr. Hunter with his hands clasped together. Ms. Munger stated that she had notified her supervisor, Ms. Madison, that a physician assistant was performing a circumcision with Dr. Gray observing. (Tr. at 464-465, 492-493).

Ms. Munger testified that, when Dr. Gray was finished with the circumcisions, he had come out of the nursery with a chart in his hand. She further stated that he had slammed the chart on the desk and yelled at her in a loud and angry voice. Then Dr. Gray left the room. (Tr. at 466).

Ms. Munger further stated that, sometime after the circumcisions of Patients 2 and 3, Dr. Gray had been performing another circumcision in the circumcision room. Ms. Munger stated that she had gone into the nursery for formulas. Dr. Gray approached her later that day, pulled her into a room, and yelled at her for spying on him. Ms. Munger stated that she had not been spying on Dr. Gray. Moreover, she had not even been aware that Dr. Gray was in the circumcision room when she entered the nursery. (Tr. at 468-469).

43. Patricia Madison, R.N., testified at hearing on behalf of the State. Ms. Madison testified that she had worked at Paulding County Hospital from approximately April 1998 through April 2001. She served as the Chief Nursing Officer and was responsible for the patient care services at the hospital. She explained that the patient care services included nursing, radiology, pharmacy, respiratory therapy and laboratory. (Tr. at 496-498).

Ms. Madison testified that she recalls the circumcision of Patient 2. Ms. Madison testified that Ms. Munger had contacted her at a meeting and had asked her to step out. She stated that Ms. Munger had been upset and reported that Mr. Hunter was performing a circumcision. Ms. Munger had asked Ms. Madison to take care of the situation. Ms. Madison stated that she had reported the situation to Mr. Thornhill. Mr. Thornhill asked Ms. Madison to take care of the matter. (Tr. at 502-503).

Ms. Madison stated that she had walked through the nursery and into the circumcision room. Ms. Madison testified that, when she went to the circumcision room, she had seen Mr. Hunter standing at the feet of the baby. Mr. Hunter had instruments in both hands. Dr. Gray held no instruments. (Tr. at 502-505).

Ms. Madison stated that she had told Dr. Gray calmly that he would have to stop the procedure, but Dr. Gray did nothing. Ms. Madison then told Mr. Hunter "Tom, you need to put down those instruments; I'm going to call the State and your license is going to be affected. Please don't jeopardize your license." She stated that Dr. Gray had been "very, very angry" and told her to leave the room. Mr. Hunter put down his instruments, and Dr. Gray completed the circumcision. Ms. Madison returned to Mr. Thornhill's office. (Tr. at 502-503).

Subsequently, Dr. Gray went to Mr. Thornhill's office. Ms. Madison was in Mr. Thornhill's office at that time. Ms. Madison testified that Dr. Gray was "extremely angry." He told Ms. Madison that she had been "out of line" and that she had had no business interfering with his procedures. Ms. Madison stated that Dr. Gray was so upset

that he was shaking. Ms. Madison testified that, when Dr. Gray opened the door to leave, he knocked over a coat rack and broke a picture on the wall. (Tr. at 503-505, 511-512).

Ms. Madison testified that she had seen Dr. Gray very angry on other occasions, and that Dr. Gray had a reputation of being "volatile." (Tr. at 506-509, 511-512).

44. Mr. Thornhill testified that he recalls the events surrounding the circumcision of Patient 2. Mr. Thornhill testified that he had been in his office when Ms. Munger informed him that a physician assistant was performing a circumcision with Dr. Gray. Mr. Thornhill asked Ms. Munger to find Ms. Madison and ask her to stop the surgery if it was, in fact, occurring. (Tr. at 179-180).

Mr. Thornhill testified that, shortly thereafter, Ms. Madison had advised him that she had stopped Mr. Hunter from further performance of the circumcision, and that Dr. Gray had completed it. She further advised that there had been a confrontation between her and Dr. Gray. (Tr. at 180).

Mr. Thornhill testified that, shortly thereafter, Dr. Gray had come to the office and "slammed the door open." In doing so, Dr. Gray had broken the frame of a picture hanging on the wall. Mr. Thornhill stated that Dr. Gray had been "obviously upset." Dr. Gray advised Mr. Thornhill that he would not have his procedures interrupted again "by Ms. Madison or anyone else." Mr. Thornhill asked Dr. Gray to come into the office and calm down. (Tr. at 180-181).

Mr. Thornhill testified that, during the ensuing conversation, he had asked Dr. Gray two or three times whether the physician assistant had cut skin. Dr. Gray had denied that Mr. Hunter had cut skin and stated that he had only cut string. The conversation ended and Dr. Gray left the office. Mr. Thornhill stated that Dr. Gray had been angry, but had controlled his anger by the end of the conversation. (Tr. at 180-181).

After Dr. Gray left, Mr. Thornhill read the hospital's credentialing file on Mr. Hunter. At that point, Mr. Thornhill found Ms. Hacker's name on the physician assistant utilization plan, and he called her. Mr. Thornhill testified that that he had told Ms. Hacker that he had a problem and that it involved conflicting stories about a circumcision. Moreover, he testified that he had asked Ms. Hacker if physician assistants have a "surgical capability" and that she had said "no." Shortly thereafter, Mr. Thornhill also discovered that Mr. Hunter had been denied surgical privileges at Paulding County Hospital. (Tr. at 181-182).

Mr. Thornhill testified that Ms. Hacker later advised him that Dr. Gray had admitted to her that Mr. Hunter had performed the circumcision. She further advised that Dr. Gray had stated that, in his opinion, "it was a matter of interpretation whether a circumcision would

be considered a surgical procedure.” Ms. Hacker informed Mr. Thornhill that the Board would be initiating an investigation. (Tr. at 183).

Mr. Thornhill further testified that, the next morning, Dr. Gray had informed Mr. Thornhill that Dr. Gray had spoken to Ms. Hacker. Mr. Thornhill told Dr. Gray that he had also spoken to Ms. Hacker. Mr. Thornhill advised Dr. Gray that Ms. Hacker had informed Mr. Thornhill that Dr. Gray had admitted that Mr. Hunter had performed a circumcision. At that time, Dr. Gray told Mr. Thornhill that there had been a misunderstanding, and that Dr. Gray had not said that to Ms. Hacker. (Tr. at 183-184).

45. Mr. Thornhill stated that he had written a letter to Dr. Gray advising that he had concerns about Dr. Gray’s behavior. Mr. Thornhill further advised Dr. Gray that he believed Dr. Gray’s behavior had been “intended to intimidate.” Finally, Mr. Thornhill advised Dr. Gray that the two of them would have to work together in a professional manner if they were going to be able to work together at all. Mr. Thornhill stated that he has not received any response to the letter from Dr. Gray. (Tr. at 184-185).
46. Cathy Hacker testified at hearing on behalf of all parties. Ms. Hacker testified that she is employed by the Board as a Physician Assistant Program Administrator. Ms. Hacker further testified that she had received a telephone call from Mr. Thornhill on May 11, 2000. She stated she does not remember the entire conversation but believes that Mr. Thornhill had told her that a nurse had seen a physician assistant performing a circumcision. Mr. Thornhill also told her that he had spoken to the physician and that the physician had denied the allegation. (Tr. at 529, 533, 928-931 [Condensed transcript (CT) at 70-73]).

Ms. Hacker testified that Mr. Thornhill had asked if it was appropriate for a physician assistant to perform a circumcision. Ms. Hacker stated that she had informed Mr. Thornhill that it was not appropriate. Moreover, Ms. Hacker had reviewed Mr. Hunter’s utilization plan, and discovered that the “assisting in surgery” box had not been checked. Nevertheless, Ms. Hacker testified that her answer to Mr. Thornhill would have been the same regardless of whether the assisting in surgery box had been checked. She stated that performing a circumcision is a surgery; it is not assisting in surgery. Therefore, what Mr. Thornhill described to her was a physician assistant performing a surgery. (Tr. at 928-931 [CT at 70-74]).

Ms. Hacker stated that, while she was talking with Mr. Thornhill, she had received a voice mail message from either Mr. Hunter or Dr. Gray. She stated that she had returned the call to Dr. Gray based on the voice mail message. (Tr. at 533).

Ms. Hacker testified that Dr. Gray told her that his physician assistant had performed a circumcision. Dr. Gray further questioned whether physician assistants were authorized to perform circumcisions. (Tr. at 533-534, 932-933 [CT at 74-75]).

Ms. Hacker testified that she had spoken again to Mr. Thornhill that same day. She advised Mr. Thornhill that she had spoken with Dr. Gray and that Dr. Gray had admitted that Mr. Hunter had performed the circumcision. (Tr. at 939-940 [CT at 81-82 ]).

47. The mother of Patients 2 and 3 testified at hearing on behalf of Dr. Gray. She testified that she is a stay-at-home mom with three sons. She further stated that she has a four-year-old son and sixteen-month-old twins. She testified that Dr. Gray has been her physician for over thirteen years and that she has frequently seen Mr. Hunter when she has gone to Dr. Gray's office. (Tr. at 517-518).

The mother of Patients 2 and 3 testified that, on the day of her twins' circumcisions, Dr. Gray had told her that "they" would be taking the boys for their circumcisions. Therefore, she had assumed that Dr. Gray and Mr. Hunter would be working together. She stated that she had had no reservations about Mr. Hunter working with Dr. Gray in performing the circumcisions. (Tr. at 521-522).

The mother of Patients 2 and 3 testified that Dr. Gray and Mr. Hunter had brought the babies back to her after the circumcisions. She stated that she had understood that Dr. Gray had performed Patient 3's circumcision and that Mr. Hunter had performed Patient 2's circumcision. She stated that there had been no complications with the circumcisions. (Tr. at 524-525).

48. By letter dated June 27, 2000, Evarista C. Nnadi, M.D., then Chief of Medical Staff at Paulding County Hospital, advised Mr. Hunter that the hospital's Medical Executive Committee had convened to discuss Mr. Hunter's involvement in the circumcision of Patients 2 and 3. In the letter, Dr. Nnadi further advised as follows:

[T]he Medical Executive Committee has decided that at no time will a Physician Assistant be allowed to perform a surgical procedure or obstetrical delivery at Paulding County Hospital until approval has been sought and received from the State Medical Board of Ohio. In the event such approval is received, the current hospital privileges held by Physician Assistant Hunter will require modification and approval by the Paulding County Hospital Medical Executive Committee and Board of Trustees before such privileges are placed into effect.

Failure to comply with the above decision will result in immediate sanctions by the Medical Executive Committee.

(Resp. Ex. E). Mr. Hunter signed the letter to acknowledge his "[r]eceipt and understanding." (Resp. Ex. E).

A similar letter was sent to Dr. Gray. Dr. Gray signed his letter to acknowledge his “[r]eceipt and understanding.” (Resp. Ex. D).

49. Mr. Hunter testified that Dr. Gray had wanted him to help in the circumcision because it was a learning experience for Mr. Hunter and because Dr. Gray wanted Mr. Hunter to “keep up his skills.” When asked what he meant by keeping up his skills, Mr. Hunter testified that he had obtained skills in circumcisions during his rotations with Dr. Gray as a student. Mr. Hunter stated that, as a student, he had observed and held retractors. (Tr. at 158, 609-610).

Mr. Hunter testified that prior to Ms. Madison walking into the room he had believed that what he was doing was permissible. Mr. Hunter stated that he had thought that the assisting in surgery portion of a standard utilization plan was directed at major, not minor, procedures. He further testified that he had not believed that a circumcision was a major procedure which would require authorization to assist in surgery. In addition, Mr. Hunter believed that he had been “implementing a treatment plan” as allowed under a standard utilization plan. Mr. Hunter emphasized that he had not been trying to hide anything. (Tr. at 141-142, 569, 580-581, 623-624).

Mr. Hunter acknowledged that the Paulding County Hospital application for privileges had been granted but that privileges for assisting in surgery had been denied. (Tr. at 140; St. Ex. 10).

50. At hearing, Dr. Gray provided a number of reasons for his decision to allow Mr. Hunter to participate in the circumcision of Patient 2. These reasons include the following:
- a. Dr. Gray had not wanted Mr. Hunter to lose his skills in performing circumcisions. Dr. Gray testified that Mr. Hunter had assisted in circumcisions as a physician assistant student. Dr. Gray stated that, when assisting in circumcisions as a student, Mr. Hunter had held hemostats and retracted tissue. Dr. Gray stated that Mr. Hunter had never performed a circumcision independently and that Mr. Hunter had never before cut skin. (Tr. at 63-65, 1097-1098).
  - b. Dr. Gray testified that he had believed that Mr. Hunter had been assisting in the circumcision and that Dr. Gray had performed it. Dr. Gray stated that he still believes that if, during the course of a circumcision performed by an assistant, the physician is gloved and advising the assistant of each step of the procedure, the physician is performing the procedure and the assistant is assisting. Because that was his belief, he did not seek guidance from the Board before having Mr. Hunter “assist” in performing the circumcision. (Tr. at 52-57, 72-73).

- c. Dr. Gray testified that, at the time of the circumcision of Patients 2 and 3, he had believed that “assisting in surgery” as referenced on the utilization plan and by the Paulding County Hospital credentialing process had meant assisting in the actual surgical suite. Dr. Gray testified that the circumcisions took place in the newborn nursery; therefore, he had not thought that Mr. Hunter needed assisting in surgery privileges to participate in a circumcision. (Tr. at 46, 58-60).
51. Mr. Hunter testified that, at the time of the circumcisions, it had been his understanding that he could do anything that was involved in implementing a treatment plan. The limitations were that the procedure had to be performed under the supervision specified in the agreement, and it had to be within the scope of the physician’s practice. Mr. Hunter stated that he had believed that, if the procedure was within the scope of Dr. Gray’s practice, and was within Mr. Hunter’s realm of clinical skills and knowledge, then it was something that Mr. Hunter would be authorized to perform. Mr. Hunter testified that this is no longer his understanding. (Tr. at 625-626).

Mr. Hunter explained that, since May 2000, he has received clarification from the Board through Ms. Hacker that circumcisions are not minor procedures that a physician assistant can perform. He further understands that, if he is going to assist in surgery, he will need to have approval for that on his standard utilization plan. (Tr. at 581).

Moreover, Mr. Hunter testified that it is currently his understanding that when the assisting in surgery box on a utilization plan has been checked, the role of the physician assistant is limited to holding retractors, passing instruments, etc. The physician assistant is not allowed to cut skin. Mr. Hunter testified that it is currently his understanding that any time skin is cut, it is considered a surgery; regardless of whether it is a major or minor procedure, it is still surgery. (Tr. at 612-614).

Mr. Hunter testified that he has not participated in a circumcision since May 11, 2000. He stated he would not do so even if he were asked. Moreover, Mr. Hunter testified that he has not participated and would not participate in any other surgical procedure. (Tr. at 581).

52. Dr. Gray testified that requesting supplemental privileges for Mr. Hunter to perform a circumcision was a “catch 22.” He stated that it was his understanding that in order to get approval in a supplemental utilization plan, the physician assistant has to have performed a certain number of procedures or has to have had a certain amount of training. He further stated that if a physician is not allowed to train someone to do a procedure, then the physician assistant cannot get the training necessary to practice under a supplemental utilization plan. (Tr. at 63-65).

53. Dr. Baggish testified that a circumcision is a surgical operation in which the foreskin of the penis is removed. Dr. Baggish testified that it is a surgical procedure regardless of whether it is performed in a surgical suite, the nursery or a physician's office. (Tr. at 303-305, 315).

Dr. Baggish described the steps in performing a circumcision. He testified that clamped skin is not dead or devitalized skin. He stated that it is normal skin with blood vessels in it. (Tr. at 303-305, 315).

Dr. Baggish testified that bleeding and infection are the most common complications of a circumcision. He stated that there are also more serious, but less common, complications. (Tr. at 309, 311-312, 362-365).

54. Dr. Bachelder testified that, in his opinion, Mr. Hunter did not perform the circumcision of Patient 2. He stated that it was a training procedure directly observed by Dr. Gray. Therefore, Dr. Gray had performed the circumcision. (Tr. at 1213-1214).

Dr. Bachelder testified that a circumcision requires preparing the area, using a probe to release adhesions from the foreskin, using a clamp to determine the depth and length of the circumcision, placing a clamp at the right position, debriding and removing the foreskin, cleansing the area, and monitoring for complications. Dr. Bachelder testified that these skills are within the abilities of a physician assistant. (Tr. at 1214-1215).

When asked if the cutting of skin, either cutting the dorsal slit or trimming the foreskin, is also within the abilities of a physician assistant, Dr. Bachelder responded that cutting the skin is not the most important step in performing a circumcision; rather, placing the hemostat to devitalize the area that will be cut for the dorsal slit is the most important step. Dr. Bachelder further stated that, "Once the instruments have been positioned, the cutting of the skin becomes really a secondary matter because the tissue is devitalized." Accordingly, Dr. Bachelder testified that it is his opinion that the cutting of skin, under these circumstances, is within the skills of a physician assistant. (Tr. at 1216-1217).

55. Dr. Bachtel testified that, in his opinion, it had not been inappropriate for Dr. Gray to utilize Mr. Hunter in performing the circumcision. Dr. Bachtel testified that his opinion was based on his understanding that Dr. Gray had been teaching Mr. Hunter the process of doing a circumcision, that Dr. Gray had been documenting that teaching, and that Dr. Gray had intended to apply for a supplemental plan to include circumcision. Dr. Bachtel concluded that, if Mr. Hunter was being taught how to perform a circumcision by his supervising physician, that would not be a violation of his utilization plan. (Tr. at 1299-1300, 1317-1318).
56. Dr. Bachtel testified that, when training a physician assistant to perform a circumcision, the physician should document the training of the physician assistant while performing the

circumcision. Dr. Bachtel testified that he would document the specifics of what the physician assistant had done in the infant's chart. Dr. Bachtel further stated that he would make a second copy of the note, or keep a log, to track the procedures performed by the physician assistant, in order to show evidence of training when later applying for privileges. (Tr. at 1318-1319).

57. Dr. Bachtel explained that he had believed that, before submitting a supplemental utilization plan for a procedure, one must document a particular physician assistant's training in that procedure. He stated that, under such a process, not allowing a physician assistant to train in a procedure prior to requesting a supplemental utilization plan would not be sensible. He stated that, if one has to document training before applying for a supplemental utilization plan, but cannot train without first getting a supplemental utilization plan, the physician assistant could never learn anything new. (Tr. at 1300-1301).

Nevertheless, Dr. Bachtel testified that his understanding has changed regarding the statutes and laws governing the use of physician assistants. Dr. Bachtel testified that:

[I]f a physician assistant is going to learn a new procedure then a supplemental utilization plan should be applied for first before teaching the procedure.

I previously thought that it was the other way around, that you had to document the training of the physician assistant before such supplemental plan would even be considered by the Medical Board.

(Tr. at 1315-1316). Dr. Bachtel concluded that the process has been very confusing to him, even with the extensive involvement he has had with the physician assistant process. Dr. Bachtel further concluded that it must have been very confusing to Dr. Gray also. (Tr. at 1300-1301).

58. Dr. Bachtel testified that his understanding of the assisting in surgery box is that it indicates that the physician assistant will be working in a hospital surgical suite or in an outpatient surgical facility. Dr. Bachtel testified that his notion of assisting in surgery "involves a surgical suite, gowns and gloves, a patient who's having a major procedure." (Tr. at 1294, 1299).

Moreover, Dr. Bachtel testified that it is his opinion that, if the assisting in surgery box is approved in a standard utilization plan, it would be acceptable for the physician assistant to perform all the steps of a circumcision so long as the supervising physician was present and directing the physician assistant. (Tr. at 1294, 1299, 1310-1312).

59. Dr. Bachtel testified that, in most cases, assistance is not required in performing a circumcision. It is performed by one person. (Tr. at 1310).

**Dr. Gray's June 2000 Request for Amendment of his Utilization Plan**

60. On June 26, 2000, Dr. Gray submitted a letter to the Board requesting that Mr. Hunter be authorized to assist in surgery. Dr. Gray testified that the Board has not yet responded to his request. (Tr. at 39-40, 45; Resp. Ex. NN).
61. Ms. Hacker stated that she remembers Dr. Gray asking what needed to be done to obtain approval for Mr. Hunter to assist in surgery. She stated that she had advised him that he could write a request to amend his application, and that is consistent with what she would have told anyone who had asked her that question. Ms. Hacker further testified that she had received such a letter from Dr. Gray requesting that authority. (Tr. at 895-896, 934-935 [CT at 37-38, 76-77]).

Ms. Hacker testified that, once she received Dr. Gray's letter, she referred it to the Board's Executive Director and the Board's Enforcement Coordinator who was handling the investigation. (Tr. at 936 [CT at 78]). Ms. Hacker testified that she has not responded to Dr. Gray's request and is not aware if anyone else at the Board had done so. (Tr. at 938 [CT at 80]).

62. Dr. Gray testified that Ms. Hacker had not told him anything about submitting a request to amend a utilization plan. He stated that the first time he heard it was during Ms. Hacker's testimony. (Tr. at 1048-1049).

**Conflict Regarding the Role of a Physician Assistant at Paulding County Hospital**

63. Mr. Hunter testified that, when he first started working with Dr. Gray, he had considered also working for the Paulding County Hospital on a part-time basis. Mr. Hunter stated that he had attended a meeting with Ms. Madison and Mr. Thornhill to discuss the issue. (Tr. at 146).

Mr. Hunter testified that, during the meeting, Ms. Madison had told him that he "would not be delivering babies at the hospital." Mr. Hunter stated that he had felt that the decision was not Ms. Madison's to make, and that the decision would be made by the Board. Mr. Hunter also stated that Paulding County Hospital has a credentialing committee; therefore, his hospital credentials were not Ms. Madison's concern. Nevertheless, Mr. Hunter acknowledged that the credentialing committee had not given him privileges to deliver babies. Mr. Hunter further acknowledged that he did not know if Ms. Madison had

simply been implementing a previously established policy of the credentialing committee. (Tr. at 145-146).

Mr. Hunter testified that he had been offended by Ms. Madison's comment. He stated that he had left the meeting and did not explore the possibility of working for the hospital any further. Mr. Hunter stated that he had felt that Ms. Madison had a grudge against physician assistants and he did not want to work in that atmosphere. (Tr. at 147).

Mr. Hunter testified that his conversation with Ms. Madison had not led him to question whether there were limitations on the scope of physician assistants' practice. Mr. Hunter testified that, instead, he had felt that Ms. Madison's actions were motivated by a desire for power over physician assistants. Mr. Hunter testified as follows:

I had known since I was in physician assistant school that there has always been friction between nurses and PAs, territorial issues. That's what I thought this was all about was that [Ms. Madison] had an issue not with me but as a physician assistant. That this was more of a nursing area instead, and also of a power control that she is director of nurses and that she is going to exhibit that power over me, a physician assistant.

(Tr. at 623).

64. Dr. Gray testified that he had had a discussion with Ms. Madison regarding the role of physician assistants and the functions they are allowed to perform at Paulding County Hospital. Dr. Gray was also aware that Ms. Madison had spoken to Mr. Hunter about the fact that a physician assistant could not participate in deliveries at the hospital. Dr. Gray thought that Ms. Madison's comments to Mr. Hunter were "very unprovoked." Dr. Gray stated that he had spoken to Ms. Madison about it. Dr. Gray further stated that he believed Ms. Madison had felt "threatened by physician assistants." Dr. Gray stated he was perturbed because he did not believe a manager "should attack a person and say you won't be delivering any babies while you're here." (Tr. at 106-108, 1069-1070).
65. Ms. Madison testified that she had explained to Mr. Hunter that delivering babies was beyond the scope of his license and that he should be careful not to practice beyond his scope in the OB department. She stated that she had also warned him about jeopardizing his license. (Tr. at 501).

Ms. Madison further testified that, shortly after her conversation with Mr. Hunter, Dr. Gray approached her. Dr. Gray advised Ms. Madison that it was "not her place" to talk with Mr. Hunter and that she had been "out of line" in having the discussion with him. Ms. Madison stated that Dr. Gray had been very angry and agitated. (Tr. at 499, 501-502).

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Ms. Madison testified that she and Dr. Gray had had a good working relationship. She testified that the relationship changed whenever they discussed issues of physician assistants. She stated that they have had numerous disagreements as to the boundaries of the physician assistant. (Tr. at 498-499).

66. Ms. Munger testified that part of her duties and responsibilities as the head of the OB department is to ensure that what happens in the department complies with hospital rules and policies. (Tr. at 463).

Ms. Munger testified that she had had a conversation with Dr. Gray during which she had attempted to discuss with Dr. Gray the fact that physician assistants were not allowed to perform deliveries and obstetrical procedures. She stated that the conversation had ended because Dr. Gray became angry with Ms. Munger. She stated that Dr. Gray had been adamant that physician assistants were allowed to perform deliveries and obstetrical procedures so long as Dr. Gray was present, directing the physician assistant, and taking responsibility for the physician assistants' actions. (Tr. at 462).

Ms. Munger testified that she had had this conversation with Dr. Gray because she had heard that Dr. Gray was allowing the physician assistants to put their hands on babies heads during deliveries and were helping Dr. Gray with circumcisions. (Tr. at 462-463).

#### **Assistance in Obstetrical Delivery by Mr. Hunter**

67. Mr. Hunter testified that he had assisted in the delivery of a baby on one occasion while he was a physician assistant student in a rotation with Dr. Gray. (Tr. at 138).

Regarding the Board's allegation that Mr. Hunter had participated in the delivery of a human infant in January 2000, Mr. Hunter acknowledged that, in his April 14, 2000, deposition, he had testified that he had done so. Mr. Hunter stated that, since reviewing the dates, he is certain that the delivery in which he participated had taken place in March 1999, at a time when Mr. Hunter was still a physician assistant student. (Tr. at 575-577).

Mr. Hunter testified that, during the delivery of the baby in March 1999, Dr. Gray had been sitting in a chair at the foot of the bed. Mr. Hunter was standing behind him. As the baby's head crowned and started to emerge, Dr. Gray told Mr. Hunter to "get in here." Mr. Hunter testified that Dr. Gray had kept his hands on the baby's head until Mr. Hunter was able to insert his hands. (Tr. at 637-638).

Mr. Hunter testified that he had placed hands on the baby's head as the baby emerged from the vagina. He stated he had put his left hand on the back of the baby's head and his right

hand was cradling the baby's face. Dr. Gray placed his hands on top of Mr. Hunter's. Mr. Hunter stated that he had had his hands in that position for approximately ten to fifteen seconds. He further stated that he had not applied any pressure to the baby's head and the head had emerged on its own. He stated that while his hands were on the baby's head, the baby's head turned sideways in restitution. Thereafter, the shoulders rapidly emerged. After the shoulders emerged, the rest of the baby's body started to emerge. Mr. Hunter testified that Dr. Gray had slid his hands onto the baby's body and Dr. Gray caught the baby. (Tr. at 579, 640-642).

68. Mr. Hunter stated that he had been seeing Patient 1 in Dr. Gray's office on a regular basis. Dr. Gray asked Mr. Hunter to attend the delivery. Mr. Hunter had expected to assist in the delivery with hands-on experience because Dr. Gray had told him that he would. Mr. Hunter testified that he had assisted in the delivery in order to learn how to deliver a baby in case an emergency should arise. Mr. Hunter also felt that a student has a responsibility to expose himself to as many opportunities and procedures as possible. Mr. Hunter stated he had not expected to be delivering babies in the normal course of working as a physician assistant with Dr. Gray. (Tr. at 139, 150, 619-621).

Mr. Hunter testified that, prior to the delivery in which he had his hands on the baby's head, he had observed deliveries and had been instructed on the procedure for deliveries. He also stated that his physician assistant training had included a course in obstetrics. During that course, doctors had come to the class and discussed the complications of delivery. Therefore, he had been exposed to obstetrics as a student. (Tr. at 620-621).

69. Dr. Gray testified that it is important for a physician assistant to be aware of the mechanics of a delivery in case the physician assistant is someday faced with an emergency delivery. Dr. Gray stated that the chances of having a healthy baby would be influenced by whether the physician assistant had been trained to handle the emergency. (Tr. at 26, 1029).

Dr. Gray testified that he had learned to perform deliveries in medical school, after observing many, by placing his hands on the baby's head with the attending or resident physician's hands on top of his. Dr. Gray further testified that, when teaching a student to assist in a delivery, he asks the student to put the student's hands on the baby's head as it emerges after crowning, so that the head does not precipitously "pop out." He stated that when he teaches students how to deliver the babies' shoulders, he places his hands over the students' hands. (Tr. at 985-986, 1017-1028).

Dr. Gray testified that he talks to the students throughout the entire process. He explains to the students what he wants them to do with their hands. Prior to even touching a baby, the students watch several deliveries while Dr. Gray talks them through. It is only after watching several deliveries that the students are allowed to touch the babies' heads. Dr. Gray stated that he puts his hands over the hands of the physician assistant students and

guides the delivery of the head and shoulders. He stated that he does this only with the full permission of the mother. (Tr. at 26, 1028-1029).

Dr. Gray testified that approximately four of his physician assistant students have been able to place their hands on the heads of babies during the course of deliveries. (Tr. at 29).

70. Dr. Baggish testified that, in a normal delivery, hands go on the baby's head at the point of crowning. The person whose hands are on the baby's head as the head is coming out of the vagina is the person who is controlling the delivery. Dr. Baggish testified that, in Patient 1's delivery, it was Mr. Hunter who had control of the delivery. Dr. Baggish testified that, even if Dr. Gray's hands had been on top of Mr. Hunter's hands, Mr. Hunter would have been the one delivering the baby. (Tr. at 316, 321).

Dr. Baggish presented somewhat confusing testimony regarding what he considers to be the delivery. At one point, Dr. Baggish testified that the delivery occurs when the head exits the vagina, and anything that occurs beyond that point, even the emergence of the shoulders, is not part of the delivery process. Later, however, Dr. Baggish testified that the delivery begins with the appearance of the presenting part and ends upon the delivery of the entire fetus. (Tr. at 318-319, 393).

Dr. Baggish also presented confusing testimony regarding how he teaches students to deliver a baby. Dr. Baggish testified that, when he is teaching medical students how to deliver, the student's hands are placed on the baby's head after the head is delivered. Dr. Baggish testified that if the student is going to deliver the shoulders, Dr. Baggish would either watch the student or put his hands over the student's hands to guide the student into doing what Dr. Baggish wanted the student to do. (Tr. at 321). Later, however, Dr. Baggish testified that he would place his own hands on the head of the baby, and ask the student to place his or her hands over Dr. Baggish's hands. (Tr. at 383-384).

71. Dr. Baggish testified that, when a physician assistant is not authorized to deliver a baby, as in the State of Ohio, there is no reason to teach a physician assistant how to deliver a baby in the normal course of practice. (Tr. at 323).
72. In a memorandum dated September 20, 2001, Dr. Abramovitz stated as follows:

As past Director of Medical Education in OB-Gyn at Grant Hospital and an active practitioner in the specialty for 25 years, I have been involved in teaching the technique of vaginal delivery to hundreds of residents and medical students. I do not recall ever having a student or resident placing their hands over mine during the teaching of a delivery. I \* \* \* feel that I can more accurately teach the proper amount of tractive force and appropriate movements by placing my hands OVER the student's hands and guiding the student during the delivery. If

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Dr. Baggish likes to have the student's hands over his and that teaching method works for him, I have no problem with that. However, it is important to note that his teaching technique is not the only method of instruction.

(Resp. Ex. BB) (emphasis in original).

At hearing, Dr. Abramovitz testified that the most common teaching technique in delivering a baby is to place the student's hands on the baby's head and the teacher's hands on top of the student's hands. Dr. Abramovitz stated that, in that position, the teacher can direct the amount and direction of force during the delivery. Dr. Abramovitz testified that he has used the teacher's-hands-over-student's-hands technique for many years. (Tr. at 768, 773).

Dr. Abramovitz stated that he has never used a technique where the student's hands are placed over the teacher's hands. Dr. Abramovitz testified that such a technique is illogical because the student would be merely a passive observer. The student would not be able to feel the strength and force asserted by the teacher, the student would not know the amount of traction being used, and the student's hands would simply be following the motions of the teacher's hands. (Tr. at 773-774).

Dr. Abramovitz testified that the person who has control of the delivery is the person whose hands are on the outside. Dr. Abramovitz testified that he would consider himself doing the delivery if he were a teacher whose hands were on top of the student's hands. (Tr. at 775-776).

73. Dr. Abramovitz testified that, even if a medical student delivers a baby, it would be the attending physician who had delivered the baby. (Tr. at 789-790).
74. Dr. Bachelder testified that, when teaching students to deliver infants, he places his hands over the student's hands on the infant's head as it emerges from the peritoneum. Dr. Bachelder stated, "It's the only way I know of that [the student] can physically feel the amount of force and pressure and direction that needs to be applied to the head to allow delivery." Dr. Bachelder testified that he had never heard of a teaching method in which the student's hands are placed over the instructor's hands until he reviewed Dr. Baggish's testimony. (Tr. at 1204-1205).

Dr. Bachelder testified that, in documenting a delivery in which a medical student had assisted, Dr. Bachelder would describe the delivery itself and note whether there had been any complications. He stated that he would also document that he had been present at the delivery and assisted by the medical student. He stated that he would identify the student by name. (Tr. at 1208).

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Dr. Bachelder testified that he has trained obstetrical nurses at Morrow County Hospital to deliver infants. Dr. Bachelder testified that, in a small rural community, it is more likely that a patient will deliver without an attending physician being available. Dr. Bachelder distinguished the situation from that of a teaching hospital in a large community where there are always physicians, residents, and students available. He concluded that, in a small community hospital, there must be other people available who are competent to assist in a delivery when needed. Dr. Bachelder testified that, in the past eighteen years, obstetrical nurses have delivered infants in his absence on five occasions. (Tr. at 1206-1207).

75. Dr. Bachelder was questioned about the propriety of training a physician assistant to perform a procedure that the physician assistant is not legally allowed to perform independently, such as delivering a baby. Dr. Bachelder testified that

[T]here needs to be a distinction between training for what is expected to occur and yet training a person for the potential problems and complications that you can run into on the fringes of medicine in a rural setting.

So, from the standpoint of your question can a physician assistant be trained to do deliveries in the expectation of doing that procedure on their own in an independent fashion, no.

On the other hand, does the physician assistant working in a primary care setting that includes obstetrics need to know what's expected during the normal course of events in a delivery to assist those patients to the best outcome they can have, that's probably legitimate, but not in the sense you're training them for the practice of obstetrics but rather for that disaster that's going to happen in a rural setting.

(Tr. at 1257-1258).

#### **Issuance of Prescriptions by Mr. Hunter**

76. Mr. Hunter testified that he had prescribed medications on blank prescription forms that had been pre-signed by Dr. Gray. Mr. Hunter testified that this practice had started in approximately July or August 2000. (Tr. at 582).

Mr. Hunter testified that, at the time he started issuing the pre-signed blank prescription forms, he had been aware that he was not legally authorized to prescribe medications. He stated that, despite the illegality, he had done so for the convenience of Dr. Gray's patients

in emergency situations. When asked what he had considered an emergency, Mr. Hunter testified:

If I had a patient come in that needed a refill on medicine, that needed to be mailed away which takes a few weeks to get in and they were coming from a long distance, I thought it was compassionate of us to give that patient a prescription so we wouldn't have to make that elderly patient drive all the way back after Dr. Gray got back in the office to get that prescription.

Mr. Hunter also stated that an emergency situation may have presented "where a patient had run out of thyroid or heart medicine or was down to their last one and they needed it before they went to work." Mr. Hunter acknowledged that there had been no reason that Dr. Gray couldn't have reviewed the records when he returned to the office and then called the prescription to the pharmacy. (Tr. at 164-165, 582, 584).

Mr. Hunter testified that he and Dr. Gray had set up parameters for use of pre-signed blank prescription forms. He stated the pre-signed blank prescription forms were only to be used when Dr. Gray was called to the hospital in emergency situations, and only for patients who had traveled a great distance. In addition, the pre-signed blank prescription forms were not to be used for narcotics or other controlled substances. Finally, the pre-signed blank prescription forms were to be used only for refills; Mr. Hunter had not been permitted to write a prescription for a drug that Dr. Gray had not already prescribed. (Tr. at 166-167, 583-584).

Mr. Hunter testified that, if a patient was on a medication and needed a refill, Mr. Hunter would prescribe it. When asked how he had made the determination that it was appropriate to refill a medication and that the patient did not need to be reevaluated before the new prescription was issued, Mr. Hunter stated that he would make the determination by assessing the patient's condition. Mr. Hunter further testified that Dr. Gray frequently reevaluates patients on long-term medications. Therefore, Mr. Hunter would review that patient's records to see when the patient's last blood work had been done, when the patient's blood pressure had been taken, and what the patient's symptoms had been. Mr. Hunter stated that he would do all those things before making a decision whether or not to prescribe. (Tr. at 642-643).

Mr. Hunter stated that he always returned the pre-signed blank prescription forms to Dr. Gray upon Dr. Gray's return to the office. Mr. Hunter further testified that Dr. Gray had always reviewed Mr. Hunter's charts and discussed the medications that Mr. Hunter had prescribed. (Tr. at 584, 587-588).

77. Mr. Hunter testified that, at the time he was completing pre-signed blank prescription forms, he had known that what he was doing was wrong. He stated that he had been aware that physician assistants do not have prescriptive authority in Ohio. (Tr. at 167, 646).
78. Dr. Gray admitted that he had pre-signed blank prescription forms and given them to Mr. Hunter. Dr. Gray stated that the pre-signed blank prescription forms had not contained patients' names or dates. Moreover, there had been no indication of the type of medication, the quantity to be prescribed, or directions for use. The only thing on the pre-signed blank prescription forms given to Mr. Hunter had been Dr. Gray's signature. (Tr. at 109-110).

Dr. Gray believes that he had started using pre-signed blank prescription forms in the summer of 2000, approximately eight to ten months after Mr. Hunter had started working for him. Dr. Gray testified that he had started the practice after a patient complained after not receiving a prescription when Dr. Gray was out of the office on an emergency. (Tr. at 109-110, 1063).

Dr. Gray testified that he had authorized Mr. Hunter to use the pre-signed blank prescription forms while Dr. Gray was out of the office. He had done so because many of his patients traveled great distances to reach Dr. Gray's office. Dr. Gray stated that the pre-signed blank prescription forms were to be used on an emergency basis only and were not to be used for controlled substances. Dr. Gray stated that he had reviewed Mr. Hunter's prescriptions as soon as he returned to the office. Dr. Gray acknowledged, however, that, by the time that he returned to the office, the patients could have already had their prescriptions filled at a pharmacy. (Tr. at 109-110, 1054, 1062-1063).

When asked if he had known that giving a physician assistant pre-signed blank prescription forms violated the Medical Practice Act, Dr. Gray answered,

I'm not so certain I knew at first. And, I could say, yes, I did read the statutes when I first hired PAs, but I'm not so certain that it was wrong when I first did it or when I did find out, and I'm not sure at which time. I don't know if being an emergency, that I could bend the rules. I don't know. But, it was wrong and if I didn't know it was wrong, certainly ignorance is no excuse.

(Tr. at 1076). Dr. Gray acknowledged, nonetheless, that even after he had realized that giving a physician assistant pre-signed blank prescription forms violated the Medical Practice Act, he had continued to give Mr. Hunter pre-signed blank prescription forms. (Tr. at 1077).

**The Standard Utilization Plan as Revised by the Board in December 2000**

79. Ms. Hacker testified that the standard utilization plan used by the Board in 1999 is no longer being used by the Board. She stated that the new plan became effective in December 2000. She stated that the change was made in response to changes in the administrative rules regarding physician assistants. These changes came into effect in September and October 2000. (Tr. at 915-917 [CT at 57-59]; St. Ex. 9; St. Ex. 15).
80. In the revised standard utilization plan, more information is provided regarding assisting in surgery than was provided in the 1999 standard utilization plan. The additional information includes the following:
- A physician assistant shall function as a physician assistant assisting in surgery only when under the direct supervision of the surgeon who is present during the surgery and only when the participation of a physician assistant assisting in surgery is indicated on the informed consent form. The performance of the following listed tasks is solely for the purpose of assisting the surgeon in performing a safe operation and shall not be construed to allow the physician assistant to perform surgery. The tasks a physician assistant assisting in surgery may perform include, but are not limited to, the following:
    - Handling of tissue;
    - Using instruments (e.g., retractors);
    - Providing hemostasis; and
    - Placing sutures as part of the surgical procedure.
  - A physician assistant functioning as a physician assistant assisting in surgery may close subcutaneous tissue and skin when the surgeon who performed the surgery provides supervision in close proximity within the surgical suite.
- \* \* \*
- No physician assistant shall perform a surgical task or procedure which is the primary purpose of the surgery.

(St. Ex. 15 at 6).

81. Dr. Bachtel testified that the standard utilization plan that he used when he first hired a physician assistant in 1995 was less specific than the Board's current standard utilization plan. Dr. Bachtel testified that, prior to the revisions, the standard utilization plan "gave a general framework in which to operate, but the new version is much more specific and,

candidly, I think much better, much easier to follow, much easier to understand even though it's more voluminous." (Tr. at 1281-1282).

### **The Standard Utilization Plan Submitted by Dr. Gray in March 2001**

82. On March 9, 2001, Dr. Gray filed a new standard utilization plan with the Board. In the utilization plan, Dr. Gray requested the Board's authorization to employ a physician assistant to perform all of the basic tasks. Dr. Gray also requested that the physician assistant be allowed to assist in surgery. (St. Ex. 15).

Dr Gray acknowledged that the new standard utilization plan included a request to have the physician assistant assist in surgery. Dr. Gray stated that had been planning to hire a new physician assistant and had hoped to have the new physician assistant assist him in surgery. He stated that, at that time, he had believed that each standard utilization plan referred to a particular physician assistant. Therefore, Dr. Gray had not expected that Mr. Hunter would have been able to assist in surgery based on the new plan. (Tr. at 42-43).

83. Ms. Hacker testified that she was aware that Dr. Gray had submitted a new standard utilization plan in March 2001. Mr. Hacker testified that she had not processed the new plan because there had been a pending investigation involving Dr. Gray and Mr. Hunter. She stated that she had turned over Dr. Gray's new standard utilization plan to the persons at the Board who were involved with the ongoing investigation. (Tr. at 942-944 [CT at 84-86]).

### **The Scope of Practice of a Physician Assistant Pursuant to a Standard Utilization Plan**

84. Ms. Hacker testified that, as part of her responsibilities as the Physician Assistant Program Administrator for the Board, she reviews utilization plans to be submitted to the Board members for their consideration. She stated that she also reviews physician assistant applicants' registrations and approves supervision agreements. Ms. Hacker attends policy meetings, both the physician assistant policy committee and the Board's physician assistant committee, as well as the monthly Board meeting. She stated that she has served in this capacity since September 1997. (Tr. at 529-530).
85. Ms. Hacker stated that, as part of her job, she answers questions by physicians and physician assistants regarding which procedures are covered under the standard utilization plan. Ms. Hacker testified that, in answering those requests, she refers to the list of functions listed in a standard utilization plan to help her determine the appropriate answer. (Tr. at 898-901 [CT at 40-43]).

Ms Hacker testified that she will not answer scope of practice questions unless the answer is clear from the standard utilization plan. She further stated that, when the answer is unclear from the standard utilization plan so that she is unable to answer the question, she instructs physicians and physician assistants to write a letter and request clarification. Mr. Hacker then directs the letter to the Executive Director of the Board. (Tr. at 901-902 [CT at 43-44]).

86. Ms. Hacker noted that the standard utilization plan, as it existed prior to December 2000, provided that if the assisting in surgery box had been checked and approved, a physician assistant may assist in surgery provided that procedures the physician assistant will perform “have been delineated within the scope of practice of a physician assistant” and “approved by an appropriate committee of the hospital or out-patient surgical care center where such services are to be rendered.” (Tr. at 587-589; St. Ex. 9 at 3).

Ms. Hacker testified that, prior to the rules revision in 2000, she did not know what tasks could be performed by a physician assistant who had been approved to assist in surgery. Ms. Hacker further testified that, prior to the rules revision in 2000, there was no document that she is aware of which would have detailed for a supervising physician what tasks a physician assistant was allowed to perform if the assist in surgery box had been checked. She stated that she is not aware how a physician would have known what responsibilities a physician assistant could perform other than by referring to the hospital’s credentialing committee. (Tr. at 893-895, 897-898 [CT at 35-40]).

87. Ms. Hacker testified that, during Board committee meetings that she attended, some of the discussion among committee members had indicated to her that it is not always clear whether something is included or is not included in a standard utilization plan. (Tr. at 914-915[CT at 56-57]; Resp. Ex. RR).
88. Ms. Hacker testified that she has never seen a standard or supplemental utilization plan which approved a physician assistant performing circumcision. She further stated that she has never seen a standard or supplemental utilization plan which permitted a physician assistant to deliver a baby. (Tr. at 535, 984 [CT at 88]).

### **Training Physician Assistant Students**

89. Dr. Bachtel testified that he is not aware of any law or regulation governing the teaching of physician assistant students. (Tr. at 1288).
90. Dr. Bachelder testified that he has worked with residents, medical students, and physician assistant students in his practice. Dr. Bachelder testified that he is not aware of any rules or guidelines pertaining to the teaching of residents, medical students, or physician assistant

students. Dr. Bachelder testified that the biggest parameter for teaching students is the comfort level the physician has with the student. (Tr. at 1189-1191).

Dr. Bachelder testified that, as a medical student, he completed a surgery rotation. He stated that while in the surgery rotation, he had performed procedures that are outside the scope of his practice today. Dr. Bachelder testified that he recalls “scrubbing in” on an abdominal aortic aneurysm. He stated that what he witnessed that day was far beyond anything that a family physician would do. Nevertheless, he stated that,

that type of training was necessary because, in being able to visualize that pathology and seeing the care that was given, it helps me to give better care to my patients as a primary care physician knowing what that patient will be going through.

(Tr. at 1194-1197).

Dr. Bachelder was asked questions regarding who actually performs a procedure when a student or resident is involved. Dr. Bachelder testified that you must distinguish between the one who physically performs the procedure and the one who is ultimately responsible for performance of the procedure. Dr. Bachelder stated that the attending physician is always the one responsible for the performance of the procedure, no matter who physically performs the procedure. (Tr. at 1197-1199).

Dr. Bachelder testified that none of the hospitals with which he is familiar has a process for credentialing students. He stated, “It somewhat begs the question do you need to have the training before you can get the privilege? Which comes first, the chicken or the egg? And to apply for a privilege that you don’t yet have the ability to do seems somewhat nonsensical.” (Tr. at 1199; 1241-1242).

91. Ms. Hacker testified that physician assistant students are not required to practice according to a utilization plan. Moreover, Ms. Hacker testified that she is aware of no Board rule or statute which governs the practice of a physician assistant student. (Tr. at 879-88).

#### **Training a Physician Assistant: Before or After Obtaining a Supplemental Utilization Plan**

92. Dr. Bachelder testified that his opinion that it had been appropriate for Mr. Hunter to perform the circumcision was based on his belief that “the physician assistant should be trained even prior to having a supplemental plan approved.” Dr. Bachelder testified that he is not aware of any requirement which states that a physician assistant must have a supplemental utilization plan in place before the physician assistant may be trained to perform a procedure. (Tr. at 1242-1243, 1256).

Dr. Bachelder acknowledged that, if a physician trains a physician assistant in a specific procedure before applying for a supplemental utilization plan to cover that procedure, it may be that the physician has trained the physician assistant in a procedure that the Board will never approve a physician assistant to perform. Dr. Bachelder further acknowledged that not every supplemental utilization plan application will necessarily be approved by the Board. (Tr. at 1242-1244).

When asked who determines whether a physician assistant has the necessary skills to perform a particular task, or to learn to perform a particular task, Dr. Bachelder answered:

That seems to be the crux of the dilemma right now in the sense that it doesn't seem the Medical Board is giving us direction. It doesn't seem that there [are] standards for students who are medical students or PAs, and what's being proposed at least I think through this case is whether there needs to be a supplemental plan prior to the educational process.

I have not seen or heard the Medical Board previously determine or make that determination as to whether that needs to be applied [for] beforehand or afterwards. So, prior to this case, it seems to me that the determination was left to the practitioner as to what skill levels were appropriate.

(Tr. at 1247-1248).

93. Dr. Bachtel testified that, as a result of his participation in this hearing, he had come to a new understanding of the statutes and laws governing the use of physician assistant. Dr. Bachtel testified that:

[I]f a physician assistant is going to learn a new procedure then a supplemental utilization plan should be applied for first before teaching the procedure.

I previously thought that it was the other way around, that you had to document the training of the physician assistant before such supplemental plan would even be considered by the Medical Board.

(Tr. at 1315-1316).

**Letters in Support of Mr. Hunter**

94. In an undated letter to the Board, David K. Bundie, M.A., P.A.-C., Physician Assistant Program Director at the University of Saint Francis, stated that he has known Mr. Hunter for many years and has “the utmost respect” for him. He further stated that the loss of Mr. Hunter as a physician assistant would be a great loss to the community. (Resp. Ex. V).
95. In a September 14, 2001, letter to the Board, Shawn R. Dooley, owner of the Dooley Funeral Home in Antwerp, Ohio, advise that he has known Mr. Hunter both professionally and personally. He stated that Mr. Hunter is an asset to the community and a benefit to Dr. Gray’s practice. (Resp. Ex. W).
96. In a September 13, 2001, letter to Mr. Hunter’s counsel, Vivian I. Schilb of Antwerp, Ohio, advised that Mr. Hunter is “a very capable and knowledgeable” physician assistant and an asset to the community. (Resp. Ex. X).
97. In a September 17, 2001, letter to the Board, Eugene O. Vance of Paulding, Ohio, advised that Mr. Hunter has been a tremendous help to Mr. Vance’s family. Mr. Vance stated that Mr. Hunter is a credit to the community. (Resp. Ex. Z).

**FINDINGS OF FACT**

1. Thomas A. Hunter, P.A., entered into a supervision agreement with James Harold Gray, D.O., in September 1999. Pursuant to that supervision agreement, Mr. Hunter certified that he would practice in accordance with Dr. Gray’s Physician Assistant Utilization Plan, as approved by the Board. Dr. Gray’s Physician Assistant Utilization Plan, as approved by the Board, did not permit any physician assistant under his supervision to engage in the delivery of human infants, to engage in surgery, or to assist in surgery.
2. On May 11, 2000, Mr. Hunter performed, in part, a circumcision on Patient 2 in the nursery of Paulding County Hospital. Mr. Hunter also assisted Dr. Gray in the circumcision of Patient 3.
3. Mr. Hunter issued prescriptions for dangerous drugs to patients without Dr. Gray’s or any other physician’s specific approval. Dr. Gray facilitated Mr. Hunter’s prescribing of dangerous drugs by signing otherwise blank prescription forms and leaving those with Mr. Hunter when Dr. Gray left his office. Mr. Hunter completed the otherwise blank pre-signed prescription forms and gave those forms to patients with the intention that those patients present the forms to pharmacies.

4. During one of Mr. Hunter's clinical rotations with Dr. Gray, while Mr. Hunter was a physician assistant student, Mr. Hunter to assisted in the delivery of a human infant at Paulding County Hospital by placing his hands on the head of the emerging infant while Dr. Gray's hands were over Mr. Hunter's hands.

Although the notice of opportunity for hearing alleged that this incident had occurred in or about January 2000, evidence at hearing demonstrated that the delivery had taken place in 1999, during one of Mr. Hunter's clinical rotations with Dr. Gray while Mr. Hunter was a student. The Board made the allegation that the delivery had occurred in January 2000 as a result of confusing testimony by Mr. Hunter during his April 2000 deposition. Therefore, testimony was presented regarding Mr. Hunter's participation in the delivery in 1999. The Respondent did not object to the substitution of the date for the purposes of this hearing.

#### CONCLUSIONS OF LAW

- A. The evidence presented at hearing supports the following allegations against Thomas A. Hunter, P.A., as set forth in the Board's June 13, 2001, notice of opportunity for hearing:
  1. The conduct of Mr. Hunter, in performing the majority of the circumcision of Patient 2 and in cutting skin during the course of that procedure, as set forth in Findings of Fact 2, constitutes the following:
    - a. "[f]ailure to practice in accordance with the conditions under which the supervising physician's supervision agreement with the physician assistant was approved, including the requirement that when practicing under a particular supervising physician, the physician assistant must practice only according to the standard or supplemental utilization plan the board approved for that physician," as that clause is used in Section 4730.25(B)(1), Ohio Revised Code.
    - b. "[f]ailure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board," as that clause is used in Section 4730.25(B)(2), Ohio Revised Code, to wit: Section 4730.02(F), Ohio Revised Code.  
  
Section 4730.02(F), Ohio Revised Code, provides that "No person shall practice as a physician assistant in a manner that is inconsistent with the standard or supplemental physician assistant utilization plan approved for the physician who is responsible for supervising the physician assistant." R.C. § 4730.02(F).
    - c. "[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed," as

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that clause is used in Section 4730.25(B)(15), Ohio Revised Code, to wit: Section 4730.02(F), Ohio Revised Code. Pursuant to Section 4730.99, Ohio Revised Code, violation of Section 4730.02, Ohio Revised Code, constitutes a misdemeanor offense.

- d. “[f]ailure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board,” as that clause is used in Section 4730.25(B)(2), Ohio Revised Code, to wit: Rule 4731-4-02(A), Ohio Administrative Code, as in effect prior to September 1, 2000.

Rule 4731-4-02(A), as in effect prior to September 1, 2000, provides that:

The physician’s assistant shall perform only in the manner and to the extent set forth in the application of registration as approved by the state medical board. Further, the physician’s assistant shall perform only within the degree of supervision specified in the application for registration as approved by the state medical board.

O.A.C. 4731-4-02(A).

- e. “[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: 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.

Section 4731.41, Ohio Revised Code, provides, in part, “No person shall practice medicine and surgery, or any of its branches, without the appropriate certificate from the state medical board to engage in the practice.” R.C. 4731.41. Pursuant to Section 4731.99(A), Ohio Revised Code, violation of 4731.41, Ohio Revised Code, constitutes a felony offense.

The evidence demonstrated that a circumcision is a surgical procedure which involves the cutting of skin. Although the procedure may not be a complex surgical procedure, it is, nonetheless, a surgical procedure. Mr. Hunter performed the majority of the circumcision, including the cutting of skin. The evidence further suggests that Mr. Hunter would have performed all of the procedure if he had not been interrupted by Ms. Madison. Arguments that Dr. Gray was teaching Mr. Hunter to perform circumcision do not negate the fact that Mr. Hunter did, in fact, perform the procedure.

Even if one were to consider Mr. Hunter's conduct as merely assisting in surgery, it is clear that the standard utilization plan under which Mr. Hunter was practicing did not permit him to assist in surgery.

Mr. Hunter presented a number of arguments supporting his contention that it had not been inappropriate to participate in the circumcision of Patient 2. First, Mr. Hunter argued that performing portions of the circumcision was an appropriate delegation of tasks by Dr. Gray pursuant to the Board's May 13, 1998, position paper on delegation of medical tasks. (See Resp. Ex. UU at 23-24).

In Mr. Hunter's argument, however, he fails to note that, before a physician may delegate a task, the physician must first assure that no other law prohibits the delegation. As noted above, Sections 4730.02(E) and 4730.21(C), Ohio Revised Code, as well as Rule 4731-4-02(A), Ohio Administrative Code, prohibit a physician from allowing a physician assistant to practice in violation of the utilization plan governing that physician assistant's practice. Moreover, the delegation position paper requires that a delegatee practicing in a hospital must practice in accordance with the delegatee's credentials as approved by that hospital. Accordingly, Dr. Gray's delegation of portions of the circumcision of Patient 2 to Mr. Hunter did not comport with the requirements for delegation of medical tasks as set forth in the Board's position paper.

In addition, Mr. Hunter argued that performing portions of the circumcision under Dr. Gray's close observation was "an appropriate means for training a physician assistant to perform a procedure." He further suggested, as did a number of the expert witnesses, that "such training was a prerequisite for any request of the Board for approval of more independent performance of that procedure pursuant to a supplemental utilization plan." (See Resp. Ex. UU at 24-25, 29) (emphasis in original). Testimony of Dr. Gray, Dr. Bachtel, and Dr. Bachelder suggests that a number of physicians are confused regarding this issue.

Relatedly, Mr. Hunter also argued that the rules governing the practice of physician assistants prior to September 2000 were difficult to decipher and required interpretation by experts and Board committee members. Mr. Hunter presented expert testimony, the testimony of Ms. Hacker, and copies of the Board's physician assistant committees' minutes in support of this contention. (See Resp. Ex. UU at 26-30).

Nevertheless, the Board will approve a utilization plan only for a task that is within the scope of a physician assistant's practice. Mr. Hunter's role in the circumcision of Patient 2 constituted performing a surgery. Performing a surgery goes far beyond assisting in surgery and there is no evidence that the Board has ever approved a

utilization plan that allows a physician assistant to perform a surgery. Moreover, Mr. Hunter did not even have the authority to assist in surgery. Therefore, even if Mr. Hunter had been unsure of the law as it applies to physician assistants performing circumcision, he should have at least contacted the Board before performing one.

In mitigation, however, it should be considered that Mr. Hunter had not intended to practice beyond the scope of his certificate. Moreover, Mr. Hunter had been taught by Dr. Gray and was practicing under Dr. Gray's supervision. Mr. Hunter was new to the practice of physician assisting and looked to Dr. Gray for guidance. Furthermore, Mr. Hunter did not perform the circumcision independently but under the close supervision of his supervising physician. In addition, Mr. Hunter to performed the procedure in full view of other hospital staff and ceased participating in the circumcision when told to do so by Ms. Madison. Mr. Hunter immediately contacted the Board for guidance. These facts suggest that Mr. Hunter had not realized that his conduct violated the utilization plan.

In further mitigation, the mother of Patient 2 was aware that Mr. Hunter would be performing the procedure. Finally, no harm occurred to Patient 2 as a result of Mr. Hunter's participation.

2. The evidence presented supports a conclusion that the conduct of Mr. Hunter, in issuing prescriptions for dangerous drugs to patients without Dr. Gray's or any other physician's specific approval, as set forth in Findings of Fact 3, constitutes the following:
  - a. "[f]ailure to practice in accordance with the conditions under which the supervising physician's supervision agreement with the physician assistant was approved, including the requirement that when practicing under a particular supervising physician, the physician assistant must practice only according to the standard or supplemental utilization plan the board approved for that physician," as that clause is used in Section 4730.25(B)(1), Ohio Revised Code.
  - b. "[f]ailure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board," as that clause is used in Section 4730.25(B)(2), Ohio Revised Code, to wit: Section 4730.02(F), Ohio Revised Code.
  - c. "[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4730.25(B)(15), Ohio Revised Code, to wit: Section 4730.02(F), Ohio Revised Code. As noted above, Section 4730.02(F), Ohio Revised Code, provides that "No person shall practice as a physician

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assistant in a manner that is inconsistent with the standard or supplemental physician assistant utilization plan approved for the physician who is responsible for supervising the physician assistant.” R.C. Section 4730.02(F). Moreover, pursuant to Section 4730.99, Ohio Revised Code, violation of Section 4730.02, Ohio Revised Code, constitutes a misdemeanor offense.

- d. “[f]ailure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board,” as that clause is used in Section 4730.25(B)(2), Ohio Revised Code, to wit: Rule 4731-4-03(C), Ohio Administrative Code, as in effect prior to September 1, 2000.

Rule 4731-4-03, Ohio Administrative Code, as in effect prior to September 1, 2000, provides, in pertinent part:

The physician’s assistant shall not perform functions or acts including, but not limited to, the following:

- (C) Prescribe medication; sign or stamp prescriptions on behalf of the employing physician; have prescription blanks available that have been presigned or stamped by the physician; or dispense or order medication[.]

OAC 4731-4-03.

- e. “[f]ailure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board,” as that clause is used in Section 4730.25(B)(2), Ohio Revised Code, to wit: Rule 4731-4-04(C), Ohio Administrative Code.

Rule 4731-4-04, Ohio Administrative Code, as in effect on and after September 1, 2000, provides, in pertinent part, as follows:

A physician assistant shall not perform services or acts including, but not limited to, the following:

\* \* \*

- (C) Prescribe medication; sign or stamp prescriptions on behalf of the supervising physician; have prescription blanks available that have been presigned or stamped by the physician; or dispense or order medication[.]

OAC 4731-4-04.

- f. “[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: Section 4729.51(C), Ohio Revised Code, Persons who may sell, purchase, distribute, or deliver dangerous drugs.

Mr. Hunter argues that his practice of issuing pre-signed prescriptions does not constitute a violation of Section 4729.51, Ohio Revised Code. Mr. Hunter argues that that statutory section is used to prosecute persons who sell or possess dangerous drugs. Mr. Hunter further argues that, since he did not possess or sell dangerous drugs, but only wrote prescriptions for dangerous drugs, his conduct is not covered by the statute.

Nevertheless, in a case similar to the present matter, the Franklin County Court of Common Pleas recently held,

When a physician assistant prescribes drugs, it is conduct that could be charged as a felony. A physician assistant is not ‘legally capable of prescribing drugs.’ Therefore, when a physician assistant prescribes drugs, ‘the drugs could not have been dispensed in the bona fide treatment of any patient.’ In effect, the physician assistant is selling drugs.

*Clayton H. Royder, D.O. v. Ohio St. Med. Bd.* (Nov. 30, 2001), Franklin C.P. No. 00CVF08-7084, unreported at 9.

Mr. Hunter testified that his intention in issuing pre-signed prescriptions had been to do a kind and considerate act for his poor and aged patients who traveled great distances to his office. Upon review of the record, however, it was clear that Mr. Hunter failed to appreciate that prescribing of medication by a person neither trained nor licensed to do so created a great potential for harm to his patients.

- g. “[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: 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.

As noted above, Section 4731.41, Ohio Revised Code, prohibits the practice medicine and surgery “without the appropriate certificate from the state medical

board to engage in the practice.” R.C. 4731.41. Moreover, pursuant to Section 4731.99(A), Ohio Revised Code, violation of 4731.41, Ohio Revised Code, constitutes a felony offense.

- B. The evidence presented at hearing does not support the following allegations against Mr. Hunter as set forth in the Board’s June 13, 2001, notice of opportunity for hearing:
1. The conduct of Mr. Hunter, by participating in the delivery of a human infant at Paulding County Hospital, as set forth in Findings of Fact 4, constitutes the following:
    - a. “[f]ailure to practice in accordance with the conditions under which the supervising physician’s supervision agreement with the physician assistant was approved, including the requirement that when practicing under a particular supervising physician, the physician assistant must practice only according to the standard or supplemental utilization plan the board approved for that physician,” as that clause is used in Section 4730.25(B)(1), Ohio Revised Code.
    - b. “[f]ailure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board,” as that clause is used in Section 4730.25(B)(2), Ohio Revised Code, to wit: Section 4730.02(F), Ohio Revised Code.
    - c. “[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4730.25(B)(15), Ohio Revised Code, to wit: Section 4730.02(F), Ohio Revised Code. Pursuant to Section 4730.99, Ohio Revised Code, violation of Section 4730.02, Ohio Revised Code, constitutes a misdemeanor offense.
    - d. “[f]ailure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board,” as that clause is used in Section 4730.25(B)(2), Ohio Revised Code, to wit: Rule 4731-4-02(A), Ohio Administrative Code, as in effect prior to September 1, 2000.
    - e. “[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: 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.

Mr. Hunter was a physician assistant student at the time of the delivery. A number of the expert witnesses testified that Mr. Hunter was appropriately being taught the process of delivering a human infant. A number of the expert witnesses also testified that the person whose hands are on top of another person's hands after the baby's head crowns is the person who is delivering the baby. This testimony was persuasive. Accordingly, although Mr. Hunter participated in the delivery, he did not perform the delivery.

The question then presented is whether Mr. Hunter's participation in the delivery constitutes a violation of the statutes and rules. The evidence clearly demonstrated that Mr. Hunter's conduct violated Paulding County Hospital policy, but the Board did not charge Mr. Hunter with violating Paulding County Hospital policy.

The question of whether Mr. Hunter's participation in the delivery constitutes a violation of the statutes and rules is not answered by the evidence presented. As noted by Ms. Hacker, there is no law or statute which states that a physician assistant student must practice in accordance with a Board-approved utilization plan. Moreover, none of the witnesses was aware of any rules or statutes that govern the practice of physician assistant students. Similarly, none of the witnesses was aware of any rules or statutes that govern the scope of practice of physician assistant students.

On the other hand, the evidence revealed that physician assistants are authorized to perform routine obstetric deliveries in many states. Nevertheless, although Mr. Hunter is technically correct in stating that no law prohibits a supervising physician from requesting approval for a physician assistant to perform deliveries in Ohio, the Board has previously determined that the delivery of human infants is beyond the scope of practice of a physician assistant. Moreover, the Franklin County Court of Appeals has upheld the Board's right to make that determination. *Marion OB/GYN, Inc. v. State Med. Bd.* (2000), 137 Ohio App.3d 522.

The evidence further revealed that St. Francis University, located in Indiana, listed participation in obstetric deliveries as one of the skills Mr. Hunter was expected to develop as a student. Dr. Gray sponsored Mr. Hunter during his clinical rotation in obstetrics. Moreover, many of the experts testified that, while in medical school or residency, they had participated in procedures they knew they would not be performing once licensed. They noted, however, that the ability to experience these procedures as a student has benefited their overall practice and abilities. Furthermore, the State presented no evidence that the laws of Ohio prohibit the teaching of normal obstetric deliveries to physician assistant students who may or may not practice in Ohio once licensed. Accordingly, the State did not meet its burden in demonstrating

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that Dr. Gray's allowing Mr. Hunter, a physician assistant student, to participate in the delivery of a human infant constitutes a violation of law.

\* \* \* \* \*

Thomas A. Hunter, P.A., practiced beyond the scope of practice of a physician assistant and in violation of his supervision agreement with Dr. Gray. Moreover, Mr. Hunter acknowledged that he had issued prescriptions that had not been reviewed by his supervising physician, despite his knowledge that such practice is illegal.

Nevertheless, Mr. Hunter presented significant mitigating evidence. First of all, there was no evidence of patient harm presented. In addition, Mr. Hunter is dedicated to his profession, and committed the violations, in large part, in a desire to increase his skills and provide better care to patients. It is also mitigating that Mr. Hunter was practicing under the guidance of Dr. Gray and may have been influenced to view a physician assistant's scope of practice more liberally than he otherwise would have. Finally, Mr. Hunter demonstrated that he will be fervent in practicing in compliance with his supervision agreement and utilization plans, and with the laws of Ohio, throughout the remainder of his practice.

### PROPOSED ORDER

It is hereby ORDERED that:

- A. **SUSPENSION, PARTIALLY STAYED:** The certificate of Thomas A. Hunter, P.A., to practice as a physician assistant in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than one year. All but thirty days of the suspension is **STAYED**.
- B. **PROBATION:** Upon reinstatement or restoration, Mr. Hunter's certificate shall be subject to the following **PROBATIONARY** terms, conditions, and limitations for a period of at least three years:
  1. **Modification of Terms:** Mr. Hunter shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.
  2. **Obey the Law:** Mr. Hunter shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
  3. **Declarations of Compliance:** Mr. Hunter shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has

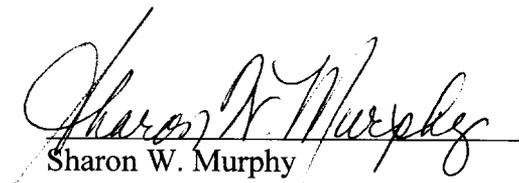
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been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

4. **Personal Appearances:** Mr. Hunter shall appear in person for quarterly interviews before the Board or its designated representative, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
5. **Tolling of Probationary Period While Out of State:** In the event that Mr. Hunter should leave Ohio for three consecutive months, or reside or practice outside the State, Mr. Hunter must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.
6. **Record Services Provided by Physician Assistant:** Mr. Hunter shall document with specific detail in the patient medical record the services he provides. Mr. Hunter shall ensure that these records are available to the Board upon request.
7. **Examination on Law Relating to Practice of Physician Assistants:** Before the end of the first year of probation, or as otherwise approved by the Board, Mr. Hunter shall take and pass an examination to be administered by the Board or its designee related to the content of the Revised Code and the Administrative Code relating to the practice of physician assistants in Ohio.
8. **Refrain From Teaching Physician Assistants:** Mr. Hunter shall refrain from teaching physician assistants, unless otherwise determined by the Board.
9. **Violation of Terms of Probation:** If Mr. Hunter violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may set aside the stay order and impose the one year suspension of Mr. Hunter's certificate.

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

- D. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Mr. Hunter shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Mr. Hunter shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
- E. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Mr. Hunter shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Mr. Hunter shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Mr. Hunter shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board.

  
Sharon W. Murphy  
Attorney Hearing Examiner



# State Medical Board of Ohio

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

## EXCERPT FROM THE DRAFT MINUTES OF MARCH 13, 2002

### REPORTS AND RECOMMENDATIONS

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

Dr. Somani 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 matter of Richard De La Flor, M.D.; Rosemarie Fernandez, M.D.; Stephen N. Fisher, M.D.; James Harold Gray, Jr., D.O.; Thomas A. Hunter, P.A.; and Willie L. Josey, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Dr. Somani	- aye

Dr. Somani 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. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye

Dr. Steinbergh - aye  
Dr. Somani - aye

Dr. Somani 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.

Dr. Somani 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.

.....

THOMAS A. HUNTER, P.A.

Dr. Somani directed the Board's attention to the matter of Thomas A. Hunter, P.A. He advised that objections were filed to Hearing Examiner Murphy's Report and Recommendation and were previously distributed to Board members.

**DR. AGRESTA MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF THOMAS A. HUNTER, P.A. DR. STEINBERGH SECONDED THE MOTION.**

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

Dr. Steinbergh stated that she finds that the Proposed Order is appropriate, although she would move to change the period of suspension to 15 days because it would be very inappropriate for this P.A. to suffer worse than his employing physician. Otherwise, the rest of the Proposed Order is appropriate.

Dr. Steinbergh stated that in this particular case she does believe that Mr. Hunter served with Dr. Gray and that, as Dr. Egner stated in reference to Dr. Gray's case, the lines became a little blurred. She stated that, although she doesn't make light of it, she probably doesn't put as much emphasis on Mr. Hunter's decision making at this time, especially during the time of the circumcision. She doesn't think that Mr. Hunter would think to tell Dr. Gray that he's not supposed to be doing this. However, physician assistants want to be considered professionals. With that said, Dr. Steinbergh stated that they must, as professionals, make a decision, ethically and morally, about what they are doing. If they're not licensed to do this, if they're not credentialed in their hospitals to do this, they have a right to say that it is inappropriate for them. They have an obligation to say that.

**DR. STEINBERGH MOVED TO AMEND PARAGRAPH A OF THE PROPOSED ORDER IN THE MATTER OF THOMAS A. HUNTER, P.A., TO IMPOSE A DEFINITE 15-DAY SUSPENSION. MR. BROWNING SECONDED THE MOTION.**

Dr. Talmage stated that one thing that should be understood is that this is not a physician assistant who was working with Dr. Gray. He was a physician assistant student, not a certified P.A.

Dr. Egner and Dr. Steinbergh stated that he is.

Dr. Talmage stated that the record refers to Mr. Hunter as a student.

Dr. Egner stated that she doesn't think that the record means that Mr. Hunter had not completed his education and been certified. Mr. Hunter is a licensed P.A.

Dr. Steinbergh stated that Dr. Gray felt that allowing Mr. Hunter to do the things he allowed was no more than teaching him to do them. Mr. Hunter was no longer a student. Although the teaching process never stops, the bottom line was that Mr. Hunter is not a student, but a licensed P.A., and he must follow the laws. That was the discussion about the difference between the educational process of a P.A. student versus being licensed.

Dr. Talmage stated that he should be referred to as P.A.-C. He stated that, given that information, he would support Dr. Steinbergh's proposed amendment.

Dr. Buchan noted for the record that Dr. Gray and Mr. Hunter entered into a supervision agreement in September 1999. He also spoke in support of Dr. Steinbergh's proposed amendment.

Mr. Dilling asked when this Order will become effective. He noted that Dr. Gray's order became effective 30 days from the date of mailing. He asked whether the Board intends this order to be effective at the same time.

Dr. Steinbergh indicated that she does.

Dr. Egner spoke in agreement with the proposed amendment. She added that she didn't think that the Order should be more harsh than that imposed upon the physician. She added that she can see that a P.A., who wants to have a good working relationship with his physician and wants to learn, is probably not going to tell the physician that he's not allowed to do that. It puts the P.A. in a bad position. However, she does think that there was no doubt in that P.A.'s mind that he was not allowed to write prescriptions. Just as a physician should not ask the P.A. to do something that is unlawful, P.A.s also need to know that they should be protecting themselves and their licenses. Mr. Hunter easily could have told Dr. Gray that he does not have prescriptive authority and that he may not write prescriptions, and he should have said that. Dr. Egner stated that she doesn't understand why Mr. Hunter would put himself in jeopardy like that.

Dr. Agresta suggested that Dr. Gray readdress his relationship with his P.A. Dr. Gray works in an underserved area and the Board has obviously made allowances for that; his P.A. has become like a partner to Dr. Gray. In the long run that will lead to more of these kinds of decisions, resulting in poor judgment again. Had this circumcision had a back outcome, then what? Then the Board's decision would have been altogether different. Dr. Agresta stated that he personally doesn't think that it's right. Some of the increase in allowing P.A.s to do more things has been to the benefit of patients and some hasn't. There are times when the Board has to say that a P.A. is still a P.A. and you can't treat him like a physician. As these relationships get closer and closer, all of a sudden the physician feels that the P.A. is just like another physician, and he isn't.

Dr. Somani stated that he hopes that it is very clear from today's deliberations that the physicians have to understand clearly the distinction between their responsibilities.

Dr. Buchan advised that he also agreed.

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- nay
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye
	Dr. Somani	- aye

The motion carried.

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF THOMAS A. HUNTER, P.A. DR. STIENECKER SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- nay
	Dr. Buchan	- aye
	Mr. Browning	- aye



# State Medical Board of Ohio

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

June 13, 2001

Thomas A. Hunter, P.A.  
9511 Sweetwater Ct.  
New Haven, IN 46774

Dear Mr. Hunter:

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, permanently 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) You entered into a supervision agreement with James Harold Gray, D.O., effective on or about September 22, 1999. Pursuant to that supervision agreement, you certified that you would practice in accordance with Dr. Gray's Physician Assistant Utilization Plan, as approved by the Board. Dr. Gray's Physician Assistant Utilization Plan, as approved by the Board, did not permit any physician assistant under his supervision to engage in the delivery of human infants, nor to engage in surgery or assist in surgery.
- (2) On or about May 11, 2000, you performed, in part, a circumcision on Patient 1 (as identified on the attached Patient Key - Key confidential and not subject to public disclosure) in the nursery of Paulding County Hospital. You also assisted Dr. Gray in the circumcision of Patient 2.
- (3) Between in or about July 2000 and April 2001, Dr. Gray signed otherwise blank prescription forms and left those forms with you when he left his office with the understanding that you would complete the otherwise blank signed prescription forms and that you would give those forms to patients with the intention that those patients present those forms to pharmacies. On more than ten but less than twenty occasions between in or about July 2000 and April 2001, you completed those otherwise blank signed prescription forms and issued prescriptions for dangerous drugs to patients without Dr. Gray's specific approval or without any other physician's specific approval for those drugs.
- (4) In or about January 2000, you assisted in the delivery of a human infant at Paulding County Hospital by using your hands to guide the infant while Dr. Gray's hands were over your hands.

*Mailed 6/14/01*

Your acts, conduct, and/or omissions as alleged in paragraphs (2), (3) and (4) above, individually and/or collectively, constitute “[f]ailure to practice in accordance with the conditions under which the supervising physician’s supervision agreement with the physician assistant was approved, including the requirement that when practicing under a particular supervising physician, the physician assistant must practice only according to the standard or supplemental utilization plan the board approved for that physician,” as that clause is used in Section 4730.25(B)(1), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (2), (3) and (4) above, individually and/or collectively, constitute “[f]ailure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board,” as that clause is used in Section 4730.25(B)(2), Ohio Revised Code, to wit: Section 4730.02(F), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (2), (3) and (4) above, individually and/or collectively, constitute “[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4730.25(B)(15), Ohio Revised Code, to wit: Section 4730.02(F), Ohio Revised Code. Pursuant to Section 4730.99, Ohio Revised Code, violation of Section 4730.02, Ohio Revised Code, constitutes a misdemeanor offense.

Further, your acts, conduct, and/or omissions occurring prior to September 1, 2000, as alleged in paragraph (3) above, individually and/or collectively, constitute “[f]ailure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board,” as that clause is used in Section 4730.25(B)(2), Ohio Revised Code, to wit: Rule 4731-4-03(C), Ohio Administrative Code, as in effect prior to September 1, 2000.

Further, your acts, conduct, and/or omissions occurring on or after September 1, 2000, as alleged in paragraph (3) above, individually and/or collectively, constitute “[f]ailure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board,” as that clause is used in Section 4730.25(B)(2), Ohio Revised Code, to wit: Rule 4731-4-04(C), Ohio Administrative Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (2) and (4) above, individually and/or collectively, constitute “[f]ailure to comply with the requirements of this chapter, Chapter 4731. of the Revised Code, or any rules adopted by the board,” as that clause is used in Section 4730.25(B)(2), Ohio Revised Code, to wit: Rule 4731-4-02(A), Ohio Administrative Code, as in effect prior to September 1, 2000.

Further, your acts, conduct, and/or omissions as alleged in paragraph (3) 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: Section 4729.51(C), Ohio Revised Code, Persons who may sell, purchase, distribute, or deliver dangerous drugs.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (2), (3) and (4) 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: 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 (30) 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.

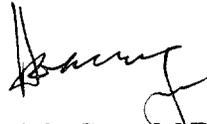
In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke or suspend your certificate of registration as a physician assistant, refuse to issue or reinstate your certificate or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, Section 4730.25(L), Ohio Revised Code, effective March 9, 1999, provides that “[w]hen the board refuses to grant a certificate of registration as a physician assistant to an applicant, revokes an individual’s certificate of registration, refuses to issue a certificate of registration, or refuses to reinstate an individual’s certificate of registration, 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 of registration as a physician assistant and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate.”

Thomas A. Hunter, P.A.  
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Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.  
Secretary

AGG/dpk

Enclosures

CERTIFIED MAIL # 7000 0600 0024 5140 6106  
RETURN RECEIPT REQUESTED

cc: Jim Flynn, Esq.  
Bricker & Eckler  
100 South Third Street  
Columbus, Ohio 43215

CERTIFIED MAIL # 7000 0600 0024 5140 6113  
RETURN RECEIPT REQUESTED