

# State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.  
Executive Director



(614) 466-3934  
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November 12, 2008

Robert Nelson Wachsberger  
24509 Tunbridge Lane  
Beachwood, OH 44122

RE: Case No. 08-CRF-007

Dear Mr. Wachsberger:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Gretchen L. Petrucci, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 12, 2008, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO

A handwritten signature in cursive script that reads "Lance A. Talmage, M.D." with a stylized flourish at the end.

Lance A. Talmage, M.D.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3934 3486 2850  
RETURN RECEIPT REQUESTED

CC: James M. McGovern, Esq.  
CERTIFIED MAIL NO. 91 7108 2133 3934 3486 2867  
RETURN RECEIPT REQUESTED

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Gretchen L. Petrucci, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 12, 2008, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Robert Nelson Wachsberger, Case No. 08-CRF-007, as it appears in the Journal of the State Medical Board of Ohio.

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



Lance A. Talmage, M.D.  
Secretary

(SEAL)

November 12, 2008

\_\_\_\_\_  
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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CASE NO. 08-CRF-007

ROBERT NELSON WACHSBERGER

\*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on November 12, 2008.

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

It is hereby ORDERED that:

The application of Robert Nelson Wachsberger for a certificate to practice massage therapy in Ohio is PERMANENTLY DENIED.

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

(SEAL)

  
Lance A. Talmage, M.D.  
Secretary

November 12, 2008  
Date

2008 OCT -2 A 9: 22

**REPORT AND RECOMMENDATION  
IN THE MATTER OF ROBERT NELSON WACHSBERGER  
CASE NO. 08-CRF-007**

The Matter of Robert Nelson Wachsberger was heard by Gretchen L. Petrucci, Hearing Examiner for the State Medical Board of Ohio, on September 5, 2008.

**INTRODUCTION**

Basis for Hearing

By letter dated January 9, 2008, the State Medical Board of Ohio [Board] notified Robert Nelson Wachsberger that it intended to determine whether to deny his pending application for a certificate to practice massage therapy in Ohio or take other disciplinary action. The Board based its proposed action on an allegation that Mr. Wachsberger had pleaded guilty to one count of Corruption of Minors in violation of Title 18, Section 6301, of the Pennsylvania Consolidated Statutes. The Board alleged that Mr. Wachsberger's plea of guilty constituted: "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor involving moral turpitude," as set forth in Section 4731.22(B)(13), Ohio Revised Code. Accordingly, the Board advised Mr. Wachsberger of his right to request a hearing in this matter. (State's Exhibit 1A)

On January 24, 2008, Mr. Wachsberger requested a hearing. (State's Exhibit 1B)

Appearances at the Hearing

Nancy H. Rogers, Attorney General, by Kyle C. Wilcox, Assistant Attorney General, on behalf of the State of Ohio.

James M. McGovern, Esq., on behalf of Mr. Wachsberger.

**EVIDENCE EXAMINED**

Testimony Heard

Robert Nelson Wachsberger  
Barbara J. Sibla  
Dennis J. Gibbons, M.T.  
Scott E. Zeilinger  
Michael P. Bloom, Ph.D.

### Exhibits Examined

State's Exhibits 1A through 1D: Procedural exhibits.

State's Exhibit 2: Certified copy of documents maintained by the Board related to Mr. Wachsberger's massage therapy application. [Redacted in part to obscure a social security number.]

State's Exhibit 3: November 2004 letter to a Board Investigator from an Allegheny County Assistant District Attorney, along with copies of the following documents in *Commonwealth of Pennsylvania v. Robert N. Wachsberger*, Case No. CC200314881, Court of Common Pleas, Allegheny County, Pennsylvania: (a) the information, (b) the criminal complaint, (c) the October 18, 2004, Order of Court and (d) the probation intake form. [Redacted in part to obscure a social security number, unconvicted charges, and the name of a juvenile.]

Respondent's Exhibit A: Collection of e-mails between Mr. Wachsberger and Board Staff regarding his licensure application.

Respondent's Exhibit B: Not admitted.

Respondent's Exhibit C: Affidavit of Mr. Wachsberger's probation officer, Allyson Connelly.

### **PROCEDURAL MATTER**

The Hearing Examiner held the record open to allow the Respondent the opportunity to submit an additional exhibit, which would be marked as Respondent's Exhibit C. He timely provided that exhibit to the Hearing Examiner. During a conference call on September 29, 2008, counsel for the State raised no objection to the exhibit. It has been admitted, and the record closed on September 29, 2008.

### **SUMMARY OF THE EVIDENCE**

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

#### **Background Information**

1. Robert Nelson Wachsberger was born in 1955 and graduated from high school in 1973. Between 1973 and 1983, Mr. Wachsberger held several sales positions and photographer's assistant positions, and attended three different higher-education institutions. He briefly attended the Rochester Institute of Technology and studied photography, but did not earn a degree. He next attended Kent State University and studied music, but did not earn a degree there either. Later, he enrolled at Cleveland State University in Cleveland, Ohio, and he

earned a Bachelor's degree in education in 1982. However, he never pursued a teaching career and he let his teaching certificate lapse. Between 1983 and 1990, Mr. Wachsberger was employed as a photographer's assistant and as a photographer in northern Ohio. Between 1990 and 1994, as well as 1997 to 2001, Mr. Wachsberger lived in California, where he mostly worked in the movie/television industry and in sales. (State's Exhibit [St. Ex.] 2 at 8-16, 19, 26-27; Hearing Transcript [Tr.] at 20-21, 52-54, 118-119)

Between 2001 and 2007, Mr. Wachsberger held positions as a speed reading teacher, a receptionist/office assistant, and a delivery person. Since approximately April 2007, he has worked as a bookkeeper/researcher for an investor, for which he estimated that he works approximately three to 10 hours per month. (Tr. at 20, 22-23, 114-116, 119)

2. In August 2002, Mr. Wachsberger entered the massage-therapy program at Cuyahoga Community College. He successfully completed that program in August 2003. He continued to attend additional classes for two semesters, attaining additional massage therapy training. He testified that his grades were all "As." (St. Ex. 2 at 2-3, 17, Tr. at 21, 57-59)
3. In August 2003, Mr. Wachsberger filed an application with the Board for a certificate to practice massage therapy in Ohio. That application remains pending. (St. Ex. 2)

Mr. Wachsberger took the massage therapy examination in December 2003. He passed the examination, scoring 92 and 93 on the two parts of the examination. (St. Ex. 2 at 5-6; Tr. at 112)

#### **Criminal Conviction in 2004**

4. In a two-count Information dated August 30, 2003, the Commonwealth of Pennsylvania charged Mr. Wachsberger with, among other things, one misdemeanor count of Corruption of Minors in violation of Title 18, Section 6301, of the Pennsylvania Consolidated Statutes. *Commonwealth of Pennsylvania v. Robert N. Wachsberger*, Case No. 200314881, Court of Common Pleas of Allegheny County [*State v. Wachsberger*]. (St. Ex. 3 at 2) The underlying police complaint alleged:

The actor, Robert Wachsberger, being 18 years of age and upwards, corrupted or tended to corrupt the moral of [name redacted], a child or children under the age of 18 years, by the act of enticing the victim to meet him after communicating over the Internet. The actor admitted, during an interview, to exchanging sexually explicit photos, via the computer, and admitted to kissing the juvenile victim and taking her to a motel, namely the Red Roof Inn located in Robinson Township, in violation of Section 6301(A1) of the Pennsylvania Crimes Code.

(St. Ex. 3 at 4)

5. On October 18, 2004, Mr. Wachsberger pleaded guilty to the Corruption of Minors charge in *State v. Wachsberger*. The other count was withdrawn. Mr. Wachsberger was sentenced to

three years of probation, and directed to have no contact on the Internet with the victim or anyone under the age of 18. Additionally, Mr. Wachsberger was required to pay the costs of prosecution; and required to attend a sexual offender program. (St. Ex. 3 at 6)

6. Mr. Wachsberger's probation was transferred from Allegheny County, Pennsylvania, to Cuyahoga County, Ohio. Mr. Wachsberger's probation officer, Allyson Connelly, attested that he has been released from probation. She further stated that Mr. Wachsberger had successfully completed all conditions of his probation, except that he had not been required to attend a sexual offender program because there were limited resources available to the Adult Parole Authority and Mr. Wachsberger had been assessed by a specialist who considered him to be a "low risk" to re-offend. (St. Ex. 3 at 6-7; Respondent's Exhibit C; Tr. at 77-78)

#### Mr. Wachsberger's Explanation

7. Mr. Wachsberger testified that, during his 40s, he had had difficulty dating women who were close to his age because:

[T]hey're looking for somebody who has a decent career or [has] more financial stability than I have.

\* \* \*

A lot of them, if they're available, they're usually divorced and they have issues with men, so they're very closed off and not easy to get to know.

(Tr. at 63)

8. Mr. Wachsberger testified that, in December 2002 when he was 47 years old, he received an instant message<sup>1</sup> on his home computer from someone he did not know. He stated that the person, a female, had guessed his AOL account name and had sent him an instant message.<sup>2</sup> He responded to the instant message and, for approximately nine months, he regularly communicated in that manner with the female. Mr. Wachsberger stated that he had learned "early on" that she was in high school, but she had told him also that she was 18 years old and would be graduating soon. (Tr. at 23-25, 26, 65-66, 69, 116)

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<sup>1</sup>Mr. Wachsberger explained that instant messaging is a means of communicating on the Internet similar to e-mail. The instant message software informs you if your friends are on-line at the same time and can receive instant communications. E-mail, however, will wait for the recipient to come on-line to provide a communication. Instant message is a typed conversation. (Tr. at 64-65)

<sup>2</sup>Mr. Wachsberger's AOL account name was "Peter Tork," after one of the members of the band "The Monkees." He noted that others had guessed the screen name and contacted him as well. (Tr. at 24-25, 66-67)

9. Mr. Wachsberger explained his understanding of the female's age and activities:

A. She was finishing up high school when we – She indicated she was graduating mid-year. And I know that some places do that. They have early graduation. And then she was going on to some sort of post-high school-type education.

Q. So then you spoke with her about graduation?

A. I never spoke to her directly about graduation. She just indicated it was coming up. It was never discussed after that.

Q. Did she ever – Then she never talked to you about what she was going to do after her graduation?

A. She indicated she was looking at being a business major.

Q. Did she ever talk to you about actually having followed through with those plans?

A. She would tell me that the school was hard that she was in. And I figured college is supposed to be hard. So I didn't ask her questions about business, because I just didn't. I wouldn't know what to ask.

Q. But the time in between December of '02 and August of '03, she never told you she actually had graduated from high school?

A. She only implied it by saying she was now majoring in business and something else.

(Tr. at 116-117)

10. Additionally, Mr. Wachsberger explained that he and the female spoke about work, music, friends and movies. He stated that the conversations eventually turned to sexual things, and they exchanged photographs of each other. He also stated that, from her photograph, she looked the age that she had told him. Mr. Wachsberger acknowledged that he also had spoken with the female's friend via instant message. (Tr. at 25-28, 29, 67-68)

Mr. Wachsberger noted that he had continued contacting the female because it was “[j]ust light conversation. It was a diversion.” (Tr. at 26)

11. Mr. Wachsberger testified that, on several occasions, the female had asked him to come to Pennsylvania in order to meet her. Just as he had begun the additional semesters of massage-therapy training in August 2003, he agreed to meet the female. They planned to meet in the

parking lot of a restaurant/bar near her house, which was approximately 150 miles from his home in Cleveland. (Tr. at 29-31, 60, 68)

12. Mr. Wachsberger explained that they had met in the parking lot of the restaurant/bar. He also stated that the female looked the age that he had thought she was at that time (which was 19 at that time). She joined him in his car. Over the next four hours, they toured downtown Pittsburgh and went to a shopping area. Next, they decided to go to a motel. They spent “a couple of hours” at the motel and engaged in sexual contact. Then, they returned to the restaurant/bar. Mr. Wachsberger waited while the female walked to her friend’s house because the friend was going to join them for dinner. While he was waiting, the police arrested him. It was at that time that Mr. Wachsberger learned that the female was 16 years old. (Tr. at 32-36, 70-71, 74-75)

13. Mr. Wachsberger stated that he was devastated, and that he had not understood or suspected that the female was 16 years old. He had thought that she had been a consenting adult. He testified:

She never did anything to contradict what she had originally told me about [her age]. She was very consistent through the whole ten months of instant messaging, as well. Her story was just very consistent.

(Tr. at 76)

14. Additionally, Mr. Wachsberger stated that it was not easy for him to discuss the events that resulted in his conviction, and he explained why:

This was probably the worst thing that had ever happened to me. I trusted a person who did not have my best interests at heart. She knew that I wouldn’t see her if I knew her real age. She knew right from wrong and continued to do wrong. She gained my trust and pretty much destroyed my life from that point on.

\* \* \*

I admit that I did it. I’m sorry I did it. You know, besides violating the law, I violated my own personal principles. This is not anything that I would do ever. And it just – It just wounded me very deeply.

(Tr. at 77)

15. Mr. Wachsberger testified that he was released from his probation on October 18, 2007. He noted that he had not attended a sexual offender program because his probation officer had not required it. He pointed out that he, voluntarily, had undergone general counseling for two months to “get over just the trauma of what had happened to [him].” Mr. Wachsberger also indicated that he is not on a sexual offender list. (Tr. at 39, 78, 103, 104, 112-113)

16. Mr. Wachsberger testified that he does not use instant messaging anymore. He continues to communicate with others via the Internet, but “[v]ia e-mail and only people I know, generally, face-to-face.” He agreed that he had used horrible judgment. Currently, he tries to meet people through friends, and is “staying away from any woman who doesn’t have at least one gray hair so that I know she’s at least closer to my age.” (Tr. at 40, 105, 106)

**Testimony by Others Regarding Mr. Wachsberger**

17. Dennis Gibbons, M.T., was Mr. Wachsberger’s instructor when he had attended Cuyahoga Community College. Mr. Wachsberger stated that Mr. Gibbons is a highly regarded and successful massage therapist in the Cleveland area, who utilizes a special technique. (Tr. at 58)

18. Mr. Gibbons testified that he has been a licensed massage therapist for 22 years. He owns and operates Chagrin Valley Wellness Center, and sees 30 to 35 clients each week. For nine years, he has been appointed by the Board to the Massage Therapy Advisory Committee, which advises the Board regarding rules and issues related to massage therapy. For many years, he taught as an adjunct professor at the Ohio College of Massage Therapy and at Cuyahoga Community College. (Tr. at 85, 96)

19. Mr. Gibbons vaguely remembered Mr. Wachsberger, stating:

[H]e was a good student because he never gave me any problems. I was part-time faculty, so my relationship with all the students was just in the classroom. We never had – I never had a problem with him in the classroom.

(Tr. at 89) Mr. Gibbons further testified that, if Mr. Wachsberger has served his time for the crime, and if the Board were to grant him a certificate to practice massage therapy, the Board should impose probationary terms, including supervision, to ensure that a similar incident does not occur. Mr. Gibbons further explained that the relationship between a massage therapist and a client is very intimate and trust is a key element that needs to exist. (Tr. at 93-94)

20. Scott E. Zeilinger is a long-time friend of Mr. Wachsberger. He has a Bachelor’s degree from Syracuse University. For the past 20 years, he has been a private investor. He is active in the Cleveland community, as a member of several area boards. Mr. Wachsberger has worked for Mr. Zeilinger in the past and currently works for him. Mr. Zeilinger estimated that Mr. Wachsberger currently works approximately 10 hours per week, not three to 10 hours per month, as Mr. Wachsberger had testified. (Tr. at 104, 121-124, 143)
21. Mr. Zeilinger testified that he has observed Mr. Wachsberger’s dates/companions and they were within his age group. He described Mr. Wachsberger’s work as phenomenal and stated that he trusts him. He confirmed that Mr. Wachsberger has had a long-standing interest in massage therapy. (Tr. at 127-130, 134-135)
22. Next, Mr. Zeilinger stated that he believes Mr. Wachsberger has a good moral character because, in looking over the past, he has had only one incident arise for which his behavior

was “outside of perfect.” Mr. Zeilinger felt that that one situation did not amount to a lack of good moral character on Mr. Wachsberger’s part because he had not known the female’s true age. (Tr. at 134, 140) Mr. Zeilinger explained his thinking as follows:

\* \* \* I think the key was finding out afterwards she was a minor. Now, if I have the facts wrong, that’s one thing. But the case, as I understand it, and from what I have heard you say is he found out afterwards. For me, that’s the key. That allows me, given who I am, to be comfortable with Bob and comfortable with his situation.

Now, if she said ahead of time, “I’m a minor,” and this had happened, we would be having a different conversation. But those are the facts as I have heard you state [them], and as I understand it.

\* \* \*

If she looks older and she says she’s older, not having met this person, but those are the facts, as I understand it. And as far as I’m concerned if our society deems to legislate that legal age is 18 and somebody says they’re 18 and looks 18, then, frankly, our society says it’s okay for an 18 year old to be with whomever they want.

(Tr. at 140-141) Mr. Zeilinger acknowledged that Mr. Wachsberger had never mentioned his communications with the female until after the arrest. (Tr. at 143)

23. Michael P. Bloom is also a long-time friend of Mr. Wachsberger. Dr. Bloom earned a Bachelor’s degree from Cleveland State University, a Master’s degree from McGill University in Montreal, and a Ph.D. from McGill University. He is a college professor at Notre Dame College in South Euclid, Ohio, and owns his own consulting practice in the area of communications/public relations. He is active with several Cleveland-area organizations. (Tr. at 105, 146-150, 156)
24. Dr. Bloom noted that he and Mr. Wachsberger have both worked with a local theater company. He testified that he never saw anything inappropriate in Mr. Wachsberger’s interactions with the underage participants; rather, Mr. Wachsberger was a reliable, “stand-up guy.” Also, he noted that Mr. Wachsberger’s dates/companions have been of his peer group. He described Mr. Wachsberger’s decision to attend massage therapy school as a natural extension of who he is. (Tr. at 150-152, 154)
25. Dr. Bloom stated that he believes Mr. Wachsberger is of high moral character. He considers the conviction in Pennsylvania to be “an unfair or unjust and unfortunate situation that in no way was part of Bob’s behavior over – the moral behavior over the past 30 years.” He stated that Mr. Wachsberger is a caring, serious, and responsible person. Dr. Bloom stated that, if Mr. Wachsberger was permitted to practice as a massage therapist, Dr. Bloom would not hesitate to send his young daughter to him. (Tr. at 154-155)

Dr. Bloom was not aware of Mr. Wachsberger's communications with the female until after the arrest. However, Dr. Bloom noted that his friendship with Mr. Wachsberger did not involve discussions about relationships and romances. (Tr. at 156-157)

26. Barbara J. Sibla, a Paralegal for the Board, testified regarding her interactions with Mr. Wachsberger while his massage-therapy application was pending. She testified that she had communicated with him on a number of occasions. She recalled that he was cooperative with her and appeared to be diligent. She could not recall any instance that led her to believe that he was being untruthful. She stated that she had been responsible for obtaining documents related to the criminal case and, because she had had difficulty in obtaining certain documents, Mr. Wachsberger had attempted to obtain them as well. (Tr. at 46-47, 50; Resp. Ex. A)

#### **Mr. Wachsberger's Additional Testimony**

27. Mr. Wachsberger testified that he has been interested in massage therapy for many years. He found that, while living in California, his interest was reinforced because massage therapy is more popular there. Mr. Wachsberger noted that he had elected to return to Ohio after the events of September 11, 2001, because he did not want to be living so far from his family if a war had erupted. He stated that, at that time, he had done some self-assessment and thought that massage therapy is something he could do. Shortly thereafter, he enrolled in Cuyahoga Community College's massage-therapy program. (Tr. at 54-56, 117-118)
28. Mr. Wachsberger stated that he believes he has received adequate education and training to be a licensed massage therapist in Ohio. Additionally, he believes that he had been diligent in pursuing a certificate prior to the conviction and through his probation period. He also pointed out that, since completing massage therapy classes in 2003, he has taken two other courses related to massage therapy. (Tr. at 61, 101-102, 111)
29. Mr. Wachsberger explained that he still would like a massage-therapy certificate and would like the Board to know the following:

[Massage therapy is] something that I think I'm very good at. It's been something that I probably should have done a lot earlier in my life. I have the affinity for the work. I have good hands. They were better when I was younger. They were stronger. I could have done more work.

I have a lot of interest in this. I have taken – Just for fun, I have taken classes in advanced techniques. Whether I get my license or not, I just want to learn these things.

And it's something that I just show a lot of interest in. It's the sort of job that works very well with me.

\* \* \*

I'm extremely sorry about what happened. Had she been honest with me, none of this would have happened. I trusted the wrong person, and I will be paying the price for it as long as I live.

This was something that was very out of character for me. And I was – I just got conned. Every now and then you read about Ph.D.s that fall for that Nigerian bank scam. It's not that I'm stupid or anything. My resistance wore down. And she gained my trust, and I really regret that this whole thing happened.

It was – It was – It's something that would never happen again because I will not allow the circumstances to arise that would let it happen again.

In our massage class, the one that Dennis Gibbons taught, he said – He explained to us that if you have somebody come in for massage who is under 18, which is unlikely because most young people don't like massage, you have a parent in the room.

And he said if you have any doubts whatsoever – Like selling alcohol when they say, "We card anybody under 40," if you have any doubts, you ask to see a driver's license. You're perfectly within your right.

And I would be probably much more adamant about making sure that the people I came in contact with were of the right age. And that, you know, so something like this doesn't happen again.

(Tr. at 106-108)

30. In addition, Mr. Wachsberger stated that he would be willing to be evaluated "to determine whether [he has] any characteristics that would indicate that [he is] a pedophile or that [he is] a sexual risk to potential clients." Moreover, he is willing to abide by any recommendations of the evaluator. (Tr. at 103-104)

#### **FINDINGS OF FACT**

1. In August 2003, Robert Nelson Wachsberger filed an Application for Certificate to Practice a Limited Branch – Massage Therapy, which remains pending.
2. On October 18, 2004, in the Criminal Division of the Allegheny County, Pennsylvania, Court of Common Pleas, Mr. Wachsberger pleaded guilty to and was found guilty of Corruption of Minors, in violation of Title 18, Section 6301, Pennsylvania Consolidated Statutes. He was sentenced to three years of probation, required to attend a sexual offenders program (although that requirement was later dropped), and prohibited from having contact on the Internet with minors under the age of 18.

**CONCLUSION OF LAW**

Mr. Wachsberger's plea of guilty and subsequent conviction, as set forth in Findings of Fact 2, constitutes "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor involving moral turpitude," to wit: Title 18, Section 6301, Pennsylvania Consolidated Statutes, as set forth in Section 4731.22(B)(13), Ohio Revised Code.

\* \* \* \* \*

Mr. Wachsberger acknowledged and explained the circumstances surrounding his 2004 misdemeanor conviction. He appears remorseful. However, the Hearing Examiner is not convinced that he has truly accepted the extent of his own culpability. The female may have lied about her age, but that lie does not excuse Mr. Wachsberger's behavior during the many months prior to his trip to Pennsylvania. Mr. Wachsberger was 47 years old and knew the female was in *high school* when the conversations started. Also, he expanded the conversations to include her friend, who was also in high school. He knowingly and voluntarily participated in numerous conversations over many months with extremely young females, and allowed the conversations to become sexual. Mr. Wachsberger knew or should have known that his actions to that point were immoral. After all, he did not even tell two long-time friends about these conversations. Additionally, Mr. Wachsberger knew or should have known that his decision to meet the female was questionable (once again he did not tell his long-time friends that he would be meeting the female).

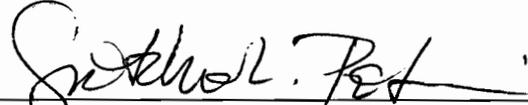
His regret is understandable. However, he has not convinced this Hearing Examiner that he is worthy of a massage therapy certificate.

**PROPOSED ORDER**

It is hereby ORDERED, that:

The application of Robert Nelson Wachsberger for a certificate to practice massage therapy in Ohio is PERMANENTLY DENIED.

This Order shall be effective immediately from the date of the mailing of the notification of approval by the Board.

  
\_\_\_\_\_  
Gretchen L. Petrucci  
Hearing Examiner

# State Medical Board of Ohio

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



Richard A. Whitehouse, Esq.  
Executive Director

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## EXCERPT FROM THE DRAFT MINUTES OF NOVEMBER 12, 2008

### REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDER

Dr. Varyani announced that the Board would now consider the Reports and Recommendations and the Proposed Findings And Proposed Order appearing on its agenda. He asked whether each member of the Board had received, read and considered the hearing record; the Findings of Fact, Conclusions of Law and Proposed Orders, and any objections filed in the matters of Maryam Bakhshandeh, M.D.; Brenda Louise Banks, M.D.; Donald E. Higgs, M.D.; Robert Wayne Miller, L.M.T.; Steven Edward Schwartz, P.A.; and Robert Nelson Wachsberger; and the Proposed Findings & Proposed Order in the matter of Lynda Lee Dean, M.T. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye

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

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

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

.....

ROBERT NELSON WACHSBERGER

.....

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF ROBERT NELSON WACHSBERGER. DR. MADIA SECONDED THE MOTION.**

.....

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

ROLL CALL: Mr. Albert - abstain  
Dr. Egner - aye  
Dr. Talmage - abstain  
Dr. Suppan - aye  
Dr. Madia - aye  
Mr. Hairston - aye  
Dr. Amato - aye  
Dr. Stephens - aye  
Dr. Steinbergh - aye  
Dr. Varyani - aye

The motion carried.

# State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.  
Executive Director

(614) 466-3934  
med.ohio.gov

January 9, 2008

Case number: 08-CRF-007

Mr. Robert Nelson Wachsberger  
24509 Tunbridge Lane  
Beachwood, OH 44122

Dear Mr. Wachsberger:

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

- (1) In or around August 2003 you caused to be submitted to the Board an Application for Certificate to Practice Massage Therapy, which remains pending. Subsequent to your application, on or about October 18, 2004, in the Criminal Division of the Allegheny County, Pennsylvania Court of Common Pleas, you pled guilty to and were found guilty of Corruption of Minors, in violation of Title 18, Section 6301, Pennsylvania Consolidated Statutes. You were sentenced to three years of probation, required to attend a sexual offenders program, and prohibited from having contact on the internet with minors under the age of 18.

Your plea of guilty or the judicial finding of guilt as alleged in paragraph (1) above, individually and/or collectively, constitute "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor involving moral turpitude, to wit: Title 18, Section 6301, Pennsylvania Consolidated Statutes, Corruption of Minors," as that clause is used in Section 4731.22(B)(13), Ohio Revised Code.

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

*Mailed 1-10-08*

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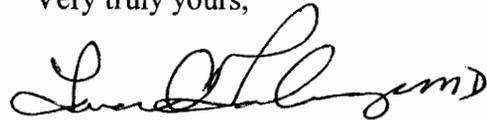
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.  
Secretary

LAT/LAZ/flb  
Enclosures

CERTIFIED MAIL #91 7108 2133 3934 3873 6171  
RETURN RECEIPT REQUESTED