

HEALTH & HUMAN

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SERVICES SECTION

IN THE COURT OF APPEALS OF OHIO

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TENTH APPELLATE DISTRICT

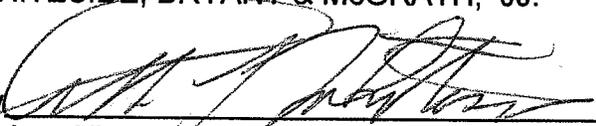
CLERK OF COURTS

Barry J. Politi, M.D.,	:	
	:	
Appellant-Appellant,	:	
	:	
v.	:	No. 06AP-914
	:	(C.P.C. No. 05CVF-12-13665)
State Medical Board of Ohio,	:	
	:	(REGULAR CALENDAR)
Appellee-Appellee.	:	

JUDGMENT ENTRY

For the reasons stated in the opinion of this court rendered herein on May 10, 2007, appellant's assignments of error are overruled. Therefore, it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs are assessed against appellant.

WHITESIDE, BRYANT & McGRATH, JJ.

By   
 Judge Alba L. Whiteside, retired of the Tenth Appellate District, assigned to active duty under the authority of Section 6(C), Article IV, Ohio Constitution.

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COURT OF APPEALS  
FRANKLIN CO., OHIO

IN THE COURT OF APPEALS OF OHIO

2007 MAY 10 PM 1:35

TENTH APPELLATE DISTRICT

CLERK OF COURTS

Barry J. Politi, M.D., :  
Appellant-Appellant, :  
v. : No. 06AP-914  
State Medical Board of Ohio, : (C.P.C. No. 05CVF-12-13665)  
Appellee-Appellee. : (REGULAR CALENDAR)

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O P I N I O N

Rendered on May 10, 2007

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*Kevin P. Byers Co., L.P.A., and Kevin P. Byers, for appellant.*

*Marc Dann, Attorney General, and Damion M. Clifford, for appellee.*

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APPEAL from the Franklin County Court of Common Pleas.

WHITESIDE, J.

{¶1} This is an appeal by Barry J. Politi, M.D. ("appellant"), from a judgment of the Franklin County Court of Common Pleas affirming an order of the State Medical Board ("appellee") denying appellant's application to practice medicine in Ohio.

{¶2} Appellant raises two assignments of error in support of his appeal as follows:

I. THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO APPELLANT'S PREJUDICE WHEN IT FOUND THE ORDER OF THE STATE MEDICAL BOARD OF OHIO

HEALTH & HUMAN

MAY 17 2007

SERVICES SECTION

IS SUPPORTED BY RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE.

II. THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO APPELLANT'S PREJUDICE WHEN IT FOUND THE ORDER OF THE STATE MEDICAL BOARD OF OHIO IN ACCORDANCE WITH LAW.

{¶3} Appellant first applied for a license to practice medicine in Ohio by filing an application in 2001 but the application was denied due to errors and irregularities in appellant's self-reporting of his education and training history, namely failure to provide required information concerning disciplinary-type action during appellant's medical residency in South Carolina.

{¶4} On June 14, 2004, appellant again applied for a medical license from appellee. On December 8, 2004, appellee issued a "Notice of Opportunity for Hearing" to appellant alleging a violation of R.C. 4731.22 by appellant by "making a false, fraudulent, deceptive or misleading statement \* \* \* in securing or attempting to secure any certificate to practice or certificate of registration issued by the board." The board also alleged that appellant had failed to furnish satisfactory proof of good moral character as required by R.C. 4731.08. This notice referenced a failure to report a warning during appellant's earlier residency at the University of Pittsburgh in violation of the requirement to report any serious adverse action.

{¶5} Appellant requested a hearing and appellee scheduled a hearing for April 21, 2005 to be conducted by a hearing examiner. Prior to this hearing, appellee issued to appellant a second notice of opportunity to request a hearing alleging that appellant had failed to notify appellee that, on February 1, 2005, he had been placed on

probation at the residency program at the University of Mississippi as required as part of the application process.

{¶6} On November 8, 2004, the faculty and director of an emergency residency program at the University of Mississippi had issued a written "faculty evaluation" advising appellant that several areas of his performance were in need of "significant progress" and also removing him from the PICU rotation and also stated that "lack of proper improvement" would result in appellant being placed on probation status. Appellant consulted an attorney and was advised that the faculty evaluation was work evaluation which did not need to be reported to appellee. However, the attorney had obtained a copy of the faculty evaluation from the Mississippi residency program but it did not include the last page which contained the warning that appellant would be placed on probation if his performance did not improve. Thereafter, on February 1, 2005, appellant was placed on probation by the University of Mississippi residency program because of lack of judgment in stressful situations, lack of insight into patient problems, deficiency in medical knowledge and development of an appropriate differential diagnosis. The notice also indicated that most of the issues were "not remediable." Appellant did not notify appellee of the probation warning until April 4, 2005. During the interim, on March 2, 2005, appellant's residency contract was not renewed by the University of Mississippi residency program and he was removed from clinical duties.

{¶7} Appellant admitted he knew he was required to report his being placed on probation at the University of Mississippi but did not recall that he was required to do so immediately. Appellant again consulted counsel as to the February 1, 2005 probation and was advised to report the information to appellee.

{¶8} Appellant did request a hearing with respect to the second notice and requested that the two hearings be consolidated. Upon this application of appellant, the two hearings were consolidated and the hearing was held on April 21, 2005 as scheduled.

{¶9} The hearing examiner in his report and recommendation stated as follows:

In April 2003, when the Board denied Dr. Politi's first application, it did not make the denial permanent, thus giving Dr. Politi an opportunity to reapply for a certificate to practice medicine and surgery in Ohio and to provide full candid disclosure in his next application. In June 2004, Dr. Politi submitted a second application for an Ohio certificate. Unfortunately, in his second application, Dr. Politi failed to fulfill his obligation to provide timely disclosure to the Board of all relevant facts concerning his ER Residency. Accordingly, Dr. Politi's pending application should be permanently denied.

{¶10} On November 9, 2005, appellee issued an order approving and confirming the findings of the hearing examiner and permanently denied appellant's application for medical license.

{¶11} Appellant appealed appellee's November 9, 2005 order to the Franklin County Court of Common Pleas. Upon considering an appeal from appellee, the common pleas court does not consider the matters de novo, nor make evidentiary findings but, instead, is limited to determining whether the board's order is supported by reliable, probative and substantial evidence and is in accordance with law. R.C. 119.12, *Pons v. Ohio State Medical Bd.* (1993), 66 Ohio St.3d 619, 621.

{¶12} The Supreme Court of Ohio has also held that the General Assembly has granted appellee a broad measure of discretion. See *Arlen v. State* (1980), 61 Ohio St.2d 168, 174.

{¶13} Upon appeal to this court of a judgment of the common pleas court affirming an order of a state agency pursuant to R.C. 119.12, this court is limited to determining whether the common pleas court abused its discretion in finding appellee's order to be supported by reliable, probative and substantial evidence and whether the agency order is in accordance with law. *Pons*, supra.

{¶14} Turning to specific consideration of the assignments of error, by his first assignment of error, appellant contends that the trial court abused its discretion in finding the order of appellee to be supported by reliable, probative and substantial evidence.

{¶15} Appellant's argument in support of this assignment of error is essentially an appeal to this court to substitute its judgment for that of the court of common pleas as to whether the evidence supporting appellee's decision is reliable, probative and substantial evidence. As to the original December 2004 notice and charge, appellee determined that there was no violation because the nondisclosure was only of a job evaluation while appellant was in the residency program. The common pleas court held that, since appellee adopted the conclusion of the hearing examiner, that there was insufficient evidence to find a violation with respect to failure to report the incident at the residency program at the University of Pittsburgh, that the allegations of the December notice were no longer at issue and, accordingly, not before the common pleas court. However, with respect to the April 2005 notice, the common pleas court found that the decision of appellee was supported by reliable, probative and substantial evidence. The April notice of appellee alleged appellant failed to disclose both the November 2004 warning and the February 1, 2005 placement on probation in the residency program at the University of Mississippi. The common pleas court also noted that question four on the application for

licensure signed by appellant, stated "[h]ave you ever resigned from, withdrawn from, or have you ever been warned by, censured by, disciplined by, been put on probation by, been requested to withdraw from, dismissed from, been refused renewal of a contract by, or expelled from a medical school, clinical clerkship, externship, preceptorship, residency, or graduate medical education program?" The common pleas court also noted that as part of the application, the applicant also must sign the following statement:

I further understand that my application for a license to practice medicine or osteopathic medicine is an ongoing process. I will immediately notify the State Medical Board of Ohio in writing of any changes to the answers to any of the questions \* \* \* [.]

{¶16} In its written decision, the trial court stated in concluding that the board order was supported by reliable, probative and substantial evidence, "[t]he evidence shows that Appellant failed to disclose the November 2004 warning that a '[l]ack of major improvement' would result in Appellant being placed on 'probation status.' Appellant conceded at the hearing that this constituted a reportable warning, and that he failed to disclose it to the Board. (Tr. 22.) Appellant concedes in his brief that he 'should have independently realized the 'reportability' of the program's warning.'" The evidence further discloses that appellant did not disclose the February 1, 2005 probation "immediately" as required by the application, and did not do so until shortly before the April 2005 administrative hearing. The board also had before it evidence that in his 2001 application, appellant had failed to disclose a notice of probation, notice of termination of residency, a warning for medication errors, and a warning for dishonesty. The evidence supports this conclusion of the common pleas court in that it is a reasonable conclusion from the evidence. Even if this court would have reached a different conclusion from the

evidence, we are not permitted to substitute our judgment for that of the trial court, but instead are limited to finding whether or not the trial court abused its discretion in finding the medical board's order to be supported by reliable, probative and substantial evidence. Since the evidence reasonably supports the conclusion of the common pleas court, that court did not abuse its discretion in finding that the order of the medical board was supported by reliable, probative and substantial evidence. Accordingly, the first assignment of error is not well-taken.

{¶17} By his second assignment of error, appellant contends that the trial court erred and abused its discretion in finding the order of the State Medical Board to be in accordance with law.

{¶18} Upon questions of law, this court is not limited by the abuse of discretion standard in viewing decisions of the State Medical Board. Upon questions of law (determining whether the order of the State Medical Board is in accordance with law), the review of this court is plenary and this court independently determines such questions of law. See *Thongs v. Ohio State Medical Bd.* (1993), 66 Ohio St.3d 619. However, the question under the assignment of error as raised by appellant, is whether the State Medical Board acted without legal authorization, or contrary to the legal authorization that has been granted to it. R.C. 4731.22(A) provides that the State Medical Board "may refuse to grant a certificate to a person found by the board \* \* \* to have committed fraud, misrepresentation, or deception in applying for \* \* \* any certificate to practice or certificate of registration." With respect to the punishment selected by the State Medical Board, neither the common pleas court nor this court is free to substitute its judgment for that imposed by the State Medical Board if the punishment imposed is authorized by law. See

*Henry's Café, Inc. v. Bd. of Liquor Control* (1959), 170 Ohio St. 233. Appellant has not demonstrated that the punishment imposed by the State Medical Board, permanently denying his application for licensure in Ohio, is not authorized by Ohio law. In this regard, it must be noted that appellant previously had an application for licensure denied for similar dishonest conduct and that there were multiple instances of failure to report in the present proceedings. See R.C. 4731.22. Appellant apparently is contending that the punishment is too harsh in relationship to the misconduct of which he was found guilty.

{¶19} In short, appellant has not demonstrated that the State Medical Board acted contrary to law either in determining him to be guilty of the charges which he was found to have committed, nor in choosing the punishment to be imposed, because it falls within the ambit of the authority granted to the State Medical Board in determining the appropriate punishment to be imposed for violation of Ohio law in making application for the certificate to practice medicine in Ohio. The second assignment of error is not well-taken.

{¶20} Having found both assignments of error to be without merit, the judgment of the Franklin County Court of Common Pleas, affirming the decision of the State Medical Board, is affirmed.

*Judgment affirmed.*

BRYANT and McGRATH, JJ., concur.

WHITESIDE, J., retired of the Tenth Appellate District,  
assigned to active duty under the authority of Section 6(C),  
Article IV, Ohio Constitution.

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IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

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COMMON PLEAS COURT  
FRANKLIN CO., OHIO  
06 SEP 13 AM 11:15  
CLERK OF COURTS

Barry J, Politi, MD :  
1206 Springdale Drive :  
Jackson, Mississippi 39211 : Case No. \_\_\_\_\_  
Appellant-Appellant, :  
v. :  
State Medical Board of Ohio : Accelerated Calendar  
77 South High Street, 17<sup>th</sup> Floor : CPC No. 05CVF-12-13665  
Columbus, Ohio 43215-0315 :  
Appellee-Appellee. :

Appeal from the common pleas court of Franklin County, Ohio

NOTICE OF APPEAL

Notice is hereby given that Appellant, Barry J. Politi, MD, hereby appeals to the Court of Appeals of Ohio, Tenth Appellate District for Franklin County, from the judgment entry and decision (attached hereto) filed in this action by the lower court on August 15, 2006.

Respectfully submitted,

KEVIN P. BYERS CO., LPA

*KPBYERS*

Kevin P. Byers 0040253  
The 107 Building  
107 South High Street, Suite 200  
Columbus, Ohio 43215-3456  
614.228.6283 Facsimile 228.6425  
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CLERK OF COURTS

Attorney for Appellant,  
Barry J. Politi, MD

06APE-9

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Certificate of Service

I certify that a true copy of the foregoing Notice of Appeal was deposited in first class US mail this 13<sup>th</sup> day of September, 2006, addressed to AAG Damion M. Clifford, Health & Human Services Section, 30 East Broad Street, 26<sup>th</sup> Floor, Columbus, Ohio 43215-3428.

Handwritten signature of Kevin P. Byers in black ink, consisting of stylized initials 'KPB' followed by 'EN S'.

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Kevin P. Byers

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

BARRY J. POLITI, M.D.,

Appellant,

vs.

STATE MEDICAL BOARD OF OHIO

Appellee

CASE NO. 05CVF-12-13665

JUDGE PFEIFFER

TERMINATION NO. 10  
BY KB

DECISION AND JUDGMENT ENTRY  
AFFIRMING THE ORDER OF THE OHIO STATE MEDICAL BOARD

AND  
NOTICE TO CLERK

Rendered this 11<sup>th</sup> day of August, 2006

PFEIFFER, J.

This case is before the Court on an appeal pursuant to R.C. 119.12. The relevant facts and procedural history are as follows.

On December 8, 2004 and April 13, 2005, the State Medical Board (the "Board") issued Notices of Opportunity for Hearing to Appellant Barry J. Politi, M.D. The Notices stated that the Board intended to determine whether to deny his application for licensure or take other disciplinary action based on allegations that Appellant had violated R.C. 4731.22(A) by engaging in "fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board." The Board alleged that Appellant had violated R.C. 4731.22(B)(5) by "making a false, fraudulent, deceptive or misleading statement ... in securing or attempting to secure any certificate to practice or certificate of registration issued by the board." The Board also alleged that Appellant had failed to furnish satisfactory proof of good moral character as required for licensure under R.C. 4731.08.

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FRANKLIN CO. OHIO  
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CLERK OF COURTS

Appellant requested a hearing, which was conducted on April 21, 2005 before a Hearing Examiner. The Hearing Examiner issued a Report and Recommendation recommending that Appellant's application for a medical license be permanently denied.

On November 9, 2005, the Board issued its Order permanently denying Appellant's application for a medical license. The Order was mailed to Appellant on November 23, 2005. Appellant filed this appeal on December 7, 2005.

The December 8, 2004 Notice of Opportunity for Hearing (the "December Notice") relates to Appellant's alleged failure to provide full and accurate disclosure of information in a June 14, 2004 application for licensure. The April 13, 2005 Notice of Opportunity for Hearing (the "April Notice") relates to Appellant's alleged failure to provide full and accurate disclosure of events that occurred after submission of the June 14, 2004 application.

Both the December Notice and the April Notice also reference the Board's earlier denial of Appellant's initial licensure application submitted in September, 2001.

By letters dated May 8 and October 9, 2002, the Board notified Appellant that it proposed to deny his 2001 application based on his alleged failure to provide full and accurate disclosures of information. A hearing was held on December 10, 2002 and January 9, 2003. On February 26, 2003, the Hearing Examiner issued a Report and Recommendation. (St. Ex. 3). The Hearing Examiner found that Appellant had failed to disclose the following relating to his residency at the University of South Carolina: that he had been placed on probation for 90 days due to reasons including actions or omissions relating to treatment of patients, he had been informed by the faculty that he was going to be terminated from the residency program, he had been given a written

warning for careless attention to detail regarding medication errors, and he had been given a written warning for dishonesty. (St. Ex. 3, Report and Recommendation dated February 26, 2003, Findings of Fact 3, 4, and 5). The Hearing Examiner found that Appellant had engaged in “carelessness and dishonesty” in the application process warranting denial of his application for Ohio licensure. (Id., p. 39). The Hearing Examiner concluded that Appellant had violated R.C. 4731.22(A) and R.C. 4731.22(B)(5) and had failed to furnish satisfactory proof of good character as required by R.C. 4731.08. On April 2, 2003, the Board issued an Order adopting the findings of the Hearing Examiner and denying Appellant’s 2001 application for medical licensure. (St. Ex. 3, p. 9).

On June 14, 2004, Appellant again applied for medical licensure.

The December Notice alleged that in the 2004 application, Appellant failed to disclose that on July 9, 2002, a written warning was issued to him by Dr. Joseph Schwerha in Appellant’s residency program at the University of Pittsburgh.

At the April 21, 2005 hearing, Dr. Schwerha testified that while he had used the word “warning” in his memorandum to Appellant, Dr. Schwerha did not consider the memorandum to constitute a serious adverse action. (Tr. 45).

Based on the testimony of Dr. Schwerha, the Hearing Examiner concluded that there was insufficient evidence to support a conclusion that the failure to disclose the July 9, 2002 written warning was a violation of R.C. 4731.22(A), R.C. 4731.22(B)(5), or R.C. 4731.08. (Report and Recommendation, p. 16). The Board adopted this conclusion, and these allegations of the December Notice are therefore no longer at issue.

The dispute in this case concerns the allegations of the April Notice. These allegations relate to disclosure of events occurring after submission of the June 14, 2004 application.

The April Notice alleged that Appellant failed to disclose a November 2004 warning in a residency program at the University of Mississippi. The April Notice alleged that Appellant also failed to timely notify the Board that on February 1, 2005, he was placed on probation in that residency program.

The June 14, 2004 application included, as question 4, the following:

Have you ever resigned from, withdrawn from, or have you ever been warned by, censured by, disciplined by, been put on probation by, been requested to withdraw from, dismissed from, been refused renewal of a contract by, or expelled from, a medical school, clinical clerkship, externship, preceptorship, residency, or graduate medical education program? [St. Ex. 2 at 6]

The application requires that all affirmative answers be fully explained. (*Id.*). As part of the application, the applicant also signed a statement including the following:

I further understand that my application for a license to practice medicine or osteopathic medicine is an ongoing process. **I will immediately notify the State Medical Board of Ohio in writing of any changes to the answers to any of the questions ....** [emphasis added; *Id.* at 14]

On November 8, 2004, the faculty and director of an emergency medicine residency program at the University of Mississippi issued a written "Faculty Evaluation" to Appellant, advising that several areas of his performance were in need of "significant progress" and must "be of intense focus immediately." The evaluation further stated that Appellant was being "removed from the PICU rotation" so that his performance could be "closely observe[d]." The evaluation stated that a "[l]ack of major improvement" would result in Appellant being placed on "probation status." (St. Ex. 5 at 75-76; Tr. at 21-22).

Appellant testified that when he received the November 8, 2004 Faculty Evaluation, he was not sure that it constituted a “warning.” (Tr. 76). He consulted legal counsel about the document. Counsel received a copy of the document that did not include the last page containing the statement that a lack of improvement would result in probation. Not having the last page of the evaluation, counsel advised Appellant that it was a “work evaluation and not a warning.” (Tr. 76). At the hearing, Appellant conceded that the Faculty Evaluation constituted a warning. (Tr. 22).

Appellant did not notify the Board of the November 8, 2004 Faculty Evaluation. (See Resp. Ex. A).

On February 1, 2005, Appellant was placed on probation in the University of Mississippi residency program. The stated reasons for probation included lack of judgment in stressful situations, lack of insight into patient problems, deficiency in medical knowledge and development of an appropriate differential diagnosis, and problems regarding reliability of key elements of the physical exam and accurate documentation of such. The written notice states that “the bulk of the issues are not remediable.” (St. Ex. 5 at 70; Tr. at 20-21).

Appellant did not notify the Board of the February 1, 2005 probation until April 4, 2005. (Resp. Ex. A). During the interim, on March 2, 2005, Appellant’s residency contract was not renewed and he was removed from clinical duties. (Id.)

Appellant testified that when he was placed on probation, he knew he was required to notify the Board, but he did not recall that he was required to do so “immediately.” (Tr. 29, 76-78).

The Hearing Examiner concluded that the failure to disclose the November 8, 2004 warning, the failure to disclose the February 1, 2005 notice of probation until April, 2005, and the failures to disclose information in the 2001 application constituted violations of R.C. 4731.22(A), R.C. 4731.22(B)(5), and R.C. 4731.08. The Hearing Examiner stated as follows:

In April 2003, when the Board denied Dr. Politi's first application, it did not make the denial permanent, thus giving Dr. Politi an opportunity to reapply for a certificate to practice medicine and surgery in Ohio and to provide a full, candid disclosure in his next application. In June, 2004, Dr. Politi submitted a second application for an Ohio certificate. Unfortunately, in his second application, Dr. Politi failed to fulfill his obligation to provide timely disclosure to the Board of all relevant facts concerning his ER Residency. Accordingly, Dr. Politi's pending application should be permanently denied.

(Report and Recommendation, p. 17).

The Board's November 9, 2005 Order approved and confirmed the findings of the Hearing Examiner and permanently denied Appellant's application for medical licensure.

When considering an appeal from a medical board's order, a common pleas court must uphold the order if it is supported by reliable, probative, and substantial evidence and is in accordance with law. R.C. 119.12. Pons v. Ohio State Med. Bd. (1993), 66 Ohio St.3d 619, 621; Landefeld v. State Med. Bd. (2000), Tenth Appellate District No. 99AP-612, 2000 Ohio App. LEXIS 2556.

The Ohio Supreme Court has recognized that the General Assembly granted the medical board a broad measure of discretion. Arlen v. State (1980), 61 Ohio St.2d 168, 174. In Farrand v. State Med. Bd. (1949), 151 Ohio St. 222, 224, the court stated:

... The purpose of the General Assembly in providing for administrative hearings in particular fields was to facilitate such matters by placing the decision on facts with boards or commissions composed of men equipped

with the necessary knowledge and experience pertaining to a particular field. ...

“Accordingly, when courts review a medical board order, they are obligated to accord due deference to the board’s interpretation of the technical and ethical requirements of the medical profession.” Landefeld, *supra*, at pg. 9.

Appellant argues that the evidence does not show fraudulent intent as necessary for a violation of R.C. 4731.22(A) and 4731.22(B)(5). The Board found that Appellant violated R.C. 4731.22(A) by engaging in “fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board” and violated R.C. 4731.22(B)(5) by “making a false, fraudulent, deceptive or misleading statement in ... securing or attempting to secure any certificate to practice or certificate of registration issued by the board.”

It is well-established that intent need not be proven directly but can be inferred from the facts and circumstances. State v. Teamer (1998), 82 Ohio St.3d 490. A person is presumed to intend the natural, reasonable and probable consequences of his voluntary acts. State v. Lott (1990), 51 Ohio St.3d 160.

In Krain v. State Medical Board (1998), Tenth App. Dist. Case No. 97APE08-981, 1998 Ohio App. LEXIS 5339, the court found that there was sufficient evidence of intent to deceive when an applicant failed to disclose prior disciplinary proceedings to the Board on his renewal applications.

This Court’s review is for the purpose of determining whether the Board’s Order is supported by reliable, probative and substantial evidence and is in accordance with law. The Court’s scope of review is limited, as the Court “will not substitute its judgment for the

Board's where there is some evidence supporting the Board's Order." Harris v. Lewis (1982), 69 Ohio St.2d 577, 579.

The record contains reliable, probative and substantial evidence supporting the Board's conclusion that Appellant intended to deceive. The evidence shows that Appellant failed to disclose the November 2004 warning that a "[l]ack of major improvement" would result in Appellant being placed on "probation status." Appellant conceded at the hearing that this constituted a reportable warning, and that he failed to disclose it to the Board. (Tr. 22). Appellant concedes in his brief that he "should have independently realized the 'reportability' of the program's warning." (brief, p. 12). The evidence further establishes that Appellant did not disclose the February 1, 2005 probation "immediately" as required by the application, and did not do so until shortly before the April, 2005 administrative hearing. The Board had before it evidence that in his 2001 application, Appellant failed to disclose a notice of probation, notice of termination of residency, a warning for medication errors, and a warning for dishonesty. The Board had also previously found that Appellant had engaged in "carelessness and dishonesty" in the application process. As the finder of fact, the Board was entitled to find implausible Appellant's claim that his repeated failures to disclose were in good faith.

The Court finds that the record also contains reliable, probative and substantial evidence supporting the Board's finding that Appellant failed to furnish satisfactory proof of good moral character as required for licensure under R.C. 4731.08.

Appellant argues that the penalty imposed on him, permanent denial of his application for medical licensure, is inconsistent with penalties imposed by the Board in similar cases, depriving Appellant of due process.

This Court's scope of review of the penalty imposed by the Board is limited. In Henry's Café v. Board of Liquor Control (1959), 170 Ohio St. 233, the Ohio Supreme Court held as follows:

On such appeal, the Court of Common Pleas has no authority to modify a penalty that the agency was authorized to and did impose, on the ground that the agency abused its discretion. [paragraph three of syllabus]

See also Hale v. Ohio State Veterinary Medical Board (1988), 47 Ohio App.3d 167 (if the penalty is within the range of choices for the infraction, the court must affirm the order even if the penalty is viewed as too harsh). This rule applies to state medical board cases. In King v. State Medical Board (1999), Tenth Appellate District, No. 98AP-570, 1999 Ohio App. LEXIS 201, the Court stated: "the common pleas court, in concluding the board's order is supported by reliable, probative and substantial evidence, is precluded from interfering with or modifying the penalty imposed if such penalty is authorized." (*Id.*, p. 4).

The Court notes that permanent denial of an application for medical licensure is one of the sanctions permitted under R.C. 4731.22(L). Accordingly, the Board was authorized to impose this penalty.

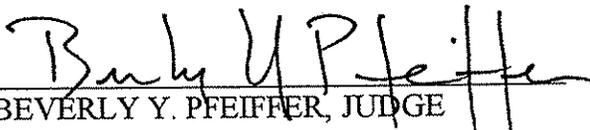
Appellant discusses one case in which the Board apparently imposed a penalty less than permanent denial for failures to disclose prior disciplinary matters. Appellee counters with a discussion of the Board's disciplinary guidelines and aggravating factors in this case that support the penalty imposed.

In Vaughn v. State Medical Board (1995), Tenth District Court of Appeals No. 95APE05-645, 1995 Ohio App. LEXIS 5258, p. 17, the appellant offered as evidence of disparate treatment a list of other physicians who had received lesser sanctions. The Court held that such information does not provide a sufficient basis for finding a violation of constitutional rights.

As in Vaughn, the Court concludes that Appellant has not shown that the penalty imposed by the Board is a violation of his constitutional rights.

For the foregoing reasons, the Court finds that the Board's Order is supported by reliable, probative, and substantial evidence and is in accordance with law. Accordingly, the Board's Order is hereby AFFIRMED. This is a final, appealable Order. Costs to Appellant. Pursuant to Civil Rule 58, the Clerk of Court shall serve upon all parties notice of this judgment and its date of entry.

IT IS SO ORDERED.

  
BEVERLY Y. PFEIFFER, JUDGE

Copies to:  
Kevin P. Byers, Counsel for Appellant  
Damion M. Clifford, Counsel for Appellee



Appellant requested a hearing, which was conducted on April 21, 2005 before a Hearing Examiner. The Hearing Examiner issued a Report and Recommendation recommending that Appellant's application for a medical license be permanently denied.

On November 9, 2005, the Board issued its Order permanently denying Appellant's application for a medical license. The Order was mailed to Appellant on November 23, 2005. Appellant filed this appeal on December 7, 2005.

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Both the December Notice and the April Notice also reference the Board's earlier denial of Appellant's initial licensure application submitted in September, 2001.

By letters dated May 8 and October 9, 2002, the Board notified Appellant that it proposed to deny his 2001 application based on his alleged failure to provide full and accurate disclosures of information. A hearing was held on December 10, 2002 and January 9, 2003. On February 26, 2003, the Hearing Examiner issued a Report and Recommendation. (St. Ex. 3). The Hearing Examiner found that Appellant had failed to disclose the following relating to his residency at the University of South Carolina: that he had been placed on probation for 90 days due to reasons including actions or omissions relating to treatment of patients, he had been informed by the faculty that he was going to be terminated from the residency program, he had been given a written

warning for careless attention to detail regarding medication errors, and he had been given a written warning for dishonesty. (St. Ex. 3, Report and Recommendation dated February 26, 2003, Findings of Fact 3, 4, and 5). The Hearing Examiner found that Appellant had engaged in “carelessness and dishonesty” in the application process warranting denial of his application for Ohio licensure. (Id., p. 39). The Hearing Examiner concluded that Appellant had violated R.C. 4731.22(A) and R.C. 4731.22(B)(5) and had failed to furnish satisfactory proof of good character as required by R.C. 4731.08. On April 2, 2003, the Board issued an Order adopting the findings of the Hearing Examiner and denying Appellant’s 2001 application for medical licensure. (St. Ex. 3, p. 9).

On June 14, 2004, Appellant again applied for medical licensure.

The December Notice alleged that in the 2004 application, Appellant failed to disclose that on July 9, 2002, a written warning was issued to him by Dr. Joseph Schwerha in Appellant’s residency program at the University of Pittsburgh.

At the April 21, 2005 hearing, Dr. Schwerha testified that while he had used the word “warning” in his memorandum to Appellant, Dr. Schwerha did not consider the memorandum to constitute a serious adverse action. (Tr. 45).

Based on the testimony of Dr. Schwerha, the Hearing Examiner concluded that there was insufficient evidence to support a conclusion that the failure to disclose the July 9, 2002 written warning was a violation of R.C. 4731.22(A), R.C. 4731.22(B)(5), or R.C. 4731.08. (Report and Recommendation, p. 16). The Board adopted this conclusion, and these allegations of the December Notice are therefore no longer at issue.

The dispute in this case concerns the allegations of the April Notice. These allegations relate to disclosure of events occurring after submission of the June 14, 2004 application.

The April Notice alleged that Appellant failed to disclose a November 2004 warning in a residency program at the University of Mississippi. The April Notice alleged that Appellant also failed to timely notify the Board that on February 1, 2005, he was placed on probation in that residency program.

The June 14, 2004 application included, as question 4, the following:

Have you ever resigned from, withdrawn from, or have you ever been warned by, censured by, disciplined by, been put on probation by, been requested to withdraw from, dismissed from, been refused renewal of a contract by, or expelled from, a medical school, clinical clerkship, externship, preceptorship, residency, or graduate medical education program? [St. Ex. 2 at 6]

The application requires that all affirmative answers be fully explained. (*Id.*). As part of the application, the applicant also signed a statement including the following:

I further understand that my application for a license to practice medicine or osteopathic medicine is an ongoing process. **I will immediately notify the State Medical Board of Ohio in writing of any changes to the answers to any of the questions ....** [emphasis added; *Id.* at 14]

On November 8, 2004, the faculty and director of an emergency medicine residency program at the University of Mississippi issued a written "Faculty Evaluation" to Appellant, advising that several areas of his performance were in need of "significant progress" and must "be of intense focus immediately." The evaluation further stated that Appellant was being "removed from the PICU rotation" so that his performance could be "closely observe[d]." The evaluation stated that a "[l]ack of major improvement" would result in Appellant being placed on "probation status." (St. Ex. 5 at 75-76; Tr. at 21-22).

Appellant testified that when he received the November 8, 2004 Faculty Evaluation, he was not sure that it constituted a “warning.” (Tr. 76). He consulted legal counsel about the document. Counsel received a copy of the document that did not include the last page containing the statement that a lack of improvement would result in probation. Not having the last page of the evaluation, counsel advised Appellant that it was a “work evaluation and not a warning.” (Tr. 76). At the hearing, Appellant conceded that the Faculty Evaluation constituted a warning. (Tr. 22).

Appellant did not notify the Board of the November 8, 2004 Faculty Evaluation. (See Resp. Ex. A).

On February 1, 2005, Appellant was placed on probation in the University of Mississippi residency program. The stated reasons for probation included lack of judgment in stressful situations, lack of insight into patient problems, deficiency in medical knowledge and development of an appropriate differential diagnosis, and problems regarding reliability of key elements of the physical exam and accurate documentation of such. The written notice states that “the bulk of the issues are not remediable.” (St. Ex. 5 at 70; Tr. at 20-21).

Appellant did not notify the Board of the February 1, 2005 probation until April 4, 2005. (Resp. Ex. A). During the interim, on March 2, 2005, Appellant’s residency contract was not renewed and he was removed from clinical duties. (Id.)

Appellant testified that when he was placed on probation, he knew he was required to notify the Board, but he did not recall that he was required to do so “immediately.” (Tr. 29, 76-78).

The Hearing Examiner concluded that the failure to disclose the November 8, 2004 warning, the failure to disclose the February 1, 2005 notice of probation until April, 2005, and the failures to disclose information in the 2001 application constituted violations of R.C. 4731.22(A), R.C. 4731.22(B)(5), and R.C. 4731.08. The Hearing Examiner stated as follows:

In April 2003, when the Board denied Dr. Politi's first application, it did not make the denial permanent, thus giving Dr. Politi an opportunity to reapply for a certificate to practice medicine and surgery in Ohio and to provide a full, candid disclosure in his next application. In June, 2004, Dr. Politi submitted a second application for an Ohio certificate. Unfortunately, in his second application, Dr. Politi failed to fulfill his obligation to provide timely disclosure to the Board of all relevant facts concerning his ER Residency. Accordingly, Dr. Politi's pending application should be permanently denied.

(Report and Recommendation, p. 17).

The Board's November 9, 2005 Order approved and confirmed the findings of the Hearing Examiner and permanently denied Appellant's application for medical licensure.

When considering an appeal from a medical board's order, a common pleas court must uphold the order if it is supported by reliable, probative, and substantial evidence and is in accordance with law. R.C. 119.12. Pons v. Ohio State Med. Bd. (1993), 66 Ohio St.3d 619, 621; Landefeld v. State Med. Bd. (2000), Tenth Appellate District No. 99AP-612, 2000 Ohio App. LEXIS 2556.

The Ohio Supreme Court has recognized that the General Assembly granted the medical board a broad measure of discretion. Arlen v. State (1980), 61 Ohio St.2d 168, 174. In Farrand v. State Med. Bd. (1949), 151 Ohio St. 222, 224, the court stated:

... The purpose of the General Assembly in providing for administrative hearings in particular fields was to facilitate such matters by placing the decision on facts with boards or commissions composed of men equipped

with the necessary knowledge and experience pertaining to a particular field. ...

“Accordingly, when courts review a medical board order, they are obligated to accord due deference to the board’s interpretation of the technical and ethical requirements of the medical profession.” Landefeld, supra, at pg. 9.

Appellant argues that the evidence does not show fraudulent intent as necessary for a violation of R.C. 4731.22(A) and 4731.22(B)(5). The Board found that Appellant violated R.C. 4731.22(A) by engaging in “fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board” and violated R.C. 4731.22(B)(5) by “making a false, fraudulent, deceptive or misleading statement in ... securing or attempting to secure any certificate to practice or certificate of registration issued by the board.”

It is well-established that intent need not be proven directly but can be inferred from the facts and circumstances. State v. Teamer (1998), 82 Ohio St.3d 490. A person is presumed to intend the natural, reasonable and probable consequences of his voluntary acts. State v. Lott (1990), 51 Ohio St.3d 160.

In Krain v. State Medical Board (1998), Tenth App. Dist. Case No. 97APE08-981, 1998 Ohio App. LEXIS 5339, the court found that there was sufficient evidence of intent to deceive when an applicant failed to disclose prior disciplinary proceedings to the Board on his renewal applications.

This Court’s review is for the purpose of determining whether the Board’s Order is supported by reliable, probative and substantial evidence and is in accordance with law. The Court’s scope of review is limited, as the Court “will not substitute its judgment for the

Board's where there is some evidence supporting the Board's Order." Harris v. Lewis (1982), 69 Ohio St.2d 577, 579.

The record contains reliable, probative and substantial evidence supporting the Board's conclusion that Appellant intended to deceive. The evidence shows that Appellant failed to disclose the November 2004 warning that a "[l]ack of major improvement" would result in Appellant being placed on "probation status." Appellant conceded at the hearing that this constituted a reportable warning, and that he failed to disclose it to the Board. (Tr. 22). Appellant concedes in his brief that he "should have independently realized the 'reportability' of the program's warning." (brief, p. 12). The evidence further establishes that Appellant did not disclose the February 1, 2005 probation "immediately" as required by the application, and did not do so until shortly before the April, 2005 administrative hearing. The Board had before it evidence that in his 2001 application, Appellant failed to disclose a notice of probation, notice of termination of residency, a warning for medication errors, and a warning for dishonesty. The Board had also previously found that Appellant had engaged in "carelessness and dishonesty" in the application process. As the finder of fact, the Board was entitled to find implausible Appellant's claim that his repeated failures to disclose were in good faith.

The Court finds that the record also contains reliable, probative and substantial evidence supporting the Board's finding that Appellant failed to furnish satisfactory proof of good moral character as required for licensure under R.C. 4731.08.

Appellant argues that the penalty imposed on him, permanent denial of his application for medical licensure, is inconsistent with penalties imposed by the Board in similar cases, depriving Appellant of due process.

This Court's scope of review of the penalty imposed by the Board is limited. In Henry's Café v. Board of Liquor Control (1959), 170 Ohio St. 233, the Ohio Supreme Court held as follows:

On such appeal, the Court of Common Pleas has no authority to modify a penalty that the agency was authorized to and did impose, on the ground that the agency abused its discretion. [paragraph three of syllabus]

See also Hale v. Ohio State Veterinary Medical Board (1988), 47 Ohio App.3d 167 (if the penalty is within the range of choices for the infraction, the court must affirm the order even if the penalty is viewed as too harsh). This rule applies to state medical board cases. In King v. State Medical Board (1999), Tenth Appellate District, No. 98AP-570, 1999 Ohio App. LEXIS 201, the Court stated: "the common pleas court, in concluding the board's order is supported by reliable, probative and substantial evidence, is precluded from interfering with or modifying the penalty imposed if such penalty is authorized." (*Id.*, p. 4).

The Court notes that permanent denial of an application for medical licensure is one of the sanctions permitted under R.C. 4731.22(L). Accordingly, the Board was authorized to impose this penalty.

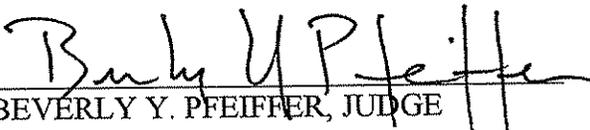
Appellant discusses one case in which the Board apparently imposed a penalty less than permanent denial for failures to disclose prior disciplinary matters. Appellee counters with a discussion of the Board's disciplinary guidelines and aggravating factors in this case that support the penalty imposed.

In Vaughn v. State Medical Board (1995), Tenth District Court of Appeals No. 95APE05-645, 1995 Ohio App. LEXIS 5258, p. 17, the appellant offered as evidence of disparate treatment a list of other physicians who had received lesser sanctions. The Court held that such information does not provide a sufficient basis for finding a violation of constitutional rights.

As in Vaughn, the Court concludes that Appellant has not shown that the penalty imposed by the Board is a violation of his constitutional rights.

For the foregoing reasons, the Court finds that the Board's Order is supported by reliable, probative, and substantial evidence and is in accordance with law. Accordingly, the Board's Order is hereby AFFIRMED. This is a final, appealable Order. Costs to Appellant. Pursuant to Civil Rule 58, the Clerk of Court shall serve upon all parties notice of this judgment and its date of entry.

IT IS SO ORDERED.

  
BEVERLY Y. PFEIFFER, JUDGE

Copies to:  
Kevin P. Byers, Counsel for Appellant  
Damion M. Clifford, Counsel for Appellee

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

Barry J. Politi, DO,  
1680 Watermark Drive, Suite 200  
Jackson, MS

Appellant,

v.

State Medical Board of Ohio,  
77 South High St., 17th Floor  
Columbus, Ohio 43266-0315

Appellee.

05 CV F 12-1366

CASE NO. \_\_\_\_\_

JUDGE \_\_\_\_\_

2005 DEC - A 9:36

STATE MEDICAL BOARD  
OF OHIO

Appeal from the State Medical Board of Ohio

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APPELLANT'S NOTICE OF APPEAL

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Pursuant to RC 119.12, notice is hereby given that Appellant, Barry J. Politi, DO, appeals the order of the State Medical Board dated November 9, 2005, and mailed November 23, 2005, (copy attached as *Exhibit A.*) The Medical Board order is not supported by the necessary quantum of reliable, probative and substantial evidence nor is it in accordance with law.

Respectfully submitted,

KEVIN P. BYERS CO., L.P.A.

KP BYERS

Kevin P. Byers 0040253  
Fifth Third Center  
21 East State Street, Suite 220  
Columbus, Ohio 43215  
614.228.6283 Fax 228.6425

Attorney for Barry J. Politi, DO

CLERK OF COURT

2005 DEC -7 11:19:28

FILED  
COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

Certificate of Service

I certify that the original of the foregoing document was hand filed this <sup>7th</sup>~~6th~~ day of December, 2005, at the State Medical Board, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0315 with a copy filed this same date in the Court of Common Pleas of Franklin County in accord with RC 119.12 with a courtesy copy mailed to the Office of Attorney General Jim Petro, Health & Human Services Section, 30 East Broad Street, 26<sup>th</sup> Floor, Columbus, Ohio 43215-3426.

KP BYERS  
Kevin P. Byers

STATE MEDICAL BOARD  
OF OHIO  
2005 DEC 21 P 2:39



# State Medical Board of Ohio

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

November 9, 2005

Barry Joseph Politi, M.D.  
1206 Springdale Drive  
Jackson, MS 39211

Dear Doctor Politi:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 9, 2005, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 7003 0500 0002 4333 9807  
RETURN RECEIPT REQUESTED

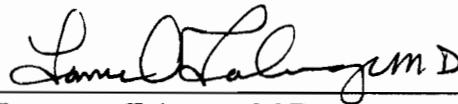
Cc: Kevin P. Byers, Esq.  
CERTIFIED MAIL NO. 7003 0500 0002 4333 9777  
RETURN RECEIPT REQUESTED

MAILED 11-23-05

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 9, 2005, 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 Barry Joseph Politi, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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



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

(SEAL)

\_\_\_\_\_  
November 9, 2005

Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF

\*

\*

BARRY JOSEPH POLITI, M.D.

\*

ENTRY OF ORDER

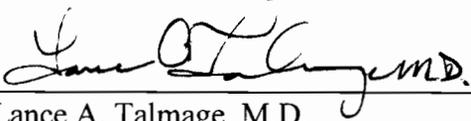
This matter came on for consideration before the State Medical Board of Ohio on November 9, 2005.

Upon the Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the 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 the application of Barry Joseph Politi, M.D., for a certificate to practice medicine and surgery in Ohio is PERMANENTLY DENIED.

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

(SEAL)

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

November 9, 2005  
\_\_\_\_\_  
Date

**REPORT AND RECOMMENDATION  
IN THE CONSOLIDATED MATTERS OF BARRY JOSEPH POLITI, M.D.**

The Consolidated Matters of Barry Joseph Politi, M.D., were heard by R. Gregory Porter, Hearing Examiner for the State Medical Board of Ohio, on April 21, 2005.

**INTRODUCTION**

I. Basis for Hearing

- A. By letter dated December 8, 2004, the State Medical Board of Ohio [Board] notified Barry Joseph Politi, M.D., that it had proposed to take disciplinary action against, or to refuse to register or reinstate, his certificate to practice medicine and surgery in Ohio. The Board based its proposed action in Dr. Politi's alleged failure to provide full and accurate disclosure of information on a June 14, 2004, application for Ohio certificate. The Board also based the proposed action on Dr. Politi's conduct that had prompted the Board to deny his initial application in 2003.

The Board alleged that Dr. Politi's conduct constitutes the following:

- “‘fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board,’ as that clause is used in Section 4731.22(A), Ohio Revised Code”;
- “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,’ as that clause is used in Section 4731.22(B)(5), Ohio Revised Code”; and/or
- failure to furnish “satisfactory proof of good moral character” as required by Section 4731.08, Ohio Revised Code.

Finally, the Board notified Dr. Politi of his right to request a hearing in this matter. (State's Exhibit 1A)

- B. By document received by the Board on January 10, 2005, Kevin P. Byers, Esq., requested a hearing on behalf of Dr. Politi. (State's Exhibit 1B)
- C. By letter dated April 13, 2005, the Board notified Dr. Politi that it had proposed to deny his application for a certificate to practice medicine and surgery in Ohio or to impose other discipline based on his alleged failure to provided full and accurate disclosure of certain events that occurred after he submitted the application on June 14, 2004. (State's Exhibit 1M)

The Board alleged that Dr. Politi's conduct constitutes the following:

- ““fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board,’ as that clause is used in Section 4731.22(A), Ohio Revised Code”;
- “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,’ as that clause is used in Section 4731.22(B)(5), Ohio Revised Code”; and/or
- failure to furnish “satisfactory proof of good moral character” as required by Section 4731.08, Ohio Revised Code.

Finally, the Board notified Dr. Politi of his right to request a hearing in this matter. (State's Exhibit 1L)

- D. By document received by the Board on April 19, 2005, Kevin P. Byers, Esq., requested a hearing on behalf of Dr. Politi, and further requested that the two matters be consolidated. (State's Exhibit 1M)
- C. By Entry dated April 19, 2005, the matters addressed in the December 8, 2004, and the April 13, 2005, notices of opportunity for hearing were consolidated for hearing. (State's Exhibit 1R)

## II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Rebecca J. Albers, Assistant Attorney General.
- B. On behalf of the Respondent: Kevin P. Byers, Esq.

## EVIDENCE EXAMINED

### I. Testimony Heard

#### A. Presented by the State

Barry Joseph Politi, M.D., as upon cross-examination

#### B. Presented by the Respondent

1. Barry Joseph Politi, M.D.
2. Joseph J. Schwerha, M.D.

### II. Exhibits Examined

#### A. Presented by the State

1. State's Exhibits 1A through 1R: Procedural exhibits.
2. State's Exhibit 2: Certified copies of Dr. Politi's 2001 and 2004 applications for Ohio licensure, and related documentation.
3. State's Exhibit 3: Certified copies of documents maintained by the Board, including the December 8, 2004, notice the opportunity for hearing, as well as documents relating to Board's April 2, 2003, Entry of Order denying Dr. Politi's 2001 application.
4. State's Exhibit 4A: Copy of a memorandum dated July 9, 2002, from Joseph J. Schwerha, M.D., Director of Occupational and Environmental Medicine at the University of Pittsburgh Graduate School of Public Health, to Dr. Politi; and a copy of an email dated July 1, 2002, from Dr. Politi to persons including Dr. Schwerha, regarding his reason for an absence from class.
5. State's Exhibit 5: Certified copy of the residency file of Barry J. Politi, M.D., as maintained by the University of Mississippi Medical Center Department of Emergency Medicine.

#### B. Presented by the Respondent

1. Respondent's Exhibit A: Collection of documents consisting of: copy of an April 4, 2005, facsimile cover sheet addressed to Board staff from Kevin P. Byers, Esq.; copy of a February 1, 2005, letter to Dr. Politi from faculty of the University of Mississippi Medical Center Department of Emergency Medicine; copy of a March 2, 2005, memorandum to Dr. Politi from faculty at the

University of Mississippi Medical Center Department of Emergency Medicine;  
and copy of a Facsimile Transaction Report Dated April 4, 2005.

2. Respondent's Exhibit B: Letter of July 5, 2002, from Gregory Jucket, M.D., Associate Professor, West Virginia University, regarding a course in tropical medicine that Dr. Politi attended in 2002.

### **SUMMARY OF THE EVIDENCE**

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

#### **Background Information**

1. Barry Joseph Politi, M.D., obtained his Bachelor's degree from California Polytechnic State University in 1992, and he obtained a Master's degree in Public Health at the University of Illinois in 1993. In 1998, he graduated from medical school at St. George's University School of Medicine in Grenada. Dr. Politi participated in a family practice residency at the University of South Carolina for two years, but left that program in January 2001 without completing it. In the summer of 2001, Dr. Politi entered an Occupational and Environmental Medicine Residency Program affiliated with the University of Pittsburgh in Pittsburgh, Pennsylvania, where he completed a two-year residency in preventive medicine. (Hearing Transcript [Tr.] at 13, 59; State's Exhibit [St. Ex.] 2 at 20, 49; St. Ex. 5 at 33, 63)

In September 2003, Dr. Politi began a fellowship in emergency medicine at the University of Connecticut, Hartford Hospital, in Hartford, Connecticut, where he divided his time between patient care and research. He completed the fellowship in good standing in June 2004. Dr. Politi then entered a residency program in emergency medicine at the University of Mississippi Medical Center in Jackson, Mississippi, in July 2004 (shortly after he submitted the present license application). (St. Ex. 2 at 27, 52, 54, 57; Tr. at 59-60)

#### **Dr. Politi's First Application for a Certificate to Practice Medicine and Surgery in Ohio**

2. In September 2001, Dr. Politi submitted to the Board an Application for Certificate – Medicine or Osteopathic Medicine [First Application]. By letters dated May 8 and October 9, 2002, the Board notified Dr. Politi that it had proposed to deny his application or impose other discipline based on his alleged failure to provide full and accurate disclosure of information on his First Application. Dr. Politi timely requested hearings and the matters were consolidated. The consolidated matters were heard on December 10, 2002, and January 9, 2003. The Hearing Examiner issued a Report and Recommendation on February 26, 2003, [2003 R&R]. (St. Ex. 3 at 7-55)

Following its April 2003 meeting, on April 2, 2003, the Board issued an Entry of Order denying Dr. Politi's First application. In so doing, the Board adopted the Conclusions of Law set forth in the 2003 R&R, including the following:

1. The acts, conduct, and/or omissions of Barry J. Politi, M.D., \* \* \* constitute 'fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board,' as that clause is used in Section 4731.22(A), Ohio Revised Code.
2. Dr. Politi's acts, conduct, and/or omissions \* \* \* constitute '[m]aking a false, fraudulent, deceptive, or misleading statement \* \* \* in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,' as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.
3. Dr. Politi's acts, conduct, and/or omissions \* \* \* constitute a 'failure to furnish satisfactory proof of good moral character as required by Section 4731.08, Ohio Revised Code.'

(St. Ex. 3 at 38-39) (Note: Paragraph numbers have been italicized to distinguish them from the numbered paragraphs in this Report and Recommendation.)

3. The above-quoted Conclusions of Law in the 2003 R&R were based on the following Findings of Fact:
  1. On or about September 10, 2001, Barry J. Politi, M.D., M.P.H., submitted an Application for Certificate—Medicine or Osteopathic Medicine to the Board [Ohio Application]. His Ohio Application remains pending.
  2. The Additional Information section of Dr. Politi's Ohio Application includes the instruction that, should the applicant answer 'YES' to any question, the applicant is required to furnish complete details, including date, place, reason and disposition of the matter. All affirmative answers must be thoroughly explained on a separate sheet of paper. [The applicant] must submit copies of all relevant documentation, such as court pleadings, court or agency orders, and institutional correspondence and orders.

In the Additional Information section of his Ohio Application, Dr. Politi answered 'YES' to question number 4, which asks the following: Have you ever resigned from, withdrawn from, or have you ever been warned by, censured by, disciplined by, been put on probation by, been requested to withdraw from, dismissed from, been refused renewal of a contract by, or expelled from, a medical school, clinical clerkship, externship, preceptorship, residency, or graduate medical education program?

Dr. Politi stated in response to question number 4 that, during his family practice residency program at the University of South Carolina, he was 'on academic probation, for approx. one month,' that he 'made a decision to leave the program to pursue other interests,' and that 'no patient has or was ever injured because of [his] involvement in their clinical care.'

3. Dr. Politi was placed on academic probation at the University of South Carolina for an initial period of ninety days due to reasons including, but not limited to, the following:
  - a. Dr. Politi discharged a postpartum patient who was subsequently readmitted with late eclampsia; he incorrectly indicated in the patient record that the patient was discharged on antihypertensive medication; and he failed to recognize Prinivil as an ACE inhibitor.
  - b. Dr. Politi wrote a prescription for Depakote for a fellow resident who was in impaired physician surveillance and failed to document any clinical note defining a therapeutic relationship with that resident.
  - c. Dr. Politi prescribed 125 mg. Rocephin for a patient with pyelonephritis although 'this dosage has no basis in pyelonephritis and reflects inattention to confirm drug doses, a pattern that is repeatedly documented in previous counseling.'
  - d. During Dr. Politi's pediatric rotation, he performed unacceptably with the private pediatric attending physicians.
  - e. Dr. Politi failed to recognize a possible case of pre-eclampsia.
  - f. Dr. Politi's conference attendance fell short of graduation requirements and he 'frequently sign[ed] in, [got his] lunch, and [left], without attention to conference content.'
4. Dr. Politi was informed by the University of South Carolina residency faculty that he was going to be terminated from that program and he accepted an offer to resign in lieu of termination.
5. Although Dr. Politi answered 'YES' to question number 4, he failed to disclose that he had been given a written warning at the University of South Carolina on or about June 15, 2000, for careless attention to detail regarding medication errors and interpersonal conflicts, and that he had been given a written warning at the University of South Carolina on or about August 15, 2000, for dishonesty.

6. On or about March 4, 2002, Dr. Politi appeared for a deposition before Board staff regarding questions concerning potential fraud in his pending Ohio Application.
7. On or about August 5, 2002, Dr. Politi submitted to the West Virginia Board an application for a license to practice medicine in the State of West Virginia. In the informational section of Dr. Politi's West Virginia Application, he answered 'NO' to the following question: Have you ever, in any jurisdiction for any reason:
  - 1) been called before or appeared before any board or panel for discussions or questions concerning violations of the law or rules pertaining to the practice of medicine, or for unethical conduct?
8. In the State Licensure Information section of Dr. Politi's West Virginia Application he was required to '[l]ist all licenses held in other states or jurisdictions regardless of the status of the license (i.e., active, inactive, lapsed, expired, revoked, suspended or surrendered) and list any state or jurisdiction in which [he had] ever applied for a medical license, including those where [his] application was withdrawn.'

Dr. Politi failed to list or otherwise identify his pending Ohio Application in his West Virginia Application.

9. At hearing, the parties stipulated that the allegation that Dr. Politi had not complied with Sections 4731.091 and 4731.14(B)(2), Ohio Revised Code, because he had not demonstrated twenty-four months of graduate medical education was correct at the time it was made. Accordingly, the Board was justified in proposing to deny his application on that basis. However, the parties also stipulated that, as of the date of hearing, Dr. Politi had complied with this requirement.

(St. Ex. 3 at 36-38) (Note: Emphasis in original, except where paragraph numbers in the quotation have been italicized to distinguish them from numbered paragraphs in the Report and Recommendation)

#### **Dr. Politi's Testimony Regarding his Participation in the Occupational and Environmental Medicine Residency Program Affiliated with the University of Pittsburgh**

4. In August 2001, prior to submitting his First Application, Dr. Politi had entered the Occupational and Environmental Medicine Residency Program affiliated with the University of Pittsburgh in Pittsburgh, Pennsylvania [Pittsburgh Residency]. (St. Ex. 2 at 20, 27)

Dr. Politi testified that, during that residency, he had elected not to attend a class on July 1, 2002, in order to attend a presentation at West Virginia University on tropical diseases, an area of interest for Dr. Politi. At 1:04 p.m. that day, Dr. Politi sent an e-mail to his residency program director, Joseph J. Schwerha, M.D., apologizing for missing class and explaining that he had gone to attend a conference of special interest at West Virginia University. (St. Ex. 4A at 2; Tr. at 54-57)

According to Dr. Politi's testimony, he later talked briefly with Dr. Schwerha about missing the class, conversing for a few seconds in a hallway or during a teaching period. In responding to Dr. Politi's e-mail, Dr. Schwerha stated, "You know that you guys cannot miss conference classes any more, even if you're going to another department's conference." Dr. Politi testified that Dr. Schwerha had not given him a written warning, said anything about a "warning," or treated it as a serious event. Moreover, Dr. Politi testified that Dr. Schwerha did not call him into Dr. Schwerha's office for a discussion or ask him to sign a written warning. (St. Ex. 2 at 53; Tr. at 52-58)

However, the records of the Pittsburgh Residency include a copy of a memorandum dated July 9, 2002, to Dr. Politi's from Dr. Schwerha that states as follows,

This will serve as your first written warning that it is not acceptable to skip class to attend meetings in other places.

As you are aware, written authorization by me is required.

(St. Ex. 4A) The document was not signed or initialed by Dr. Politi. (St. Ex. 4A at 1; Tr. at 17-18)

5. Dr. Politi testified that he had not seen the above-quoted memorandum during his participation in the Pittsburgh Residency, and that he had not been aware of it in June 2004, when he submitted his second license application to the Board (which is described in more detail below). Dr. Politi stated that, when he had received the Board's December 8, 2004, notice of opportunity for hearing describing the July 9, 2002, warning, he had not remembered it. Dr. Politi testified that he then obtained a copy of his file from the Pittsburgh Residency, where he finally found the warning. (Tr. at 52-58)
6. Joseph J. Schwerha, M.D., the Director of the Department of Occupational and Environmental Medicine at the University of Pittsburgh Graduate School of Public Health, testified on Dr. Politi's behalf. Dr. Schwerha noted that he is responsible for all occupational-medicine residents, keeping "everybody in line \* \* \* so that they can graduate when they're supposed to." Dr. Schwerha testified that Dr. Politi had been a very bright resident and that, during Dr. Politi's two-year residency, he did "extremely well." Dr. Schwerha noted that, when Dr. Politi had been asked to do presentations in seminars, he had gone "way ahead and done way more than would be normally anticipated \* \* \*." In addition, Dr. Schwerha testified that he has no doubts or concerns regarding Dr. Politi's moral character. (Tr. at 44-50)

With respect to the July 9, 2002, memorandum regarding Dr. Politi's attendance, Dr. Schwerha testified that residents are allowed to miss classes but simply need to tell him. Therefore, when someone is absent from "a couple of" seminars, he sends them an email or letter. (Tr. at 44-50; Resp. Ex. B) Dr. Schwerha explained that such memoranda are not "intended as critical, you know, something that's going to throw them out of the residency type of thing." Furthermore, Dr. Schwerha did not view the memorandum to Dr. Politi as a serious adverse action "at all," deeming it just a reminder to get things "back on track." He acknowledged, however, that he had used the word "warning" in the memorandum. (Tr. at 48)

7. When reporting to the Federation Credentials Verification Service regarding Dr. Politi's residency, Dr. Schwerha wrote that Dr. Politi had never been disciplined, placed on probation, or been given negative reports from instructors. Dr. Schwerha further stated that no limitations or special requirements had been placed on Dr. Politi based on questions of academic incompetence, disciplinary problems or for any other reason. (St. Ex. 2 at 52)

#### **Dr. Politi's June 2004 Application to the Board**

8. On June 14, 2004, Dr. Politi submitted to the Board a second application for a certificate to practice medicine and surgery in Ohio [Second Application]. (St. Ex. 2 at 2; Tr. at 15-16) Under the heading "Additional Information," in the Second Application, the instructions include the following:

\* \* \* All affirmative answers must be thoroughly explained on a separate sheet of paper. You must submit copies of all relevant documentation, such as \* \* \* institutional correspondence and orders. Please note that some questions require very specific and detailed information. Make sure all responses are complete.

(St. Ex. 2 at 6) Under "Additional Information," question 4 asks as follows:

Have you ever resigned from, withdrawn from, or have you ever been warned by, censured by, disciplined by, been put on probation by, been requested to withdraw from, dismissed from, been refused renewal of a contract by, or expelled from, a medical school, clinical clerkship, externship, preceptorship, residency, or graduate medical education program?

(St. Ex. 2 at 6) In response to question 4, Dr. Politi answered, "YES." He then provided the following explanation of his answer as follows, in its entirety:

I was warned, put on academic probation and then eventually resigned under threat of termination from my first residency program at Richland Memorial Hospital in SC.

(St. Ex. 2 at 6, 10; Tr. at 16)

In addition, under the heading “Affidavit and Release of Applicant,” Dr. Politi signed a statement including the following paragraph:

I further understand that my application for a license to practice medicine or osteopathic medicine in the State of Ohio is an ongoing process. **I will immediately notify the State Medical Board of Ohio in writing of any changes to the answers** to any of the questions contained in the ADDITIONAL INFORMATION section of the application if such a change occurs at any time prior to a license to practice medicine or osteopathic medicine \* \* \*.

(St. Ex. 2 at 14) (Emphasis added)

9. In July 2004, shortly after he submitted the Second Application to the Board, Dr. Politi entered a residency program in emergency medicine at the University of Mississippi Medical Center in Jackson, Mississippi [ER Residency]. (St. Ex. 2 at 28; Tr. at 59-60)

On or about November 8, 2004, faculty and the Program Director of the ER Residency issued a written “Faculty Evaluation” to Dr. Politi, advising that several areas of his performance were in need of “significant progress” and must “be of intense focus immediately.” The evaluation further states that Dr. Politi was being “removed from the PICU rotation and \* \* \* placed in the ED work schedule for the period November 22, 2004, – December 19, 2004” so that his performance could be “closely observe[d].” Most importantly, the evaluation states that a “[l]ack of major improvement” would result in Dr. Politi being placed on “probation status.” (St. Ex. 5 at 75-76; Tr. at 21-22)

10. In a written notice dated February 1, 2005, the Program Director and the Resident Adviser of the ER Residency informed Dr. Politi that he “shall be placed officially on probation for one month, effective today.” The written notice further stated that faculty had reported continued concerns in five specific areas,

- Lack of insight into patient problems[;]
- Lack of judgment in stressful situations when decisions must be made quickly[;]
- Concerns with issues related to common sense—i.e. judgment calls in a non-urgent situation[;]
- Continued deficiency in medical knowledge and development of an appropriate differential diagnosis[; and,]
- Problems regarding reliability of key elements of the physical exam and accurate documentation of such[.]

(St. Ex. 5 at 70) Finally, the written notice indicates concern “that the bulk of the issues are not remediable.” (St. Ex. 5 at 70; Tr. at 19-21)

11. Dr. Politi testified that he had not received a copy of the written notice on February 1, 2005, but that he had probably signed it about a week later. (Tr. at 27, 66)
12. By memorandum dated March 2, 2005, the ER Residency Program Director and faculty advised Dr. Politi that his residency contract would not be renewed. Dr. Politi's signature appears on this memorandum. (St. Ex. 5 at 68)
13. At the time that Dr. Politi learned of the probation in the ER Residency, he had already been notified via notice of opportunity for hearing dated December 8, 2004, that the Board had proposed to deny his Second Application. (St. Ex. 1A)

In addition, on January 31, 2005, the Board sent a letter to Dr. Politi by certified mail notifying him that his hearing had been scheduled to proceed on April 21, 2005. (St. Ex. 1D)

Prior to the hearing, on April 4, 2005, counsel for Dr. Politi transmitted two documents to the Board: a copy of the ER Residency's written notice to Dr. Politi dated February 1, 2005, in which the program director informed Dr. Politi that he was on probation for one month; and a copy of a memorandum dated March 2, 2005, informing Dr. Politi that the ER residency was not renewing his contract. (Resp. Ex. A)

Subsequently, on April 13, 2005, the Board issued a notice of opportunity for hearing advising Dr. Politi that it had proposed to deny his Second Application on the additional basis of his failure to give timely notice to the Board regarding the warning and probation with regard to the ER Residency. (St. Ex. 1L, 1R)

#### **Dr. Politi's Testimony Regarding the ER Residency**

14. At the hearing, Dr. Politi testified that, when he received the November 8, 2004, written faculty evaluation in the ER Residency, he had not immediately notified the Board because he had not been sure that it constituted a "warning." He said that he had forwarded the evaluation to counsel, who felt it was a "work evaluation and not a warning." However, Dr. Politi acknowledged that his counsel may not have received the last page of the document (which contained the statement that a lack of improvement would result in Dr. Politi's being placed on probation). Nonetheless, Dr. Politi acknowledged that the written faculty evaluation had constituted a "warning." (Tr. at 22, 76)
15. Dr. Politi testified that, when the ER Residency placed him on probation in February 2005, he had known he was required to notify the Board, but had not remembered that the notification must be "immediate." He asserted that, with "all this stuff going on," he had not reviewed the application to see what specific time period was required for notifying the Board. Additionally, Dr. Politi testified that

he had not really known what “immediately” means, although he later clarified that he had not known what the Board meant by “immediately.” He testified that he had thought that, if he let the Board know about his probation “in a month or so,” that would be adequate. Also, he was awaiting the conclusion of the one-month probation in the hope that, by the time he notified the Board, there would be a positive outcome. (Tr. at 27-30, 76-78)

However, at the conclusion of the probation, Dr. Politi was informed that his contract would not be renewed. Dr. Politi testified that he had been pursuing a review process and that no final determination had yet been issued with regard to the nonrenewal. (St. Ex. 5 at 68; Tr. at 24-25, 77-78)

16. Dr. Politi testified that he had recently received his PGY-1 training scores and had scored in the 95th percentile, placing first in his residency class of ten people. He testified that, based on those scores, the ER Residency was considering whether he should be permitted back in the program. However, he testified that he does not plan to pursue emergency medicine because he feels it does not suit his personal traits, in that he is unable to stay up all night for several days and then go back to the day shift for several days. (Tr. at 25-26, 61-62)
17. Dr. Politi emphasized that, on his Second Application, he had tried to provide full disclosure regarding his history, and had answered more than a dozen questions in the affirmative. He noted that he had provided additional information about a misdemeanor charge years ago that had been dismissed, because he had tried to make the application as perfect and honest as he could. (Tr. at 37- 40)
18. Dr. Politi acknowledged that, from his previous experience with the Board in his First Application, he knew that the Board expected him to disclose everything fully and honestly when he applied again. However, he acknowledged that he had not done so in his Second Application. (Tr. at 23)

### **FINDINGS OF FACT**

1. On or about September 10, 2001, Barry Joseph Politi, M.D., submitted an Application for Certificate – Medicine or Osteopathic Medicine [First Application] to the Board. By signing the First Application, Dr. Politi certified that the information provided therein was true.
2. The “Additional Information” section of Dr. Politi’s First Application includes the instruction that, should he answer “Yes” to any question, he is “required to furnish complete details, including date, place, reason and disposition of the matter. All affirmative answers must be thoroughly explained on a separate sheet of paper. You must submit copies of all relevant documentation, such as court pleadings, court or agency orders, and institutional correspondence or orders.” In that “Additional Information”

section of his First Application, Dr. Politi answered “Yes” to question number 4, which asks the following:

Have you ever resigned from, withdrawn from, or have you ever been warned by, censured by, disciplined by, been put on probation by, been requested to withdraw from, dismissed from, been refused renewal of a contract by, or expelled from, a medical school, clinical clerkship, externship, preceptorship, residency, or graduate medical education program?

- (a) Dr. Politi stated in response to question number 4 that, during his family practice residency program at the University of South Carolina [USC residency], he had been “on academic probation, for approx. one month,” that he had “made a decision to leave the program to pursue other interests,” and that “no patient has or was ever injured because of [his] involvement in their clinical care.”
- (i) In fact, as reflected in a letter from Dr. Politi’s residency program director, he was placed on academic probation at the USC residency for an initial period of ninety days due to reasons including, but not limited to, the following:
- a. Dr. Politi discharged a postpartum patient who was subsequently readmitted with late eclampsia; he incorrectly indicated in the patient record that the patient was discharged on antihypertensive medication; and he failed to recognize Prinivil as an ACE inhibitor.
  - b. Dr. Politi wrote a prescription for Depakote for a fellow resident who was in impaired physician surveillance and failed to document any clinical note defining a therapeutic relationship with that resident.
  - c. Dr. Politi prescribed 125 mg. Rocephin for a patient with pyelonephritis although “this dosage has no basis in pyelonephritis and reflects inattention to confirm drug doses, a pattern that is repeatedly documented in previous counseling.”
  - d. During Dr. Politi’s pediatric rotation, he performed unacceptably with the private pediatric attending physicians.
  - e. Dr. Politi failed to recognize a possible case of pre-eclampsia.
  - f. Dr. Politi’s conference attendance fell short of graduation requirements; he also “frequently sign[ed] in, [got] your lunch, and [left], without attention to conference content.”

- (ii) Dr. Politi was informed by the USC residency that he was going to be terminated from that program and he accepted an offer to resign from that program in lieu of termination.
  - (b) Although Dr. Politi answered “Yes” to question number 4, he failed to disclose that he had been given a written warning at the USC residency on or about June 15, 2000, for careless attention to detail regarding medication errors and interpersonal conflicts, and that he had been given a written warning at the USC residency on or about August 15, 2000, for dishonesty.
3. On or about August 5, 2002, Dr. Politi submitted an application to the West Virginia Board of Medicine [West Virginia Application].
- (a) In the informational section of his West Virginia Application, Dr. Politi answered “No” to the following question:

Have you ever, in any jurisdiction, for any reason:

- 1) been called before or appeared before any board or panel for discussions or questions concerning violations of the law or rules pertaining to the practice of medicine, or for unethical conduct? (Emphasis in the original).

In fact, on or about March 4, 2002, you appeared for a deposition before Ohio Board staff regarding questions concerning potential fraud in your application pending before the Board at that time.

- (b) In the State Licensure Information section of his West Virginia Application, Dr. Politi was required to “[l]ist\* \* \* any state or jurisdiction in which you have ever applied for a medical license, including those where your application was withdrawn.”

Although Dr. Politi submitted his First Application to the Ohio Board on or about September 10, 2001, he failed to list or otherwise identify that application to the West Virginia Board of Medicine in his West Virginia Application.

4. On April 2, 2003, the Board issued an Order denying Dr. Politi’s First Application based on violations of Sections 4731.22(A) and (B)(5), and 4731.08, Ohio Revised Code.
5. On June 14, 2004, Dr. Politi submitted a second Application for Certificate – Medicine or Osteopathic Medicine [Second Application] to the Board. By signing the Second Application, he certified that the information provided therein was true. Dr. Politi’s Second Application is currently pending.

6. In the “Additional Information” section of his Second Application, Dr. Politi answered “Yes” to question number four which asks:

Have you ever resigned from, withdrawn from, or have you ever been warned by, censured by, disciplined by, been put on probation by, been requested to withdraw from, dismissed from, been refused renewal of a contract by, or expelled from, a medical school, clinical clerkship, externship, preceptorship, residency, or graduate medical education program?

Although Dr. Politi answered “Yes” to question number four, he failed to disclose that, on or about July 9, 2002, a written warning had been issued to him by Joseph J. Schwerha, M.D., Director of the Occupational and Environmental Medicine Residency Program affiliated with the University of Pittsburgh in Pittsburgh, Pennsylvania.

Nevertheless, the evidence also indicates that, although Dr. Schwerha had used the word “warning” in his memorandum to Dr. Politi, Dr. Schwerha had not considered the memorandum to constitute a formal warning.

7. On June 14, 2004, Dr. Politi submitted an Application for Certificate – Medicine or Osteopathic Medicine [Second Application] to the Board. Dr. Politi’s Second Application is currently pending. By signing the Second License Application, he certified that the information provided therein was true. He also certified that he would “immediately notify the [Board] in writing of any changes to the answers to any of the questions contained in the ADDITIONAL INFORMATION section of the application if such change occurs at any time prior to a license to practice medicine or osteopathic medicine being granted to [him] by the [Board].” (Emphasis in the original)
8. At the time the notice was issued, Dr. Politi had failed to disclose that, on or about November 8, 2004, he was advised by the Emergency Medicine Residency Program Director at the Emergency Medicine Residency Program at the University of Mississippi Medical Center [ER residency] located in Jackson, Mississippi, that his performance on several performance characteristics for the period July to October 2004 had been poor, that specific areas for improvement were “to be of intense focus immediately,” that he had been “removed from the PICU rotation and ... placed in the ED work schedule for the period November 22, 2004, – December 19, 2004, so that [the ER residency faculty could] closely observe [his] performance” and that the “[l]ack of major improvement will result in being moved to probation status.”
9. On or about February 1, 2005, Dr. Politi was placed on probation at the ER Residency for the following reasons:
- lack of insight into patient problems;
  - lack of judgment in stressful situations when decisions must be made quickly;

- concerns with issues related to common sense—i.e. judgment calls in a non-urgent situation;
- continued deficiency in medical knowledge and development of an appropriate differential diagnosis; and
- problems regarding reliability of key elements of the physical exam and accurate documentation of such.

Although Dr. Politi was notified on or about February 1, 2005, about said probation, he failed to notify the Board about this adverse action until on or about April 4, 2005.

### CONCLUSIONS OF LAW

1. The conduct of Barry Joseph Politi, M.D., as set forth in Findings of Fact 1, 2, 4, 5, and 7 through 9 constitutes “fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board,” as that clause is used in Section 4731.22(A), Ohio Revised Code.
2. The conduct of Dr. Politi as set forth in Findings of Fact 1 through 5 and 7 through 9 constitutes “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,” as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.
3. The conduct of Dr. Politi as set forth in Findings of Fact 1 through 5 and 7 through 9 constitutes a failure to furnish satisfactory proof of good moral character as required by Section 4731.08, Ohio Revised Code.
4. Due to testimony provided at hearing by Joseph J. Schwerha, M.D., the evidence is insufficient to support a finding that Dr. Politi’s conduct, as set forth in Findings of Fact 6, constituted intent on the part of Dr. Politi to deceive the Board. Accordingly, the evidence is insufficient to support a conclusion that such conduct constitutes:
  - “fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board,” as that clause is used in Section 4731.22(A), Ohio Revised Code;
  - “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,” as that clause is used in Section 4731.22(B)(5), Ohio Revised Code; and/or

- a failure to furnish satisfactory proof of good moral character as required by Section 4731.08, Ohio Revised Code.

\* \* \* \* \*

In April 2003, when the Board denied Dr. Politi's first application, it did not make the denial permanent, thus giving Dr. Politi an opportunity to reapply for a certificate to practice medicine and surgery in Ohio and to provide full, candid disclosure in his next application. In June 2004, Dr. Politi submitted a second application for an Ohio certificate. Unfortunately, in his second application, Dr. Politi failed to fulfill his obligation to provide timely disclosure to the Board of all relevant facts concerning his ER Residency. Accordingly, Dr. Politi's pending application should be permanently denied.

**PROPOSED ORDER**

It is hereby ORDERED that the application of Barry Joseph Politi, M.D., for a certificate to practice medicine and surgery in Ohio is PERMANENTLY DENIED.



R. Gregory Porter, Esq.  
Hearing Examiner



# State Medical Board of Ohio

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

## EXCERPT FROM THE DRAFT MINUTES OF NOVEMBER 9, 2005

### REPORTS AND RECOMMENDATIONS

Dr. Davidson announced that the Board would now consider the findings and orders appearing on the Board's agenda. She asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Lynne Ellen Zegiob Check, M.D.; Vikas Kumar Jain, M.D.; and Barry Joseph Politi, M.D. A roll call was taken:

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

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

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

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

served as Secretary and Mr. Albert served as Supervising Member.

Dr. Davidson 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.

.....  
BARRY JOSEPH POLITI, M.D.

Dr. Davidson directed the Board's attention to the matter of Barry Joseph Politi, M.D. She advised that objections were filed to Hearing Examiner Porter's Report and Recommendation and were previously distributed to Board members.

**DR. ROBBINS MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF BARRY JOSEPH POLITI, M.D. DR. EGNER SECONDED THE MOTION.**

Dr. Egner stated that this physician has problems early in his career. She commented that she is always sorry when a physician gets into problems in his or her training or early practice years. Dr. Egner added, however, that she doesn't see evidence of Dr. Politi's changing. Not being honest, trustworthy and truthful are personal defects. Dr. Egner noted that Dr. Politi has completed two applications for licensure. In both of these applications he omitted negative information about his history; i.e., he was dismissed from two residency programs. She noted that one explanation given by Dr. Politi is that he didn't know what the Board meant by the word, "immediately" (referring to the portion of the application that indicates that the applicant will immediately inform the Board of any changes to the answers asked in the application during the application process).

Dr. Egner stated that she supports the Proposed Order of permanent denial in this case. She added that she doesn't see any rehabilitation for Dr. Politi.

Dr. Steinbergh agreed with Dr. Egner. She noted that, in its citation letter, the Board alleged fraud, misrepresentation and failure to furnish satisfactory proof of good moral character. She added that, although Dr. Politi has not been charged with failure to comply with minimal standards of care or incompetence, she does have some concerns about his competency with regard to his being released from his residency programs and so forth. She added that she's not basing her decision on that issue, though.

Dr. Steinbergh stated that Dr. Politi has been dishonest with this Board twice on applications, and he does, quite frankly, fail to furnish satisfactory proof of good moral character. Dr. Steinbergh agrees that a permanent denial of licensure is appropriate in this case.

Dr. Egner stated that she would like to make one amendment, to include an effective date of the Order.

**DR. EGNER MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF BARRY JOSEPH POLITI, M.D., TO MAKE THE ORDER EFFECTIVE IMMEDIATELY. DR. STEINBERGH SECONDED THE MOTION. A vote was taken:**

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Mr. Browning	- aye
	Dr. Robbins	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

The motion carried.

**DR. ROBBINS MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF BARRY JOSEPH POLITI, M.D. MR. BROWNING SECONDED THE MOTION. A vote was taken:**

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Mr. Browning	- aye
	Dr. Robbins	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

The motion carried.



# State Medical Board of Ohio

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

April 13, 2005

Barry Joseph Politi, M.D.  
1206 Springdale Drive  
Jackson, MS 39211

Dear Doctor Politi:

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

- (1) On or about June 14, 2004, you submitted an Application for Certificate – Medicine or Osteopathic Medicine [Second License Application] to the State Medical Board of Ohio. Your Second License Application is currently pending. By signing the Second License Application, you certified that the information provided therein was true. You also certified that you would “immediately notify the [Board] in writing of any changes to the answers to any of the questions contained in the ADDITIONAL INFORMATION section of the application if such change occurs at any time prior to a license to practice medicine or osteopathic medicine being granted to [you] by the [Board].” (Emphasis in the original).
- (2) On or about April 2, 2003, the Board issued an Order denying your First License Application, which was filed by you with the Board on or about September 10, 2001, based on violations of Sections 4731.22(A), (B)(5) and 4731.08, Ohio Revised Code. A copy of the Order is attached hereto and incorporated herein.
- (3) You have to date failed to disclose that, on or about November 11, 2004, you were advised by the Emergency Medicine Residency Program Director at the Emergency Medicine Residency Program at the University of Mississippi Medical Center [ER residency] located in Jackson, Mississippi, that your performance on several performance characteristics for the period July to October 2004 was poor, that specific areas for improvement were “to be of intense focus immediately,” that you had been “removed from the PICU rotation and ... placed in the ED work schedule for the period November 22, 2004 – December 19, 2004 so that we may closely observe your performance” and that the “[I]ack of major improvement will result in being moved to probation status.”

MAILED 4-14-05

(4) On or about February 1, 2005, you were placed on probation at the ER Residency for the following reasons:

- lack of insight into patient problems;
- lack of judgment in stressful situations when decisions must be made quickly;
- concerns with issues related to common sense – i.e. judgment calls in a non-urgent situation;
- continued deficiency in medical knowledge and development of an appropriate differential diagnosis; and
- problems regarding reliability of key elements of the physical exam and accurate documentation of such.

Although you were notified on or about February 1, 2005, about said probation, you failed to notify the Board about this adverse action until on or about April 4, 2005.

Your acts, conduct, and/or omissions as alleged in paragraphs (1), (3) and (4) above, individually and/or collectively, constitute “fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board,” as that clause is used in Section 4731.22(A), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1), (3) and (4) above, individually and/or collectively, constitute “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,” as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1), (3) and (4) above, individually and/or collectively, constitute a failure to furnish satisfactory proof of good moral character as required by Section 4731.08, Ohio Revised Code.

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

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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

  
Lance A. Talmage, M.D.  
Secretary

LAT/blt  
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5142 9099  
RETURN RECEIPT REQUESTED

cc: Kevin Byers, Esq.  
21 East State Street  
Suite 220  
Columbus, OH 43215

CERTIFIED MAIL # 7000 0600 0024 5142 9105  
RETURN RECEIPT REQUESTED



# State Medical Board of Ohio

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

December 8, 2004

Barry Joseph Politi, M.D.  
1206 Springdale Drive  
Jackson, MS 39211

Dear Doctor Politi:

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

- (1) On or about June 14, 2004, you submitted an Application for Certificate – Medicine or Osteopathic Medicine [Second License Application] to the State Medical Board of Ohio. Your Second License Application is currently pending. By signing the Second License Application, you certified that the information provided therein was true.
- (2) On or about September 10, 2001, you submitted an Application for Certificate – Medicine or Osteopathic Medicine [First License Application] to the State Medical Board of Ohio. By signing the First License Application, you certified that the information provided therein was true.
- (3) The “Additional Information” section of your First License Application includes the instruction that, should you answer “Yes” to any question, “you are required to furnish complete details, including date, place, reason and disposition of the matter. All affirmative answers must be thoroughly explained on a separate sheet of paper. You must submit copies of all relevant documentation, such as court pleadings, court or agency orders, and institutional correspondence or orders” (emphasis in the original). In that “Additional Information” section of your First License Application you answered “Yes” to question number 4, which asks the following:

Have you ever resigned from, withdrawn from, or have you ever been warned by, censured by, disciplined by, been put on probation by, been requested to withdraw from, dismissed from, been refused renewal of a contract by, or expelled from, a

MAILED 12-09-04

medical school, clinical clerkship, externship, preceptorship, residency, or graduate medical education program?

(a) You stated in response to question number 4 that, during your family practice residency program at the University of South Carolina [USC residency], you were “on academic probation, for approx. one month,” that you “made a decision to leave the program to pursue other interests,” and that “no patient has or was ever injured because of [your] involvement in their clinical care.”

(i) In fact, as reflected in a letter from your residency program director, you were placed on academic probation at the USC residency for an initial period of ninety days due to reasons including, but not limited to, the following:

- a. You discharged a postpartum patient who was subsequently readmitted with late eclampsia; you incorrectly indicated in the patient record that the patient was discharged on antihypertensive medication; and you failed to recognize Prinivil as an ACE inhibitor.
- b. You wrote a prescription for Depakote for a fellow resident who was in impaired physician surveillance and failed to document any clinical note defining a therapeutic relationship with that resident.
- c. You prescribed 125 mg. Rocephin for a patient with pyelonephritis although “this dosage has no basis in pyelonephritis and reflects inattention to confirm drug doses, a pattern that is repeatedly documented in previous counseling.”
- d. During your pediatric rotation, you performed unacceptably with the private pediatric attending physicians.
- e. You failed to recognize a possible case of pre-eclampsia.
- f. Your conference attendance fell short of graduation requirements; you also “frequently sign[ed] in, [got] your lunch, and [left], without attention to conference content.”

(ii) You were informed by the USC residency that you were going to be terminated from that program and you accepted an offer to resign from that program in lieu of termination.

(b) Although you answered “Yes” to question number 4, you failed to disclose that you were given a written warning at the USC residency on or about June 15, 2000, for careless attention to detail regarding medication errors and interpersonal conflicts, and that you were given a written warning at the USC residency on or about August 15, 2000, for dishonesty.

(4) On or about August 5, 2002, you submitted an application to the West Virginia Board of Medicine [West Virginia Board Application].

(a) In the informational section of your West Virginia Board Application, you answered “No” to the following question:

Have you ever, in any jurisdiction, for any reason:

1) been called before or appeared before any board or panel for discussions or questions concerning violations of the law or rules pertaining to the practice of medicine, or for unethical conduct? (Emphasis in the original).

In fact, on or about March 4, 2002, you appeared for a deposition before Ohio Board staff regarding questions concerning potential fraud in your application pending before the Board at that time.

(b) In the State Licensure Information section of your West Virginia Application, you were required to “[l]ist ... any state or jurisdiction in which you have ever applied for a medical license, including those where your application was withdrawn.”

Although you submitted your First License Application to the Board on or about September 10, 2001, you failed to list or otherwise identify your First License Application in your West Virginia Board Application.

(5) On or about April 2, 2003, the Board issued an Order denying your First License Application based on violations of Sections 4731.22(A), (B)(5) and 4731.08, Ohio Revised Code. A copy of the Order is attached hereto and incorporated herein.

(6) In the “Additional Information” section of your Second License Application you answered “Yes” to question number four which asks:

Have you ever resigned from, withdrawn from, or have you ever been warned by, censured by, disciplined by, been put on probation by, been

requested to withdraw from, dismissed from, been refused renewal of a contract by, or expelled from, a medical school, clinical clerkship, externship, preceptorship, residency, or graduate medical education program?

Although you answered "Yes" to question number four, you failed to disclose that, on or about July 9, 2002, a written warning was issued to you at the Occupational and Environmental Medicine Residency Program affiliated with the University of Pittsburgh located in Pittsburgh, Pennsylvania.

Your acts, conduct, and/or omissions as alleged in paragraphs (1), (2), (3), (5) and (6) above, individually and/or collectively, constitute "fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) through (6) above, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) through (6) above, individually and/or collectively, constitute a failure to furnish satisfactory proof of good moral character as required by Section 4731.08, Ohio Revised Code.

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

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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

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

Lance A. Talmage, M.D.  
Secretary

LAT/blt  
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5143 2518  
RETURN RECEIPT REQUESTED

TERMINATION NO. 10  
BY C.H.

COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

2004 APR 14 PM 4:30  
CLERK OF COURTS  
FRANKLIN CO OHIO

Barry J. Politi, M.D., :  
Appellant, : CASE NO. 03CVF05-5090  
-vs- : JUDGE JOHN A. CONNOR  
The State Medical Board of Ohio, :  
Appellee. :

**DECISION AND ENTRY AFFIRMING THE ORDER OF THE STATE  
MEDICAL BOARD OF OHIO**

Rendered this 14<sup>th</sup> day of April, 2004.

**HEALTH & HUMAN**

CONNOR, JUDGE

APR 26 2004

**I. INTRODUCTION**

**SERVICES SECTION**

This matter comes before the Court upon an appeal and pursuant to R.C. 119.12 from an Order of the State Medical Board of Ohio (hereinafter "the Board"), dated April 2, 2003. The Board's Order denied the application of Appellant, Barry J. Politi, M.D., M.P.H. (hereinafter "Dr. Politi"), for a license to practice medicine in the State of Ohio.

**II. PROCEDURAL HISTORY**

On September 10, 2001, Dr. Politi submitted an Application for Certificate - Medicine or Osteopathic Medicine (hereinafter "Ohio Application"), to the Board. *State's Exhibit 2*. During the following year, with his consent and cooperation, Dr. Politi was deposed on March 4, 2002 before Board staff regarding questions concerning potential fraud in his pending Ohio Application.

After reviewing Dr. Politi's Ohio Application in conjunction with his deposition testimony, the Board responded by issuing a letter dated May 8, 2002, which notified Appellant that the Board intended to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register

or reinstate his certificate to practice medicine and surgery, or to reprimand or place him on probation. *State's Exhibit 1A*. In its correspondence, the Board advised Dr. Politi that he had a right to request a hearing in the matter. On May 23, 2002, through his attorney, Dr. Politi submitted a written request to exercise his right to a hearing. *State's Exhibit 1B*.

Before a hearing could be scheduled, the Board issued a second letter on October 9, 2002, proposing to deny Dr. Politi's pending Ohio Application on additional grounds. *State's Exhibit 1U*. The basis of the Board's second letter were responses Dr. Politi had included in a separate application for medical licensure in the State of West Virginia (hereinafter "West Virginia Application), which was submitted to that state's medical board on August 5, 2002. Once again, Dr. Politi, by way of counsel, expressed in writing his desire for a hearing on these additional allegations. *State's Exhibit 1V*.

Ultimately, on December 10, 2002 and January 9, 2003, a consolidated hearing was held before a duly appointed hearing officer of the Board. During the hearing, Dr. Politi called himself, Tan J Platt, M.D., Manuel D. Reich, D.O., Joseph J. Schwerha, M.D., M.P.H., and S. Manoj Jegasothy, Esq. as witnesses. Appellee called Dr. Politi, as on cross-examination, as its only witness.

On February 26, 2003, the hearing officer issued his Report and Recommendations in the consolidated matters. The hearing officer determined that the Board is justified in denying Dr. Politi's Ohio Application and proposed an order discouraging Appellant from reapplying prior to July 1, 2004. Dr. Politi filed objections to the Proposed Order. On April 2, 2003, the Board issued a Final Order adopting the Findings of Fact and Conclusions of Law included in the Report and Recommendations. However, the Board modified the Proposed Order to reflect a denial of licensure for Appellant, but removed any specific timeframe in which Dr. Politi was precluded from resubmitting an application. Appellant Dr. Politi then filed the present appeal on May 6, 2003.

### III. FACTUAL BACKGROUND

The instant action arises from responses submitted by Dr. Politi in his September 10, 2001 Application for medical licensure in the State of Ohio, as well as responses he included in a separate application for licensure in the State of West Virginia, dated August 5, 2002. *State's Exhibits 2 and 4.* Specifically, in the Ohio Application, Dr. Politi answered "YES" to the following question: Have you ever resigned from, withdrawn from, or have you ever been warned by, censured by, disciplined by, been put on probation by, been requested to withdraw from, dismissed from, been refused renewal of contract by, or expelled from, a medical school, clinical clerkship, externship, preceptorship, residency, or graduate medical education program? *State's Exhibit 2* at the section entitled "Additional Information – Medicine or Osteopathic Medicine" (hereinafter "Additional Information section"), Question 4.

The instructions included in the aforementioned section of the Ohio Application provide as follows:

If you answer "YES" to any of the following questions you are required to furnish complete details, including dates, place, reason and disposition of the matter. All affirmative answers must be thoroughly explained on a separate sheet of paper. You must submit copies of all relevant documentation, such as court pleadings, court or agency orders, and institutional correspondence and orders. Please note that some questions require very specific and detailed information. Make sure all responses are complete. (Emphasis in original). *Id.*

In response, Dr. Politi attached the following explanation to supplement his answer of "YES" to Question 4 of that section:

"I, Barry J. Politi, was on academic probation, for approx. one month during the middle of my second year of Family Practice residency, secondary to difficulties with time management and multitasking. I broke no laws, there were no ethical breaches and no patient has or was ever injured because of my involvement in their clinical care.

I made a decision to leave the program to pursue other interests including an Occupational Medicine residency program which I am now enrolled in." *Id.*

After receiving supplemental information from the University of South Carolina family practice residency program (hereinafter "the USC residency") and conducting a deposition of Dr. Politi before Board staff on March 4, 2002, the Board issued a charging letter on May 8, 2002. *State's Exhibit 1A.* According to the Board, a letter received from Dr. Politi's residency program director reflected the following: (1) Appellant was placed on academic probation at the USC residency for an initial period of ninety (90) days, based on a number of failures, errors, and shortcomings; (2) Appellant subsequently was informed by the USC residency that he was going to be terminated from that program and in response, Appellant accepted an offer to resign in lieu of termination; (3) Appellant was given a written warning at the USC residency on or about June 15, 2000 for careless attention to detail regarding medication errors and interpersonal conflicts; and (4) Appellant was given a written warning at the USC residency on or about August 15, 2000 for dishonesty. *Id.*

In its May 8, 2002 letter, the Board alleged that Dr. Politi's acts, conduct, and/or omissions constitute fraud, misrepresentation, or deception pursuant to R.C. 4731.22(A) and (B)(5). Moreover, the Board alleged that such acts, conduct, and/or omissions constitute a failure to provide good moral character, as required under R.C. 4731.08. Finally, the Board recognized that Dr. Politi was independently ineligible for licensure as requested because he failed to submit satisfactory evidence that he had successfully completed not less than twenty-four (24) months of graduate medical education through the second-year level of graduate medical education or its equivalent.<sup>1</sup> *Id.*

Subsequently, while his Ohio Application remained pending, Dr. Politi submitted a separate

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<sup>1</sup> The parties have stipulated that Dr. Politi failed to have the necessary hours of graduate medical education at the time he submitted his Ohio Application, but are in agreement that he currently has met

application for medical licensure in the State of West Virginia, dated August 5, 2002. *State's Exhibit*

4. In the information section of that application, Appellant answered "NO" to the following question:

Have you ever, in any jurisdiction for any reason: 1. been called before or appeared before any board or panel for discussions or questions concerning violations of the law or rules pertaining to the practice of medicine, or for any unethical conduct? (Emphasis in original). *Id.*

Additionally, in the section of the West Virginia Application entitled State Licensure Information, applicants were asked to "list all licenses held in other states or jurisdictions regardless of the status of that license (i.e. active, inactive, lapsed, expired, revoked, suspended, or surrendered) and list any state or jurisdiction in which you have ever applied for a medical license, including those where your application was withdrawn." In his West Virginia Application, Dr. Politi listed South Carolina and Pennsylvania, but notably failed to make any reference to the pending Ohio Application. *Id.*

The Board responded on October 9, 2002 by issuing a second charging letter, alleging that the aforementioned responses by Dr. Politi in his West Virginia Application further constitute false fraudulent, deceptive, or misleading statements, in contravention of R.C. 4731.22(B)(5) and R.C. 4731.08. *State's Exhibit 1U.*

Pursuant to a Motion filed by Dr. Politi, the Board and the parties agreed to a consolidated hearing on these matters, which occurred on December 10, 2002 and January 9, 2003.

#### IV. STANDARD OF REVIEW

Pursuant to R.C. 119.12, a reviewing trial court must affirm the order of the State Medical Board if it is supported by reliable, probative and substantial evidence and is in accordance with law. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621; *Landefeld v. State Med. Bd.* (Jun. 15, 2000), Franklin App. No. 99AP-612, unreported; See also *Univ. of Cincinnati v.*

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this requirement. (Tr. 270-271).

*Conrad* (1980), 63 Ohio St.2d 108, 111; *Henry's Cafe, Inc. v. Board of Liquor Control* (1959), 170 Ohio St. 233.

That quality of proof was articulated by the Ohio Supreme Court in *Our Place v. Liquor Control Comm.* (1992), 63 Ohio St.3d 570 as follows:

(1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) "Substantial" evidence is evidence with some weight; it must have importance and value. *Id.* at 571

In conducting its review, the trial court must give due deference to the agency's resolution of evidentiary conflicts in its factual findings. *Leon v. Ohio Bd. of Psychology* (1992), 63 Ohio St.3d 683, 687. To a limited extent, the court may substitute its judgment for that of the administrative agency in making factual findings. *Columbia Gas Transmission Corp. v. Ohio Dept. of Transportation* (1995), 104 Ohio App.3d 1, 4. The court may further consider the credibility of witnesses as well as the weight and probative character of the evidence. *Univ. of Cincinnati v. Conrad, supra* at 110. However, the court is obligated to accord due deference to the agency's interpretation of the technical and ethical requirements of its profession. *Pons v. Ohio State Med. Bd, supra* at 621.

## V. ANALYSIS AND FINDINGS OF THE COURT

R.C. 4731.22 provides the following in relevant part:

(A) The state medical board, by an affirmative vote of not fewer than six of its members, may revoke or may refuse to grant a certificate to a person found by the board to have committed fraud during the administration of the examination for a certificate to practice or to have committed fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board.

(B) The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an

individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

(5) Making a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board.

In addition, R.C. 4731.08 states the following in pertinent part:

\*\*\*] [E]ach person who desires to practice medicine and surgery or osteopathic medicine and surgery in this state shall file with the secretary of the state medical board a written application for admission to the examination conducted by the board under section 4731.13 of the Revised Code. The applicant shall file the application under oath on a form prescribed by the board. The applicant shall furnish evidence satisfactory to the board that the applicant is more than eighteen years of age and of good moral character.

The trustworthiness of a physician is a central and fundamental component of a doctor-patient relationship and has been recognized as a guiding principle in matters of licensure. *Gipe v. State Med. Bd. of Ohio* (Jul. 31, 2003), Franklin App. No. 02AP-1315, citing *Bouquett v. Ohio State Med. Bd.* (1997), 123 Ohio App.3d 466, 473. The Tenth District Court of Appeals has determined that in order to find a violation of R.C. 4731.22(A), the Board must find that the underlying statements were made with an intent to mislead the Board. *In re Wolfe* (1992), 82 Ohio App.3d 675, 687; *Webb v. State Med. Bd. of Ohio* (2001), 146 Ohio App.3d 621. Moreover, the Tenth District has extended this standard of proof regarding intent for violations under R.C. 4731.22(B)(5). *Rajan v. State Med. Bd. of Ohio* (1997), 118 Ohio App.3d 187, 194.

When considering the issue of intent, the Board may infer intent from the surrounding circumstances, such as when a licensee clearly knows something which he or she fails to disclose in

response to a direct question. *Hayes v. State Med. Bd. of Ohio* (2000), 138 Ohio App.3d 762, 770; *Gipe v. State Med. Bd. of Ohio* (Jul. 31, 2003), Franklin App. No. 02AP-1315.

In his brief, Appellant asserts that the Board's denial of his license is not supported by reliable, probative, and substantial evidence. Appellant states that the Board assigned undue importance to patient harm and substandard care, in spite of the fact that Dr. Politi was only charged with failure to disclose and misrepresentation. Similarly, Appellant claims that a large portion of the record created by the Board concerns itself with Dr. Politi's mental and emotional health, even though he was never noticed of any concern under the section addressing mental capability to obtain licensure.

It is Appellant's contention that the evidence offered during the hearing demonstrates that Dr. Politi's report to Ohio regarding the USC residency included in the Ohio Application was factually accurate. Moreover, Appellant alleges that the Board does not provide applicants a definition of what "thoroughly explain" means in the context of the application. According to Appellant, the Ohio Application was submitted in good faith and there is no direct or circumstantial evidence of an intent to deceive or commit fraud. With respect to the charges stemming from Dr. Politi's West Virginia Application, Appellant maintains that the Board lacks jurisdiction to even consider these responses, as it is a matter for that state's medical board. Assuming *arguendo*, Appellant further insists that he relied on counsel for the first inquiry included in the West Virginia Application and simply failed to recognize the additional inquiry asking for all licensure applications ever submitted. Finally, Appellant represents that the effect of the Board's sanction has put him in a perpetual state of limbo based on the universal reciprocity provisions of the American medical licensing statutes.

In response, Appellee maintains that the order of the Board is supported by reliable, substantial, and probative evidence, and the sanction chosen is one authorized by R.C. 4733.22. Appellee claims

that Dr. Politi's responses to the Ohio Application were not accurate as to his probation in the USC residency and also failed to disclose several warnings he had received during his residency. Similarly, Appellee contends that a lack of integrity is revealed in Dr. Politi's responses to straightforward questions included in his West Virginia Application and Appellant's explanations can only be characterized as incredible.

Appellee insists that the issues of Dr. Politi's mental health and patient care were introduced by Appellant himself and do not form the basis of the charging letters or the Report and Recommendation. Moreover, Appellee alleges that Dr. Politi's mental condition is referred to repeatedly in the USC residency documents and Dr. Politi signed a general release of these documents as part of his application. Lastly, Appellee submits that there is no requirement that the Board set a specific time before which it would consider a new application from a physician who had received a non-permanent denial of a prior application. As a consequence, Appellee asserts that the Court enter judgment on the record and affirm the Board's Order.

After a complete review of the record, this Court determines that competent and credible evidence exists to support the conclusion that the Board's April 2, 2003 Order was based upon reliable, probative and substantial evidence and is in accordance with law.

An initial examination of the record reveals that no material dispute exists that Dr. Politi's responses to both the Ohio Application and the subsequent West Virginia Application were factually incorrect and materially incomplete. Although Dr. Politi in his brief attempts to argue that his attached explanation regarding his USC residency was technically accurate, Appellant himself conceded during the hearing that he understood that his probationary period at the South Carolina residency had been ninety (90) days and that he received no less than two formal warning letters while a resident in that

program. (Tr. 42-46, 184-185). These facts are disharmonious with the responses supplied by Dr. Politi to Question 4 in the Additional Information section of the Ohio Application and are further corroborated by Dr. Tan Jackson Platt, the Vice Chairman of the Department of Family and Preventive Medicine at USC and Appellant's advisor during the USC residency. (Tr. 61, 91, 104, 120).

Similarly, the Court finds that Dr. Politi's assertion in his brief that the words "thoroughly explain", which are included in the instructions to the Additional Information section of the Ohio Application, are vague or without sufficient definition, does not constitute a meritorious argument. Generally, words appearing in an administrative regulation, including an application for a license to practice medicine, are given their plain and ordinary meaning. *Guanzon v. State Med. Bd. of Ohio* (1997), 123 Ohio App.3d 489. In the context of the Ohio Application, the meaning or implication of these words, along with the accompanying words "very specific and detailed information", are extremely straightforward and not subject to multiple interpretations. For Dr. Politi to presently offer that he failed to accurately reflect the terms of his probation and subsequent departure from the USC residency, as well as neglecting to address the multiple formal warnings he received because he did not believe that such information was responsive to the words "thoroughly explain" is simply not credible.

With respect to his submissions in the West Virginia Application, Dr. Politi once again admitted during the hearing that his two responses that formed the basis of the second charging letter are inaccurate. As to Question 1 of the West Virginia Application, which asked whether he had ever been called before or appeared before any board or panel for discussions or questions, Dr. Politi stated that he simply did not understand the breadth of the question and he relied on his attorney at that time who instructed him to answer "NO." (Tr. 195-198). With respect to the section of the West Virginia Application entitled "State Licensure Information", Dr. Politi represented that it was simply an

oversight that he failed to include Ohio as a state he applied for a medical license. (Tr. 234).

Accordingly, the Court finds that there is currently no meaningful dispute that each of the aforementioned responses submitted by Dr. Politi in his applications are factually inaccurate and materially incomplete. Nevertheless, the Court finds that the more significant issue raised in this appeal concerns the intent and state of mind of Dr. Politi when he submitted the relevant responses to the Ohio Application, as well as the West Virginia Application. As indicated by the above-cited authority, intent is a necessary requirement to substantiate violations of R.C. 4731.22(A) and (B)(5). Consequently, there must be sufficient evidence that Appellant displayed an intent to mislead, and not merely that he inadvertently or negligently failed to provide accurate responses.

During the hearing before the Board, Dr. Politi provided considerable testimony attempting to explain how his factually incorrect responses in the two applications were based on mistake or a neglect on his part to pay careful attention to the details of the question. With respect to Dr. Politi's failure to make mention in the Ohio Application of the formal warnings issued to Appellant while at the USC residency, Dr. Politi stated the following on cross-examination:

Q. Okay. But they didn't – Is it your testimony then that South Carolina told you not to list individual warnings that you received?

A. No, they didn't say that. I just wasn't sure how to – I mean, as I look at the application now, I made an error. I should have mentioned each time I had been warned. So I made a mistake. (Tr. 45-46).

Dr. Politi also admitted that at the time of the hearing, he understood that the probationary period at the USC residency was not approximately one month, as he stated in the Ohio Application. Dr. Politi offered the following as an explanation:

Q. Okay. As you sit here today, do you recognize and understand that the probationary period in South Carolina was 90 days?

A. Yes, I do. Yeah. I –

Q. Do you have an explanation as to why on your Ohio application you characterized the suspension as approximately one month?

A. There were several reasons. One, I has so much going on at the time that I didn't know what the time frame was. Two, I had spoken to Dr. Platt and he mentioned that I should say that I was on academic probation for a couple of months as opposed to three or one.

And then also what happened was I was on probation for about a month and a week or whatever – a month and two weeks or something – a month and some odd days. At the end of that period when we, as a group, decided that I was not going to go on as a resident within the family practice program, my probation ended. And that's the way that I – that I saw it and that's the way that they saw it. (Tr. 215-216).

When asked about his "NO" answer to Question 23 of the Additional Information section of the Ohio Application, which inquired if the applicant had any diagnosed medical condition which impairs their ability to practice with reasonable skill and safety, Dr. Politi attested as follows:

A. When I read it, I thought that it said a medical condition and I didn't – I passed through this first – This section comes first. So I read this. If this section right here would have been here, I think that it would have been clearer, but I realize that I made a mistake.

Knowing what I know now, I should have answered yes to that question; but when I read medical condition, I didn't know that it included all of those things that are listed above that. Medical condition, I thought that different from a psychiatric condition. (Tr. 167).

In response to an inquiry regarding Question 1 of the West Virginia Application, Dr. Politi testified that such a question was ambiguous and that he relied on the advice of his attorney in answering the question in the negative. The following exchange took place on cross examination of Dr. Politi with respect to this issue:

Q. Okay. You don't think that that language is clear: "Any jurisdiction for any reason called to appear before the board for discussions," you don't think that fits what went on here in Ohio?

A. No, not for rules pertaining – not for stuff pertaining – It says law – No. 1 says, "Concerning violations of the laws or rules pertaining to the

practice of medicine.” They didn’t call me to tell me that I violated a law or that I had some unethical conduct. I can give you some examples maybe. That’s how I see this.

Q. Well, let me back up them. It says, “Or for unethical conduct,” correct?

A. Right.

Q. And what happened in Ohio was – To your knowledge, you’re facing a cite alleging dishonesty and fraudulent statements on an application?

A. Correct.

Q. Okay. And fraud and dishonesty in filing an application to practice medicine, in your mind, does not qualify as unethical conduct?

A. When they’re talking about unethical conduct, they’re talking about it as pertaining to medicine. So an example – Within the practice of medicine, an example would be if I had a patient and I slept with a patient. What they’re talking about here is that kind of thing. They’re not talking about being asked to appear at a deposition about questions on my application.

Q. Okay.

A. But since I wasn’t sure – Let me finish. Since I wasn’t sure about it, I went to ask my attorney, who subsequently is a lawyer, and said you can answer “no” to the question.

As to the section of the West Virginia Application which inquired as to medical licenses from other states, Dr. Politi provided the following testimony:

Q. It says, “list” – If you could read that, please.

A. “List all licenses [held in other states or jurisdictions] regardless of status (acting, pending, lapsed, expired, revoked, suspended, surrendered), and list any state or jurisdiction in which you have [ever] applied for [a medical license], including those where your application was withdrawn.”

Q. And you didn’t list your Ohio application there, correct?

A. Correct.

Finally, when Dr. Politi was asked on direct examination to reconcile the numerous misstatements on the two applications, he responded as follows:

Q. [\*\*\*] If you are – if you are – What would be your response to someone saying, you know, “I can accept your explanation for one or two of these incidents of alleged misrepresentations, but when we get to three and four, I really tend to doubt your credibility.” What is your response to that?

A. I guess I would say it’s an unlikely set of coincidences in my case. I would also say that if that person looked to see what effort I had went through to document an accurate application, they would change their mind, i.e., if they talked to South Carolina and they talked to my attorney and they talked to me, they would say, “I understand.”

Taking this testimony in its entirety, the hearing examiner determined that both the carelessness and dishonesty displayed by Dr. Politi in the applications process, for both Ohio and West Virginia, justifies the Board denying Appellant’s Ohio Application at this time. See *Report and Recommendation* at 29. The Board subsequently adopted the hearing examiner’s finding in its entirety. See *Final Order*, dated April 2, 2003.

Upon review, this Court determines that sufficient evidence exists to conclude that Dr. Politi was not credible during his testimony at the consolidated hearing and that he engaged in dishonesty in the submission of his applications for medical licensure in Ohio and West Virginia. In matters of medical licensure, the Board is assigned the difficult task of weighing the credibility of the applicants appearing before it. This Court assumes the role of ascertaining whether there is an absence or presence of the requisite quantum of evidence to support the Board’s order. *In Re Wolfe, supra* at 683, citing *Andrews v. Bd. of Liquor Control* (1955), 164 Ohio St. 275. Where it appears that the Board’s determination rests upon inferences improperly drawn from the evidence adduced, the trial court may reverse the administrative order. *Id.*

In the matter *sub judice*, reasonable inferences in light of the evidence and testimony admitted during the hearing suggest that Dr. Politi has engaged in a pattern of conduct demonstrating dishonest and deceptive behavior. A review of the record confirms that the Board's conclusion, which found that Dr. Politi's explanation of his inaccurate responses on his Ohio Application lacked credibility, is based on reliable, probative, and substantial evidence and is in accordance with law. Because acts of deception by an applicant in securing of a medical license puts the public at a substantial risk of harm, the Board's Final Order denying Dr. Politi's Ohio Application is supported by the record.

As an separate contention in his brief, Dr. Politi raises a jurisdictional argument regarding the consideration by the Board of responses submitted by Appellant in a separate application for licensure in the State of West Virginia. Essentially, Dr. Politi insists that it was improper for the Board to consider the West Virginia Application, as that is a matter exclusively for the medical board of that state. However, upon review of the hearing transcript, the Court observes that Dr. Politi himself indicates that he was well aware of the sharing of information between the various state medical boards and that he was certain that the two states would communicate as a matter of course. (Tr. 194, 240, 244). Additionally, Appellant's attorney, Manoj Jegasothy, stated the following during his testimony:

A. Now, I also, having done significant amounts of licensure work realize that boards from different states communicate with each other. And I obviously, therefore, realize that any other state could get ahold [sic] of the application that he filled out. (Tr. 281).

Given such an expectation and understanding, the Court finds it ironic that Dr. Politi at this time suggests that Ohio should not be privy to the submissions by Appellant in West Virginia. After all, Dr. Politi has consistently represented in both his testimony and his brief that because he was conscious of the fact that state medical boards shared information, he had no incentive to lie or omit any information. More importantly, Appellant has failed to provide this Court any legal authority

which indicates that the Board is precluded from considering responses submitted in other states, nor was this Court independently able to locate any such authority. As a consequence, the Court concludes that the Board's consideration of Dr. Politi's West Virginia Application was permissible and proper.

Dr. Politi further contends that the issues of mental health and/or patient harm clouded the Board's judgment and received under importance in their deliberations. After an independent review, this Court disagrees and determines that the Board's primary focus consistently remained on the issues of dishonesty, deception, and misrepresentation in Dr. Politi's applications for licensure.

The record reflects that Dr. Politi himself introduced these two additional categories of evidence for the purpose of mitigation of the underlying charges based on R.C. 4731.22(A), R.C. 4731.22 (B)(5) and R.C. 4731.08. Moreover, a review of the Board minutes reveals that although these matters were briefly discussed in the manner that they tangentially relate to deception or misrepresentation in the licensure application process, they were not consider on their merits as separate and unique charges. Similarly, the hearing examiner made careful mention in his Report and Recommendation that evidence of mental health and errors at the USC residency were considered for the sole purpose of determining if Dr. Politi committed violations of Ohio law by failing to disclose information to the Board in his Ohio Application that he was required to disclose. *Id.* at 29. As a result, the Court fails to find that the Board placed undue emphasis on the issues of Dr. Politi's mental health or patient harm while Dr. Politi was a resident in South Carolina.

Finally, Dr. Politi has argued that the denial of his application for Ohio licensure is too harsh a sanction and the Board's Order lacks the necessary clarity or guidance as to future opportunity for Dr. Politi to resubmit an application for licensure in Ohio.

Upon review, the Court finds Appellant's assertion to be without merit. Even if this Court were inclined to be more lenient, it is powerless to do so given the long-settled rule of *Henry's Café v. Board of Liquor Control* (1959), 170 Ohio St. 233, found at paragraph three of the syllabus:

On such appeal, the Court of Common Pleas has no authority to modify a penalty that the agency was authorized to and did impose, on the ground that the agency abused its discretion.

*See also Hale v. Ohio State Veterinary Medical Board* (1988), 47 Ohio App. 3d 167 (if the penalty is within the range of choices for the infraction, the court must affirm the order even if the penalty is viewed as too harsh). This rule applies to state medical board cases. In *John Paul King v. State Medical Board* (1999), Tenth Appellate District, No. 98AP-570, 1999 Ohio App. LEXIS 201, the Court stated: "the common pleas court, in concluding the board's order is supported by reliable, probative and substantial evidence, is precluded from interfering with or modifying the penalty imposed if such penalty is authorized." *Id* at 4.

Denial of the application is one of the penalties authorized by R.C. 4731.22(B) and is therefore within the discretion of the Board. Moreover, the Court observes that the Board opted in its Order to impose the less harsh sanction of a general denial, rather than either a permanent denial or a denial with a specific period of time before which Dr. Politi could reapply for licensure. Lastly, this Court is unable to find any language in Chapter 4731 of the Ohio Revised Code which states that it is improvident for the Board to deny an application without stating a specific timeframe upon which the applicant can reapply.

Based on the foregoing, this Court finds that the Board's April 2, 2003 Order, which denied Dr. Politi Ohio Application for medical licensure, was supported by reliable, probative and substantial

evidence and is in accordance with law. Accordingly, the Court hereby **AFFIRMS** the Board's Order.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

**(B) Notice of filing.** When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

**THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY. THIS IS A FINAL APPEALABLE ORDER.** The Clerk is instructed to serve the parties in accordance with Civ. R. 58(B) as set forth above.

  
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JOHN A. CONNOR, JUDGE

COPIES TO:

Kevin P. Byers, Esq., Counsel for Appellant Barry J. Politi, M.D.  
Mark A. Michael, Esq., Counsel for Appellee State Medical Board of Ohio



# 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/)

April 2, 2003

Barry J. Politi, M.D., M.P.H.  
947 East End Avenue  
Pittsburgh, PA 15221

Dear Doctor Politi:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Daniel Roberts, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 2, 2003, 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.*  
Anand G. Garg, M.D. /TAG  
Secretary

AGG:jam  
Enclosures

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5151 1992  
RETURN RECEIPT REQUESTED

Cc: James M. McGovern, Esq.,  
CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5151 1985  
RETURN RECEIPT REQUESTED

*Mailed 4/20/03*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Daniel Roberts, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 2, 2003, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and Barry J. Politi, M.D., M.P.H., 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.  
Anand G. Garg, M.D.  
Secretary

(SEAL)

April 2, 2003  
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF

\*

\*

BARRY J. POLITI, M.D., M.P.H.

\*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on April 2, 2003.

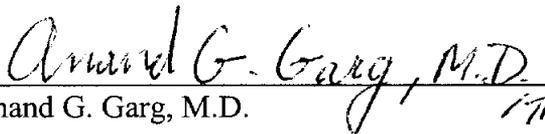
Upon the Report and Recommendation of Daniel Roberts, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the modification, approval and confirmation by vote 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:

The application of Barry J. Politi, M.D., M.P.H., for a certificate to practice medicine and surgery in Ohio is DENIED.

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

(SEAL)

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

April 2, 2003  
Date

2003 FEB 26 A 10: 39

**REPORT AND RECOMMENDATION  
IN THE CONSOLIDATED MATTERS OF BARRY J. POLITI, M.D., M.P.H.**

The consolidated Matters of Barry J. Politi, M.D., M.P.H., were heard by Daniel Roberts, Attorney Hearing Examiner for the State Medical Board of Ohio, on December 10, 2002, and January 9, 2003.

**INTRODUCTION**

I. Basis for Hearing

- A. On or about September 10, 2001, Barry J. Politi, M.D., M.P.H., submitted an Application for Certificate—Medicine or Osteopathic Medicine [Ohio Application] to the State Medical Board of Ohio [Board]. His Ohio Application remains pending.
- B. By letter dated May 8, 2002, the Board notified Dr. Politi that it intended to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate his certificate to practice medicine and surgery, or to reprimand or place him on probation, for one or more of the following reasons:
1. The Additional Information section of Dr. Politi's Ohio Application includes the instruction that, should the applicant answer "YES" to any question, the applicant is

required to furnish complete details, including date, place, reason and disposition of the matter. All affirmative answers must be thoroughly explained on a separate sheet of paper. [The applicant] must submit copies of all relevant documentation, such as court pleadings, court or agency orders, and institutional correspondence and orders.<sup>1</sup>

In the Additional Information section of his Ohio Application Dr. Politi answered "YES" to question number 4, which asks the following:

Have you ever resigned from, withdrawn from, or have you ever been warned by, censured by, disciplined by, been put

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<sup>1</sup> Wherever special text is used to emphasize particular words quoted in this Report and Recommendation the same emphasis appears in the original document.

on probation by, been requested to withdraw from, dismissed from, been refused renewal of a contract by, or expelled from, a medical school, clinical clerkship, externship, preceptorship, residency, or graduate medical education program?

2. Dr. Politi stated in response to question number 4 that, during his family practice residency program at the University of South Carolina [USC], he was “on academic probation, for approx. one month,” that he “made a decision to leave the program to pursue other interests,” and that “no patient has or was ever injured because of [his] involvement in their clinical care.”

Dr. Politi was placed on academic probation at USC for an initial period of ninety days due to reasons including, but not limited to, the following:

- a. Dr. Politi discharged a postpartum patient who was subsequently readmitted with late eclampsia; he incorrectly indicated in the patient record that the patient was discharged on antihypertensive medication; and he failed to recognize Prinivil as an ACE inhibitor.
- b. Dr. Politi wrote a prescription for Depakote for a fellow resident who was in impaired physician surveillance and failed to document any clinical note defining a therapeutic relationship with that resident.
- c. Dr. Politi prescribed 125 mg. Rocephin for a patient with pyelonephritis although “this dosage has no basis in pyelonephritis and reflects inattention to confirm drug doses, a pattern that is repeatedly documented in previous counseling.”
- d. During Dr. Politi’s pediatric rotation, he performed unacceptably with the private pediatric attending physicians.
- e. Dr. Politi failed to recognize a possible case of pre-eclampsia.
- f. Dr. Politi’s conference attendance fell short of graduation requirements and he “frequently sign[ed] in, [got his] lunch, and [left], without attention to conference content.”

3. Dr. Politi was informed by the USC residency faculty that he was going to be terminated from that program and he accepted an offer to resign in lieu of termination.
4. Although Dr. Politi answered “YES” to question number 4, he failed to disclose that he had been given a written warning at USC on or about June 15, 2000, for careless attention to detail regarding medication errors and interpersonal conflicts, and that he had been given a written warning at USC on or about August 15, 2000, for dishonesty.

The Board alleged that the acts, conduct, and/or omissions of Barry J. Politi, M.D., M.P.H., as alleged above, individually and/or collectively, constitute “‘fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board,’ as that clause is used in Section 4731.22(A), Ohio Revised Code.”

The Board further alleged that Dr. Politi’s acts, conduct, and/or omissions as alleged above, individually and/or collectively, constitute “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,’ as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.”

The Board also alleged that Dr. Politi’s acts, conduct, and/or omissions as alleged above, individually and/or collectively, constitute a “failure to furnish satisfactory proof of good moral character as required by Section 4731.08, Ohio Revised Code.”

Finally the Board asserted that Dr. Politi is ineligible for licensure because he has failed to submit evidence satisfactory to the Board that he has successfully completed not less than twenty-four months of graduate medical education through the second-year level of graduate medical education or its equivalent as determined by the Board as required by Sections 4731.091 and 4731.14(B)(2), Ohio Revised Code.

Accordingly, the Board advised Dr. Politi of his right to request a hearing in this matter. (State’s Exhibit 1A)

- C. On May 23, 2002, S. Manoj Jegasothy, Esq., submitted a written hearing request on behalf of Dr. Politi. (State’s Exhibit 1B)

- D. By letter dated October 9, 2002, the Board notified Dr. Politi that it intended to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate Dr. Politi's certificate to practice medicine and surgery, or to reprimand or place him on probation for one or more of the following reasons:
1. On or about March 4, 2002, Dr. Politi appeared for a deposition before Board staff regarding questions concerning potential fraud in his pending Ohio Application.
  2. On or about August 5, 2002, Dr. Politi submitted an application for a license to practice medicine in the State of West Virginia [West Virginia Application] to the West Virginia Board of Medicine [West Virginia Board]. In the informational section of Dr. Politi's West Virginia Application, he answered "NO" to the following question:

Have you ever, in any jurisdiction for any reason:

- 1) been called before or appeared before any board or panel for discussions or questions concerning violations of the law or rules pertaining to the practice of medicine, or for unethical conduct?
3. In the State Licensure Information section of Dr. Politi's West Virginia Application he was required to "[l]ist all licenses held in other states or jurisdictions regardless of the status of the license (i.e., active, inactive, lapsed, expired, revoked, suspended or surrendered) and list any state or jurisdiction in which [he had] ever applied for a medical license, including those where [his] application was withdrawn."

Dr. Politi failed to list or otherwise identify his pending Ohio Application in his West Virginia Application.

The Board alleged that Dr. Politi's acts, conduct, and/or omissions as alleged in the October 9, 2002, letter, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,' as that clause is used in Section 4731.22(B)(5), Ohio Revised Code."

The Board further alleged that Dr. Politi's acts, conduct, and/or omissions as alleged in the October 9, 2002, letter, individually and/or collectively, "constitute a failure to furnish satisfactory proof of good moral character as required by Section 4731.08, Ohio Revised Code."

Accordingly, the Board advised Dr. Politi of his right to request a hearing in this matter. (State's Exhibit 1U)

- E. On October 18, 2002, James M. McGovern, Esq., submitted a written hearing request on behalf of Dr. Politi. (State's Exhibit 1V)

## II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Mark A. Michael, Assistant Attorney General.
- B. On behalf of the Respondent: James M. McGovern, Esq.

## **EVIDENCE EXAMINED**

### I. Testimony Heard

- A. Presented by the State  
  
Barry J. Politi, M.D., M.P.H., as on cross-examination.
- B. Presented by the Respondent
  - 1. Barry J. Politi, M.D., M.P.H.,
  - 2. Tan J. Platt, M.D.
  - 3. Manuel D. Reich, D.O.
  - 4. Joseph J. Schwerha, M.D., M.P.H.
  - 5. S. Manoj Jegasothy, Esq.

### II. Exhibits Examined

- A. Presented by the State:
  - 1. State's Exhibits 1A-1CC: Procedural exhibits.
  - 2. State's Exhibit 2: Certified copy of documents from the Board's records concerning Dr. Politi's Ohio Application.

- \* 3. State's Exhibit 4: Copies of documents from Dr. Politi's residency file at the University of South Carolina.
  - 4. State's Exhibit 5: Certified copy of Dr. Politi's West Virginia Application.
- B. Presented by the Respondent:
- 1. Respondent's Exhibit A: Unsigned copy of February 5, 2002, letter to the Board from John Lammie, M.D.
  - 2. Respondent's Exhibit B: Copies of letters of reference for Dr. Politi.
  - 3. Respondent's Exhibit C: Curriculum Vitae of Manual D. Reich, D.O.
- \* Exhibits marked "\*" are under seal to protect patient privacy.

### **SUMMARY OF THE EVIDENCE**

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

#### **Background Information Provided by Barry J. Politi, M.D., M.P.H. at Hearing**

- 1. Barry J. Politi, M.D., M.P.H., testified that he had entered a family practice residency at the University of South Carolina [USC] immediately after completing medical school at the St. George's University School of Medicine in Grenada. Dr. Politi graduated from medical school in May 1998. He remained at USC until January 2001. (Hearing Transcript [Tr.] at 31-38, 204-205; State's Exhibits [St. Exs.] 2-4; Respondent's Exhibit [Resp. Ex.] A)
- 2. Dr. Politi testified that he is currently participating in an occupational medicine residency program at the University of Pittsburgh Medical Center [UPMC]. He entered this residency program during the summer of 2001. Dr. Politi testified that the residency program is "[a]proximately two years" in duration and he anticipates completing it in June 2003. (Tr. 29-30, 219-220, 224-225)

#### **Dr. Politi's Ohio Application**

- 3. On August 31, 2001, the Board received an Application for Certificate—Medicine or Osteopathic Medicine [Ohio Application] from Dr. Politi. Dr. Politi had signed the Affidavit and Release for the Board on August 8, 2001. The Board continued to receive additional parts of the application through December 4, 2001. (Tr. 38-39; St. Ex. 2)

The Additional Information section of the Ohio Application includes the following:

If you answer “YES” to any of the following questions, you are required to furnish complete details, including date, place, reason and disposition of the matter. All affirmative answers must be thoroughly explained on a separate sheet of paper. You must submit copies of all relevant documentation, such as court pleadings, court or agency orders, and institutional correspondence and orders. Please note that some questions require very specific and detailed information. Make sure all responses are complete.

(St. Ex. 2)

Following the initial paragraph set out above the Additional Information section contains twenty-five specific questions. Question number 4 asks:

Have you ever resigned from, withdrawn from, or have you ever been warned by, censured by, disciplined by, been put on probation by, been requested to withdraw from, dismissed from, been refused renewal of a contract by, or expelled from, a medical school, clinical clerkship, externship, preceptorship, residency, or graduate medical education program?

(St. Ex. 2)

4. In response to question number 4, Dr. Politi, marked “YES”. He also provided a typewritten explanation on a separate page for his affirmative answer to question number 4. Dr. Politi stated:

I, Barry J. Politi, was on academic probation, for approx. one month during the middle of my second year of Family Practice residency secondary to difficulties with time management and multitasking. I broke no laws, there were no ethical breaches and no patient has or was ever injured because of my involvement in their clinical care.

I made a decision to leave the program to pursue other interests, including an Occupational Medicine residency program, which I’m now enrolled in.

Sincerely,

Barry Politi MD, MPH

(Tr. 39-42; St. Ex. 2)

**Testimony of Tan Jackson Platt, M.D., Concerning the USC Residency Program**

5. Tan Jackson Platt, M.D., testified via telephone at hearing that he has been the Vice Chair of the Department of Family and Preventative Medicine at USC for about four and a half years and that he had been with the department since 1986. Dr. Platt further testified that he has an undergraduate degree from Trinity College, Hartford, Connecticut and graduated from the Columbia University College of Physicians and Surgeons. He completed postgraduate training at St. Joseph's Hospital, Denver, and has been board certified in family medicine since 1977. He noted that between completing training and joining USC he had practiced in South Dakota with the National Healthcare Support Department and had been in private practice in New York. (54-55)
6. Dr. Platt testified that the USC residency program has about forty residents and twenty-four faculty members. He noted that it is a three-year program and that during the first year residents participate in a series of one-month rotations on various services. Dr. Platt testified that ongoing evaluation is an integral part of residency training. The evaluation process allows faculty members to assess a resident's strengths and weakness and address those issues as a part of training. Correction of errors both in medical judgment and interpersonal actions with staff and patients is a normal part of residency training. Dr. Platt testified that when a problem comes up with a resident it is primarily the responsibility of Residency Director John Lammie, M.D., to bring the problem to the attention of the resident. (Tr. 55-58, 75-79, 85-87)

Dr. Platt testified that there is a significant difference between the third year of the residency program and the first two years. He explained that during the third year each resident serves as Inpatient Chief. This involves a great deal more responsibility and pressure than in other parts of the residency. (Tr. 58-59, 89-90)

7. Dr. Platt testified that he is familiar with Dr. Politi because he had been Dr. Politi's advisor during the two years Dr. Politi had been part of the USC residency. Dr. Platt further testified that he had observed Dr. Politi several times a week. He added that he had also received reports and evaluations from individuals who had supervised Dr. Politi on various rotations. (Tr. 55-60, 74-76, 85-87, 93-94)

**Dr. Politi's General Testimony Concerning His Experiences in South Carolina**

8. Dr. Politi testified that his stay at USC was the first time he had spent any considerable time outside of California while still in the United States. Dr. Politi asserted that South Carolina had been a culture shock for him. He explained that the educational system, rotations and clinical application were different in South Carolina. He elaborated that what was considered socially acceptable in South Carolina was considerably different from what he had grown up with and the cultural norms while in medical school. Dr. Politi

testified, "It was difficult for me fitting in, particularly into that conservative group amongst the residents; and the faculty to some degree too unfortunately." Dr. Politi conceded that he has done some traveling but that is not the same as living and working with people in the way he had to in South Carolina. Dr. Politi explained that during college and medical school he had been surrounded largely by people from California or New York. He noted that, although he had attended medical school in Grenada, almost all of his clinical education had taken place in California. (Tr. 205-210, 235-236)

Dr. Politi testified that the difficulties caused by his immersion into the South Carolina environment along with lack of sleep had caused him to start having worrying thoughts. He noted that staff members, not patients, had started to complain about his behavior. In reference to his behavior he explained:

It was sort of obsessive things \*\*\* like asking people to recheck this for me or getting upset when a nurse didn't do an order correctly or interrupting which would have been okay to do [in California], particularly if I thought it was relatively important. But in South Carolina interrupting when an attending was doing something was not accepted. So that combination of things over time put me at odds with some of the people that I worked with unfortunately.

(Tr. 209)

9. Dr. Platt testified that there had been several occasions on which Dr. Politi had lost his temper or become upset and someone had taken exception to his conduct. He noted that these problem interactions had been with staff not with patients. Dr. Platt noted that there had been enough incidents of this type to create a problem for Dr. Politi in his evaluation by the program. (Tr. 90-91, 223)

#### **The June 15, 2000, Letter of Counseling**

10. By letter dated June 15, 2000, Dr. Lammie advised Dr. Politi that:

The attending physicians on the Family Inpatient service have decided that your performance did not meet the required level of independence, care, and teaching supervision for a second month second year resident. While all agreed that your enthusiasm, availability, and reliability had improved from last year, they shared a common perception that you were very dependent on "coaching" and provision of information and formula from senior residents and faculty. Each attending experienced careless attention to detail such as medication errors.

All attendings agreed that you did not appear to verify information, doses, patient histories, or treatment plans. With one patient in congestive failure, you did not follow up in a timely fashion, resulting in a worsening of her symptoms from your fluid bolus. You did not try to reason out the causes of her respiratory distress, other than to follow the ER physician's recommendation of putting her on 130 ml/hr of NS. With another patient in DKA, you did not coordinate the shift from IV insulin drip to daily dosage with appropriate IV fluids. On a consultation on a surgical patient with mental status changes, you did not review the outpatient record or call the family in order to properly assess the clinical situation. Physical examinations were at times sketchy and incomplete. You showed little evidence of critical reading about your patients and little teaching of medical students and junior residents.

Feedback from FPC attendings and nurses reflects insensitivity to courtesy and consideration of others in your practice. The perception of inappropriately demanding requests, even if on behalf of needy patients, has disrupted interpersonal harmony and had impeded efficient operation of your FPC area.

(St Ex. 3 at 39-40)

11. At hearing, Dr. Politi testified that he had received two or three formal warnings while at USC and that he considers the June 15, 2000, Letter of Counseling from Dr. Lammie as one of those warnings. Dr. Politi explained that the Letter of Counseling advised him "what kinds of things I should try to focus on as far as improving my residency program." Dr. Politi conceded that he had "probably" considered this letter a letter of warning when he had received it. (Tr. 42-45; St. Ex. 3 at 39-40)
12. At hearing, Dr. Politi commented on the congestive heart failure patient mentioned in Dr. Lammie's June 15, 2000, Letter of Counseling. Dr. Politi stated that there had been a brief period of time when this patient's symptoms had worsened. He explained that she had become more short of breath. Dr. Politi asserted that he had followed up in a timely fashion with this patient, had given her intravenous Lasix "shortly after" and she had gotten "tremendously better." Dr. Politi asserted that his actions had not contributed to any worsening of the patient's symptoms. (Tr. 46-53; St. Ex. 3)

**The August 15, 2000, Written Warning Concerning the Journal Club Incident**

13. By letter dated August 15, 2000, Dr. Lammie advised Dr. Politi:

This letter is a written warning for your actions of last Thursday, 10 August. You told the Pediatric Preceptor at Moncrief Army Community

Hospital that you would not be able to attend their clinics because of obligations with the departmental Journal Club. You did not attend Journal Club. You subsequently attended a social function in the evening (Billiards Tournament). I have discussed the situation with Dr. Sribnick, and she confirms that you had requested to attend the Journal Club. She does report that your attendance at Moncrief has been unpredictable.

I understand that you had extenuating circumstances: you had a complicated patient on Thursday AM who kept you from your Moncrief commitment in the AM, and your parents were in town that week.

However, I see this as an unacceptable breach of integrity: both in dishonesty and in failure to fulfill a service commitment.

14. At hearing, Dr. Politi testified that Journal Club was a monthly meeting of residents and some faculty to discuss a particular piece of medical literature. He explained that, while residents were not required to attend Journal Club, he and most residents usually attended. (Tr. 168-171)

Dr. Politi testified that he had been working at Moncrief Hospital on the day of the Journal Club meeting. He asserted that he had asked the attending physician if he could leave to go to the Journal Club and she had replied, "Barry, you've been here every day[.] \*\*\* If you have other things you need to do, that's fine." Dr. Politi testified that he had gone home first and found that his parents had come to visit. He had elected not to go to Journal Club so that he could spend some time with his parents. Subsequently, he had taken his parents to a social event for residents and faculty. Dr. Politi asserted that when he had left his work assignment at Moncrief he had had intended to attend Journal Club. (Tr. 168-173, 229-232, 245)

15. Dr. Platt testified that he does not have personal knowledge of any incidents in which Dr. Politi's honesty had been called into question at USC. However, he noted that he had seen a memorandum concerning such an incident in Dr. Politi's file. (Tr. 91-93)

**Dr. Politi's Non-Disclose to the Board of the Warning and Counseling Letters**

16. At hearing, Dr. Politi conceded that he had been aware of both the Letter of Counseling and the Written Warning. He further conceded that he had disclosed neither to the Board in his Ohio Application. Dr. Politi subsequently asserted that he had spoken with individuals at the USC residency program and that they had advised him to say on his Ohio Application that he had been placed on probation and that USC would send the documents they deemed appropriate to the Board. (Tr. 44-46, 168-170)

17. Dr. Platt testified that Dr. Politi had consulted with him about completing Dr. Politi's Ohio Application. However, he does not recall the details of those exchanges. (Tr. 81-82, 111-114)
18. Dr. Politi testified, "[A]s I look at the application now, I made an error. I should have mentioned each time I had been warned. So I made a mistake." Dr. Politi added that he had never had any intention of deceiving the Board about what had happened in South Carolina. Dr. Politi commented that he had assumed that the Board would obtain his complete residency file directly from USC. (Tr. 45-46, 223-224)

### **The USC Probation Letter**

19. By letter dated August 28, 2000, [the USC Probation Letter] Dr. Politi was formally notified by Dr. Lammie that he was being placed on probation. Dr. Politi was notified that his probationary period would be for a minimum of ninety days beginning September 1, 2000. Dr. Lammie provided specific examples of problems that had occurred during the previous month. (Tr. 172, 184-185; State. Ex. 3 at 31-33)
20. In the USC Probation Letter, Dr. Lammie asserted that Dr. Politi had discharged a postpartum patient who was subsequently readmitted twelve days postpartum with late eclampsia. He added that Dr. Politi had incorrectly indicated in the patient record that the patient was discharged on antihypertensive medication, and had failed to recognize Prinivil as an ACE inhibitor. (St. Ex. 3 at 31-33)  
  
At hearing, Dr. Politi asserted that he had not harmed this patient. Dr. Politi testified that he does not know if he should have discovered prior to her discharge that she had eclampsia. (Tr. 173-179)
21. In the USC Probation Letter, Dr. Lammie asserted that Dr. Politi had written a prescription for Depakote for a fellow resident who was in impaired physician surveillance and had failed to document any clinical note defining a therapeutic relationship with that resident. At hearing, Dr. Politi testified that he had written a prescription for a colleague without documenting the prescription. (Tr. 179-180; St. Ex. 3 at 31-33)
22. In the USC Probation Letter, Dr. Lammie asserted that Dr. Politi had prescribed 125 mg. Rocephin for a patient with pyelonephritis although "this dosage has no basis in pyelonephritis and reflects inattention to confirm drug doses, a pattern that is repeatedly documented in previous counseling." (St. Ex. 3 at 31-33)
23. In the USC Probation Letter, Dr. Lammie asserted that Dr. Politi had performed unacceptably with the private pediatric attending physicians during his pediatric rotation. Dr. Lammie elaborated that Dr. Politi had failed to make himself aware of details that he should have known about patients. Dr. Lammie added that Dr. Politi had not completed

rounds appropriately and had had interpersonal problems with attending physicians and nurses. (St. Ex. 3 at 31-33)

24. In the USC Probation Letter, Dr. Lammie asserted that Dr. Politi had failed to recognize a possible case of pre-eclampsia. Dr. Lammie elaborated that Dr. Politi had failed to recognize the potential significance of a blood pressure of 138/86 with edema in a fifteen-year-old obstetrical patient. Dr. Lammie added that Dr. Politi had not ordered a urine test to look for pre-eclampsia, had not known the criteria for a non-stress-test and had not known the sequence of evaluation if the “NST” was non-reactive. Dr. Lammie asserted that Dr. Politi had relied on a nurse for interpretation of the test and had failed to record in the medical record the assistance he had received from a resident physician. (St. Ex. 3 at 31-33)
25. In the USC Probation Letter, Dr. Lammie asserted that Dr. Politi had missed “Mom Baby” rounds with Dr. Lammie and that when Dr. Lammie had paged Dr. Politi he had gotten Dr. Politi out of bed. (St. Ex. 3 at 31-33)
26. In the USC Probation Letter, Dr. Lammie asserted that Dr. Politi had not completed a previously ordered videotaped patient encounter review. (St. Ex. 3 at 31-33)
27. In the USC Probation letter, Dr. Lammie advised Dr. Politi that his conference attendance was “among the poorest in the residency program, falling short of graduation requirements.” Dr. Lammie noted “When you do attend conferences, you frequently sign in, get your lunch, and leave, without attention to conference content.” (Tr. 60-61; St. Ex. 3 at 32)
28. In the USC Probation Letter, Dr. Lammie noted that Dr. Politi was being placed on probation in part because of clear examples of dishonesty. At hearing, Dr. Politi testified that during a period of his residency Dr. Lammie had had trouble accepting him as honest and trustworthy. (Tr. 180-182)
29. Dr. Platt testified that Dr. Politi had been placed on probation during September, October and November of 2000. Dr. Platt explained that the USC faculty had laid out very specific plans and objectives that needed to be accomplished during the probationary period. (Tr. 58-64, 89-90, 184-185; St. Ex. 3. at 31-32)

**Evaluation of Dr. Politi’s Performance While On Probation**

30. On October 7, 2000, Dr. Lammie prepared a memorandum for the USC Promotions Committee and Dr. Politi which summarized Dr. Politi’s performance during the first month of his probationary period. One problem noted by Dr. Lammie was “very poor communication with a young asthmatic’s family, resulting in a bounce back admission.” (St. Ex. 3 at 21)

31. Dr. Platt testified that the term “bounce back admission” refers to a situation in which a patient is readmitted to the hospital within a certain period of time after being discharged from the hospital. He pointed out that different institutions have different criteria for how long a period of time between admissions defines an admission as a “bounce back admission”. He is aware of definitions that range from twenty-four hours to one month. (Tr. 98-99)

Dr. Platt testified that he was aware that it was the opinion of some faculty members that Dr. Politi’s poor communication with the family of a young asthma patient had led to a bounce back admission. Dr. Platt conceded that poor communication by a physician to the family of a juvenile asthma patient that leads to a bounce back admission “probably fits within the definition” of harm to a patient. However, Dr. Platt asserted that he does not have enough information to determine if the bounce back admission in this particular case was caused by Dr. Politi’s actions. (Tr. 100-101)

32. On October 9, 2000, the USC Promotions Committee met to consider Dr. Politi’s performance during the first month of his probation. All of the members of the committee, including Dr. Lammie, agreed that Dr. Politi had failed to meet the probationary conditions that had been imposed as of September 1, 2000. Following the Promotions Committee meeting, Dr. Platt and Dr. Lammie met with Dr. Politi to inform him that he was going to be terminated by the USC residency program. By letter dated October 10, 2000, Dr. Lammie advised Dr. Politi that he had begun the formal process of termination and that Dr. Politi could appeal that decision. He further advised Dr. Politi that he could elect to resign rather than be terminated. Dr. Politi elected to resign. (Tr. 58-66, 89-90, 101-105, 110-111, 184-191, 222-223; St. Ex. 3 at 17-21, 31-33; Resp. Ex. A)
33. Dr. Platt testified that he and Dr. Politi had gone over every incident of concern at USC as they had occurred. He noted that there had been concerns that Dr. Politi’s conduct had created the potential for harm to patients. However, Dr. Platt also testified that he is unaware of any incident in which actual harm occurred. (Tr. 114-115, 121-124)

Dr. Politi testified that no one at USC has ever told him that anything he had done had resulted in actual patient harm. Dr. Politi added that he had made affirmative efforts both while a resident at USC and after leaving the program to confirm that he had not harmed any patients at USC. (Tr. 210-211, 226-228)

34. Dr. Politi testified that his medical judgment had been called into question at USC. At hearing, Dr. Politi was asked if he agreed that his medical judgment had been called into question at USC for good reason. Dr. Politi replied:

I do, not every—I mean, not everything unfortunately in the documentation is accurate, but there certainly—yeah, I would say there are some things.

A lot of the documentation doesn't—is out of context. A lot of the documentation doesn't give me opportunity to express my side of the story, but unfortunately there were some problems.

(Tr. 210)

35. Dr. Platt testified that he and Dr. Lammie had recommended to Dr. Politi that Dr. Politi seek admission to a residency program that did not require as much intensive inpatient training. He explained that they had believed that Dr. Politi would be better suited to outpatient rather than inpatient work. (Tr. 66-69, 105-109)
36. At hearing, Dr. Platt opined that Dr. Politi's typewritten explanation for question 4 on his Ohio Application is basically correct except that the period of probation had been three months rather than one month.<sup>2</sup> However, Dr. Platt stated that Dr. Politi had been advised near the end of his first month of probation that he would be terminated if he did not resign. (Tr. 117-120; St. Ex. 2)
37. Dr. Politi testified that he now understands that his probationary period at USC had been ninety days. He stated that he had been on probation for one month and some days when he had learned that he would not be promoted to the third year. Dr. Politi explained that he had been told by Dr. Lammie and Dr. Platt that he no longer had to meet the probationary conditions that had been imposed on him. Dr. Politi testified that he believed at the time that he completed his written explanation to Additional Information question number 4 on his Ohio Application that he was accurately portraying what had ultimately occurred. (Tr. 184-185, 215-219)
38. Dr. Politi testified that if he had not resigned he would have been terminated and could have appealed the termination administratively. However, he would not have been able to participate in the third year training while the appeal was pending. Dr. Politi further testified that he had been permitted to remain at USC until mid-January 2001, to allow him time to explore other options. (Tr. 115-117, 184-188, 215-219, 238-240; St. Ex. 3 at 31-33)

#### **Dr. Politi's Ohio Deposition**

39. On or about March 4, 2002, Dr. Politi appeared for a deposition before Board staff regarding questions concerning potential fraud in his Ohio Application. At hearing, Dr. Politi testified that he had given his deposition in Columbus and had been represented by legal counsel. Dr. Politi added that the deposition had concerned only his Ohio Application. (Tr. 176-178, 191)

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<sup>2</sup> See numbered paragraph 4 of the Summary of the Evidence.

**Dr. Politi's West Virginia Application**

40. Dr. Politi testified that he had applied for a license to practice medicine in West Virginia so that he could moonlight there. He commented that he had been taking a tropical medicine course in West Virginia and had made a lot of contacts there that had led to moonlighting opportunities. On or about August 5, 2001, Dr. Politi submitted his West Virginia Application to the West Virginia Board. (Tr. 191-194, 226-228; St. Ex. 4)
41. In the informational section of Dr. Politi's West Virginia Application, he answered "NO" to the following question:

Have you ever, in any jurisdiction for any reason:

- 1) been called before or appeared before any board or panel for discussions or questions concerning violations of the law or rules pertaining to the practice of medicine, or for unethical conduct?

(Tr. 191-194; St. Ex. 4)

42. Dr. Politi testified that because he had been unsure how to answer question 1 on his West Virginia Application he had consulted with his Pittsburgh attorney. He further testified that he does not know if that attorney is licensed in West Virginia or Ohio. (Tr. 194-198; St. Ex. 4)
43. During the course of hearing the following exchange occurred between Dr. Politi and the Assistant Attorney General:
- Q. Okay. And you don't believe that filing a false—or allegedly filing a false or fraudulent application in another state pertains to the practice of medicine?
- A. No. No, certainly not.
- Q. So you felt that because you were cited for those reasons in Ohio that you could answer "no" to that question.
- A. Well, I wasn't sure about it, but being that I had so many problems, what I did was contact my attorney. We went through this question by question, and he instructed me to answer "no" to that question for the same reasons that I discussed with you—or very similar reasons. So I was told [by] my attorney.

I saw this as; you know what, I'm going to get in trouble. There's potential here. Why don't I ask someone who knows what they're doing. I don't think I need to answer yes to this. I went and I talked to my attorney who then subsequently advised me to answer no to that particular question and had me answer yes to a couple other questions.

Q. Okay. You don't think that the language is clear: "Any jurisdiction for any reason called to appear before the board for discussions," you don't think that fits what went on in Ohio?

A. No, not for rules pertaining—not for stuff pertaining—It says law – No. 1 says, "Concerning violations of the laws or rules pertaining to the practice of medicine." They didn't call me to tell me that I had violated a law or that I had some unethical conduct. I can give you some examples maybe. That's how I see this.

Q. Well let me back up then.

It says, "Or for unethical conduct," correct?

A. Right.

Q. And what happened in Ohio was – To your knowledge, you're facing a cite alleging dishonesty and fraudulent statements on an application.

A. Correct.

Q. Okay. And fraud and dishonesty in filling an application to practice medicine, in your mind, does not qualify as unethical conduct.?

A. When they're talking about unethical conduct, they're talking about it pertaining to medicine. So an example -- Within the practice of medicine, an example would be if I had a patient and I slept with a patient. What they're taking about here is that kind of thing. They're not talking about being asked to appear at a deposition about questions on my application.

Q. Okay.

- A. But since I wasn't sure – Let me finish. Since I wasn't sure about it, I went to ask my attorney, who subsequently is a lawyer, and said you can answer “no” to the question.
- Q. If you look carefully at the language it says “Practice of medicine –
- A. I have looked carefully.
- Q. It says comma, “Or for unethical conduct.” Unethical conduct is set apart from the practice of medicine, correct?
- A. Right, but it doesn't say called to take a look at your application or for questions into your application of for a deposition or for –
- Q. But you realize that in Ohio you were being called into question for dishonesty and fraud on your application?
- A. Within – I don't know if I'd say fraud. I guess I would say I was being called to come and explain what allegations, which have to do with fraud.
- Q. Okay. And you had a deposition related to that also prior to the cite letter, correct?
- A. Right. Yeah. I understand what you're saying. I don't agree with it. I think that – that that's not what it's saying. I didn't know what the right answer was, therefore I sought legal advice from somebody who I very much trust. He said, “For that particular question, you can answer no.”

(Tr. 195-198; St. Ex. 4)

**Testimony of S. Manoj Jegasothy, Esq.**

44. S. Manoj Jegasothy, Esq., testified by telephone at hearing on behalf of Dr. Politi.<sup>3</sup> Mr. Jegasothy completed law school at the University of Pittsburgh in 1997. Since being admitted to the Pennsylvania bar he has been engaged in the practice of law in Pittsburgh. Mr. Jegasothy stated that he handles a variety of cases with an emphasis in civil litigation, medical malpractice, and health care law. He also has experience representing practioners before licensing boards. Mr. Jegasothy is not admitted to the practice of law in Ohio or West Virginia. (Tr. 272-275, 303-311; St. Ex. 4)

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<sup>3</sup> Dr. Politi waived the attorney-client privilege with Mr. Jegasothy for purposes of this hearing. (Tr. 272-274)

45. Mr. Jegasothy testified that he had initially been retained by Dr. Politi to represent him and advise him “with respect to his dealing with licensure in the state of Ohio.” Mr. Jegasothy noted that he had never given Dr. Politi any advice about completing his Ohio Application. Mr. Jegasothy explained that, at the time he had been retained, Dr. Politi had already submitted his Ohio Application, had been deposed by Board staff and had retained Ohio licensed counsel. (Tr. 275-278, 302-304, 310-311; St. Ex. 4)
46. Mr. Jegasothy testified that during the summer of 2001 Dr. Politi had sought his advice as to question number 1 of the West Virginia Application. Mr. Jegasothy elaborated that during the course of a meeting on another subject Dr. Politi had shown Mr. Jegasothy a copy of the page from his West Virginia Application that contains question number 1. Dr. Politi had asked Mr. Jegasothy for advice on how to answer this question because Dr. Politi had felt that there was “ambiguity in the question.” (Tr. 278-280, 284-299, 305-309; St. Ex. 4)

Mr. Jegasothy stated that he had reviewed question number 1 of the West Virginia Application and had subsequently advised Dr. Politi that Dr. Politi “had two obligations, the most important one being that he had to tell the truth and answer truthfully on the application.” Mr. Jegasothy testified that Dr. Politi had agreed. Mr. Jegasothy further testified that he had also advised Dr. Politi that “he had to answer the question as posed.” Mr. Jegasothy explained:

As posed, the question asked whether he had been called before or appeared before any board or panel for discussions or questions concerning violations or rules, et cetera. I did know that he had questioning from Mr. Katko. In my legal opinion, that did not constitute a board or a panel or an appearance before a board or panel.

(Tr. 278-280, 284-302, 305-309; St. Ex. 4)

Mr. Jegasothy commented that Dr. Politi had believed that the question related to the practice of medicine and that “he had never had any questions regarding the practice of medicine because all the questions came up when he was at the University of South Carolina.” (Tr. 280-281; St. Ex. 4)

47. Mr. Jegasothy testified that application documents can be discoverable in medical malpractice cases and that answering “yes” when “no” was the appropriate answer could create additional questions and problems for Dr. Politi at a later time. Mr. Jegasothy noted that he had been particularly careful in reading and interpreting this question because he was aware that various state boards share application information with each other. (Tr. 281-282, 292-299, 305-309; St. Ex. 4)

48. In the State Licensure Information section of Dr. Politi's West Virginia Application he was required to:

[l]ist all licenses held in other states or jurisdictions regardless of the status of the license (i.e., active, inactive, lapsed, expired, revoked, suspended or surrendered) and list any state or jurisdiction in which you have ever applied for a medical license, including those where your application was withdrawn.

(St. Ex. 4)

49. Dr. Politi testified that he had not listed his pending Ohio Application on his West Virginia Application. He asserted that both he and his attorney had failed to realize that he needed to list his Ohio Application. Dr. Politi subsequently asserted that he had believed that since he had answered "NO" to question number 9 on the previous page he was not required to list his pending Ohio Application. Question number 9 asks, "Have you ever, in any jurisdiction for any reason: been denied a license to practice medicine?" Dr. Politi testified that he now understands that he should have listed his Ohio Application. (Tr. 198-200, 232-234; St. Ex. 4)

Dr. Politi testified that that he did not know how West Virginia would have known to check with the Board about his Ohio status without his having listed his Ohio Application on his West Virginia Application, but that he had been sure that they would check. (Tr. 194, 243-245; St. Ex. 4)

Dr. Politi asserted that he had not had any intent to deceive the West Virginia Board when he completed his West Virginia Application. He asserted that he had had no reason to question his attorney's advice. (Tr. 228-229; St. Ex. 4)

50. Mr. Jegasothy testified that had not seen the page of Dr. Politi's West Virginia Application that requested information about other medical licenses and medical license applications at the time he had advised Dr. Politi about question number 1. He added that Dr. Politi had never asked him for advice about this page of the West Virginia Application. Mr. Jegasothy commented that he had eventually seen this page at a much later date. (Tr. 282-284; St. Ex. 4)

### **Mental Health Issues**

51. Dr. Platt testified that during Dr. Politi's residency at USC, the USC administration had considered the possibility that Dr. Politi was experiencing mental, emotional, or physical health problems. As a result, Dr. Politi was advised to seek counseling outside of the USC residency program. Dr. Platt asserted that the faculty had independently verified that Dr. Politi had in fact complied with the recommendation of outside counseling. Dr. Platt

testified that, subsequent to entering counseling, Dr. Politi had demonstrated significant improvement in interpersonal interactions and decision-making. (Tr. 69-76)

52. Dr. Politi testified that someone from the faculty at USC had first suggested to him that he might have a mental or physical health problem that contributed to his problems coping with residency. He commented that at first he had been taken aback by the suggestion of a mental health evaluation. He stated that he now wishes that he had been evaluated sooner. He asserted that beginning psychotherapy had been very helpful. (Tr. 211-215, 221-222)
53. Additional Information question number 23 of Dr. Politi's Ohio Application asks:

Do you have, or have you been diagnosed as having, a medical condition which in any way impairs or limits your ability to practice medicine with reasonable skill and safety?

(St. Ex. 2)

At hearing, Dr. Politi was asked why he had answered "NO" in response to question number 23. Dr. Politi Responded:

Knowing what I know now, I should have answered yes to that question; but when I read medical condition, I didn't know that it included all of those things that are listed above that. Medical condition, I thought that was different from a psychiatric condition.

(Tr. 164-167; St. Ex. 2)

Dr. Politi conceded that it is important to fully examine all the definitions before answering questions on a licensure application. However, he asserted that in this instance he had "just missed it." Dr. Politi commented that if the introductory language between questions 22 and 23 defining the terms used in question number 23 had appeared below question number 23 he would have answered, "YES," to question number 23. Dr. Politi added that he had assumed that USC would send documentation to the Board that would include discussion of his mental condition. (Tr. 167-168, 240-242)

### **Testimony of Manuel David Reich, D.O.**

54. Manuel David Reich, D.O., testified by telephone at hearing on behalf of Dr. Politi.<sup>4</sup> Dr. Reich testified that he had graduated from the New York College of Osteopathic Medicine. He subsequently completed an internship followed by a residency in psychiatry,

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<sup>4</sup> Dr. Politi waived the physician-patient privilege with Dr. Reich for purposes of this hearing. (Tr. 126-127, 138)

which he completed in 1987. Dr. Reich was employed by the United States Public Health Service and subsequently completed additional fellowship training in child psychiatry. Dr. Reich is board certified in both adult and child psychiatry. He is engaged in a general clinical psychiatric practice in Pittsburgh, Pennsylvania, and has been working as both an adult and a child psychologist since 1991. (Tr. 126-128, 138-139; Resp. Ex. C)

55. Dr. Reich testified that a psychologist in the community had referred Dr. Politi to him. His first appointment with Dr. Politi had been on July 29, 2002. Dr. Reich testified that he has had three office visits with Dr. Politi and anticipated that the next office visit would be in December 2002 or January 2003. Dr. Reich testified that he last saw Dr. Politi in Dr. Reich's office on September 30, 2002. However, he has spoken to Dr. Politi on subsequent occasions by telephone to discuss his status and medications. Dr. Reich explained that he has tried to be sensitive to the time constraints Dr. Politi faces as a resident. Dr. Reich stated that he has diagnosed Dr. Politi as suffering from generalized anxiety disorder. He also concurs with a diagnosis of attention deficit disorder, previously made by Sharon Leak, Ph.D. (Tr. 128-129, 137-138)

Dr. Reich testified that subsequent to initial assessment and several medication trials he concluded that the optimal medicinal regime for Dr. Politi is a combination of Lexapro, a serotonin regulating anti-depressant and Buspar, an anti-anxiety medication. Dr. Reich opined that these medications stabilize Dr. Politi's condition and allow him optimal performance of academic and professional tasks and in interpersonal relationships. He added that these medications in no way impair a person's ability to practice medicine. Dr. Reich testified that, in addition to medication, his treatment plan for Dr. Politi includes counseling sessions and a meeting with Dr. Politi's significant other. (Tr. 126-137)

Dr. Reich testified that he has recommended that Dr. Politi continue to see him and believes that Dr. Politi understands that continued treatment is necessary. Dr. Reich noted that Dr. Politi has reported reduced subjective symptoms and that objective observations corroborate the self-reporting of the subjective symptoms. (Tr. 133-134)

56. Dr. Reich testified that an untreated patient with Dr. Politi's diagnoses is anxious, performs poorly, receives negative feedback, and their anxiety heightens because the patient is unable to respond in an appropriate way. (Tr. 130-132)

#### **Additional Information Concerning Dr. Politi's UPMC Residency**

57. Dr. Politi testified that his experience in the UPMC residency has been varied. He explained that he has really enjoyed some rotations and disliked others. He noted that he does not find the occupational medicine residency "nearly as disappointing as [he had] found family practice." He commented that he believes a lot of the difference in his experience at UPMC is because of the people he works with there. He explained that many of the people at UPMC are older and have broader experience than those in South

Carolina. He further explained that his colleagues at UPMC come from a more geographically and culturally diverse population than those at USC. He described the environment at UPMC as being similar to that in which he grew up and to that in which he attended medical school. (Tr. 220-223)

**Testimony of Joseph J. Schwerha, M.D., M.P.H.**

58. Joseph J. Schwerha, M.D., M.P.H., testified by telephone at hearing on behalf of Dr. Politi. Dr. Schwerha testified that he had received an undergraduate degree from the University of Pittsburgh. He subsequently received a Masters in Public Health from the University of Michigan. Dr. Schwerha left a Ph.D. program at the University of Michigan to enter medical school at West Virginia University. After completing an internship at Mercy Hospital in Pittsburgh he began employment with U. S. Steel. From 1982 until 1998, Dr. Schwerha served as general manager of health services and corporate medical director for U.S. Steel. (Tr. 225, 255-257)

Dr. Schwerha testified that when he retired from U.S. Steel he had been asked to come to UPMC as a professor and director of the occupational medicine residency program. Dr. Schwerha noted that he has been concurrently engaged in the private practice of general medicine in the evenings since 1973. (Tr. 256-258)

59. Dr. Schwerha testified that the UPMC occupational medicine residency program had accepted Dr. Politi during the summer of 2001. He explained that the program provides PGY-2 and PGY-3 training. He noted that from between 60 and 100 applications are received each year, UPMC interviews no more than 12 people. (Tr. 258-259)

Dr. Schwerha testified that he anticipates that Dr. Politi will complete his residency in July 2003. Dr. Schwerha commented that Dr. Politi has progressed well at UPMC. He noted that Dr. Politi and all residents make errors during residency training. He stated that Dr. Politi has been cooperative and honest in assessing and learning from his errors. He added that he had verified independently that Dr. Politi was in fact being honest. (Tr. 259-261, 267-268)

Dr. Schwerha testified that Dr. Politi's interpersonal skills are quite good. He commented that Dr. Politi tends to be impulsive and gives "two hundred percent" to any project he is assigned. He further commented that examples of Dr. Politi's impulsive conduct include making comments or answering questions without fully thinking them out. He noted that Dr. Politi continues to consider the issues and will be able to explain why his impulsive answer was right or wrong. He added that Dr. Politi is very bright and that his impulsive answers are often correct. (Tr. 268-269)

60. Dr. Schwerha testified that he is aware that Dr. Politi had had personal problems during his USC residency and that he had not been a good fit for that particular program. He

noted that he had not discussed USC with Dr. Politi in detail. Dr. Schwerha was not aware until hearing that Dr. Politi had resigned from USC under threat of termination. Dr. Schwerha noted that the failure of an applicant to disclose the circumstances under which he had left a previous program would be of concern to him if the applicant had been asked about those circumstances. However, he stated that they had not asked Dr. Politi that question. (Tr. 261-267)

**Additional Information**

61. At hearing, Dr. Politi introduced a packet of eight letters of reference dated between October 29, 1997, and October 28, 2002. The authors of these letters were not subject to cross-examination. The record does not disclose what information, if any, these writers had about Dr. Politi's problems at USC or the accusations against him in Ohio. (Resp. Ex. B)
62. By letter dated October 29, 1997, Antonio I. Kos, M.D., who practices family medicine in Nova Scotia, stated that he had worked with Dr. Politi when Dr. Politi was in medical school and Dr. Kos was completing his rotating internship. He observed that Dr. Politi had been very helpful in Dr. Kos' charitable work in Grenada. Dr. Kos noted that he had had the opportunity to observe Dr. Politi's hospital work in Grenada. He described Dr. Politi as hardworking, reliable and courteous. He also described Dr. Politi as being "a very versatile person with good communication and interpersonal skills." (Resp. Ex. B)
63. By letter dated June 2, 1998, Benjamin K. Silverman, M.D., stated that he had been the preceptor for Dr. Politi's pediatric rotation as a medical student at Children's Hospital of Orange County, California. Dr. Silverman described Dr. Politi as "very bright" and noted that he "works with great enthusiasm, has excellent rapport with patients and families and colleagues." (Resp. Ex. B)
64. By letter dated October 2, 2000, Chip Zulliger, D.O., an emergency physician at Providence Hospital, Columbia, South Carolina, stated that he had had the opportunity to observe Dr. Politi during urgent care and emergency rotations. He commented that Dr. Politi's "interactions with difficult patients, families, and unexpected clinical outcomes are amongst the best I have seen." (Resp. Ex. B)
65. By letter dated November 6, 2000, Alfred B. Boykin, Jr., M.D., Director, Pulmonary and Critical Care Medicine, University of South Carolina School of Medicine, commented that he had gotten to know Dr. Politi both personally and professionally. He observed that Dr. Politi was "well-motivated, dedicated, and reliable." He further observed that Dr. Politi's problem solving and record keeping skills were excellent. He added that Dr. Politi was "always dependable and punctual." (Resp. Ex. B)

Report and Recommendation

In the Matter of Barry J. Politi, M.D., M.P.H.

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66. By letter dated November 14, 2000, Tommy Norris, M.D., Emergency Department Medical Director, Kershaw County Medical Center, Camden, South Carolina, stated that he had had the opportunity to work with Dr. Politi at the Kershaw County Medical Center during November 1999. He observed that Dr. Politi had demonstrated “a good solid work ethic, fairly good attention to detail, and genuine patient care interest.” (Resp. Ex. B)
67. By letter dated November 2, 2001, David K. English, M.D., FACEP, Department of Emergency Medicine, Alameda County Medical Center, Oakland, California, commented on Dr. Politi’s medical student rotation from February 2 through March 13, 1998. Dr. English observed that Dr. Politi had been “consistently enthusiastic and interested during the rotation particularly when presented with new clinical problems or new procedures. Dr. English added that Dr. Politi’s patient assessments were appropriate, “but could have demonstrated more depth of thought about alternative possibilities.” (Resp. Ex. B)
68. By letter dated October 8, 2002, Jay D. Harper, M.D., M.P.H., Clinical Assistant Professor, Environmental and Occupational Health, University of Pittsburgh, noted that he had had the opportunity to observe Dr. Politi for a period of more than one year. Dr. Harper opined that Dr. Politi had performed well in the classroom and on clinical rotations. He described Dr. Politi as “bright, personable, likeable, and very energetic and enthusiastic.” (Resp. Ex. B)
69. By letter dated October 28, 2002, Rani K. Kumar, M.D., FACEP, Assistant Professor, University of Pittsburgh Medical Center, and Chair, Department of Emergency Medicine, UPMC McKeesport, stated that Dr. Politi had completed an emergency department rotation at UPMC McKeesport in October 2002. Dr. Kumar observed that Dr. Politi was “an exceptionally pleasant and courteous young gentleman who exhibited a great deal of enthusiasm and an eagerness to learn.” He further observed that Dr. Politi’s “interaction with his patients was sincere and truly compassionate and I found his medical knowledge to be very sound.” (Resp. Ex. B)
70. Dr. Politi testified that his Pennsylvania license is a conditional training license. He explained that he is not eligible for an unrestricted license in Pennsylvania. However, when he completes his residency he will have met all the requirements to apply for a full Pennsylvania license. (Tr. 242-243)
71. Dr. Politi testified that during leaves of absence from his USC residency and between leaving USC and starting at UPMC he had worked at a rural clinic in Latin America or at a refugee camp in Thailand. Dr. Politi testified that he is exploring many possible career paths including occupational medicine, public health, urgent care, overseas work, working with refugees, or working for the United Nations or the World Health Organization. (Tr. 31, 203-204, 225-226)

**Stipulations Concerning Dr. Politi's Residency Training**

72. At hearing, the parties stipulated that the allegation that Dr. Politi had not complied with Sections 4731.091 and 4731.14(B)(2), Ohio Revised Code because he had not demonstrated twenty-four months of graduate medical education was correct at the time it was made. Accordingly, the Board was justified in proposing to deny his application on that basis. However, the parties also stipulated that, as of the date of hearing, Dr. Politi had complied with this requirement. (Tr. 270-272)

**FINDINGS OF FACT**

1. On or about September 10, 2001, Barry J. Politi, M.D., M.P.H., submitted an Application for Certificate—Medicine or Osteopathic Medicine to the Board. His Ohio Application remains pending.
2. The Additional Information section of Dr. Politi's Ohio Application includes the instruction that, should the applicant answer "YES" to any question, the applicant is required to furnish complete details, including date, place, reason and disposition of the matter. All affirmative answers must be thoroughly explained on a separate sheet of paper. [The applicant] must submit copies of all relevant documentation, such as court pleadings, court or agency orders, and institutional correspondence and orders.

In the Additional Information section of his Ohio Application Dr. Politi answered "YES" to question number 4, which asks the following:

Have you ever resigned from, withdrawn from, or have you ever been warned by, censured by, disciplined by, been put on probation by, been requested to withdraw from, dismissed from, been refused renewal of a contract by, or expelled from, a medical school, clinical clerkship, externship, preceptorship, residency, or graduate medical education program?

Dr. Politi stated in response to question number 4 that, during his family practice residency program at the University of South Carolina, he was "on academic probation, for approx. one month," that he "made a decision to leave the program to pursue other interests," and that "no patient has or was ever injured because of [his] involvement in their clinical care."

3. Dr. Politi was placed on academic probation at the University of South Carolina for an initial period of ninety days due to reasons including, but not limited to, the following:

- a. Dr. Politi discharged a postpartum patient who was subsequently readmitted with late eclampsia; he incorrectly indicated in the patient record that the patient was discharged on antihypertensive medication; and he failed to recognize Prinivil as an ACE inhibitor.
  - b. Dr. Politi wrote a prescription for Depakote for a fellow resident who was in impaired physician surveillance and failed to document any clinical note defining a therapeutic relationship with that resident.
  - c. Dr. Politi prescribed 125 mg. Rocephin for a patient with pyelonephritis although “this dosage has no basis in pyelonephritis and reflects inattention to confirm drug doses, a pattern that is repeatedly documented in previous counseling.”
  - d. During Dr. Politi’s pediatric rotation, he performed unacceptably with the private pediatric attending physicians.
  - e. Dr. Politi failed to recognize a possible case of pre-eclampsia.
  - f. Dr. Politi’s conference attendance fell short of graduation requirements” and he “frequently sign[ed] in, [got his] lunch, and [left], without attention to conference content.”
4. Dr. Politi was informed by the University of South Carolina residency faculty that he was going to be terminated from that program and he accepted an offer to resign in lieu of termination.
  5. Although Dr. Politi answered “YES” to question number 4, he failed to disclose that he had been given a written warning at the University of South Carolina on or about June 15, 2000, for careless attention to detail regarding medication errors and interpersonal conflicts, and that he had been given a written warning at the University of South Carolina on or about August 15, 2000, for dishonesty.
  6. On or about March 4, 2002, Dr. Politi appeared for a deposition before Board staff regarding questions concerning potential fraud in his pending Ohio Application.
  7. On or about August 5, 2002, Dr. Politi submitted to the West Virginia Board an application for a license to practice medicine in the State of West Virginia. In the informational section of Dr. Politi’s West Virginia Application, he answered “NO” to the following question:

Have you ever, in any jurisdiction for any reason:

- 1) been called before or appeared before any board or panel for discussions or questions concerning violations of the law or rules pertaining to the practice of medicine, or for unethical conduct?
8. In the State Licensure Information section of Dr. Politi's West Virginia Application he was required to "[l]ist all licenses held in other states or jurisdictions regardless of the status of the license (i.e., active, inactive, lapsed, expired, revoked, suspended or surrendered) and list any state or jurisdiction in which [he had] ever applied for a medical license, including those where [his] application was withdrawn."

Dr. Politi failed to list or otherwise identify his pending Ohio Application in his West Virginia Application.

9. At hearing, the parties stipulated that the allegation that Dr. Politi had not complied with Sections 4731.091 and 4731.14(B)(2), Ohio Revised Code, because he had not demonstrated twenty-four months of graduate medical education was correct at the time it was made. Accordingly, the Board was justified in proposing to deny his application on that basis. However, the parties also stipulated that, as of the date of hearing, Dr. Politi had complied with this requirement. (Tr. 270-272)

### CONCLUSIONS OF LAW

1. The acts, conduct, and/or omissions of Barry J. Politi, M.D., M.P.H., as described in Findings of Fact 1 through 5, individually and/or collectively, constitute "fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code.
2. Dr. Politi's acts, conduct, and/or omissions as described in Findings of Fact 1 through 8, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.
3. Dr. Politi's acts, conduct, and/or omissions as described in Findings of Fact 1 through 8, individually and/or collectively, constitute a "failure to furnish satisfactory proof of good moral character as required by Section 4731.08, Ohio Revised Code."

4. The Board was justified in alleging that Dr. Politi had “failed to submit evidence satisfactory to the Board that he has successfully completed not less than twenty-four months of graduate medical education through the second-year level of graduate medical education or its equivalent as determined by the Board as required by Sections 4731.091 and 4731.14(B)(2), Ohio Revised Code.” However, Dr. Politi has subsequently complied with this requirement.

\* \* \* \* \*

Barry J. Politi, M.D., M.P.H., is not accused in the present hearing of practicing below the minimal standards of care or being unable to practice safely due to mental illness. During the course of the hearing evidence was presented as to errors he committed while a resident at the University of South Carolina. In addition, evidence was introduced as to his ongoing mental health treatment.

In preparing this Report and Recommendation, the Attorney Hearing Examiner has considered the evidence of errors at the University of South Carolina and the sanctions imposed by that institution for the sole purpose of determining if Dr. Politi committed violations of Ohio law by failing to fully disclose information to the Board in his Ohio Application that he was required to disclose.

The Attorney Hearing Examiner has considered the evidence of Dr. Politi’s mental health treatment solely as mitigating evidence that helps to explain the conduct for which he was notified that the Board was considering taking action, and his efforts to address the situation.

The Board is obliged by law to similarly limit its consideration of this evidence. If the Board wishes to address allegations of failure to conform to the minimum standards of care or impairment due to mental illness it would be necessary for the Board to issue a new Notice of Opportunity for Hearing addressing those issues.

Dr. Politi’s carelessness and dishonesty in the applications process for both Ohio and West Virginia justifies the Board in denying his Ohio Application at this time. However, the mitigating evidence presented by Dr. Politi as to the mental health issues which may have contributed to his carelessness and dishonesty, when combined with the evidence he presented that he is attempting to correct deficiencies in his conduct, justify the Board in allowing him to submit a new application after he has had additional time to establish an improved record.

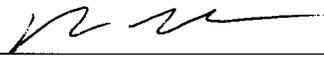
Should Dr. Politi elect to again apply for licensure in Ohio, the Board may examine all of the issues addressed in the present matter as well as any appropriate additional information presented at the time of reapplication.

**PROPOSED ORDER**

It is hereby ORDERED that:

1. The application of Barry J. Politi, M.D., M.P.H., for a certificate to practice medicine and surgery in Ohio is DENIED.
2. Dr. Politi is hereby notified that reapplication is discouraged prior to July 1, 2004. He is further notified that, should he elect to file a new Ohio application, the Board may consider all appropriate information, including but not limited to the material contained in the present record, in determining whether to grant his new application.

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



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Daniel Roberts  
Attorney Hearing Examiner



# State Medical Board of Ohio

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## EXCERPT FROM THE DRAFT MINUTES OF APRIL 2, 2003

### REPORTS AND RECOMMENDATIONS

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

Mr. Browning asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Ireneo T. Cadsawan, M.D.; Karen M. Paradies, M.D.; Barry J. Politi, M.D.; and Guy M. Sava, M.D. A roll call was taken:

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

Mr. Browning 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. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

Mr. Browning - aye

Mr. Browning 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.

Mr. Browning 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.

.....  
BARRY J. POLITI, M.D., M.P.H.

Mr. Browning directed the Board's attention to the matter of Barry J. Politi, M.D., M.P.H. He advised that objections were filed to Hearing Examiner Roberts' Report and Recommendation and were previously distributed to Board members.

Mr. Browning continued that a request to address the Board has been timely filed on behalf of Dr. Politi. Five minutes would be allowed for that address.

Dr. Politi advised that he appreciates the opportunity to appear before the Board to share his thoughts about this case and the situation. He stated that he understands that the main issues are the terms in which he left his residency program, probationary periods, and possible harm to patients, as well as his West Virginia application.

Dr. Politi stated that he does not deny that he made some mistakes, but he does feel that his actions in many of these cases were justified. He wishes he had originally included in his application more details about what happened to him in South Carolina; unfortunately, he did not. He was not attempting to deceive the Medical Board. He provided enough information that the Board could follow-up. In fact, he did attempt to disclose what happened in South Carolina, and he went out of his way to confirm and check this with his former residency department. They encouraged him to fill out the application as he did. He, Dr. Lammie and Dr. Platt all testified that he resigned from the program, that his probationary period was, in fact, approximately 30 days and not 90 days, and there was not any harm done to patients. There is nothing in the record before this Board that he intended to deceive the Board with the information he provided during this procedure.

Dr. Politi stated that, most upsetting to him or most worrisome to him, is that somehow the Medical Board believes that he somehow injured or harmed people and then went out of his way to distort that, or that he

somehow lied about that. Dr. Politi stated that he made errors during his medical residency, but he's confident that Board members can remember making mistakes during their training. He admitted that he made medical errors as well as interpersonal errors during his residency. He added that he also understands that this is part of the training experience. He learned from these mistakes and tried not to repeat them. Dr. Platt and others in the residency program testified that there wasn't anything as far as being aware of harm to patients.

Dr. Politi continued that he answered the question on his West Virginia application the way he did because he went to an attorney who advised him to answer one of the questions at issue the way that he did answer it. Unfortunately, it is true that he did screw up the application, and he realizes that now. At the time it was not obvious to him.

Dr. Politi stated that he's not a lawyer and he's not on the Medical Board, but he is a doctor and it seems to him that the real issue should be whether or not he is fit to practice medicine. Dr. Politi stated that the answer to that question is "yes." No one has really discussed what was going on in South Carolina. The truth is that since then it's been two or three years and he's gotten into another residency program, and is completing that program. Although he wasn't a poor resident in South Carolina, he's now a better-than-average resident.

Dr. Politi explained that the reason why he had so much trouble in South Carolina is because of the ADD issue, lack of sleep, being in a part of the country where he didn't fit in, disinterest in the specialty for which he was training, a lot of things going on at home in California with his mother being sick, and his girlfriend had an unplanned pregnancy. He had all of these things going on, and that's the real issue why he failed in South Carolina. Now he has taken steps to improve himself. He's had some psychotherapy and medical treatment. He's trained for a couple more years. He went overseas and worked in a refugee camp in Southeast Asia. He's done all of these things to find out what he wants to do with his life and to make himself better. He realizes as he looks back that he was unable to conquer a lot of these problems he had by himself. Since then he's gotten help.

Mr. Browning advised Dr. Politi that he has a minute to conclude his statement.

Dr. Politi stated that he's not sure what evidence there is for statements that he injured or harmed patients. Furthermore, his current residency director, as well as his past residency director, testified that he didn't try to deceive the Board by the way he answered the questions. Both made the statement that his probation period was 30 days or approximately 30 days. The reason he answered it that way was because his probationary period ended in approximately 30 days. It did not continue on for 90 days. It is true that he would have been fired if he hadn't left the residency program, but it's not true that that was his only option. Other options were some of the things that he's done: going to a grievance committee, going to a promotions committee, staying and getting some specific kinds of therapy.

Mr. Browning advised Dr. Politi that his time is up. Mr. Browning asked whether the Assistant Attorney General wished to respond.

Mr. Michael stated that in Dr. Politi's professional career he has repeatedly exhibited dishonest behavior. That dishonest behavior led to both citations that are being considered today. On his 2001 application, Dr. Politi did not fully and honestly answer the questions. He disclosed a one-month period of probation that he received while in residency in South Carolina, and that he subsequently left the program. He failed to answer honestly that it was, in fact, a 90-day probation for a variety of personal and patient care issues, and that he accepted the offer to resign in lieu of being terminated from that residency program. He also failed to honestly answer and report the warning letters that he received while in that residency program. One of those warning letters was directly related to dishonest behavior. He was also dishonest in a subsequent application for a West Virginia license. He didn't disclose that he'd appeared for a deposition in Ohio, related to unethical conduct in which he had participated prior to submitting his West Virginia license application. He also failed to list that he had applied for an Ohio license at all on that West Virginia application. It was a clear and unequivocal question to list all states in which he had applied for licensure. He tried to say that he relied on his attorney's advice; however, the attorney only looked at the first question and somehow failed to look at the page, or render advice on whether or not Dr. Politi should list whether he had applied to Ohio at all.

Mr. Michael stated that Dr. Politi showed a continual problem with honesty that is continuing to be evident through the residency programs and his applications to Ohio and West Virginia. He added that he believes that many of Dr. Politi's answers at hearing were also dishonest attempts to gloss over the problems, not to accept responsibility for what had happened and to be untruthful with this Board. He is in agreement with the proposed denial of Dr. Politi's application; however, he disagrees with paragraph 2 of the Proposed Order and the conclusion that the Board can fully reexamine the issues underlying these notices of opportunity for hearing should the Board set a minimal date when Dr. Politi could reapply to Ohio. Last year, in a similar situation, the Board was advised by Mr. Pratt that a res judicata problem would arise when setting a specific date for reapplication, because the period during which the respondent could not reapply would be the discipline for the conduct in the cite letter and further reevaluation of the underlying issues would be inappropriate. The problem could be avoided by simply making the Board's Order a denial. If the Board intends to allow him to reapply in the future, a denial would preserve the Board's rights to re-examine the issues that were in the cites, as well as any other issues the Board may wish to look at at that point in time. Deletion of paragraph 2 and a deletion of the last paragraph on page 29 of the Proposed Order would preserve the Board's ability to fully reconsider the matters, should Dr. Politi file a subsequent application.

**DR. SOMANI MOVED TO APPROVE AND CONFIRM MR. ROBERTS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF BARRY J. POLITI, M.D., M.P.H. DR. STEINBERGH SECONDED THE MOTION.**

Mr. Browning stated that he would now entertain discussion in the above matter.

Dr. Talmage stated that, despite the protestations of Dr. Politi, the Board should not consider patient care. This is not a minimal standards case. It is a case of fraud in filling out the application.

Dr. Talmage stated that he would go along with the Assistant Attorney General's recommendation to remove paragraph 2 of the Proposed Order, but he would not agree to remove the last paragraph on page 29 of the Report and Recommendation. That latter paragraph does not have a limiting time on it, but only uses the words, "(s)hould Dr. Politi elect to again apply for licensure...." Dr. Talmage stated that he would be amenable to eliminating paragraph 2 since a simple denial allows him to apply at some future time, when he has sufficiently stabilized his life, his practice and can prove that he is fit to practice in the State of Ohio.

**DR. TALMAGE MOVED TO AMEND THE PROPOSED ORDER TO DELETE PARAGRAPH 2 AND TO RENUMBER THE SUBSEQUENT PARAGRAPHS. DR. BHATI SECONDED THE MOTION.**

Dr. Steinbergh stated that Dr. Politi has committed fraud in application for licensure in both Ohio and West Virginia. The issue is one of honesty. When a young person demonstrates dishonesty in both his postgraduate years and again in a licensure application, this is a clear signal that there is a problem. Part of the fitness to practice medicine is not just the knowledge of medicine and application to patient care, but the ability to be honest, which directly affects patient care. She noted that Dr. Lammie testified that the discipline he received in South Carolina was partially because of his dishonesty. One has to wonder, and it was clear from the record, that Dr. Politi was not honest in his postgraduate years. Therefore, one must worry about whether or not his assessment of patients, his plans for a patient and all the decisions he makes in patient care will be approached with an honest attitude. If one is unethical, this goes throughout one's life. The decision to not complete an application honestly was Dr. Politi's decision. She stated that she doesn't know why he needed to go to an attorney. The questions are clear. He should answer them honestly and provide the information that is asked, and then let the chips fall where they may. He shouldn't go looking for ways to get around the licensure process. Dr. Steinbergh stated that she doesn't think that Dr. Politi will ever be an appropriate candidate for licensure in the State of Ohio. She stated that she would permanently deny his application for licensure in this state. She hesitates to think that he will be able to prove that he has suddenly become honest.

Dr. Egner stated that Dr. Politi is a dishonest person, and he hasn't come to grips with that. Part of that is his youth, and part of that is that he still can't accept responsibility. His underlying problem has been that he's on the road to becoming the prototype of the disruptive physician. The Board doesn't handle that all too often, but that is very much Dr. Politi's impairment. She believes that, with more help, he can overcome that, but he has to come to grips with it. He is not a team player, and when you're not a team player, you're constantly making excuses as to why you don't fit into the team. Medicine is definitely a team effort. You have got to be able to work with other physicians, with nurses, and consider the patient, also, as part of that team. He's not been able to do that in his past.

Dr. Egner stated that she's not willing at this point for the Board to permanently deny him. She stated that, like an impaired physician, he could come back at some point in time and show the Board that he's a more mature, mentally stable individual.

Dr. Egner continued that she understands the Assistant Attorney General's recommendation, but if the Board takes the date out, what is to prevent Dr. Politi from coming back in three to six months to reapply, other than his heeding the Board's discussion today and realizing that it would be an ill-advised thing to do. She doesn't particularly want to close the door completely, but she wants Dr. Politi to understand that the Board will need a lot more demonstration of the kind of individual that he is, and that he's able in the future to be honest, forthcoming, give good patient care, and work in that team that is so necessary.

Dr. Somani stated that there is no question that Dr. Politi has been dishonest in the past. He noted that today's testimony was not convincing because Dr. Politi brings in a lot of excuses for what he did, rather than accepting the reality that it is he who should be responsible for all of it. Dr. Somani stated that his major concern is the statement that Dr. Politi has made that no patient harm has occurred. The Board has not had much discussion about this, but he would like to point out to Dr. Politi that the Board doesn't have to have 100% foolproof evidence that patient harm has occurred. The Board is responsible to set guidelines on how he practiced, and the Board isn't willing to take the possibility of potential harm happening because of the physician's conduct and practice. That's a clear message the Board needs to convey to him. When Dr. Politi takes care of the patient, he has to take care of the patient in the best possible way with no probability of causing harm. Demonstration of harm is not necessary for the Board to take action.

Dr. Egner agreed with Dr. Somani's statement, but added that Dr. Politi was not charged with patient harm in the Board's citation letter. Although the Board may look and see where that may occur, the Board must look at fraud in his application and misrepresentation.

Dr. Somani stated that he is looking at dishonesty.

Dr. Bhati stated that Dr. Politi is a young man who obviously made a lot of mistakes. There are certain mitigating circumstances, but these are excuses that are not acceptable. Dr. Bhati stated that denying Dr. Politi completely would not be the right thing to do. The Board should give him one more chance to get better. If he comes back and proves that he has gotten better, it would be fair to reconsider his application at that time.

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye

Dr. Garg - abstain  
Dr. Steinbergh - aye

The motion carried.

**DR. TALMAGE MOVED TO APPROVE AND CONFIRM MR. ROBERTS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF BARRY J. POLITI, M.D., M.P.H. DR. BHATI SECONDED THE MOTION.** A vote was taken:

Vote:

Mr. Albert - abstain  
Dr. Egner - aye  
Dr. Talmage - aye  
Dr. Bhati - aye  
Dr. Somani - aye  
Ms. Sloan - aye  
Dr. Davidson - aye  
Dr. Agresta - aye  
Dr. Garg - abstain  
Dr. Steinbergh - aye

The motion carried.



# State Medical Board of Ohio

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

October 9, 2002

Barry J. Politi, M.D.  
622 Whitney Avenue #2  
Pittsburgh, PA 15221

Dear Doctor Politi:

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, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about September 10, 2001, you submitted an Application for Certificate – Medicine or Osteopathic Medicine [Ohio License Application] to the State Medical Board of Ohio. Your Ohio License Application is currently pending.
- (2) On or about August 5, 2002, you submitted an application to the West Virginia Board of Medicine [West Virginia Application].
  - (a) In the informational section of your West Virginia Application, you answered “NO” to the following question:

Have you ever, in any jurisdiction, for any reason:

- 1) been called before or appeared before any board or panel for discussions or questions concerning violations of the law or rules pertaining to the practice of medicine, or for unethical conduct?  
(Emphasis in the original).

In fact, on or about March 4, 2002, you appeared for a deposition before State Medical Board of Ohio [Ohio Board] staff regarding questions concerning potential fraud in your application currently pending before the Ohio Board.

- (b) In the State Licensure Information section of your West Virginia Application, you were required to “[l]ist ... any state or jurisdiction in which you have ever applied for a medical license, including those where your application was withdrawn.”

*Mailed 10/10/02*

Although you submitted your pending Ohio License Application to the Ohio Board on or about September 10, 2001, you failed to list or otherwise identify your Ohio License Application in your West Virginia Application.

Your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute a failure to furnish satisfactory proof of good moral character as required by Section 4731.08, Ohio Revised Code.

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

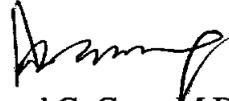
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at 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, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, effective March 9, 1999, 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,



Anand G. Garg, M.D.  
Secretary

AGG/blt  
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5149 0433  
RETURN RECEIPT REQUESTED

cc: James McGovern, Esq.  
1328 Dublin Rd.  
Columbus, OH 43215-1090

CERTIFIED MAIL # 7000 0600 0024 5149 0440  
RETURN RECEIPT REQUESTED

cc: S. Manoj Jegasothy, Esq.  
Two PPG Place  
Suite 400  
Pittsburgh, PA 15222-5402

CERTIFIED MAIL # 7000 0600 0024 5140 4676  
RETURN RECEIPT REQUESTED



# 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/)

May 8, 2002

Barry J. Politi, M.D.  
622 Whitney Avenue #2  
Pittsburgh, PA 15221

Dear Doctor Politi:

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, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about September 10, 2001, you submitted an Application for Certificate – Medicine or Osteopathic Medicine [License Application] to the State Medical Board of Ohio. Your License Application is currently pending.
- (2) The “Additional Information” section of your License Application includes the instruction that, should you answer “YES” to any question, “you are required to furnish complete details, including date, place, reason and disposition of the matter. All affirmative answers must be thoroughly explained on a separate sheet of paper. You must submit copies of all relevant documentation, such as court pleadings, court or agency orders, and institutional correspondence or orders” (emphasis in the original). In that “Additional Information” section of your License Application you answered “YES” to question number 4, which asks the following:

Have you ever resigned from, withdrawn from, or have you ever been warned by, censured by, disciplined by, been put on probation by, been requested to withdraw from, dismissed from, been refused renewal of a contract by, or expelled from, a medical school, clinical clerkship, externship, preceptorship, residency, or graduate medical education program?

*Mailed 5.9.02*

- (a) You stated in response to question number 4 that, during your family practice residency program at the University of South Carolina [USC residency], you were “on academic probation, for approx. one month,” that you “made a decision to leave the program to pursue other interests,” and that “no patient has or was ever injured because of [your] involvement in their clinical care.”
- (i) In fact, as reflected in a letter from your residency program director, you were placed on academic probation at the USC residency for an initial period of ninety days due to reasons including, but not limited to, the following:
- a. You discharged a postpartum patient who was subsequently readmitted with late eclampsia; you incorrectly indicated in the patient record that the patient was discharged on antihypertensive medication; and you failed to recognize Prinivil as an ACE inhibitor.
  - b. You wrote a prescription for Depakote for a fellow resident who was in impaired physician surveillance and failed to document any clinical note defining a therapeutic relationship with that resident.
  - c. You prescribed 125 mg. Rocephin for a patient with pyelonephritis although “this dosage has no basis in pyelonephritis and reflects inattention to confirm drug doses, a pattern that is repeatedly documented in previous counseling.”
  - d. During your pediatric rotation, you performed unacceptably with the private pediatric attending physicians.
  - e. You failed to recognize a possible case of pre-eclampsia.
  - f. Your conference attendance fell short of graduation requirements; you also “frequently sign[ed] in, [got] your lunch, and [left], without attention to conference content.”
- (ii) You were informed by the USC residency that you were going to be terminated from that program and you accepted an offer to resign from that program in lieu of termination.

- (b) Although you answered "YES" to question number 4, you failed to disclose that you were given a written warning at the USC residency on or about June 15, 2000, for careless attention to detail regarding medication errors and interpersonal conflicts, and that you were given a written warning at the USC residency on or about August 15, 2000, for dishonesty.

Your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute "fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute a failure to furnish satisfactory proof of good moral character as required by Section 4731.08, Ohio Revised Code.

Further, you are ineligible for licensure as requested in paragraph (1) above because you have failed to submit evidence satisfactory to the Board that you have successfully completed not less than twenty-four months of graduate medical education through the second-year level of graduate medical education or its equivalent as determined by the Board as required by Sections 4731.091 and 4731.14(B)(2), Ohio Revised Code.

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

You are further advised that, 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, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, effective March 9, 1999, 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,



Anand G. Garg, M.D.  
Secretary

AGG/blt  
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5141 7973  
RETURN RECEIPT REQUESTED

cc: Thomas W. Hess, Esq.  
191 West Nationwide Blvd.  
Suite 300  
Columbus, OH 43215

CERTIFIED MAIL # 7000 0600 0024 5141 7966  
RETURN RECEIPT REQUESTED

cc: S. Manoj Jegasothy, Esq.  
Two PPG Place  
Suite 400  
Pittsburgh, PA 15222-5402

Barry J. Politi, M.D.  
Page 5

CERTIFIED MAIL # 7000 0600 0024 5141 7959  
RETURN RECEIPT REQUESTED