



# YOUR REPORT

FROM THE STATE MEDICAL BOARD OF OHIO

FALL 1996

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## A WORD FROM THE EDITORS

*Your Report's* Spring 1996 article about the Ohio Medical Board's centennial anniversary drew some engaging responses from historically-minded readers. Excerpts from letters we received about the Medical Board's past appear beginning on page 6 of this issue, along with a fascinating look back through the time tunnel at a turn-of-the-century disciplinary hearing.

Lest we forget the modern-day practitioner, this issue of *Your Report* also addresses such timely topics as recent Ohio legislation pertaining to physician assistants and advanced practice nurses; sexual harrassment; and the controversial weight-control medication Redux. A summary of important new State Medical Board rules detailing the responsibilities of HIV/HBV-positive licensees and their treating physicians begins on page 22.

We hope that you find this issue of *Your Report* informative, and look forward to your continuing feedback.

*Charles D. Stienecker, M.D., President  
& Lauren Lubow, J.D., co-editors*

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## **Sexual Misconduct: Accountability & Responsibility**

*by Charles D. Stienecker, M.D., President*

The subject of sexual harassment has become a hot topic on the medical staff dinner circuit. More and more hospitals are being held responsible for maintaining a harassment-free workplace and are finding that doctors are the subjects of the complaints and grievances. While a recent Federation of State Medical Boards policy defines sexual violation and impropriety in physician/patient terms, the precepts are being extended to all those circumstances in which the physician, by virtue of his/her position, has dominance, or "power," over another. The questions of moral turpitude and ethics are then extended to relationships with nurses, hospital staff, students and residents, and even to patients' families.

The physician in the workplace is held to the same level of accountability and responsibility as in the doctor/patient relationship because of this power position and the public trust. Sexual harassment is thus placed in a different light when committed by a physician, who becomes much like an employer where the quid pro quo situation is more likely to be perceived by the victim, who has accepted physician dominance.

The following definitions of sexual violation and sexual impropriety are excerpted from the *Report on Sexual Boundary Issues* by the Federation of State Medical Boards' Ad Hoc Committee on Impairment, which was adopted as policy by the Federation in April 1996.

\* \* \* \* \*

Physician sexual misconduct is behavior that exploits the physician-patient relationship in a

sexual way. This behavior is nondiagnostic and nontherapeutic, may be verbal or physical, and may include expressions of thoughts and feelings or gestures that are sexual or that reasonably may be construed by a patient as sexual.

The committee believes that there are primarily two levels of sexual misconduct: sexual violation and sexual impropriety. Behavior listed in both levels may be the basis for disciplinary action by a state medical board if the board finds that the behavior was an exploitation of the physician-patient relationship.

Sexual violation may include physician-patient sex, whether or not initiated by the patient, and engaging in any conduct with a patient that is sexual or may be reasonably interpreted as sexual, including but not limited to:

1. sexual intercourse, genital to genital contact;
2. oral to genital contact;
3. oral to anal contact, genital to anal contact;
4. kissing in a romantic or sexual manner;
5. touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment, or where the patient has refused or has withdrawn consent;
6. encouraging the patient to masturbate in the presence of the physician or masturbation by the physician while the patient is present;
7. offering to provide practice-related services, such as drugs, in exchange for sexual favors.

Sexual impropriety may comprise behavior, gestures, or expressions that are seductive, sexually suggestive, or sexually demeaning to a patient, including but not limited to:

1. disrobing or draping practices that reflect a lack of respect for the patient's privacy, deliberately watching a patient dress or undress, instead of providing privacy for disrobing;

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2. subjecting a patient to an intimate examination in the presence of medical students or other parties without the explicit consent of the patient or when consent has been withdrawn;
  3. examination or touching of genitals without the use of gloves;
  4. inappropriate comments about or to the patient, including but not limited to making sexual comments about a patient's body or underclothing, making sexualized or sexually demeaning comments to a patient, criticizing the patient's sexual orientation (homosexual, heterosexual, or bisexual), making comments about potential sexual performance during an examination or consultation except when the examination or consultation is pertinent to the issue of sexual function or dysfunction, requesting details of sexual history or sexual likes or dislikes when not clinically indicated for the type of consultation;
  5. using the physician-patient relationship to solicit a date;
  6. initiation by the physician of conversation regarding the sexual problems, preferences, or fantasies of the physician;
  7. examining the patient intimately without consent.

\* \* \* \*

It is the difficult "obligation of nobility" to be more sensitive and circumspect in one's actions in order to avoid being seen as taking advantage of a position of power. In this case, the cry that, once again, the physician is being discriminated against is balanced by the long history of tolerance people have shown for questionable liberties because the perpetrator was a physician. But the tenor of the times is changing, and physicians, like all others in the workplace, must be cognizant of the boundaries of conduct and their particular vulnerability.

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## LEGISLATIVE UPDATE

The following summary of legislation is provided to assist licensees in being aware of changes in the law that may affect their practices. The summary does not purport to be all-inclusive. Licensees are encouraged to periodically review relevant portions of the Ohio Revised Code (statutes) and Ohio Administrative Code (rules) to remain current in their knowledge and understanding of the legal parameters impacting their medical practice. You may also wish to consult your state and local professional associations for further information.

The summary in this newsletter utilizes language taken directly from the Final Analysis of the bill, as prepared by the Legislative Service Commission of the State of Ohio.

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**Amended Substitute Senate Bill 154** was passed by the 121st General Assembly, signed by the Governor, and became effective on September 10, 1996.

(continued on next page)

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Sponsors: Sens. Kearns, Drake, Sheerer, Gaeth, Greenwood, McLin, Kucinich, J. Johnson, Furney, Howard, Ray, Oelslager, Watts, Zaleski, Carnes, Long, Latell, Cupp, Herington, Horn, Nein, Vukovich, Burch, Espy, Boggs, B. Johnson, Yarbrough, Snyder. Reps. Lawrence, Van Vyven, Beatty, Blessing, Brading, Ford, Fox, Grendell, Hagan, Jacobson, Jones, Maier, Ogg, Olman, Sawyer, Sines, Sweeney, Taylor, Terwilleger, Wachtmann, Walen.

- Provides for issuance by the Board of Nursing of certificates of authority to practice nursing as a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner.
- Defines the scope of practice and establishes certification and educational requirements for each nursing specialty.
- Establishes for each nursing specialty requirements for collaborating with or being supervised by a physician, podiatrist, or dentist.
- Extends until January 1, 2010 (from January 1, 1997), the pilot programs for advanced practice nurses operated by the schools of nursing at Case Western Reserve University, Wright State University, and the University of Cincinnati.
- Creates the Direct Entry Midwifery Study Council consisting of 11 members to study the regulation of direct entry midwives.

\* \* \* \*

The bill establishes four advanced nursing specialties: certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, and certified nurse practitioner. To practice in one of these specialties, an individual must be a registered nurse and must obtain a certificate of authority from the Board of Nursing by meeting

certain educational requirements, as well as the certification and examination requirements of specified national credentialing organizations.

Supervision requirements apply to certified registered nurse anesthetists. "Supervision" means being under the direction of a physician, podiatrist, or dentist. **When administering anesthesia, the nurse must be in the immediate presence of the physician.** When performing other functions related to anesthesia, the nurse must be supervised, but the bill does not require the immediate presence of the physician.

Collaboration requirements apply to the remaining three nursing specialties. "Collaboration" means that a physician or podiatrist is continuously available to communicate with the nurse either in person or by radio, telephone, or other form of telecommunication. Clinical nurse specialists and certified nurse practitioners may collaborate with physicians or podiatrists. Certified nurse-midwives may collaborate only with physicians.

For the three nursing specialties subject to collaboration requirements, the bill requires that the relationship between a nurse and physician or podiatrist be established by their entering into a "standard care arrangement." The arrangement is a written, formal guide for planning and evaluating patients' health care. **The bill requires the nurse and the physician or podiatrist to maintain the standard care arrangement on file at the site where the nurse practices.**

**A nurse may enter into a standard care arrangement with one or more physicians or podiatrists, but may not enter into an arrangement with a physician or podiatrist whose practice is not the same or similar to the nurse's specialty.** A standard care arrangement is not required for a clinical nurse specialist whose nursing specialty is mental health or psychiatric mental health, as determined by the

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Board of Nursing. Such nurses are, however, required to practice in collaboration with physicians.

**The nurse practicing under a standard care arrangement may practice only in accordance with the arrangement. Prior approval of the arrangement by the Board of Nursing or the State Medical Board is not required, but either board may review it periodically to determine compliance with the bill.** Under the bill, each standard care arrangement must contain the following:

- (1) Criteria for referring a patient to a collaborating physician or podiatrist;
- (2) A process for the nurse to obtain a consultation with the physician or podiatrist;
- (3) A plan for coverage in instances of emergency or planned absences of either the nurse or the collaborating physician or podiatrist that provides the means whereby a physician or podiatrist is available for emergency care;
- (4) The process for resolution of disagreements regarding matters of patient management between the nurse and the collaborating physician or podiatrist;
- (5) A procedure for a regular review of the referrals by the nurse to other health care professionals and the care outcomes for a random sample of all patients seen by the nurse;
- (6) If the nurse regularly provides services to infants, a policy for care of infants up to age one and recommendations for collaborating physician visits for children from birth to age three;

- (7) Any other criteria required by rule of the Board of Nursing.

Applicants for renewal in the three specialties subject to collaboration requirements are required to submit the names and business addresses of their current collaborating physicians or podiatrist. **In turn, physicians and podiatrists are required to report the names of all nurses with whom they are collaborating when renewing their licenses with the State Medical Board.**

The bill specifies that its requirements for standard care arrangements do not prohibit a hospital from hiring a nurse as an employee and negotiating standard care arrangements on behalf of the employee as necessary to meet the bill's requirements. A standard care arrangement between a nurse employed by a hospital and the nurse's collaborating physician are subject to approval by the medical staff and governing body of the hospital prior to implementation of the arrangement at the hospital.

The bill authorizes the State Medical Board to impose its existing licensing sanctions against a physician or podiatrist who fails to maintain standard care arrangement with a nurse practicing one of the three specialties that require collaboration and a standard care arrangement: certified nurse-midwives, certified nurse practitioners, and clinical nurse specialists other than those specializing in mental health or psychiatrist mental health.

All nurses practicing a nursing specialty are authorized to provide to individuals and groups nursing care that requires knowledge and skill obtained from advanced formal education and clinical experience. Within each specialty, a nurse is authorized to perform services consistent with the nurse's education and national credentials and in accordance with rules adopted by the Board of

See LEGISLATION on page 6

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# Regulation of Medical Practice in Early Ohio

It is estimated that in the early part of the nineteenth century, less than twenty percent of Ohio physicians held medical degrees. The usual procedure to become a medical practitioner was a preceptorship of three years with a physician, after which a letter of proficiency was issued. Upon registration with legal authorities, one became a “legal practitioner.”

In 1811, a legislative act established five medical districts in Ohio, in which medical censors were appointed to examine non-degree candidates for the practice of medicine. Candidates who passed these examinations were called “licensed practitioners.” An 1821 act provided for censors to

meet yearly in Columbus. This body was called the Medical Convention of Ohio, the forerunner of the Ohio State Medical Association. Holders of medical degrees, in general, became licensed practitioners without examination and members of district medical societies.

In the early 1830’s competitiveness and animosity between “regular” and “sectarian” physicians—as well as rivalries and jealousies within these groups—precluded any uniform standards regarding medical regulation. Consequently, out of frustration, in 1833 the Ohio legislature repealed all laws pertaining to the regulation of the

practice of medicine! This opened the way for proponents of outlandish theories and charlatans to settle in Ohio and—with little or no formal education—be allowed to practice medicine. This situation existed for 35 years, with only limited influence from local and state medical societies.

In 1868, a legislative act required two twelve-week courses of instruction and graduation from a medical college to practice medicine. Since there was an abundance of medical colleges in Ohio at the time, it was easy to receive a medical degree; and

see **REGULATION** on page 8

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## **LEGISLATION** (cont.)

Nursing. When being supervised by a podiatrist or dentist, the nurse’s scope of practice is limited to the procedures the podiatrist or dentist is authorized to perform. The bill specifies that the existing prohibition against nurses engaging in medical diagnosis, prescription of medical measures, and the practice of medicine or surgery or any of its branches does not prohibit a nurse from practicing in one of the specialties established by the bill.

Under the bill, the Board of Nursing is required to adopt in accordance with the Administrative Procedure Act rules establishing (1) standards and procedures for approving certificates of authority to practice

a nursing specialty and for the renewal of those certificates, and (2) quality assurance standards for nurses practicing a nursing specialty.

For purposes of the medical assistance program, the bill provides that the division of any reimbursement between a collaborating physician or podiatrist and a nurse practicing a specialty requiring collaboration must be determined and agreed on by the nurse and the collaborating physician or podiatrist. The bill prohibits Medicaid reimbursement from exceeding the payment that the physician or podiatrist would have received had the physician or podiatrist provided the entire service.

The bill creates the Direct Entry Midwifery Study Council consisting of 11 members to study the regulation of direct entry midwives. The council has until December 31, 1996, to submit an interim progress report to the Senate President and the Speaker. The Council must prepare and submit a final report to the President and the Speaker no later than December 31, 1997. The final report is to contain the Council’s recommendations regarding whether Ohio should recognize and regulate direct entry midwives and what qualifications are needed for recognition of direct entry midwives. After submitting the final report, the Council will cease to exist. ◆

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# A PROTEST FROM OUT OF THE PAST

*"I have labored hard and earnestly for more than 20 years. I want to forever efface the memory of the past four months and be remembered by you, and everyone, as an earnest, true, loyal member of the grand old army of high minded medicos."*

The words could ring as true today as they did in 1910, when Dr. B. P. Ivey of Cincinnati wrote to the State Medical Board of Ohio trying to clear his name of charges.

Ivey's case is one of the older disciplinary actions taken by the board, which was established by state law February 27, 1896. From 1811 to 1824, doctors had been licensed by county medical societies. Beginning in 1831, young doctors were screened by examiners appointed by the Ohio Medical College in Cincinnati who gauged whether they were competent to practice medicine. A battle among medical schools forced the repeal of laws governing medicine, and from 1868 until the board was founded there actually were no laws to

regulate the practice of medicine in Ohio.

The dry, old legal-sized pages recording Ivey's hearing tell a tale of intrigue, drama, even poetry. Ivey graduated from the Medical College of Alabama in Mobile in 1887. He applied for an Ohio medical license in 1896, at age 35.

At age 48, in 1909, he was charged with gross immorality by the board, which threatened to revoke his license. Ivey was working with the "Phenomenal Kraus," a man who claimed he could fill patients with so much electricity that a piece of paper held to the patient's toes would be ignited.

Kraus' methods, according to an article in a Cincinnati medical journal, were "extremely crude, but his skill in extracting reluctant dollars from the pockets of his victims is unsurpassed."

The 1910 hearing record detailed the account of James Harvey Stewart, 56, a Catlettsburg, Ky., man

see **PROTEST** on page 8

## Dr. H. E. Beebe, Oldest Physician In Co., Dies; His Reputation Was State-Wide

Sidney and Shelby county are mourning the death of their oldest medical servant today as Dr. H. E. Beebe, 89, widely known over the state in medical societies, passed away Friday morning at 8:20 at his home.... Dr. Beebe retired from active medical practice several years ago after he completed 55 years of service to the citizens of this community and county....

Henry E. Beebe was born on July 24, 1849, at Carey, Wyandot county, the son of Buell S. and Lucinda Keir Beebe, who resided on a farm in that community. Both of his parents have preceded him in death. He attended public schools there and went to Wittenberg College, Springfield, for a short time until he turned to the study of medicine.

He went to the Cleveland Homeopathic College at Cleveland from which institution he graduated in 1873 and in casting about for a place to locate, he often told how he investigated several cities before deciding to locate in Sidney. He like to tell that he came here with just enough money to get here but not enough to leave....

Dr. Beebe's acquaintance grew in medical circles throughout the state and he served on the first Ohio Medical board, holding several offices during the thirteen years of incumbency. He had been a member of the Ohio Homeopathic Medical society since 1873 and at the time of his death was its oldest member. He had been president of this group in 1886. He was a member of the American Institute of Homeopathy for over fifty years and served as its president in 1904. He was on the state examining board, which he helped organize, for seven years, serving as president in 1903.

One of his most highly prized awards was his membership in the American College of Surgeons, which was organized in 1913 and he was awarded his membership in the following year. This was an honor of which he was justly proud....

*Sidney Daily News, Feb. 11, 1938; contributed by T. Baumann, M.D., of Sidney, Ohio*

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**PROTEST** (cont.)

who paid Ivey \$200 for treatments of “Bright’s disease” and liver and heart trouble. Stewart said doctors took a glass tube and rubbed it on his back and spinal column.

While the treatments were supposed to make him “sleep like a baby,” Stewart said he couldn’t sleep at all. During the hearing, Stewart said he told Ivey, “Hold on right there. I want you to stop. I have got tired of that. I want to sleep like a man once. You have said that I would sleep like a baby and I says, ‘Two babies like me would have kept all Cincinnati awake last night!’”

Hearing officers asked Ivey about false advertising claims. Ivey said the advertising was injudicious, he didn’t think he should be held liable for that.

“Do you know of the advertising?” the board asked.

“Certainly, but I will tell you this plainly, that the cases that come in there . . . receive the very best treatment at the hands of the medical fraternity, when they get there,” Ivey responded.

“And you stick them for all the money they have?”

“And so do outside doctors,” Ivey shot back.

A member of the Board said, “I beg your pardon.”

Ivey said, “Everyone is out after the money. There are a great many of us who would like to make more money. We are poor collectors. You may be a fine physician, but you may have to work hard to get the people to pay. The doctor is the last man some people will pay. I have absolutely carried on my books professional people who

didn’t pay and who could have paid.”

Ivey’s license was revoked April 5, 1910.

Ivey wrote a scathing letter to the board after the verdict: “Now so far as the constitutionality of your act is concerned, my authority for revoking each of your licenses is as good as yours. But out of respect for the efforts of the state legislature to clothe ‘plaintiffs,’ as in your case, with both judge and jury powers I shall not pretend to practice medicine

in Ohio until the courts have set aside your action against me. Concerning your charge of gross immoral conduct I will not pass by so easily. I am in Ohio yet, fearless and exultantly, I am, B. P. Ivey.”

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*This story by Catherine Gilfether originally appeared in the Cleveland Plain Dealer on October 14, 1990. It is reprinted here with the Plain Dealer's permission.*

**REGULATION** (cont.)

there is no record of prosecution under this law, which proved to be ineffective.

Little effective regulation existed until 1896, when the Ohio Medical Protection Act was passed, authorizing the formation of a State Board of Medical Registration and Examination. The purpose of the Board was to issue medical licenses by endorsing candidates with medical degrees and to examine those without degrees. In the few years following the passage of the 1896 act, 900 non-degree physicians left Ohio to practice elsewhere, and more prosecutions for the illegal practice of medicine took place in Ohio than in any other state. A law that became effective in 1900 provided for a high educational requirement prior to entering medical school and for the examination of all applicants for medical licenses.

The stricter educational requirements endorsed by the State Medical Board and national organizations, such as the Association of American Medical Colleges (organized 1890) and the AMA Council on Medical Education (organized 1904), resulted in the closing of all but a few of Ohio’s medical colleges. With the exception of the powerful Cincinnati Eclectic Medical College, which existed until 1939, by 1914 all of Ohio’s proprietary medical schools had become extinct—leaving the medical departments of the University of Cincinnati, the Ohio State University, and Western Reserve University. These were the only medical schools in Ohio for half a century until the 1960s and 1970s, when the state legislature approved schools in Toledo, Dayton, Rootstown, and Athens.

*Contributed by Emil R. Pinta, M.D., Worthington, Ohio*

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# APPEALING A STATE MEDICAL BOARD ORDER

*In past editorials published in Your Report, Medical Board Member Charles D. Stienecker, M.D., touched on aspects of the Medical Board's administrative hearing process that can seem intimidating to those who don't make a regular practice of appearing before the Board. Dr. Stienecker noted that, if a practitioner feels that the decision entered by the Medical Board in his or her case isn't right, an appeal of that decision can be taken. The following explanation of the appellate process appears courtesy of the Office of Ohio Attorney General Betty Montgomery.*

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Any licensee adversely affected by an Order of the State Medical Board may appeal that Order to the Franklin County Court of Common Pleas ("FCCCP"). If the licensee desires to appeal, he or she must, within fifteen days after the mailing of the notice of the Board's Order, file a Notice of Appeal with the Board setting forth the Order appealed from and the grounds of the appeal. Within this fifteen-day time period, the licensee must also file a copy of the Notice of Appeal with the FCCCP.

The filing of the Notice of Appeal does not automatically operate to suspend ("stay") the effect of the Board's Order while the appeal is being considered by the FCCCP. The effect of the Board's Order will only be suspended during the appeal if the licensee requests a stay from the FCCCP and can demonstrate (1) that an unusual hardship to the licensee will result from the execution of the Board's Order pending determination of the appeal, and (2) that the health, safety and welfare of the public will not be threatened by suspension of the Board's Order. If the FCCCP decides that these criteria are met and grants a stay pending appeal, the stay will continue until the FCCCP renders a final decision regarding the appeal, or fifteen months after the filing of the Notice of Appeal with the FCCCP, if a decision has not been rendered prior to that time. Additional stays, or extensions of existing stays, may be granted throughout the appeals process.

Within thirty days after receipt of the Notice of Appeal, the Medical Board must prepare and certify to the FCCCP a complete record of the proceedings that resulted in the Board's Order. Furthermore, upon the request of the licensee, the Board must provide the licensee, at his or her expense, with a complete copy of the record, as well as a copy of the transcript and evidence submitted at the hearing.

In reviewing the Board's Order, the FCCCP is limited to considering only that which is included in the record certified by the Board. In limited circumstances, however, the FCCCP will admit additional evidence if the requesting party demonstrates that the evidence is newly discovered and could not reasonably have been discovered prior to the Medical Board hearing.

In deciding the appeal, the FCCCP is required to apply the standard of review established by R.C. 119.12. The FCCCP may affirm the Board's Order if, upon consideration of the entire record (and any additional evidence the Court elected to admit), the Court finds that the Order is supported by "reliable, probative and substantial evidence and is in accordance with law." If the FCCCP does not make such a finding, it may reverse, vacate, or modify the Order, or make another ruling that is supported by the evidence and in accordance with law.

To assist the FCCCP in deciding the appeal, the licensee, typically through legal counsel, submits a written brief to the Court setting forth the factual and legal arguments that form the basis of the appeal. Then the Board, represented by the Ohio Attorney General, submits a written brief setting forth reasons why the Board's Order should be upheld. Following submission of the Board's brief, the licensee is provided with an opportunity to address the Board's arguments via a written reply brief. Finally, before deciding the appeal, the FCCCP may, in its discretion, allow counsel for the parties to orally present the parties' respective positions to the Court.

see **APPEALS** on page 10

The decision of the FCCCP is final unless it is reversed, vacated or modified on appeal to the Tenth District Court of Appeals. An appeal to the Court of Appeals mirrors many of the elements of an appeal to the FCCCP. In particular, appeals to both courts involve the filing of a timely Notice of Appeal, the certification of a complete record of the proceeding, the submission of written legal briefs supporting or opposing the basis of the appeal, and the potential opportunity to present oral argument. However, in deciding the appeal, the Court of Appeals is required to apply a different standard of review than the FCCCP applied. In an appeal of a question of fact, the decision of the FCCCP is given great weight and will be overturned only if the Court of Appeals determines that the decision of the FCCCP was an abuse of discretion. The Court of Appeals is not so limited when reviewing questions of law. When evaluating questions of law, the Court of Appeals, like the FCCCP, exercises unrestricted powers of review.

The decision of the Court of Appeals is final unless the Supreme Court of Ohio grants jurisdiction to hear the appeal and decides to reverse, modify or vacate the Court of Appeal's decision. Unlike lower courts, the Ohio Supreme Court is not obligated to accept an appeal. In determining whether or not to review a case, the Ohio Supreme Court will look to see if the matter in contention involves a constitutional issue or is of public or great general interest. ♦

## HOW OHIO'S NEW PHYSICIAN ASSISTANT LAW AFFECTS YOU

Just a few months after legislative efforts to restructure laws governing physician assistants (P.A.s) took effect, Ohio Governor George Voinovich has been presented with a second bill that reduces the expenses and paperwork to be borne by physician assistants and the physicians who supervise them. Both bills—Substitute Senate Bill No. 143 and Substitute Senate Bill 259, respectively—promise to bring changes to medical practices that utilize P.A. services, as well as to the State Medical Board's P.A. registration process. Here, in brief, is an overview of Ohio's new P.A. statutes and how they could affect you.

### **Delegation to and Supervision of Physician Assistants**

While the new law changes the title "physician's assistant" to "physician assistant," it does not alter the kinds of tasks a P.A. may ordinarily perform. The following duties are often delegated to P.A.s:

- Obtaining comprehensive patient histories;
- Taking patient histories, performing physical examinations, including pelvic, rectal, and genital-urinary examinations when indicated;
- Initiating requests for and/or performing routine laboratory, radiologic and diagnostic studies as indicated;

- Assessing patients for development of treatment plans;
- Implementing treatment plans that have been reviewed and approved by the supervising physician;
- Providing patient education; and
- Assisting in surgery in a hospital setting.

Under previous law, employment of P.A.s was limited to any currently licensed physician who received Board approval. The new legislation expands that employment authority to permit institutional hiring of P.A.s, although they must still function under the supervision and control of an individual physician practicing within the parameters of a Board-approved P.A. utilization plan. The level of supervision required is dependent on the tasks the P.A. undertakes and the practice setting. In every instance, however, a physician must always be available for consultation and direction. Patients who are new to a physician's practice may only be seen by a P.A. when the supervising physician is actually on site, unless a Board-approved standard or supplemental utilization plan specifies otherwise. New patients or established patients with new conditions must be personally seen and evaluated by the supervising physician before any treatment plan proposed by a P.A. can be initiated.

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Although a supervising physician may enter into supervision agreements with an unlimited number of P.A.s, he or she may not supervise more than two P.A.s at a time, and may not delegate tasks to a P.A. that are beyond the physician's or the P.A.'s expertise or normal course of practice. When a supervising physician authorizes a P.A. to practice in a facility's emergency department, the physician must always provide on-site supervision.

### **The P.A. Registration Process**

The new legislation codifies a process for obtaining authorization to supervise a P.A. that is similar to the process that the Board already had in place. The law now clearly specifies that the individual physician who chooses to utilize a P.A. is in charge of supervision and is ultimately responsible for patient care. Substitute Senate Bill No. 259 does establish a system under which a group may submit a utilization plan; nevertheless, every physician within that group must sign a statement approving its terms and agreeing to practice within its parameters.

The new legislation codifies a three step process for obtaining approval for a P.A. to work under physician supervision.

#### **Step I: The Physician Assistant**

The P.A. must hold a **Registration Certificate**. Any P.A. who holds a current, valid certificate from the National Commission of Certification of Physician's Assistants (NCCPA) may apply to the Medical Board for a

registration certificate by submitting an application form along with a nonrefundable \$100 fee. Once granted by the Board, the unique registration number issued by the Board continues to be assigned to the P.A. throughout his or her career in Ohio, regardless of employment status. A biennial renewal of the registration is required, whether or not the P.A. is currently employed. Each renewal application for registration must be accompanied by a \$50 fee. To be eligible for renewal, the P.A. must also maintain NCCPA certification and complete that organization's continuing education requirement. The Board will also issue a temporary registration number to applicants who are scheduled for but have not yet taken the NCCPA examination. If the applicant fails the examination, the temporary registration cannot be renewed. However, if the applicant succeeds in passing the examination, the Board will automatically issue full registration upon receipt of notice directly from the NCCPA.

#### **Step II: The Supervising Physician**

A physician who desires to supervise a P.A. must submit a **Physician Assistant Utilization Plan** on a form provided by the Board. The plan includes a practice description, a listing of the P.A.s functions, and a quality assurance plan. In an effort to reduce processing time and enhance understanding between the Board and physician supervisors as to how P.A.s may be used, the Board and the P.A. Policy Committee plan to develop

model utilization plans for different types of practices, including emergency medicine, family practice, and surgery. Substitute Senate Bill 259 provides that each utilization plan submitted for Board approval must be accompanied by a fee of \$75 per physician, up to a maximum fee of \$750 for groups of ten or more physicians who are applying for identical plans. Once approved by the Board, the utilization plan does not need to be resubmitted for Board review at the time a P.A. is hired.

#### **Step III: Employment of the P.A.**

When a physician who has obtained approval for a utilization plan and a currently registered P.A. wish to enter into an employment relationship, the physician need only notify the Board by filing a **supervision agreement** on a form provided by the Board. The form must be accompanied by a nonrefundable \$25 fee, and biennial renewal of the supervision agreement is required. The form previously utilized by the Board for supervision agreements has been significantly revised as a result of the new legislation to permit the signatures of multiple physician assistants and multiple supervising physicians on one form. The modifications are intended to reduce paperwork while accommodating large group practices. If and when the supervision agreement is terminated, both the supervising physician and P.A. must submit written notification to the Board

see **P.A. LAW** on page 12

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**P.A. LAW** (cont.)

within two weeks, along with an explanation of the reason(s) for the termination.

The Medical Board wants to be certain that registered P.A.s are working within the guidelines set by approved utilization plans and are not involved in the independent practice of medicine. Accordingly, the Board's Quality Assurance Committee has instituted an audit process to assess compliance with approved P.A. utilization plans in order to achieve that goal. Each month, one group practice and one non-group practice that have utilization plans on file with the Board are randomly selected for review by a Board Investigator Supervisor. The Investigator Supervisor will make an unscheduled visit to the practice site to observe the P.A.'s activities and verify that the responsibilities of both the supervising physician and P.A., as outlined in the approved utilization plan, are being met. The P.A.'s daily patient load, the level of supervision, and the expediency of countersignatures will all be noted. Group practices will also be

evaluated for compliance with their approved quality assurance plan, including the mechanisms utilized following the group's QA review to ensure that identified deficiencies are corrected. The findings of the Investigator Supervisor are forwarded to the Board's Quality Assurance Committee for assessment.

While the new physician assistant legislation promises to ease and expedite the registration process for all concerned, there will inevitably be a transition period between the old law to the new. During that time, general questions about the process should be directed to the Board's Public Inquiries Division. If you have questions or concerns about a specific application, please call the Licensure Division. Both divisions can be reached through the Board's reception desk at 614/466-3934.

-- Anand G. Garg, M.D., Ph.D., Member

State Medical Board staff members Sandra Caldwell, Thomas Dilling, J.D., Lauren Lubow, J.D., and Penny McKenzie contributed to this article.

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## STATE MEDICAL BOARD OF OHIO DISCIPLINARY ACTIONS

*March 1996 - July 1996*

**BASCH**, John Steven (MD #65667) - Akron  
**Consent Agreement** - Probationary terms, conditions and limitations imposed based on doctor's admissions that he has suffered from chemical dependency, for which he received treatment through a Board-approved provider; that he has suffered from depression and personality disorder, not otherwise specified; that during a period in 1994, he wrote prescriptions for controlled substances in the names of others in order to obtain controlled substances for his own use; and that he was found guilty in 4/95 of Attempted Deception to Obtain a Dangerous Drug, a first degree misdemeanor. Effective 6/12/96; Agreement to remain in effect for at least two years prior to any request for termination.

**BERRY**, Kevin R. (MD #48752) - Columbus  
**Pre-hearing Suspension** - Pursuant to Section

3719.121(C), O.R.C., doctor's license immediately suspended based on his plea of guilty to three felony counts of Illegal Processing of Drug Documents, for which he was granted treatment in lieu of conviction. Notice mailed 4/18/96. **Consent Agreement** - Medical license indefinitely suspended for at least six months, such time to be calculated from 4/17/96 (the effective date of doctor's pre-hearing suspension); conditions for reinstatement and subsequent probation for minimum of five years established; doctor ineligible to hold D.E.A. registration without prior Board approval. Based on doctor's plea of guilty to three felony counts of Illegal Processing of Drug Documents, for which he was granted treatment in lieu of conviction. Effective 6/12/96.

**BOYD**, Theresa Elaine (MD #62722) - Cleveland  
**Board Order** - Permanent revocation of medical license

stayed, subject to one year suspension retroactive to 6/2/95; probationary terms, conditions and limitations established for at least five years; doctor ineligible to hold or apply for D.E.A. registration without prior Board approval. Based on doctor's plea of guilty to one felony count of drug abuse. Effective 6/13/96.

**BREWER**, Eugene Allan (MD #45064)  
Kansas City, MO

**Board Order** - Medical license indefinitely suspended, min. three months; conditions for reinstatement and subsequent probation for at least three years established. Based on doctor's failure to employ acceptable scientific methods in the selection of modalities for treatment of disease and failure to conform to minimal standards of care with respect to treatment of patients in the course of his practice of urology. Effective 7/11/96.

**CINELLI**, Albert Burton (MD #29750) Youngstown  
**Pre-hearing Suspension** - Pursuant to Section 3719.121(C), O.R.C., doctor's license immediately suspended based on his plea of guilty to one felony count of knowingly possessing, with the intent to illegally dispense and distribute, controlled substances. Notice mailed 7/11/96.

**CINTRON**, Emma L. (MD #46146) - Perrysburg  
**Consent Agreement** - Medical license indefinitely suspended; conditions for reinstatement established, including requirement that doctor enter into subsequent consent agreement incorporating probationary terms, conditions and limitations to monitor practice. Based on doctor's admission that she suffers from alcohol dependence, major depression, and post-traumatic stress disorder, and has been determined to be disabled and unable to perform her regular work as a physician. Agreement effective 3/14/96.

**COLVIN**, George Leslie (DO #1899)  
Woodmore, NY

**Board Action** - Doctor's license permanently limited and restricted to prohibit practice of radiology in Ohio; license suspended for one year, but suspension stayed subject to probationary terms, conditions and limitations for at least five years. Based on prior action by New York's Medical Board based upon that board's findings of fact that doctor had deviated from acceptable medical standards in his practice as a radiologist. Effective 5/9/96.

**DANIAL**, Azmy T. (MD applicant) - Solon  
**Consent Agreement** - Application for medical license

granted subject to reprimand based on doctor having been employed as a physician, performed physical exams and lab work on patients for compensation, and held himself out as a physician prior to being licensed as a physician in Ohio. Agreement effective 5/8/96.

**DAVIS**, John M. (MD #46572) - Hilliard  
**Pre-hearing Suspension** - Pursuant to Section 3719.121(C), O.R.C., doctor's license immediately suspended based on his plea of guilty to one felony count of Illegal Processing of Drug Documents, for which he was found eligible for treatment in lieu of conviction. Notice mailed 4/18/96.

**Consent Agreement** - Medical license indefinitely suspended for at least one year; conditions for reinstatement and subsequent probation for a minimum of five years established; doctor required to immediately surrender D.E.A. certificate. Based on doctor's plea of guilty to one felony count of Illegal Processing of Drug Documents, for which he was granted treatment in lieu of conviction. Effective 6/12/96.

**DOBSON**, Walter Albert (DO #2298)  
Grand Prairie, TX

**Consent Agreement** - Probationary terms, conditions and limitations imposed based on prior action by Texas State Board of Medical Examiners, which was itself based upon incidents of upcoding, unbundling fees, incorrectly identifying services and performing I.V. sedation and monitoring in cases in which it was not required. Agreement to remain in effect until at least 10/5/96 and until doctor is released from terms and conditions imposed by his 10/4/91 Texas Board Order. Agreement effective 3/14/96.

**ESTROFF**, Todd Wilk (MD #40893) - Atlanta, GA  
**Board Action** - Medical license permanently revoked based on doctor's plea of guilty to and conviction of one count of mail fraud and filing false claims, constituting a felony committed in the course of practice. Effective 5/9/96.

**FIGENSCHUH**, William Harold, Jr.  
(MD #37859) - Alliance

**Consent Agreement** - Medical license indefinitely suspended; conditions for reinstatement established, including requirement that doctor enter into subsequent consent agreement incorporating probationary terms, conditions and limitations to monitor practice. Based on doctor's admission that he has suffered from alcohol dependence and alcohol induced mood disorder. Agreement effective 3/13/96.

**FIGEL**, John Nicholas (MD #57016) - Steubenville  
**Board Order** - Permanent revocation of medical license stayed subject to minimum one year suspension, retroactive to 12/6/95; conditions for reinstatement and subsequent probationary terms, conditions and limitations for at least five years established; doctor ineligible to hold or apply for D.E.A. registration without prior Board approval. Based on doctor having been found guilty of 26 misdemeanor counts of Drug Abuse, 26 felony counts of Deception to Obtain Dangerous Drugs, and 26 felony counts of Illegal Processing of Drug Documents, for which doctor was found eligible for treatment in lieu of conviction. Effective 6/19/96.

**GARDNER**, Robert R. (DO #3219) - Englewood  
**Consent Agreement** - Probationary terms, conditions and limitations established for a minimum of three years based on doctor's admission that he was found guilty of Attempted Illegal Processing of Drug Documents, that he has been diagnosed with chemical dependence, alcohol abuse, major depression and generalized anxiety disorder, and that he has received treatment from an approved provider. Agreement effective 4/17/96.

**GARWOOD**, Richard M. (DO #2655)  
Garfield Heights  
**Board Order** - Permanent revocation stayed subject to indefinite suspension of medical license for at least one year; conditions for reinstatement and subsequent probationary terms, conditions and limitations for at least five years established; license permanently limited to prohibit doctor from utilizing anorectic agents. Based on improper utilization of controlled substance anorectics in the course of treating at least 15 specified patients. Effective 4/25/96. **Court Action** - Notice of appeal of Board's 3/13/96 suspension Order filed by doctor in Franklin County Court of Common Pleas on or about 3/28/96. By Decision and Entry filed on or about 4/10/96, Franklin County Court of Common Pleas granted doctor's motion for a stay of Board's 3/13/96 suspension Order pending Common Pleas Court's final decision on the appeal, provided that doctor fully complies with probationary monitoring conditions set forth in Board's 3/13/96 Order.

**GUANZON**, Noel Araneta (MD #67652) - Belpre  
**Board Order** - Permanent revocation based on doctor's failure to advise Ohio Medical Board during the licensure process that he was being investigated by the West Virginia Board of Medicine and had been asked to appear before that board's complaint committee. Effective 6/13/96.

**Court Action** - Notice of appeal of Board's 6/12/96 permanent revocation Order filed by doctor in Franklin County Court of Common Pleas on or about 6/28/96. By Decision and Entry filed 7/15/96, Franklin County Court of Common Pleas granted doctor's motion for a stay of Board's 6/12/96 permanent revocation Order.

**HANING**, Ray Vernon, Jr. (MD #30918)  
Harahan, LA  
**Voluntary Surrender** - Permanent revocation authorized by doctor in lieu of formal disciplinary proceedings based on prior action by Rhode Island's medical board for immoral conduct in the practice of medicine. Effective 5/23/96.

**HIGGINS**, Thomas Leo (MD #43709) - Bratenahl  
**Consent Agreement** - Medical license reinstated subject to probationary terms, conditions and limitations for at least three years based on doctor's admission that he has undergone treatment through an approved provider for chemical dependency relapse, that his current offer of employment in Massachusetts does not include clinical anesthesiology, and that he will not be credentialed in anesthesia. Agreement effective 4/17/96.

**HUTCHISON**, Charles (MD applicant) - Kettering  
**Consent Agreement** - Application for medical license granted subject to probationary terms, conditions and limitations based on doctor having been found guilty of one misdemeanor count of public indecency. Agreement effective 5/8/96; agreement to remain in effect for a minimum of two years prior to any request for termination.

**JOSEPH**, David Lee, Jr. (MT #5819) - Columbus  
**Board Order** - Massage therapy certificate suspended for thirty days; subsequent probationary terms, conditions and limitations imposed for one year. Based on massage therapist's plea of guilty to a charge of Solicitation, a first degree misdemeanor, after he solicited another to engage in sexual activity for hire. Effective 8/11/96.

**KAYE**, Larry Carl (DPM #2678)  
Mayfield Heights  
**Pre-hearing Suspension** - Pursuant to Section 3719.121(C), O.R.C., doctor's podiatry license immediately suspended based on his plea of guilty to four felony counts of Trafficking in Drugs and five felony counts of Illegal Processing of Drug Documents. Notice mailed 4/18/96. **Court Action** - Notice of Appeal to Franklin County Court of Common Pleas filed with Board by doctor on 6/20/96 based on 4/17/96 pre-hearing

suspension. Notice of Appeal filed with Franklin County Court of Common Pleas on 7/22/96.

**KELNER**, Paul Evan (MD #61460) - Bucyrus  
**Consent Agreement** - Medical license indefinitely suspended; conditions for reinstatement established, including requirement that doctor enter into subsequent consent agreement incorporating probationary terms, conditions and limitations to monitor practice. Based on doctor's admission that, subsequent to his release from terms of prior consent agreement in 3/93, he relapsed on oral opiates for a period of three months. Agreement effective 6/12/96.

**KIM**, Michael Kwangsoo (MD #70563) - Dayton  
**Consent Agreement** - Medical license granted subject to probationary terms, conditions and limitations for a minimum of three years based on doctor's admission that he suffered from narcotic dependency, for which he has received treatment. Agreement effective 6/12/96.

**KITCHEN**, Alfred George Ernest (MD #41199)  
Vermillion  
**Consent Agreement** - Probationary terms, conditions and limitations imposed based on doctor's admission that he was diagnosed with alcohol dependency following a Board-ordered evaluation and that he subsequently received treatment through a Board-approved provider and has remained compliant with aftercare. Agreement effective 7/10/96; Agreement to remain in effect for a two years prior to any request for termination.

**KRALIK**, Rita Marie (MD #50161) - Roosevelt Island, NY  
**Court Action** - Medical license indefinitely suspended; conditions for reinstatement and subsequent probationary terms, conditions and limitations for at least two years established. Based on impairment of ability to practice due to mental illness. Order mailed 4/18/96; Order effective 4/18/96. **Court Action** - Notice of Appeal of Board's 4/17/96 indefinite suspension Order filed by doctor with Franklin County Court of Common Pleas on 5/2/96. By Decision and Entry filed 8/1/96, Franklin County Court of Common Pleas granted Board's motion to dismiss doctor's appeal based on doctor's failure to file notice of appeal with Board.

**KRATZ**, Arthur W. (DO #526) - Dallas, TX  
**Voluntary Surrender** - Permanent voluntary surrender of license accepted; doctor ineligible for reinstatement in future. Effective 4/18/96.

**LARACH**, Fernando C. (MD #51160)  
St. Petersburg, FL  
**Board Action** - Medical license indefinitely suspended for at least one year; conditions for reinstatement and subsequent probationary terms, conditions and limitations for five years established. Based on doctor's failure to advise Medical Board on license renewal application that disciplinary action had been initiated against him by Florida Board of Medicine. Order mailed 5/9/96; Order effective 5/9/96. **Court Action** - Notice of appeal of Board's 5/9/96 suspension Order filed by doctor in Franklin County Court of Common Pleas on or about 5/13/96. Doctor's request for stay of Board's 5/9/96 suspension Order granted by Franklin County Court of Common Pleas by Entry filed 6/5/96.

**LITTLE**, David E. (DO #2895) - Pickerington  
**Pre-hearing Suspension** - Pursuant to Section 4731.22(D), O.R.C., doctor's license summarily suspended upon receipt of notice based on determination that there is clear and convincing evidence that doctor has violated Sections 4731.22(B)(10), (15) and (26), O.R.C., and that doctor's continued practice presents a danger of immediate and serious harm to the public. Notice hand-delivered on 4/17/96; notice mailed 4/18/96. **Court Action** - Notice of appeal of 4/17/96 summary suspension Order filed by doctor in Franklin County Court of Common Pleas on 4/19/96, but voluntarily dismissed by doctor. **Board Order** - Osteopathic license permanently revoked based on violation of conditions of limitation imposed on license by 5/2/92 Board Order; commission of an act that constitutes a felony, to wit: Illegal Processing of Drug Documents; and impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice. Order mailed 7/11/96; Order effective 7/11/96. **Court Action** - Notice of Appeal of Board's 7/11/96 permanent revocation Order filed by doctor on 7/29/96.

**MAHER**, William Patrick (DO #4405)  
Westerville  
**Pre-hearing Suspension** - Pursuant to Section 3719.121(C), O.R.C., doctor's license immediately suspended based on his plea of guilty to Drug Abuse, for which he was granted treatment in lieu of conviction. Notice mailed 4/18/96.

**MILLER**, Ronald L. (MD #44451) - Columbus  
**Consent Agreement** - Immediate suspension imposed on

2/14/96 terminated; permanent revocation of medical license stayed subject to indefinite suspension for at least one year; conditions for reinstatement and subsequent probation for at least five years established; doctor ineligible to hold or apply for D.E.A. registration without prior Board approval. Agreement effective 7/10/96.

**NARAMORE**, Lloyd Stanley, Jr. (DO #2518)  
Lovell, WY/Topeka, KS

**Pre-hearing Suspension** - Pursuant to Section 4731.22(F), O.R.C., doctor's license automatically suspended as of 1/26/96 by operation of law based on his having been found guilty in District Court of Cheyenne County, Kansas, of second degree Murder, a felony. Notice of opportunity for hearing mailed 7/11/96.

**NASIR**, Iqbal (MD #100315) - Bowling Green  
**Board Order** - Medical license permanently revoked based on doctor's failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease; failure to conform to minimal standards of care; and commission of fraudulent misrepresentations in the course of practice. Order mailed 3/19/96; Order effective 4/19/96, but doctor immediately ineligible to undertake care of new patients.

**NASSIF**, Rita Mae (MD #25916) - Cleveland  
**Board Order** - Medical license permanently revoked based on doctor's publication of false, fraudulent, deceptive or misleading statements with respect to prior Board action on a hospital privilege application; improper prescribing; and failure to comply with conditions of limitation imposed on her license by prior consent agreement with Medical Board. Order mailed 3/19/96; Order effective 4/19/96, but doctor immediately ineligible to undertake care of new patients. **Court Action** - Notice of appeal of Board's 3/13/96 permanent revocation Order filed by doctor in Franklin County Court of Common Pleas on 4/2/96. By Entry filed 7/8/96, Franklin County Court of Common Pleas granted doctor's motion for a stay of Board's 3/13/96 permanent revocation Order, provided that she not prescribe or dispense controlled substances during the pendency of appeal.

**OLAF**, Charles R. (DO #5909) - Allentown, PA  
**Board Order** - Osteopathic license suspended for thirty days based on doctor's plea of guilty in Kentucky to practicing medicine without a license, a misdemeanor; and denial of doctor's application for license in Kentucky by that state's medical board based on the misdemeanor conviction. Order mailed 6/19/96; Order effective 6/19/96.

**OLSON**, Dettleff Elmer (DO #5936) - Clayton  
**Consent Agreement** - Probationary terms, conditions and limitations imposed for a minimum of three years based on doctor's admission that he has suffered from opiate dependence, for which he received treatment through a Board-approved provider; that he relapsed on opiates in 9/94; that following subsequent treatment and aftercare through a Board-approved provider, he has maintained continuing full compliance with an advocacy contract since 12/94; and that he has suffered from and received treatment for depressive disorder, not otherwise specified. Agreement effective 6/12/96.

**ORR**, Dennis Paul (DO #2473) - Canfield  
**Pre-hearing Suspension** - Pursuant to Section 3719.121(C), O.R.C., doctor's license immediately suspended based on his plea of guilty to twelve felony counts of distributing controlled substances without a legitimate medical purpose. Notice mailed 5/9/96.

**PAJARI**, Karen L. (MD #34578) - Hazard, KY  
**Consent Agreement** - Medical license suspended for at least one year; conditions for reinstatement and subsequent probation for a minimum of three years established. Based on doctor's admission that she improperly used sick leave on dates for which she billed a second employer for services rendered, resulting in payments for sick leave by her employer, Hamilton County Community Mental Health Board, in excess of \$14,000. Agreement effective 6/12/96. (Note: doctor's license was suspended by operation of law on 10/1/94 for failure to renew, and remained suspended at the time of this consent agreement.)

**PARGHI**, Ajay H. (MD ##66057) - Salisburg, MD  
**Voluntary Surrender** - Permanent voluntary surrender of medical license accepted by Board in lieu of doctor's fulfillment of probationary terms established by 10/11/95 Board Order. Effective 7/11/96.

**PARK**, Hyun Young (MD #37629)  
Moreland Hills  
**Consent Agreement** - Medical license indefinitely suspended for at least thirty days, such time to be calculated from 2/14/96, when doctor voluntarily ceased practice; conditions for reinstatement and probationary terms, conditions and limitations established for three years; license permanently limited to practice in supervised, structured environment. Based on doctor's admissions that he failed to advise Ohio Medical Board on licensure renewal applications that action had been taken against his hospital privileges, that action had been initiated his Georgia license by that state's medical board,

and that he had agreed to place his Georgia license on inactive status and remain ineligible to petition for active status for a specified time period; and that he had provided incorrect information on applications for hospital privileges and professional liability insurance in response to questions about prior actions against hospital privileges and his medical license. Doctor denied that the above acts or omissions were done deliberately or with fraudulent intent. Agreement effective 7/10/96.

**PRICE**, William Anthony (MD #51195)  
Boardman

**Pre-hearing Suspension** - Pursuant to Section 3719.121(C), O.R.C., doctor's license immediately suspended based on his plea of guilty to one felony count of Distribution of a Controlled Substance. Notice mailed 4/18/96.

**RICE**, Phillip Lynn (MD #45865) - North Canton  
**Consent Agreement** - Medical license to remain suspended; conditions for reinstatement and subsequent probationary terms, conditions and limitations for at least five years established. Based on doctor's admission that he has suffered from alcohol dependence. Agreement effective 3/14/96; Agreement supersedes 6/16/93  
Consent Agreement between doctor and Medical Board.

**RICHMOND**, Katherine Lily (DO #6407)  
Garfield Heights

**Consent Agreement** - License to practice osteopathic medicine and surgery granted subject to probationary terms, conditions and limitations for a minimum of three years based on doctor's admission that she has suffered from opiate dependency. Agreement effective 4/17/96.

**ROSS**, Alan Jay (DO #1987) - Knoxville, TN

**Board Order** - Osteopathic license permanently revoked based on prior action by Tennessee Board of Osteopathic Examination following that board's finding that the doctor's conduct constituted (1) unprofessional and unethical conduct, (2) gross malpractice and a pattern of continued or repeated malpractice, negligence, and incompetence in the course of medical practice, and (3) dispensing, prescribing, or otherwise distributing any controlled substance not in good faith to relieve pain and suffering, and not to cure an ailment, physical infirmity, or disease; doctor's failure to advise Ohio Board on license renewal applications that his Tennessee license had been summarily suspended, that disciplinary action had been initiated and taken against his Tennessee license by that state's board, and that he had pled no contest in 1974 Assault and Battery, a misdemeanor. Order mailed 7/12/96; Order effective 7/12/96.

**RUBEN**, Alan Marshall (MD #41800)  
Wheeling, WV

**Consent Agreement** - Probationary terms, conditions and limitations imposed, including prescribing restrictions. Based on doctor's admissions that he permitted office nurses to write and sign his name to prescriptions, subject to his review; and that he permitted, but did not adequately supervise, wholesale ordering of dangerous drugs by his office staff for use by themselves or their families, by utilizing his D.E.A. number and/or name; and that disciplinary action had been imposed by West Virginia's medical board on the basis of the same conduct. Agreement effective 6/12/96; Agreement to remain in effect for a minimum of three years prior to any request for termination.

**SINGH**, Rajinder (MD #46289) - East Liverpool

**Consent Agreement** - Probationary terms, conditions and limitations established for at least three years based on doctor's admission that he has suffered from opioid dependence and dysthymia, that he has suffered relapses, and that he has received treatment through a Board approved provider. Agreement effective 4/17/96.

**SOMERSALL**, Morley Valentine (MD #63114)  
Warren

**Board Order** - Doctor reprimanded based on failure to advise Ohio Medical Board on license renewal application that disciplinary action had been initiated against him by New York's medical board. Order mailed 6/13/96; Order effective 6/13/96.

**SPENCER**, Jeffrey C. (MD #40551) - Lyndhurst

**Pre-hearing Suspension** - Pursuant to Section 3719.121(C), O.R.C., doctor's license immediately suspended based on his having been found guilty of one felony count of unlawful operation of a methadone treatment program. Notice mailed 6/13/96.

**TAYLOR**, Rodger Lloyd Moore (MD #18485)  
Dayton

**Voluntary Surrender** - Permanent voluntary retirement of medical license accepted by Board in lieu of formal disciplinary proceedings pursuant to Section 4731.22(B)(6), O.R.C., which permits the Board to take disciplinary action based on failure to conform to minimal standards of care of similar practitioners under the same or similar circumstances. Effective 5/23/96.

**VYAS**, Subhash A. (MD #41388)  
Williamson, WV

**Board Order** - Probationary terms, conditions and limitations established for at least four years based on

prior action by the Kentucky Board of Medical Licensure based on doctor's failure to conform to acceptable standards of care in his surgical treatment of a patient. Order mailed 6/13/96; Order effective 6/13/96.

**WARD**, James C. (DO #440) - North Olmsted  
**Voluntary Surrender** - Doctor's voluntary permanent surrender of medical license accepted on behalf of Medical Board in lieu of further formal proceedings. Based on doctor's admissions that he maintained medical records for six specified patients that failed to meet minimal standards of documentation, and that he prescribed controlled substances and other dangerous drugs and over the counter medications to those patients without appropriate substantiating documentation. Effective 7/8/96.

**WEINER**, Mark Aaron (DO #5502) - Toledo  
**Consent Agreement** - Probationary terms, conditions and limitations established for at least three years based on doctor's admission that he suffers from opiate dependency, for which he received treatment through an approved provider. Agreement effective 4/17/96.

**WINSTON**, Frederick Benjamin (MD #32807)  
Cincinnati  
**Voluntary Surrender** - Permanent revocation authorized by doctor in lieu of formal disciplinary proceedings based on his plea of guilty to one count of Illegal Processing of Drug Documents; one count of Deception to Obtain Dangerous Drugs; one count of Drug Abuse; and one count of Conspiracy, all felonies. Effective 4/17/96.

#### Continuing Medical Education Actions

**CLEMENT**, John Francis (MD #41785)  
Cincinnati  
**Board Order** - Indefinite suspension, minimum thirty days; conditions for reinstatement; subsequent probation for three biennial registration periods. Based on doctor's failure to comply with Continuing Medical Education requirements. Effective 7/14/96.

**KARSON**, Tom H. (MD #64179)  
Jamaica Plain, MA  
**Consent Agreement** - Doctor reprimanded; probationary terms, conditions and limitations imposed for three biennial registration periods. Based on doctor's failure to timely submit documentation of Continuing Medical

Education hours in response to Board audit, although required hours had been timely completed. Agreement effective 3/14/96.

**NICKELS**, Russell A. (MD #30241)  
Brookings, OR  
**Consent Agreement** - Probationary terms, conditions and limitations imposed for three biennial registration periods based on doctor having certified on license renewal application that he had completed required Continuing Medical Education hours when, in fact, he had not completed those hours at the time of certification. Required hours were completed subsequently. Agreement effective 4/17/96.

**SHEAKOSKI**, Steven Leon (MD #55220)  
Hubbard  
**Consent Agreement** - Doctor reprimanded; probationary terms, conditions and limitations imposed for three biennial registration periods based on doctor's failure to submit documentation of compliance with Continuing Medical Education requirements in response to Board audit, although required hours had been timely completed. Agreement effective 4/17/96.

**TABENKIN**, Hava (MD #60373) - ISRAEL  
**Consent Agreement** - Probationary terms, conditions and limitations imposed for three biennial registration periods based on doctor having certified on license renewal application that she had completed required Continuing Medical Education hours when, in fact, she had not completed those hours at the time of certification. Required hours were completed subsequently. Agreement effective 4/5/96.

**TREECE**, Timothy Allen (MD #59861)  
Columbus  
**Consent Agreement** - Doctor reprimanded; probationary terms, conditions and limitations imposed for three biennial registration periods based on doctor's failure to timely submit documentation of compliance with Continuing Medical Education requirements in response to Board audit, although required hours had been timely completed. Agreement effective 5/8/96.

**ZOLNA**, Sheldon (MD #38333) - Keyport, NJ  
**Consent Agreement** - Medical license suspended for at least thirty days; conditions for reinstatement and subsequent probation for three biennial registration periods established based on doctor's failure to submit documentation of compliance with Continuing Medical Education requirements in response to Board audit. Agreement effective 4/17/96.

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## **COURT APPEAL UPDATE**

**ALLEN**, William H. (MD #16996) - Athens  
**Court Action** - By Decision filed 3/21/96, Franklin County Court of Common Pleas granted doctor's motion for stay of Board's 2/14/96 indefinite suspension Order pending resolution of doctor's appeal.

**BERNAT**, Donald Russell (MD #17723) - Youngstown  
**Court Action** - By Decision filed on 7/25/96, Franklin County Court of Common Pleas affirmed Board's 10/11/95 permanent revocation Order.

**BEYER**, Carolyn T. (DO #1366) - Chesterton, IN  
**Court Action** - Notice of appeal of Board's 2/14/96 indefinite suspension Order filed by doctor with Franklin County Court of Common Pleas on 3/11/96.

**BHARMOTA**, Harjit S. (MD #100171) - Marion  
**Court Action** - By Decision rendered 2/14/96 and filed 3/12/96, Franklin County Court of Common Pleas affirmed Board's 9/6/95 Order denying restoration of revoked medical license. Entry filed 4/3/96.

**BONGIORNO**, Frank Paul (MD #53146)  
Wayne, MI  
**Court Action** - By Decision rendered 3/28/96 and filed on 4/5/96, Tenth District Court of Appeals affirmed the 7/27/95 decision of the Franklin County Court of Common Pleas, which had affirmed Board's 7/14/94 reprimand Order.

**DAVIDSON**, Jerome Philip (DPM #1210)  
Youngstown  
**Court Action** - By Entry filed 5/13/96, Franklin County Court of Common Pleas granted doctor's motion to extend the court's prior stay of the Board's 10/11/95 revocation Order, pending the court's final decision on the doctor's appeal. By Decision filed 6/11/96 and documented by Entry filed 7/1/96, Franklin County Court of Common Pleas reversed Board's 10/11/95 revocation Order and remanded case to Medical Board for further proceedings.

**EASTWAY**, Robert J., Jr. (DO #2367) - London  
**Court Action** - By Opinion filed on 6/20/96 and documented by Entry filed on 6/24/96, Tenth District Court of Appeals modified Board's 4/23/95 Order on Remand and affirmed Order as modified. Stay lifted and Board directed to proceed with doctor's suspension. Doctor's motion for continuance of stay pending appeal

to Ohio Supreme Court denied by Tenth District Court of Appeals on 7/17/96.

**GOLDMAN**, Douglas S. (CT #3754) - Springfield  
**Court Action** - By Decision rendered 3/29/96, Tenth District Court of Appeals reversed Court of Common Pleas Decision that had affirmed Board's 3/9/94 permanent revocation Order and remanded matter to Common Pleas Court with instructions to remand to Medical Board to conduct a hearing pursuant to Section 4731.22, O.R.C. Decision notes that "a full adversarial and evidentiary proceeding" is not required. Notice of appeal of 3/29/96 Court of Appeals Decision filed on behalf of Medical Board with Ohio Supreme Court on 05/10/96. Notice of cross-appeal of 3/29/96 Court of Appeals Decision filed on behalf of cosmetic therapist with Ohio Supreme Court on 5/20/96.

**HILL**, Sam (DO #3607) - Lynchburg  
**Court Action** - By Decision filed 4/19/96, Franklin County Court of Common Pleas affirmed Board's 4/14/95 suspension Order. Entry filed 5/7/96.

**KOLLI** Suresh (MD #44837) - Rocky River  
**Court Action** - By Decision filed 3/25/96, Franklin County Court of Common Pleas affirmed Board's 8/9/95 permanent revocation Order. Judgment Entry filed 5/1/96.

**KREMER**, Richard M. (MD #29821) - Akron  
**Court Action** - By Opinion rendered 3/12/96, Tenth District Court of Appeals affirmed the judgment of the Franklin County Court of Common Pleas, which had upheld Medical Board's 10/13/94 reprimand Order.

**MIDWESTERN COLLEGE OF MASSOTHERAPY/**  
Robert T. McKinney (MT #4296) - Columbus  
**Court Action** - By opinion rendered 4/30/96, the Tenth District Court of Appeals affirmed the 8/24/95 Decision of the Franklin County Court of Common Pleas, which had upheld Board's 10/12/94 Order denying school a certificate of good standing and revoking the school's provisional certificate of good standing.

**OHIO COLLEGE OF LIMITED MEDICAL**  
**PRACTICE/Lawrence Kramer (MT #4412) - Cleveland**  
**Court Action** - Notice of appeal to Ohio Supreme Court filed on behalf of school on 4/12/96. By Entry filed 7/3/96, Ohio Supreme Court declined to accept jurisdiction of appeal.

see **COURT APPEAL UPDATE** on page 21

## REGULATING REDUX



*The applicability of the State Medical Board's controlled substance rules to the use of the new weight control medication Redux (dexfenfloramine) has been one of the most common queries directed to the Medical Board's Prescribing Committee since marketing of the drug began this past spring. The following Compliance Bulletin 96-003 issued to pharmacists by the Ohio State Board of Pharmacy on June 17, 1996 includes important information about the regulation of Redux. Representatives of Wyeth Laboratories, the drug's manufacturer, anticipate that their product will be declared an unscheduled drug by the end of 1996, at which point the State Medical Board's controlled substance rules will no longer apply to this medication. Compliance Bulletin 96-003 is reprinted below in its entirety.*

In May 1996 Wyeth Laboratories started distribution of the new diet drug Redux. This is the first new drug approved by the FDA for obesity in twenty years. Recently, staff from the Board of Pharmacy met with the Prescribing Committee of the Medical Board about how the Medical Board rule, Ohio Administrative Code (OAC) Rule 4731-11-04, applies to Redux. That meeting resulted in the Pharmacy Board staff and the Medical Board Prescribing Committee agreeing to the following:

Information needed to be considered by a pharmacist when dispensing Redux:

- (1) Currently, Redux is a Schedule IV controlled substance. Thus, it falls under the requirements of OAC Rule 4731-11-04.
- (2) A pharmacist may only dispense a fourteen-day supply of the drug. The approved package insert calls for a maximum dosage of 30mg per day. Thus, a pharmacist may dispense a total of 28 doses of the 15mg capsules every fourteen days.
- (3) A practitioner may not authorize refills. A new prescription, written or oral, must be issued after a reduction in weight is documented by the practitioner within every fourteen days.
- (4) The length of time that Redux may be prescribed is different than for fenfluramine and the other weight-reduction products. The package insert, official labeling approved by the FDA, indicates that Redux may be used for up to one year. Fenfluramine and the other diet products are only indicated for a "short period (a few weeks)."
- (5) In the Redux package insert, under "Precautions", combination therapy with other weight-loss agents is not recommended. Thus, under Rule 4731-11-04(B)(3), its use in combination with other weight-loss agents is not permitted.

see REDUX on next page

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**COURT APPEAL UPDATE** (cont.)

**OLYNYK**, Maryanne S. (MD #60217) - Cleveland  
**Court Action** - By Decision rendered 3/21/96 and filed on 3/22/96, Franklin County Court of Common Pleas granted a stay of Board's 12/6/95 indefinite suspension Order pending resolution of appeal before Common Pleas Court.

**RAJAN**, Semur P. G. (MD #33496) - Mansfield  
**Court Action** - By Decision rendered 6/6/96 and filed on 6/7/96, Franklin County Court of Common Pleas affirmed Board's 9/13/95 suspension Order. Entry filed 6/26/96. Entry specifies that if judgment is appealed, stay previously granted by Court is to remain in effect until any appeals are finally adjudicated. Notice of Appeal to Tenth District Court of Appeals filed by doctor on 7/18/96.

**RICHTER**, Ronald Joseph (MD #63175)  
Cincinnati  
**Court Action** - Notice of appeal of Board's 2/14/96 permanent revocation Order filed by doctor with Franklin County Court of Common Pleas on or about 3/15/96.

**SCHUTTE**, Harry Anthony (DO #4128)  
Columbus  
**Court Action** - By decision filed 3/12/96, Franklin County Court of Common Pleas affirmed Board's 10/11/95 permanent revocation Order.

**TANDON**, Mahendra Kumar (MD #36402)  
Mayfield  
**Court Action** - By Decision rendered 3/13/96 and filed on 3/14/96, Franklin County Court of Common Pleas dismissed doctor's appeal and lifted stay of Board's 6/22/95 Order that had been previously granted based on Court's lack of jurisdiction to hear appeal due to its having been untimely filed. By Decision and Entry filed 4/12/96, Franklin County Court of Common Pleas granted doctor's motion to continue stay until his notice of appeal to Court of Appeals is filed or 4/20/96, whichever occurs first. Entry notes that "the stay of the agency's order continues automatically upon the filing of the notice of appeal." Notice of appeal to Tenth District Court of Appeals filed by doctor on 4/10/96.

**URELLA**, Rocco Philip (MD #61396)  
Ardmore, PA  
**Court Action** - By Decision rendered 3/13/96, Franklin County Court of Common Pleas reversed Board's 8/9/95 Order and remanded case to Medical Board with instructions to immediately reinstate doctor's Ohio medical license. Entry filed 5/8/96.

**VAUGHN**, Mattie Lou (MD #41503) - Columbus  
**Court Action** - By Entry filed 4/24/96, Ohio Supreme Court declined to accept jurisdiction of doctor's appeal and ordered that it be dismissed. By Entry filed 5/29/96, Ohio Supreme Court denied doctor's motion for reconsideration. By Entry filed 6/17/96, Ohio Supreme Court denied doctor's motion for a stay of Court's 4/24/96 Judgment Entry pending appeal to the U.S. Supreme Court.

**REDUX** (cont.)

- (6) The "Indications And Usage" section of the Redux package insert contains a height and weight chart showing which patients meet the standards of obesity for Redux therapy. Patients with BMI values of 30 or greater qualify. Patients with BMI of 27 to 29 may qualify for Redux therapy if they have a concomitant risk factor. While it is the physician's responsibility to assure compliance with this guideline, pharmacists should be aware of its implications.

Since this is a new drug, pharmacists should read the package insert and familiarize themselves with Redux prior to dispensing.

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Effective July 31, 1996, State Medical Board of Ohio licensees are subject to new rules about HIV and HBV. The rules, appearing in Chapter 4731-19 of the Ohio Administrative Code (O.A.C.), incorporate guidelines and procedures that the Ohio Department of Health's Task Force on the Transmission of Blood Borne Pathogens by Health Care Professionals identified as being necessary to minimize the risk of HIV/HBV transmission from health care providers to the public.

The rules establish a three-pronged approach to preventing physicians from transmitting HIV and HBV to their patients. First, a physician is required to obtain testing if s/he has reason to suspect s/he is infected with HIV/HBV. Second, a physician who learns that s/he is infected is required to submit to assessment and monitoring by an appropriate panel established or approved by the Ohio Department of Health. That physician must observe any practice restrictions established by the panel to minimize the risk to patients. Third, a physician who learns that a colleague is seropositive is required to assure that the colleague is referred to an appropriate entity for assessment and monitoring. If an infected colleague fails to self-report within seven days after the physician advises the colleague of their duty to do so, the physician must report their knowledge of the colleague's seropositivity to the Board.

Recognizing the sensitive nature of the information with which it

## NEW RULES FOCUS ON **HIV/HBV**

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was dealing, the Medical Board's rules encourage voluntary compliance and minimize the risk that a practitioner's seropositivity will be publicly divulged.

The Ohio Department of Health (ODH) plays a crucial role in providing the public protection envisioned by the rules. Rule 4731-19-02(A), O.A.C., requires a physician who has learned s/he is seropositive to report him/herself either to ODH or an institutional review panel approved by ODH, or to the State Medical Board. It is the Board's belief that nearly all affected physicians will choose to be monitored exclusively by ODH or by an ODH-approved institutional review panel, rather than by the Board. Indeed, the Board reworded paragraph (A) as requested by ODH to list ODH as the first reporting option and the Board as the last. Also, under Rules 4731-19-03 and 4731-19-06(B), O.A.C., the Board will refer physicians to the ODH or to an approved panel in most cases, in lieu of direct intervention. Even those physicians who the Board determines must be directly monitored will be required, as part of that process, to submit to monitoring by ODH or by an approved panel.

The monitoring panel, be it an ODH-approved institutional

review panel or a panel convened by ODH itself, will perform the evaluation and recommend practice restrictions, particularly restrictions relating to exposure-prone invasive procedures. "Exposure-prone invasive procedures" are defined by reference to existing Board Rule 4731-17-01, O.A.C. Rule 4731-19-05(A), O.A.C., now requires, consistent with the Centers for Disease Control's Guidelines, that physicians infected with HIV or HBV notify prospective patients of their seropositivity before they undergo exposure prone invasive procedures.

The Board appreciates that a physician who learns of a colleague's HIV/HBV positive status in the course of providing medical care to that colleague may be precluded by Section 3701.243, Ohio Revised Code, from reporting the colleague's test results to the Board. In such cases, paragraph (C) of Rule 4731-19-02, O.A.C., provides that the physician is nevertheless required to report any information s/he may obtain that leads him or her to believe that the colleague is in violation of Section 4731.22, O.R.C. For example, if the colleague shows signs of AIDS-related dementia, but continues to practice medicine, the physician would report the behavioral problems s/he has observed that suggest an inability to practice according to minimal standards of care, but would not reveal that the colleague has tested positive for HIV. Specific questions regarding the application of existing mandatory reporting requirements

set out in Chapter 4731-15, O.A.C., may be directed to the Secretary and Supervising Member of the State Medical Board for an advisory opinion, as permitted by Rule 4731-15-01.

Complete sets of all the new HIV/HBV rules comprising Chapter 4731-19, O.A.C., are available upon request from the State Medical Board's Public Inquiries Department. Two of those rules, 4731-19-02, O.A.C., concerning the licensee's duty to report infection with HIV/HBV, and 4731-19-05, O.A.C., outlining the duty to refrain from certain procedures, are reprinted on the following pages, along with Rule 4731-17-01(C), "Definition of Exposure Prone Invasive Procedure."

4731-19-02 LICENSEE'S DUTY TO REPORT INFECTION WITH HIV OR HBV.

- (A) A LICENSEE WHO LEARNS THAT HE IS INFECTED WITH HIV OR HBV SHALL REPORT THAT FACT TO ODH OR TO AN INSTITUTIONAL REVIEW PANEL APPROVED BY ODH OR TO THE BOARD.
- (B) A LICENSEE WHO LEARNS THAT ANOTHER LICENSEE IS INFECTED WITH HIV OR HBV SHALL ADVISE THE INFECTED LICENSEE OF HIS DUTY TO REPORT UNDER PARAGRAPH (A) OF THIS RULE, AND SHALL FOLLOW-UP WITH THE LICENSEE TO ASSURE THAT HE HAS SELF-REPORTED. IF THE INFECTED LICENSEE HAS NOT SELF-REPORTED WITHIN SEVEN DAYS AFTER BEING ADVISED OF HIS

DUTY TO DO SO, THE ADVISING LICENSEE SHALL REPORT THE IDENTITY AND HIV/HBV STATUS OF THE INFECTED LICENSEE TO THE BOARD WITHIN FORTY EIGHT HOURS.

- (C) A LICENSEE WHO BELIEVES THAT ANOTHER LICENSEE IS INFECTED WITH HIV BUT WHO IS PROHIBITED BY A PREVAILING LAW FROM DIVULGING THE BASIS OF HIS BELIEF SHALL REPORT TO THE BOARD AS REQUIRED BY RULE 4731-15-01 OF THE ADMINISTRATIVE CODE IF HE BELIEVES THE INFECTED LICENSEE IS OTHERWISE PRACTICING BELOW MINIMUM STANDARDS OF CARE OR IS UNABLE TO PRACTICE ACCORDING TO ACCEPTABLE AND PREVAILING STANDARDS OF CARE BY REASON OF MENTAL ILLNESS OR PHYSICAL ILLNESS. THE REPORTING LICENSEE NEED NOT INCLUDE IN HIS REPORT TEST RESULTS OR OTHER INFORMATION WHICH THE PREVAILING LAW PROHIBITS HIM FROM DIVULGING.

4731-19-05 DUTY TO REFRAIN FROM CERTAIN PROCEDURES.

- (A) A LICENSEE WHO KNOWS HE IS INFECTED WITH HIV OR HBV SHALL NOT PERFORM OR PARTICIPATE IN AN EXPOSURE-PRONE INVASIVE PROCEDURE, AS THAT TERM IS DEFINED IN PARAGRAPH (C) OF RULE 4731-17-01 OF THE ADMINISTRATIVE CODE, UNTIL HE HAS OBTAINED COUNSEL FROM ODH OR FROM AN INSTITUTIONAL REVIEW PANEL APPROVED BY ODH AND THEN, ONLY

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## CHANGE OF ADDRESS NOTICE

*Please print or type all information and mail to:*

STATE MEDICAL BOARD OF OHIO/77 S. High Street, 17th Floor/Columbus, OH 43266-0315

Effective Date of Address Change \_\_\_\_\_ Ohio License # \_\_\_\_\_

Name \_\_\_\_\_

Previous Mailing Address \_\_\_\_\_

New Mailing Address \_\_\_\_\_

Telephone \_\_\_\_\_

Practice Address (if different) \_\_\_\_\_

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UNDER THE CIRCUMSTANCES THAT THE COUNSELING PANEL OR ODH DECIDES ARE APPROPRIATE. SUCH CIRCUMSTANCES SHALL INCLUDE NOTIFYING PROSPECTIVE PATIENTS OF THE LICENSEE'S SEROPOSITIVITY BEFORE THEY UNDERGO EXPOSURE-PRONE INVASIVE PROCEDURES, AND ADHERENCE TO ALL GUIDELINES PUBLISHED BY THE CENTERS FOR DISEASE CONTROL, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES.

- (B) A LICENSEE WHO HAS REASON TO SUSPECT THAT HE MAY BE INFECTED WITH HIV OR HBV SHALL OBTAIN APPROPRIATE TESTING TO REVEAL HIS HIV STATUS AND HBV STATUS BEFORE HE PERFORMS OR PARTICIPATES IN AN EXPOSURE-PRONE INVASIVE PROCEDURE.
- (C) A LICENSEE WHO KNOWS OR SHOULD SUSPECT THAT HE IS INFECTED WITH HIV OR HBV SHALL PRACTICE RECOMMENDED SURGICAL TECHNIQUE AND SHALL ADHERE TO UNIVERSAL PRECAUTIONS, AS DELINEATED IN CHAPTER 4731-17 OF THE ADMINISTRATIVE CODE, WHEN PERFORMING INVASIVE PROCEDURES OTHER THAN EXPOSURE-PRONE INVASIVE PROCEDURES.
- (D) A VIOLATION OF ANY PROVISION OF THIS RULE SHALL ALSO CONSTITUTE "A DEPARTURE FROM, OR THE FAILURE TO CONFORM TO, MINIMAL STANDARDS OF CARE OF SIMILAR PRACTITIONERS UNDER THE SAME OR SIMILAR CIRCUMSTANCES WHETHER OR NOT ACTUAL INJURY TO A PATIENT IS ESTABLISHED," AS THAT CLAUSE IS USED IN DIVISION (B)(6) OF SECTION 4731.22 OF THE REVISED CODE.

\* \* \* \* \*

4731-17-01 Definitions

For purposes of this chapter of the Administrative Code: . . . .

- (C) "Exposure-prone invasive procedure" means an invasive procedure in which there is a significant risk of contact between the blood or body fluids of the licensee and the blood or body fluids of the patient. Some characteristics of exposure-prone invasive procedures include digital palpation of a needle tip in a body cavity or the simultaneous presence of the licensee's fingers and a needle or other sharp instrument or object in a poorly visualized or highly confined anatomic site. An invasive procedure is exposure-prone if it presents a recognized risk of percutaneous injury to the licensee, and, in the event such an injury occurs, the licensee's blood is likely to contact the patient's body cavity, subcutaneous tissues, or mucous membranes. [Effective 10/1/94]

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**STATE OF OHIO**  
**THE STATE MEDICAL BOARD**  
77 South High Street, 17th Floor  
Columbus, Ohio 43266-0315

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