

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
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July 14, 2010

Stephen Allan Straubing, M.D.
8109 Village Drive
Cincinnati, OH 45242

RE: Case No. 09-CRF-105

Dear Dr. Straubing:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Gretchen L. Petrucci, Esq., Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 14, 2010, including motions approving and confirming the Findings of Fact and amending Conclusions of the Hearing Examiner, and adopting an 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 MD
RW*

Lance A. Talmage, M.D.
Secretary

LAT:baj
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3936 3114 1406
RETURN RECEIPT REQUESTED

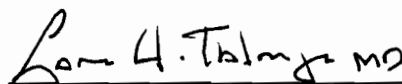
cc: Eric J. Plinke, Esq.
CERTIFIED MAIL NO. 91 7108 2133 3936 3114 1413
RETURN RECEIPT REQUESTED

Mailed 8-5-10

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Gretchen L. Petrucci, Esq., State Medical Board Attorney Hearing Examiner; and excerpt of the Minutes of the State Medical Board, meeting in regular session on July 14, 2010, including motions approving and confirming the Findings of Fact and amending the Conclusions of the Hearing Examiner, and adopting an Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Stephen Allan Straubing, M.D., Case No. 09-CRF-105, 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. *rw*
Secretary

(SEAL)

July 14, 2010

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

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CASE NO. 09-CRF-105

STEPHEN ALLAN STRAUBING, M.D.

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ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on July 14, 2010.

Upon the Report and Recommendation of Gretchen L. Petrucci, Esq., 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 Conclusion of Law #2 be amended as follows:

2. Dr. Straubing's acts, conduct, and/or omissions, as set forth in Finding of Fact 2, individually and/or collectively, constitute "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed," as set forth in Section 4731.22(B)(10), Ohio Revised Code, to wit: Deception to Obtain a Dangerous Drug, in violation of Section 2925.22, Ohio Revised Code.

It is further ORDERED that:

- A. **REVOCATION, STAYED; SUSPENSION:** The certificate of Stephen Alan Straubing, M.D., to practice medicine and surgery in the State of Ohio shall be REVOKED. Such revocation is STAYED, and Dr. Straubing's certificate shall be SUSPENDED for an indefinite period of time.
- B. **INTERIM MONITORING:** During the period that Dr. Straubing's certificate to practice medicine and surgery in Ohio is suspended, Dr. Straubing shall comply with the following terms, conditions, and limitations:

1. **Obey the Law:** Dr. Straubing shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
2. **Declarations of Compliance:** Dr. Straubing shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
3. **Personal Appearances:** Dr. Straubing shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, or as otherwise directed by the Board. Subsequent personal appearances shall occur every three months thereafter, and/or as otherwise directed by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
4. **Obtain a Drug/Alcohol Examination:** Within 90 days of the effective date of this Order, or as otherwise approved by the Board, Dr. Straubing shall submit to an appropriate drug/alcohol examination. Such examination shall be provided by a treatment provider selected by Dr. Straubing and approved in advance by the Board, and approved under Section 4731.25 of the Revised Code for treatment of drug and/or alcohol dependency or abuse.

Prior to the examination, Dr. Straubing shall furnish the approved treatment provider copies of the Board's Order, Summary of the Evidence, Findings of Fact, and Conclusions of Law, and any other documentation from the hearing record that the Board may deem appropriate or helpful to the treatment provider. Within ten days after the completion of the examination, or as otherwise determined by the Board, Dr. Straubing shall cause a written report to be submitted to the Board from the treatment provider that shall include, to the extent applicable, the following:

- a. A detailed plan of any recommended treatment based upon the treatment provider's informed assessment of Dr. Straubing's current needs;

- b. A statement indicating whether Dr. Straubing entered into or commenced any recommended treatment program within 48 hours of its determination;
 - c. A copy of any treatment contract signed by Dr. Straubing establishing the terms of treatment and aftercare, including any required supervision or restrictions on practice during treatment or aftercare; and
 - d. A statement indicating that the treatment provider will immediately report to the Board any failure by Dr. Straubing to comply with the terms of any treatment contract during inpatient or outpatient treatment or aftercare.
5. If Dr. Straubing is found to be impaired following the examination set forth in paragraph B.4, he shall comply with the following terms, conditions, and limitations:
- a. **Sobriety**
 - i. **Abstention from Drugs:** Dr. Straubing shall abstain completely from the personal use or personal possession of drugs, except those prescribed, dispensed, or administered to him by another so authorized by law who has full knowledge of Dr. Straubing's history of chemical dependency and/or abuse and who may lawfully prescribe for him (for example, a physician who is not a family member). Further, in the event that Dr. Straubing is so prescribed, dispensed, or administered any controlled substance, carisoprodol, or tramadol, Dr. Straubing shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber, the name of the drug Dr. Straubing received, the medical purpose for which he received the drug, the date the drug was initially received, and the dosage, amount, number of refills, and directions for use. Further, within 30 days of the date said drug is so prescribed, dispensed, or administered to him, Dr. Straubing shall provide the Board with either a copy of the written prescription or other written verification from the prescriber, including the dosage, amount, number of refills, and directions for use.

- ii.* **Abstention from Alcohol:** Dr. Straubing shall abstain completely from the use of alcohol.

b. Drug and Alcohol Screens; Drug Testing Facility and Collection Site

- i.* Dr. Straubing shall submit to random urine screenings for drugs and alcohol at least four times per month, or as otherwise directed by the Board. Dr. Straubing shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug-testing panel utilized must be acceptable to the Secretary of the Board, and shall include Dr. Straubing's drug(s) of choice.
- ii.* Dr. Straubing shall submit, at his expense and on the day selected, urine specimens for drug and/or alcohol analysis. (The term "toxicology screen" is also be used herein for "urine screen" and/or "drug screen.")

All specimens submitted by Dr. Straubing shall be negative, except for those substances prescribed, administered, or dispensed to him in conformance with the terms, conditions and limitations set forth in this Order.

Refusal to submit such specimen, or failure to submit such specimen on the day he is selected or in such manner as the Board may request, shall constitute a violation of this Order.

- iii.* Dr. Straubing shall abstain from the use of any substance that may produce a positive result on a toxicology screen, including the consumption of poppy seeds or other food or liquid that may produce a positive result on a toxicology screen.

Dr. Straubing shall be held to an understanding and knowledge that the consumption or use of various substances, including but not limited to mouthwashes, hand-cleaning gels, and cough syrups, may cause a positive toxicology screen, and that

unintentional ingestion of a substance is not distinguishable from intentional ingestion on a toxicology screen, and that, therefore, consumption or use of substances that may produce a positive result on a toxicology screen is prohibited under this Order.

- iv.* All urine screenings for drugs and alcohol shall be conducted through a Board-approved drug-testing facility and Board-approved collection site pursuant to the global contract between the approved facility and the Board, which provides for the Board to maintain ultimate control over the urine-screening process and to preserve the confidentiality of positive screening results in accordance with Section 4731.22(F)(5), Ohio Revised Code. The screening process for random testing shall require a daily call-in procedure. Further, in the event that the Board exercises its discretion, as provided in Paragraph (B)(5)(c), below, to approve urine screenings to be conducted at an alternative drug-testing facility, collection site, and/or supervising physician, such approval shall be expressly contingent upon the Board's retaining ultimate control over the urine-screening process in a manner that preserves the confidentiality of positive screening results.
- v.* Within 30 days of the effective date of this Order, Dr. Straubing shall enter into the necessary financial and/or contractual arrangements with the Board-approved drug-testing facility and/or collection site ("DFCS") in order to facilitate the screening process in the manner required by this Order.

Further, within 30 days of making such arrangements, Dr. Straubing shall provide to the Board written documentation of completion of such arrangements, including a copy of any contract entered into between Dr. Straubing and the Board-approved DFCS. Dr. Straubing's failure to timely complete such arrangements, or failure to timely provide written documentation to the Board of completion of such arrangements, shall constitute a violation of this Order.

- vi. Dr. Straubing shall ensure that the urine-screening process performed through the Board-approved DFCS requires a daily call-in procedure, that the urine specimens are obtained on a random basis, and that the giving of the specimen is witnessed by a reliable person.

In addition, Dr. Straubing and the Board-approved DFCS shall ensure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening result.

- vii. Dr. Straubing shall ensure that the Board-approved DFCS provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Order, and whether all urine screens have been negative.

- viii. In the event that the Board-approved DFCS becomes unable or unwilling to serve as required by this Order, Dr. Straubing shall immediately notify the Board in writing, and make arrangements acceptable to the Board, pursuant to Paragraph 5.c, below, as soon as practicable. Dr. Straubing shall further ensure that the Board-approved DFCS also notifies the Board directly of its inability to continue to serve and the reasons therefor.

- ix. The Board, in its sole discretion, may withdraw its approval of any DFCS in the event that the Secretary and Supervising Member of the Board determine that the DFCS has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

- c. **Alternative Drug-testing Facility and/or Collection Site:**
It is the intent of this Order that Dr. Straubing shall submit urine specimens to the Board-approved DFCS chosen by the Board. However, in the event that using the Board-approved DFCS creates an extraordinary hardship on Dr. Straubing, as determined in the sole discretion of the Board, then, subject to the following requirements, the

Board may approve an alternative DFCS or a supervising physician to facilitate the urine-screening process for Dr. Straubing.

- i.* Within 30 days of the date on which Dr. Straubing is notified of the Board's determination that utilizing the Board-approved DFCS constitutes an extraordinary hardship on Dr. Straubing, he shall submit to the Board in writing for its prior approval the identity of either an alternative DFCS or the name of a proposed supervising physician to whom Dr. Straubing shall submit the required urine specimens.

In approving a facility, entity, or an individual to serve in this capacity, the Board will give preference to a facility located near Dr. Straubing's residence or employment location, or to a physician who practices in the same locale as Dr. Straubing. Dr. Straubing shall ensure that the urine-screening process performed through the alternative DFCS or through the supervising physician requires a daily call-in procedure, that the urine specimens are obtained on a random basis, and that the giving of the specimen is witnessed by a reliable person. In addition, Dr. Straubing shall ensure that the alternative DFCS or the supervising physician maintains appropriate control over the specimen and immediately informs the Board of any positive screening result.

- ii.* Dr. Straubing shall ensure that the alternative DFCS or the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Order, and whether all urine screens have been negative.
- iii.* In the event that the designated alternative DFCS or the supervising physician becomes unable or unwilling to so serve, Dr. Straubing shall immediately notify the Board in writing. Dr. Straubing shall further ensure that the previously designated alternative DFCS or the supervising

physician also notifies the Board directly of the inability to continue to serve and the reasons therefor. Further, in the event that the approved alternative DFCS or supervising physician becomes unable to serve, Dr. Straubing shall, in order to ensure that there will be no interruption in his urine-screening process, immediately commence urine screening at the Board-approved DFCS chosen by the Board, until such time, if any, that the Board approves a different DFCS or supervising physician, if requested by Dr. Straubing.

- iv.* The Board, in its sole discretion, may disapprove any entity or facility proposed to serve as Dr. Straubing's designated alternative DFCS or any person proposed to serve as his supervising physician, or may withdraw its approval of any entity, facility or person previously approved to so serve in the event that the Secretary and Supervising Member of the Board determine that any such entity, facility or person has demonstrated a lack of cooperation in providing information to the Board or for any other reason.
- d.* **Reports Regarding Drug and Alcohol Screens:** All screening reports required under this Order from the Board-approved DFCS, the alternative DFCS and/or supervising physician must be received in the Board's offices no later than the due date for Dr. Straubing's declarations of compliance. It is Dr. Straubing's responsibility to ensure that reports are timely submitted.
- e.* **Additional Screening Without Prior Notice:** Upon the Board's request and without prior notice, Dr. Straubing shall provide a specimen of his blood, breath, saliva, urine, and/or hair for screening for drugs and alcohol, for analysis of therapeutic levels of medications that may be prescribed for Dr. Straubing, or for any other purpose, at Dr. Straubing's expense. Dr. Straubing's refusal to submit a specimen upon the request of the Board shall result in a minimum of one year of actual license suspension. Further, the collection of such specimens shall be witnessed by a representative of the Board, or another person acceptable to the Secretary and Supervising Member of the Board.

- f. **Rehabilitation Program:** Dr. Straubing shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or C.A., no less than three times per week, or as otherwise ordered by the Board. Substitution of any other specific program must receive prior Board approval.

Dr. Straubing shall submit acceptable documentary evidence of continuing compliance with this program, including submission to the Board of meeting attendance logs, which must be received in the Board's offices no later than the due date for Dr. Straubing's declarations of compliance.

- g. **Comply with the Terms of Aftercare Contract:** Dr. Straubing shall maintain continued compliance with the terms of the aftercare contract(s) entered into with his treatment provider(s), provided that, where terms of an aftercare contract conflict with terms of this Order, the terms of this Order shall control.

- h. **Absences from Ohio:** Dr. Straubing shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the suspension/probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed. Further, the Secretary and Supervising Member of the Board shall have discretion to waive part or all of the monitoring terms set forth in this Order for occasional periods of absence of 14 days or less.

In the event that Dr. Straubing resides and/or is employed at a location that is within 50 miles of the geographic border of Ohio and a contiguous state, Dr. Straubing may travel between Ohio and that contiguous state without seeking prior approval of the Secretary or Supervising Member provided that Dr. Straubing is otherwise able to maintain full compliance with all other terms, conditions and limitations set forth in this Order.

6. **Releases:** Dr. Straubing shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Straubing's chemical dependency/abuse and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluation occurred before or after the effective date of this Order. To the extent permitted by law, the above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43, Ohio Revised Code, and are confidential pursuant to statute.

Dr. Straubing shall also provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event Dr. Straubing fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.

7. **Required Reporting of Change of Address:** Dr. Straubing shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.

C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Straubing's certificate to practice medicine and surgery until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration:** Dr. Straubing shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Compliance with Interim Conditions:** Dr. Straubing shall have maintained compliance with all applicable terms and conditions set forth in Paragraph B of this Order.
3. **Demonstration of Ability to Resume Practice:** If treatment was recommended from a treatment provider approved under Section 4731.25, Ohio Revised Code per Paragraph (B)(4), Dr. Straubing shall demonstrate to the satisfaction of the Board that he can practice in compliance with acceptable and prevailing standards of care. Such demonstration shall include but shall not be limited to the following:

- a. Certification that Dr. Straubing has successfully completed a minimum of 28 days of inpatient/residential treatment for chemical dependency/ abuse at a treatment provider approved by the Board.
- b. Evidence of continuing full compliance with an aftercare contract with a treatment provider approved under Section 4731.25, Ohio Revised Code. Such evidence shall include, but shall not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with Rule 4731-16-10, Ohio Administrative Code.
- c. Evidence of continuing full compliance with this Order.
- d. If treatment was recommended from a treatment provider approved under Section 4731.25, Ohio Revised Code per paragraph B.4, two written reports indicating that Dr. Straubing's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care, with respect to chemical dependency/abuse.

The reports shall have been made by physicians knowledgeable in the area of addictionology and who are either affiliated with a current Board-approved treatment provider or otherwise have been approved in advance by the Board to provide an assessment of Dr. Straubing. Further, the two aforementioned physicians shall not be affiliated with the same treatment provider or medical group practice. Prior to the assessments, Dr. Straubing shall provide the assessors with copies of patient records from any evaluation and/or treatment that he has received, and a copy of this Order. The reports of the assessors shall include any recommendations for treatment, monitoring, or supervision of Dr. Straubing, and any conditions, restrictions, or limitations that should be imposed on Dr. Straubing's practice. The reports shall also describe the basis for the assessor's determinations.

All reports required pursuant to this paragraph shall be based upon examinations occurring within the three months immediately preceding any application for reinstatement or restoration. Further, at the discretion of the Secretary and Supervising Member of the Board, the Board may request

an updated assessment and report if the Secretary and Supervising Member determine that such updated assessment and report is warranted for any reason.

4. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Straubing has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.
5. **Controlled Substances Prescribing Course(s):** At the time he submits his application for reinstatement or restoration, Dr. Straubing shall provide acceptable documentation of successful completion of a course or courses dealing with the prescribing of controlled substances. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Straubing submits the documentation of successful completion of the course(s) dealing with the prescribing of controlled substances, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

6. **Personal/Professional Ethics Course(s):** At the time he submits his application for reinstatement or restoration, Dr. Straubing shall provide acceptable documentation of successful completion of a course or courses dealing with personal/professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Straubing submits the documentation of successful completion of the course(s) dealing with personal/professional ethics, he shall also submit to the Board a written report describing the course(s), setting forth what he learned

from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

7. **Physician/Patient Boundaries Course(s)**: At the time he submits his application for reinstatement or restoration, Dr. Straubing shall provide acceptable documentation of successful completion of a course or courses dealing with physician/patient boundaries. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Straubing submits the documentation of successful completion of the course(s) dealing with physician/patient boundaries, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

- D. **PROBATION**: Upon reinstatement or restoration, Dr. Straubing's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:

1. **Terms, Conditions, and Limitations Continued from Suspension Period**: Dr. Straubing shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
2. **Modification of Terms**: Dr. Straubing shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.
3. **Tolling of Probationary Period While Out of Compliance**: In the event Dr. Straubing is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.

- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Straubing's certificate will be fully restored.
- F. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Straubing violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- G. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER**

- 1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. Straubing shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training, and the chief of staff at each hospital or healthcare center where he has privileges or appointments. Further, Dr. Straubing shall promptly provide a copy of this Order to all employers or entities with which he contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or healthcare center where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Straubing receives from the Board written notification of the successful completion of probation as set forth in Paragraph E, above.

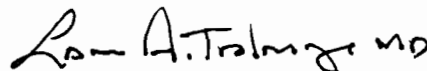
In the event that Dr. Straubing provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, Dr. Straubing shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services. This requirement shall continue until Dr. Straubing receives from the Board written notification of the successful completion of the probation as set forth in Paragraph E, above.

- 2. **Required Reporting to Other Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Straubing shall provide a copy of this Order to the proper licensing authority of any State or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any

license or certificate. Also, Dr. Straubing shall provide a copy of this Order at the time of application to the proper licensing authority of any State or jurisdiction in which he applies for any professional license or reinstatement/ restoration of any professional license. This requirement shall continue until Dr. Straubing receives from the Board written notification of the successful completion of the probation as set forth in Paragraph E, above.

3. **Required Documentation of the Reporting Required by Paragraph G:** Dr. Straubing shall provide the Board with **one** of the following documents as proof of each required notification within 30 days of the date of each such notification: (a) the return receipt of certified mail within 30 days of receiving that return receipt, (b) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (c) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (d) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

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



Lance A. Talmage, M.D. RW
Secretary

(SEAL)

July 14, 2010

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of

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Case No. 09-CRF-105

Stephen Alan Straubing, M.D.,

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Hearing Examiner Petrucci

Respondent.

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REPORT AND RECOMMENDATION

Basis for Hearing

By letter dated August 12, 2009, the State Medical Board of Ohio [Board] notified Stephen Alan Straubing, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action on allegations that Dr. Straubing admitted that he had done the following:

- (1) Engaged in sexual conduct with two patients while providing medical care to them.
- (2) Prescribed medications, including controlled substances, to five patients and had those patients return some of the medication to him for his personal use, but later failed to answer questions regarding these events.
- (3) Prescribed medications to four patients without maintaining a complete medical chart, or any medical chart.
- (4) Written prescriptions for tramadol in the name of two family members, and failed to maintain a patient chart or record of such prescribing.

Further, the Board alleged that the Dr. Straubing's acts, conducts, and/or omissions constitute:

- (1) "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of [Chapter 4731] or any rule promulgated by the Board," as set forth in Section 4731.22(B)(20), Ohio Revised Code. The Board alleged that the following rules were violated: Rules 4731-26-02, 4731-11-08(A), and 4731-11-02(D), Ohio Administrative Code [O.A.C.]. The Board further alleged that those rule violations constitute violations of Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code.
- (2) "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed," as set forth in Section 4731.22(B)(10), Ohio Revised Code. The Board alleged that the acts constituted the felony of Deception to Obtain a Dangerous Drug, as set forth in Section 2925.22, Ohio Revised Code.

- (3) “[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed,” as set forth in Section 4731.22(B)(12), Ohio Revised Code. The Board alleged that Dr. Straubing’s acts constituted violations of the following two misdemeanor statutes:

- Authority of Licensed Health Care Professional; Contents of Prescription, as set forth in Section 3719.06(A)(1)(a), Ohio Revised Code.
- Persons Who May Sell, Purchase, Distribute or Deliver Dangerous Drugs, as set forth in Section 4729.51(C)(3), Ohio Revised Code.

Accordingly, the Board advised Dr. Straubing of his right to request a hearing in this matter. (State’s Exhibit 17A) On July 24, 2009, Dr. Straubing requested a hearing. (State’s Exhibit 17B)

Appearances at the Hearing

Richard Cordray, Attorney General, by Kyle C. Wilcox, Assistant Attorney General, on behalf of the State of Ohio. Eric J. Plinke, Esq., on behalf of Dr. Straubing.

Hearing Date: January 5 and 6, 2010

SUMMARY OF THE EVIDENCE

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

Background

1. Stephen Alan Straubing, M.D., is an obstetrician/gynecologist. He graduated in 1972 from Adelphi University in Garden City, New York. In 1976, Dr. Straubing earned a medical degree from the Creighton University School of Medicine in Omaha, Nebraska. Between 1976 and 1980, Dr. Straubing completed a one-year internship and a three-year, Obstetrics/ Gynecology [OB/GYN] residency at the University of Cincinnati in Cincinnati, Ohio. (Hearing Transcript [Tr.] at 28-29; Respondent’s Exhibit [Resp. Ex.] E)
2. After his residency in 1980, Dr. Straubing entered private practice with Obstetrics & Gynecology Associates, Inc., located in Cincinnati. The practice had 10 physicians. He worked there for 28 years, until late 2008. Between 1980 and 2008, Dr. Straubing also held an assistant clinical instructor position at the University of Cincinnati, and clinical faculty positions at Good Samaritan Hospital and Bethesda North Hospital. Also, Dr. Straubing was Director/Chairman of the Department of Obstetrics/Gynecology at Mercy Fairfield Hospital between 2005 and 2008. (Tr. at 29, 137, 139; State’s Exhibit [St. Ex.] 16 at 13; Resp. Ex. E)

3. In 2008, Dr. Straubing took a hospital staff position with Mercy Fairfield Hospital. However, he was suspended soon thereafter because of the issues involved in this matter.¹ At the time of the hearing in January 2010, Dr. Straubing was working as an instructor at Mercy Fairfield Hospital, teaching and supervising residents two to four days each month. (Tr. at 29, 31, 34, 38, 178; St. Ex. 16 at 13, 20-21; Resp. Ex. E)
4. Dr. Straubing holds an active medical license in Ohio. He also holds a medical license in Kentucky, but that license is inactive. In addition, Dr. Straubing is certified by the American Board of Obstetrics and Gynecology. (Tr. at 28, 35)

Agreement with Certain Allegations in the Notice of Opportunity for Hearing

5. Dr. Straubing and the State entered into stipulations, in which Dr. Straubing agreed with many allegations in the August 2009 Notice of Opportunity for Hearing. The stipulations are as follows:
 - [a.] In the course of Dr. Straubing's medical practice, Dr. Straubing admits that he treated, provided care for and/or prescribed medications to Patients 1 through 10, as identified in the Patient Key attached to the August 12, 2009 Notice of Opportunity for hearing letter.

On or about December 18, 2008, Dr. Straubing was interviewed by a Board investigator. During the interview, Dr. Straubing stated that he had engaged in sexual conduct with Patients 1 and 2.

In or around April 2009, Dr. Straubing stated under oath that he had provided general gynecologic care to Patient 1, but Dr. Straubing did not know the exact dates of the doctor-patient relationship. Dr. Straubing further stated that he engaged in sexual conduct with Patient 1 from approximately September 2007 until February 2009. Patient 1's patient chart indicates that Dr. Straubing provided medical care to her, including prescribing medications, both before and during the time that he acknowledged engaging in sexual conduct with Patient 1.

Dr. Straubing admits that he also stated under oath that he engaged in sexual conduct on one or two occasions with Patient 2, sometime in June or July of 2007. Patient 2's medical records indicate that Dr. Straubing was providing medical care and had a doctor-patient relationship with Patient 2 during the time that he acknowledged that he engaged in sexual conduct with her.

¹Dr. Straubing notified Mercy Hospital of the Board investigation the day after he met with a Board Investigator in December 2008, at which time his employment there was suspended. Dr. Straubing explained that he still holds privileges at Good Samaritan Hospital and Bethesda Hospital. However, Dr. Straubing chose not to see private patients during the Board's investigation. (Tr. at 31-32)

Dr. Straubing admits that his conduct violates [Section] 4731.22(B)(20) in that he has violated Board rules. He admits that he has specifically violated O.A.C. 4731-26-02 by engaging in sexual conduct with a patient. Dr. Straubing also admits that by engaging in sexual conduct with patients that he has violated [Section] 4731.22(B)(6) and his care of those patients was 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.

- [b.] During a December 18, 2008 interview with the Board investigator, Dr. Straubing stated that he had prescribed medications to Patients 7 and 8 without maintaining or keeping a medical chart. In April of 2009, Dr. Straubing told the Board under oath that he had prescribed hydrocodone and Medrol to Patient 7, and Xanax to Patient 8, without maintaining a full medical chart for either patient.

Dr. Straubing admits that he violated [Section] 4731.22(B)(20) when he violated Board rules, including O.A.C. 4731-11-02(D), which requires physicians to maintain complete and accurate medical records pertaining to the utilization of controlled substances. Violation of O.A.C. 4731-11-02(D) also constitutes a violation of [Sections] 4731.22(B)(2) and 4731.22(B)(6), and Dr. Straubing admits to violating these portions of [Section] 4731.22.

- [c.] During the December 18, 2008 interview with the Board investigator, Dr. Straubing stated that he had prescribed medications to Patients 9 and 10 without maintaining or keeping a medical chart. In April of 2009, Dr. Straubing told the Board under oath that he had prescribed hydrocodone to Patient 9 and other controlled medications to Patient 10, without maintaining a full medical chart for either patient.

Dr. Straubing admits that he violated [Section] 4731.22(B)(20) when he violated Board rules, including O.A.C. 4731-11-02(D), which requires physicians to maintain complete and accurate medical records pertaining to the utilization of controlled substances. Violation of O.A.C. 4731-11-02(D) also constitutes a violation of [Sections] 4731.22(B)(2) and 4731.22(B)(6), and Dr. Straubing admits to violating these sections of 4731.22.

- [d.] During Dr. Straubing's December 18, 2008 interview with the Board investigator, Dr. Straubing stated that he had written prescriptions for tramadol in the name of two family members, and that he had put that medication in a medicine kit that Dr. Straubing kept at a vacation home. In or around April of 2009, Dr. Straubing admitted under oath that he had written prescriptions for tramadol in the names of two family members to "treat minor ailments especially on vacation" and that Dr. Straubing admitted that he did not maintain a patient chart or any records to reflect these prescriptions.

[e.] Dr. Straubing and the Medical Board agree that these stipulations do not preclude the parties from exploring the mitigating and aggravating factors, or any other evidence related to the facts subject to this stipulation, as long as such inquiry is not deemed inappropriate by the Hearing Examiner.

(St. Ex. 18)

6. Dr. Straubing did not stipulate to the factual allegations in paragraph two of the Notice. However, Dr. Straubing admitted at the hearing he that he had prescribed medications, which included controlled substances, to Patients 1, 3, 4, and 5 and then asked those patients to give him some of the medication for his personal use. He also admitted at hearing that he had learned from a pharmacist that Patient 3 was calling in her own prescriptions for medications, using his name. (Tr. at 48, 68-69, 72-73, 75, 78)

Although Dr. Straubing acknowledged that he had told a Board investigator that he had prescribed medication to Patient 6 and asked Patient 6 for some of the medication, he testified at hearing that he was not sure if he *had* actually asked Patient 6 for some of the medication. (Tr. at 78)

7. Dr. Straubing did not agree with four of the legal allegations in the Notice. Dr. Straubing disagrees that his conduct constitutes:
 - The felony of Deception to Obtain a Dangerous Drug, as set forth in Section 2925.22, Ohio Revised Code.
 - A misdemeanor under Authority of Licensed Health Care Professional; Contents of Prescription, as set forth in Section 3719.06(A)(1)(a), Ohio Revised Code.
 - A misdemeanor under Persons Who May Sell, Purchase, Distribute or Deliver Dangerous Drugs, as set forth in Section 4729.51(C)(3), Ohio Revised Code.
 - A violation of Rule 4731-11-08(A), O.A.C.

Dr. Straubing's Explanation Regarding the Sexual Relationships with Patients 1 and 2

8. Dr. Straubing has been married twice. He was married to his second wife for 20 years. They separated in 2006, and that marriage ended in 2009. (Tr. at 37)
9. Patient 1 was employed by Obstetrics & Gynecology Associates, Inc., while Dr. Straubing worked there. Dr. Straubing explained that the physicians at Obstetrics & Gynecology Associates, Inc., regularly provided medical care and treatment to the employees. He further explained that he treated Patient 1's medical conditions and prescribed medications to her. He testified that he dated her from approximately September 2007 to February 2009, during which he prescribed medications to her. Moreover, billing records for services provided, prescriptions, a work excuse, progress notes from office visits, a laboratory test order, and a letter regarding Patient 1's medical treatment all demonstrate that Dr. Straubing's sexual relationship with Patient 1 occurred while she was his patient. (Tr. at 39-40, 43-47, 143, 144; St. Ex. 1 at 5,7, 37, 41, 45, 47, 81-83, 87-107, 113-115, 179)

10. Dr. Straubing testified he knew it was not a good idea to date an employee, and he knew it was a bad idea to have a relationship with a patient. He further testified that, as a result, he had recommended to Patient 1 that she consider seeing another doctor, and she agreed. Dr. Straubing stated that he had thought he was following the existing ethical guidelines of the American Congress of Obstetricians and Gynecologists. Dr. Straubing acknowledged that he has since learned that a letter terminating the patient/physician relationship is needed. (Tr. at 41-42, 139)

Dr. Straubing also stated that he treated Patient 1 after the dating relationship began because she had financial difficulties and he did not charge her, and because she had “relatively minor” complaints. (Tr. at 140)

11. With regard to Patient 2, Dr. Straubing explained that he knew her because he had worked with her at two area hospitals. Dr. Straubing treated her before the sexual relationship began. He stated that the brief relationship occurred in July 2007. He further stated that he prescribed some antibiotics and pain medications to her after the sexual relationship occurred. Prescriptions and a progress note from an office visit demonstrate that Dr. Straubing’s sexual relationship with Patient 2 occurred while she was his patient. (Tr. at 39, 51, 141-142; St. Ex. 2 at 1, 31-33; St. Ex. 2A at 11-17, 23, 25)
12. Dr. Straubing explained why he had allowed sexual relationships to develop with Patients 1 and 2:

Again, it was basically something that should not have happened, but – but it did, primarily because these were people that [I] had been friends [with] for a long time, and I did not feel that same superiority issue.

I mean, we were basically – I would consider us peers of each other. We called each other by our first names. We – It was not like a patient who would come into my office and I would say, “Let’s go out for a drink.”

* * *

So I think in those two cases, Patient 1 and Patient 2, I did not feel what I understood the main ethical issue of physician being superior to the patient, and therefore, possibly using that superiority to influence a patient to some degree.

(Tr. at 142-143) Nevertheless, Dr. Straubing acknowledged that he had known at the time he had sexual relationships with Patients 1 and 2 that it was inappropriate. Moreover, he testified that he knew it was inappropriate to continue to provide medical care to them afterward. (Tr. at 145-146)

Dr. Straubing’s Explanation Regarding Obtaining Medication from Patients

13. Dr. Straubing stated that he has back and sciatic nerve problems, which have made it difficult for him to work at times. He explained that, a number of years ago, he injured his back while

water skiing, but despite the injury, he continued to remain active with running, cycling and water skiing. Over the years, he suffered bouts of sciatica, and received various treatments. He believes that, as he aged, his back condition deteriorated. (Tr. at 69-70, 98-101, 103, 159)

14. Dr. Straubing acknowledged that he had been prescribed hydrocodone for his back pain, but starting in 2003, he did not ask his treating physician for more medication when flare-ups occurred. He chose not to contact his treating physician because he would have had to take time off from work. Dr. Straubing's colleagues at Obstetrics & Gynecology Associates, Inc., prescribed pain medication to him two times. (Tr. at 102-104, 160-161)
15. Moreover, between 2006 and 2008, Dr. Straubing asked Patients 1, 3, 4, and 5 for some of the pain medications he had prescribed to them in order to alleviate the back pain. All of those patients worked with Dr. Straubing at Obstetrics & Gynecology Associates, Inc.² If the patients had the medication, they provided it to Dr. Straubing and he consumed it. He stated that he requested medications from Patients 1, 3, 4, and 5 on a "relatively sporadic basis," and as a result he did not believe that he was "committing anything that was totally inappropriate or illegal." (Tr. at 48, 67, 69, 70, 73, 76-78, 147-150, 158, 160, 165; St. Exs. 13-15)
16. Patients 1, 4, and 5 provided written statements to the Board, describing Dr. Straubing's requests for the pain medications. Dr. Straubing largely agreed with those statements, but stated that he had asked Patient 4 for some of her pain medication much less frequently than Patient 4 wrote in her statement to the Board. (Tr. at 73, 176-177)
 - Patient 1 wrote: "He would borrow 1 @ a time every once in a while; maybe once every 2 or 3 wks. I can't quite remember because it was infrequent." (St. Ex. 13 at 2)
 - Patient 4 wrote: "It seemed from that day on – he would call my ext before his office hours & ask that I put 2 in a envelope & place in his office under his phone. This would happen a few times a week. If he was in our West Chester office he would sometimes call in the am & ask that I place 2 in a inter-office envelope & send in our courier bag." (St. Ex. 14)
 - Patient 5 wrote: "When Dr. Straubing wrote a script for Vicodin and gave it to me he never asked me at that time if I would give him some back; it was after the script was filled he would ask for some. Dr. Straubing would ask for 1 or 2 tablets at a time. The most I ever gave him was 5 or 6. I gave him so he did not need to ask for a while." (St. Ex. 15)
17. Patient 6 was also an employee at Obstetrics & Gynecology Associates, Inc. Dr. Straubing testified that he believes that he prescribed medication for her, but he could not recall for certain. As previously addressed above, he acknowledged that he had told the Board

²These five patients were less than 15 percent of the total employees at Obstetrics & Gynecology Associates, Inc., between 2006 and 2008. Dr. Straubing treated a number of the employees for a variety of medical conditions, including non-pain conditions. (Tr. at 172)

investigator that he had asked Patient 6 for some of her medication, but he testified that he was not sure if he actually had asked her. (Tr. at 78)

18. Dr. Straubing estimated that, between 2006 and 2008, he had asked for medications from Patients 1, 3, 4, 5, and possibly 6 approximately 50 to 70 times. He noted that he did not receive medications on all occasions that he had asked. (Tr. at 166-168)
19. He further explained that he never took the pain medications when he was on call or had a surgical procedure scheduled. He also stated, "at times the pain that I had was so disabling that it was – or so severe, that it was basically was either that or go home and cancel an entire day of patients." (Tr. at 48-49, 162-163)
20. The medical records for Patients 1, 3, 4, 5, and 6 reflect the following medical conditions and the following pain medications prescribed by Dr. Straubing:

| Pt. | Medical Condition(s) Treated | Pain Medication Prescribed by Dr. Straubing | Citation to Record |
|-----|------------------------------|---|---|
| 1 | Back pain | Percocet, Lortab | St. Ex. 1 at 21, 25, 29, 33, 121, 171 (See, also, St. Ex. 13) |
| 3 | Endometriosis, migraines | Lortab, hydrocodone | St. Ex. 3 at 49, 53, 167-169; St. Ex. 3A at 7-17 |
| 4 | Endometriosis, tooth pain | Lortab, Vicodin and hydrocodone | St. Ex. 4 at 15-19, 25, 27, 53-55; St. Exs. 4A, 4B (See, also, St. Ex. 14) |
| 5 | Neck pain, migraines | Lortab, hydrocodone, and Vicodin | St. Ex. 5 at 45, 49, 53, 227-231; St. Ex. 5A at 13-25 (See also Tr. at 77; St. Ex. 15) |
| 6 | Depression | None ³ | St. Exs. 6, 6A |

Dr. Straubing's Explanation Regarding Treatment of Patients 7 through 10 without Maintaining Full Medical Charts

21. Patient 7 is male, and was Dr. Straubing's dry cleaner. Dr. Straubing explained that, upon discovering Patient 7 bent over significantly one day, he examined him at Patient 7's store. Dr. Straubing testified that Patient 7 had extreme muscle spasms, and he called in a prescription for a pain medication and a Medrol Dose Pak.⁴ Dr. Straubing also testified that, several months

³Patient 6's medical record and pharmacy record reflect that Dr. Straubing prescribed Xanax for her. There is nothing in either of those exhibits that establish that he prescribed a pain medication for Patient 6. (St. Exs. 6; 6A)

⁴Dr. Straubing explained that a Medrol Dose Pak contains a steroid that works as an anti-inflammatory. (Tr. at 55)

later, he treated Patient 7 in his office, after hours, for an abscess. Dr. Straubing explained that, on that day, he conducted an incision and drainage, and may have prescribed an antibiotic. Dr. Straubing stated that he created no chart for the first treatment, but wrote a note about the second treatment for Patient 7. (Tr. at 55-57)

22. Patient 8 is a nurse with whom Dr. Straubing worked at one of the area hospitals. He stated that she had told him of her personal problems and had asked for his advice. He testified that he had referred her to a urologist, but she had remained upset. He prescribed Xanax/alprazolam to her. Dr. Straubing acknowledged that he made no medical record of these discussions and prescriptions for Patient 8. Pharmacy records reflect that Dr. Straubing prescribed alprazolam on three occasions in 2008. (Tr. at 57-59; St. Ex. 8 at 25)
23. Patient 9 is a male friend of Dr. Straubing. Patient 9 had back and bowel problems. Dr. Straubing stated that he had prescribed Patient 9 some pain medications, as well as Effexor to address associated depressive symptoms. Dr. Straubing also acknowledged that, in order to address Patient 9's concerns about becoming ill during a long trip, he had given Patient 9 antibiotics, pain medication, Medrol and diarrhea medication. Moreover, Dr. Straubing examined Patient 9 in his office on one occasion to determine if he had a prostate infection. Dr. Straubing stated that he made some notes of these events with Patient 9, but for the most part he did not keep records. (Tr. at 62-64, 125)
24. Patient 10 was a friend of Dr. Straubing. Patient 10 had lung cancer. Dr. Straubing stated that, once during a weekend, Patient 10's wife asked Dr. Straubing to prescribe pain medication for Patient 10 because she could not reach his oncologist. (Tr. at 65-66) Dr. Straubing testified:

I believe the medication was Morphine, which I didn't even know how to prescribe as a liquid. I didn't even know it came as a liquid. But [the wife] told me, you know, "[Patient 10's oncologist] gives it to him all the time, and, you know, all you have to do is call it in, they know me." And I did.

(Tr. at 66) Dr. Straubing stated that, he had been in the middle of doing something with his children and did not prepare a patient chart for Patient 10. Pharmacy records reflect that Dr. Straubing also prescribed Phenergan, Promethazine, and Ibuprofen to Patient 10 as well. (Tr. at 67; St. Ex. 10 at 3, 5, 13, 15)

25. Dr. Straubing testified that he was very sloppy, especially when he called in prescriptions. He acknowledged that he should have recorded his care and treatment in the charts and he should have called his office to have his "phoned-in prescriptions" recorded on the patients' charts. (Tr. at 152-153)

Dr. Straubing's Explanation Regarding the Tramadol Prescriptions

26. Dr. Straubing explained that he had felt that it was important to have a "fairly extensive medical kit" at his vacation home. Dr. Straubing testified that he prescribed tramadol in the name of two family members so that the medication could be included in that medical kit. Dr. Straubing also testified that he had prescribed tramadol in the name of those two family

members because he was suffering from back pain, and that he had consumed some of that tramadol.⁵ (Tr. at 81-82, 84, 178)

27. Pharmacy records reflect that, for one of the family members, Dr. Straubing prescribed tramadol six times in four months in 2007. For the other family member, Dr. Straubing prescribed tramadol and Ibuprofen in May 2008. (St. Exs. 11A, 11B; Tr. at 178)

Eastway Waiver and Impairment Assessment at the Cleveland Clinic

28. The Notice of Opportunity for Hearing in this matter does not contain any allegation of impairment. Dr. Straubing waived any concerns or objections that he may have had with regard to the Board considering evidence related to impairment or imposing terms related thereto. (Tr. at 11) See, *In re Eastway* (1994), 95 Ohio App.3d; *Krain, M.D., v. State Med. Bd. of Ohio* (Oct. 29, 1998), Franklin App. No. 97APE08-981, unreported.
29. After meeting with a Board investigator in December 2008, Dr. Straubing sought an impairment assessment from the Cleveland Clinic. The impairment examination took place in January 2009; it was originally to be a 72-hour examination, but Dr. Straubing remained at the Cleveland Clinic additional days for an extended assessment. His urine sample was positive for marijuana, which he admitted to using periodically since college, and his hair sample was positive for dihydrocodeine, oxycodone, and hydrocodone. An Ohio Automated Rx Record System (OARRS) record was obtained, which listed only one prescription filled for Dr. Straubing between January 2008 and January 2009. It was for hydrocodone, and was filled in May 2008. David W. Stroom, M.D., concluded, based on the totality of evidence, that there was “insufficient evidence to make a diagnosis of impairment as defined in Chapter 4731-16-01,” O.A.C. (Tr. at 107; Resp. Ex. A at 1-3, 11, 22-25)

The documentation accompanying the impairment report reflects the following as his “precipitating” problem(s):

According to the complaint the patient was accused of writing prescriptions inappropriately. Once the Board started to investigate they found duplicate prescriptions that were written for his [family member]. The patient states that he reported the investigation to Mercy Medical Center where he is on staff and they asked for a drug screen which was positive for THC. He reports that due to the positive screen and investigation he has been placed on suspension at Mercy Medical Center.

Patient states that he has not written inappropriate prescriptions. He said that “many of his patients ask for prescriptions for antibiotics or antidepressants

⁵As part of the Board’s investigation, Dr. Straubing answered interrogatories. Dr. Straubing incorrectly answered “No” to interrogatory 43 that inquired whether he had written prescriptions for controlled substances (or provided medications) to anyone other than Patients 1, and 3 through 6. The answer was incorrect because he had prescribed tramadol to his family members. However, Dr. Straubing did identify in interrogatory 61 that he had prescribed tramadol to two family members. (Tr. at 91; St. Ex. 16 at 27, 32) The discrepancy in his interrogatory responses is *not* an issue in this matter.

when they are in to see him, but he cannot think of any other circumstances.” Patient states that he * * * wrote duplicate prescriptions in his [family member’s] name to make up a medical kit for both places. He said that there were “no narcotics or mood altering substance involved.”

In another circumstance patient states that he had a back ache while at the office and asked his staff, some of whom were also his patients, if anyone had any pain medication as he had a bad back ache. * * *

(Resp. Ex. A at 6-7)

Testimony in Support of Dr. Straubing

30. Patient 9 testified on behalf of Dr. Straubing. He confirmed that he had been examined by Dr. Straubing. He further stated that Dr. Straubing had prescribed medications for him on a number of occasions for his back problems, for a trip, and for other needs. He stated that he saw Dr. Straubing record information on paper, but he was not sure it was a medical chart. He testified that he believes Dr. Straubing is one of the brightest physicians in the Cincinnati area, and that he is highly regarded by fellow physicians. (Tr. at 126-127, 130, 133)
31. Alan P. Altman, M.D., testified on Dr. Straubing’s behalf. Dr. Altman is an obstetrician/gynecologist who practices at Bethesda North Hospital in Cincinnati, Ohio, and has been the Chairman of its OB/GYN Department for 10 years. For 15 years, he has been involved with the hospital’s Quality Assurance Committee. He has known Dr. Straubing for approximately 19 years. Dr. Altman testified that, as Chairman of the OB/GYN Department, he schedules Dr. Straubing for work at Bethesda North Hospital for teaching the OB/GYN residents. Dr. Altman stated no quality issues have arisen concerning Dr. Straubing, and that the nursing staff and the residents enjoy working with Dr. Straubing. Dr. Altman further stated that Dr. Straubing’s reputation and skills are excellent. He also stated that Dr. Straubing is helpful, pleasant and professional. (Tr. at 181-187)

Letters of Support of Dr. Straubing

32. Dr. Straubing presented letters of support from three medical professionals. The State did not have the opportunity to cross-examine the authors. Warren Methard, M.D., stated that Dr. Straubing is an outstanding obstetrician/gynecologist, who has provided competent, compassionate and excellent care of his patients. Dr. Methard stated that he would refer any patient and his family members to Dr. Straubing for care. He further noted that he has trained with Dr. Straubing, and has never seen any signs of substance abuse. (Resp. Ex. C)
33. Melissa M. Nurre and Nancy A. Parsley are two nurses who have worked with Dr. Straubing for many years at Mercy Fairfield Hospital. Ms. Nurre stated that she has never seen Dr. Straubing under the influence of drugs or alcohol. Ms. Parsley stated that Dr. Straubing was professional with his patients, and did a “great job” when teaching the hospital staff. (Resp. Exs. B, D)

Other information

34. Dr. Straubing explained that he was comfortable treating patients for many medical conditions outside his OB/GYN specialty because he had spent five months during medical school studying family practice, and because much of his medical reading involves non-OB/GYN issues. He noted that the American College of Obstetrics and Gynecology considers obstetricians/gynecologists to be primary-care physicians for women. (Tr. at 61, 168-170)
35. With regard to Patient 3, Dr. Straubing pointed out that he had received a call from a pharmacist, who stated that Patient 3 had received large numbers of controlled substances. Dr. Straubing stated that he had not prescribed that much medication for her, and he did not know how so many prescriptions were called in. He stated that he had confronted Patient 3 and he had helped Patient 3 obtain treatment for her addiction. (Tr. at 92-95; St. Ex. 16 at 24)
36. Dr. Straubing answered Board interrogatories in April 2009. Among his answers were refusals to answer several questions on constitutional grounds. Those questions concerned whether Dr. Straubing ever:
- Diverted any controlled substances, dangerous drugs or medications.
 - Split doses of medications with patients and/or other individuals.
 - Wrote prescriptions for controlled substances to Patients 1, 3, 4, 5, and 6, and then asked those patients for some of the medication back for his personal use.
 - Obtained drugs for self-use by either writing or “calling-in” a prescription for a controlled substance/dangerous drug in the name of a family member, or in his own name.
 - Obtained controlled substances or dangerous drugs for self-use by ingesting controlled substances/dangerous drugs prescribed or provided to another person.

(St. Ex. 16 at 20, 25-27, 29)

37. From the time of his separation from his wife in November 2006 to the time of the hearing in January 2010, Dr. Straubing was being treated for situation anxiety and depression. (St. Ex. 16 at 7; Tr. at 104-105, 151)
38. Dr. Straubing acknowledged his errors, and expressed great remorse for his actions. (Tr. at 155-157)

RELEVANT OHIO LAW

- The relevant and operative component of Section 2925.22, Ohio Revised Code, Deception to Obtain a Dangerous Drug, states: “No person, by deception, shall procure the administration of, a prescription for, or the dispensing of, a dangerous drug or shall possess an uncompleted preprinted prescription blank used for writing a prescription for a dangerous drug.”

- Section 3719.06(A)(1)(a), Ohio Revised Code, states:

(A)(1) **A licensed health professional authorized to prescribe drugs, if acting in the course of professional practice, in accordance with the laws regulating the professional's practice, and in accordance with rules adopted by the state board of pharmacy, may, except as provided in division (A)(2) or (3) of this section, do the following:**

(a) **Prescribe schedule II, III, IV, and V controlled substances.**

(Emphasis added.) Pursuant to Section 3719.99(E), Ohio Revised Code, a violation of Section 3719.06, Ohio Revised Code, constitutes a misdemeanor of the third degree.

- Section 4729.51(C), Ohio Revised Code, states in relevant part:

* * *

(3) Except as provided in division (C)(4) of this section, **no person shall possess dangerous drugs.**

(4) **Divisions (C)(1), (2), and (3) of this section do not apply to a registered wholesale distributor of dangerous drugs, a licensed terminal distributor of dangerous drugs, or a person who possesses, or possesses for sale or sells, at retail, a dangerous drug in accordance with Chapters 3719., 4715., 4723., 4725., 4729., 4730., 4731., and 4741. of the Revised Code. Divisions (C)(1), (2), and (3) of this section do not apply to an individual who holds a current license, certificate, or registration issued under Title [43] of the Revised Code and has been certified to conduct diabetes education by a national certifying body specified in rules adopted by the state board of pharmacy under section 4729.68 of the Revised Code, but only to the extent that the individual possesses insulin or personally supplies insulin solely for the purpose of diabetes education and only if diabetes education is within the individual's scope of practice under statutes and rules regulating the individual's profession. Divisions (C)(1), (2), and (3) of this section do not apply to an individual who holds a valid certificate issued by a nationally recognized S.C.U.B.A. diving certifying organization approved by the pharmacy board in rule, but only to the extent that the individual possesses medical oxygen or personally supplies medical oxygen for the purpose of emergency care or treatment at the scene of a diving emergency.**

(Emphasis added.) A violation of Section 4729.51(C)(3), Ohio Revised Code, constitutes a misdemeanor of the first degree, pursuant to Section 4729.99(H), Ohio Revised Code.

- Rule 4731-26-02, O.A.C., states:

Sexual behavior between a licensee and a patient is never diagnostic or therapeutic.

- (A) A license shall not engage in sexual misconduct⁶ with a patient, key third party, or chaperone.
- (B) Conduct included within the definition of sexual misconduct occurring between a licensee and a former patient constitutes sexual misconduct and is prohibited if it meets any of the following criteria:
 - (1) The conduct occurred within ninety days after the physician-patient relationship was terminated;
* * *
 - (3) The board determines that the conduct constitutes sexual misconduct upon consideration of the following factors:
 - (a) The duration of the physician-patient relationship;
 - (b) The nature of the medical services provided;
 - (c) The lapse of time since the physician-patient relationship ended;
 - (d) The extent to which the patient confided personal or private information to the licensee;
 - (e) The degree of emotional dependence that the former patient has on the licensee; and
 - (f) The extent to which the licensee used or exploited the trust, knowledge, emotions, or influence derived from the previous physician-patient relationship.

Pursuant to Rule 4731-26-03(A), Ohio Administrative Code, a violation of Rule 4731-26-02, Ohio Administrative Code, also violates Section 4731.22(B)(6), Ohio Revised Code, which is 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.”

- Rule 4731-11-08(A), O.A.C., states:

Accepted and prevailing standards of care presuppose a professional relationship between a patient and physician when the physician is utilizing controlled substances. By definition, a physician may never have such a relationship with himself or herself. Thus, **a physician may not self-prescribe or self-administer controlled substances.** This paragraph does not prohibit a physician from obtaining a schedule V controlled substance for personal use in conformance with state and federal laws, in the same manner that a non-physician may obtain a schedule V controlled substance.

(Emphasis added.)

⁶“Sexual misconduct” includes sexual conduct between a licensee and patient whether or not initiated by, consented to, or participated in by a patient, and any conduct with a patient that is sexual or may be reasonably interpreted as sexual, including sexual intercourse and kissing. Rule 4731-26-01(G)(3), O.A.C.

- Rule 4731-11-02(D), O.A.C., states: “**A physician shall complete and maintain accurate medical records reflecting the physician’s examination, evaluation, and treatment of all of the physician’s patients.** Patient medical records shall accurately reflect the utilization of any controlled substances in the treatment of a patient and shall indicate the diagnosis and purpose for which the controlled substance is utilized, and any additional information upon which the diagnosis is based.” (Emphasis added.) A violation of Rule 4731-11-02(D), Ohio Administrative Code, also constitutes violation of Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code, pursuant to Rule 4731-11-02(F), O.A.C.

FINDINGS OF FACT

1. In the course of Dr. Straubing’s medical practice, Dr. Straubing undertook the treatment, provided care for and/or prescribed medications to Patients 1 through 10, as identified in a confidential Patient Key.

On or about December 18, 2008, Dr. Straubing was interviewed by a Board investigator. During the interview, Dr. Straubing stated that he had engaged in sexual conduct with Patients 1 and 2.

In April 2009, Dr. Straubing stated under oath that he had provided general gynecologic care to Patient 1, but Dr. Straubing did not know the exact dates of the doctor-patient relationship. Dr. Straubing further stated that he engaged in sexual conduct with Patient 1 from approximately September 2007 until February 2009. Patient 1’s patient chart indicates that Dr. Straubing provided medical care to her, including prescribing medications, both before and during the time that he acknowledged engaging in sexual conduct with Patient 1.

Dr. Straubing also stated under oath that he engaged in sexual conduct on one or two occasions with Patient 2, in approximately June or July of 2007. Patient 2’s medical records indicate that Dr. Straubing provided medical care to Patient 2, including prescribing medications, during the time that he acknowledged that he engaged in sexual conduct with her.

2. During the December 2008 interview with the Board investigator, Dr. Straubing stated that he had prescribed medications, which included controlled substances, to Patients 1, 3, 4, 5, and 6 and then asked those patients for some of the medication for his personal use. Dr. Straubing further stated that he learned from a pharmacist that Patient 3 was calling in her own prescriptions for medications, using his name.

When the Board requested additional information under oath from Dr. Straubing, he did not answer certain questions asking whether he ever diverted any controlled substances, dangerous drugs or medications; split doses of medications with patients and/or other individuals; wrote prescriptions for controlled substances to Patients 1, 3, 4, 5, and 6, and then asked those patients for some of the medication back for his personal use; obtained drugs for self-use by either writing or telephoning a prescription for a controlled substance/ dangerous drug in the name of a family member, or in his own name; and obtained controlled substances or

dangerous drugs for self-use by ingesting controlled substances/dangerous drugs prescribed or provided to another person.

3. During the December 2008 interview with the Board investigator, Dr. Straubing stated that he had prescribed medications to Patients 7 and 8 without maintaining or keeping a medical chart. In April of 2009, Dr. Straubing stated under oath that he had prescribed hydrocodone and Medrol to Patient 7, and Xanax to Patient 8, without maintaining a full medical chart.
4. During the December 2008 interview with the Board investigator, Dr. Straubing stated that, although he kept some notes, he had prescribed medications to Patients 9 and 10 without maintaining a complete medical chart. In April of 2009 Dr. Straubing stated under oath that he had prescribed hydrocodone to Patient 9 and medications to Patient 10, without maintaining a full medical chart.
5. During the December 2008 interview with the Board investigator, Dr. Straubing stated that he had written prescriptions for tramadol in the name of two family members, and that he had put that medication in a medicine kit that Dr. Straubing kept at a vacation home. In April of 2009, Dr. Straubing stated under oath that he had written prescriptions for tramadol in the names of two family members “to treat minor ailments especially on vacation” and that Dr. Straubing failed to maintain a patient chart or records to reflect such prescribing.

CONCLUSIONS OF LAW

1. Dr. Straubing’s acts, conduct, and/or omissions, as set forth in Finding of Fact 1, individually and/or collectively, constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of [Chapter 4731] or any rule promulgated by the Board,” as set forth in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-26-02, , Ohio Administrative Code. Pursuant to Rule 4731-26-03(A), Ohio Administrative Code, a violation of Rule 4731-26-02, Ohio Administrative Code, also violates Section 4731.22(B)(6), Ohio Revised Code, which is 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.”
2. Dr. Straubing’s acts, conduct, and/or omissions, as set forth in Finding of Fact 2, individually and/or collectively, do not constitute “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” as set forth in Section 4731.22(B)(10), Ohio Revised Code, to with: Deception to Obtain a Dangerous Drug, in violation of Section 2925.22, Ohio Revised Code.

The evidence does not establish that Dr. Straubing used *deception* to obtain a dangerous drug from Patients 1, 3, 4, 5 or 6, which is an essential element of the offense.

3. Dr. Straubing’s acts, conduct, and/or omissions, as set forth in Finding of Fact 2, individually and/or collectively, constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of [Chapter

4731] or any rule promulgated by the Board,” as set forth in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-08(A), Ohio Administrative Code.

4. Dr. Straubing’s acts, conduct, and/or omissions, as set forth in Findings of Fact 3 and 4, individually and/or collectively, constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of [Chapter 4731] or any rule promulgated by the Board,” as set forth in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(D), Ohio Administrative Code. Pursuant to Rule 4731-11-02(F), Ohio Administrative Code, a violation of Rule 4731-11-02(D), Ohio Administrative Code, also constitutes violation of Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code.
5. Dr. Straubing’s acts, conduct, and/or omissions, as set forth in Findings of Fact 3 and 4, individually and/or collectively, constitute “[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed,” as set forth in Section 4731.22(B)(12), Ohio Revised Code, to wit: Authority of Licensed Health Care Professional; Contents of Prescription, as set forth in Section 3719.06(A)(1)(a), Ohio Revised Code. Pursuant to Section 3719.99(E), Ohio Revised Code, a violation of Section 3719.06, Ohio Revised Code, constitutes a misdemeanor of the third degree.

The evidence establishes that Dr. Straubing prescribed medications to Patients 7 through 10 without fully documenting his actions in patient charts, which is not in accordance with the law.

6. Dr. Straubing’s acts, conduct, and/or omissions, as set forth in Finding of Fact 5, individually and/or collectively, constitute “[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed,” as set forth in Section 4731.22(B)(12), Ohio Revised Code, to wit: Persons Who May Sell, Purchase, Distribute or Deliver Dangerous Drugs, as set forth in Section 4729.51(C)(3), Ohio Revised Code. Pursuant to Section 4729.99(H), Ohio Revised Code, a violation of Section 4729.51(C)(3), Ohio Revised Code, constitutes a misdemeanor of the first degree.

The evidence establishes that Dr. Straubing wrote prescriptions for tramadol in the name of two family members and placed some of the tramadol in a medicine kit and consumed some. Dr. Straubing possessed the tramadol, but did not possess them in accordance with Chapter 4731.

Rationale for the Proposed Order

Dr. Straubing practiced “loose and fast” for an extended period of time, and knowingly disregarded a number of statutes and regulations. The Hearing Examiner was not convinced by Dr. Straubing’s argument that the multiple relationships that Dr. Straubing had with his patients were significant factors, particularly for Patients 1 and 2. He testified directly that he understood that his sexual

relationships with Patients 1 and 2 were inappropriate at the time they took place. Dr. Straubing chose to disregard the requirements, and disciplinary action by the Board is warranted.

Yet, several mitigating factors exist. The events appear to have occurred largely during a difficult period of Dr. Straubing's life. Dr. Straubing is very remorseful, and was cooperative during the investigation and the hearing. Additionally, he was open, and has no prior disciplinary actions. Moreover, Dr. Straubing took interim rehabilitation and remedial actions – he stopped seeing private patients from December 2008 to at least January 2010, and he sought an impairment assessment at the Cleveland Clinic. In addition, Dr. Straubing waived any objections under *Eastway* so that the Board could address any concerns regarding impairment.

It is not clear whether impairment is a mitigating factor to the medication-related issues in this matter. On the one hand, the evidence establishes that, on multiple occasions, Dr. Straubing used marijuana and others' pain medications, which suggests substance abuse or chemical dependency. On the other hand, the Cleveland Clinic did not find impairment following its assessment of Dr. Straubing. Yet, the Cleveland Clinic apparently did not receive complete information regarding Dr. Straubing's use of his patients' pain medications on multiple occasions, the prescriptions he wrote in the name of second family member, and his use of the tramadol.

Taking all into consideration, it is recommended that Dr. Straubing's certificate be subject to a stayed revocation and suspended indefinitely. During the suspension, Dr. Straubing should be evaluated for impairment at a Board-approved treatment facility that receives, at a minimum, a copy of the Board's Order and this Report and Recommendation. Additionally, Dr. Straubing should obtain any inpatient treatment necessitated by the evaluation, and complete courses on prescribing controlled substances, ethics, and physician/patient boundaries. When Dr. Straubing can demonstrate his ability to practice medicine, his certificate can be restored/reinstated and he should be subject to probationary terms and conditions for five years.

PROPOSED ORDER

It is hereby ORDERED, that:

- A. **REVOCATION, STAYED; SUSPENSION:** The certificate of Stephen Alan Straubing, M.D., to practice medicine and surgery in the State of Ohio shall be REVOKED. Such revocation is STAYED, and Dr. Straubing's certificate shall be SUSPENDED for an indefinite period of time.
- B. **INTERIM MONITORING:** During the period that Dr. Straubing's certificate to practice medicine and surgery in Ohio is suspended, Dr. Straubing shall comply with the following terms, conditions, and limitations:
 1. **Obey the Law:** Dr. Straubing shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.

2. **Declarations of Compliance:** Dr. Straubing shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
3. **Personal Appearances:** Dr. Straubing shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, or as otherwise directed by the Board. Subsequent personal appearances shall occur every three months thereafter, and/or as otherwise directed by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
4. **Obtain a Drug/Alcohol Examination:** Within 90 days of the effective date of this Order, or as otherwise approved by the Board, Dr. Straubing shall submit to an appropriate drug/alcohol examination. Such examination shall be provided by a treatment provider selected by Dr. Straubing and approved in advance by the Board, and approved under Section 4731.25 of the Revised Code for treatment of drug and/or alcohol dependency or abuse.

Prior to the examination, Dr. Straubing shall furnish the approved treatment provider copies of the Board's Order, Summary of the Evidence, Findings of Fact, and Conclusions of Law, and any other documentation from the hearing record that the Board may deem appropriate or helpful to the treatment provider. Within ten days after the completion of the examination, or as otherwise determined by the Board, Dr. Straubing shall cause a written report to be submitted to the Board from the treatment provider that shall include, to the extent applicable, the following:

- a. A detailed plan of any recommended treatment based upon the treatment provider's informed assessment of Dr. Straubing's current needs;
- b. A statement indicating whether Dr. Straubing entered into or commenced any recommended treatment program within 48 hours of its determination;
- c. A copy of any treatment contract signed by Dr. Straubing establishing the terms of treatment and aftercare, including any required supervision or restrictions on practice during treatment or aftercare; and
- d. A statement indicating that the treatment provider will immediately report to the Board any failure by Dr. Straubing to comply with the

terms of any treatment contract during inpatient or outpatient treatment or aftercare.

5. If Dr. Straubing is found to be impaired following the examination set forth in paragraph B.4, he shall comply with the following terms, conditions, and limitations:

a. **Sobriety**

- i.* **Abstention from Drugs:** Dr. Straubing shall abstain completely from the personal use or personal possession of drugs, except those prescribed, dispensed, or administered to him by another so authorized by law who has full knowledge of Dr. Straubing's history of chemical dependency and/or abuse and who may lawfully prescribe for him (for example, a physician who is not a family member). Further, in the event that Dr. Straubing is so prescribed, dispensed, or administered any controlled substance, carisoprodol, or tramadol, Dr. Straubing shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber, the name of the drug Dr. Straubing received, the medical purpose for which he received the drug, the date the drug was initially received, and the dosage, amount, number of refills, and directions for use. Further, within 30 days of the date said drug is so prescribed, dispensed, or administered to him, Dr. Straubing shall provide the Board with either a copy of the written prescription or other written verification from the prescriber, including the dosage, amount, number of refills, and directions for use.
- ii.* **Abstention from Alcohol:** Dr. Straubing shall abstain completely from the use of alcohol.

b. **Drug and Alcohol Screens; Drug Testing Facility and Collection Site**

- i.* Dr. Straubing shall submit to random urine screenings for drugs and alcohol at least four times per month, or as otherwise directed by the Board. Dr. Straubing shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug-testing panel utilized must be acceptable to the Secretary of the Board, and shall include Dr. Straubing's drug(s) of choice.
- ii.* Dr. Straubing shall submit, at his expense and on the day selected, urine specimens for drug and/or alcohol analysis. (The term "toxicology screen" is also be used herein for "urine screen" and/or "drug screen.")

All specimens submitted by Dr. Straubing shall be negative, except for those substances prescribed, administered, or dispensed to him in conformance with the terms, conditions and limitations set forth in this Order.

Refusal to submit such specimen, or failure to submit such specimen on the day he is selected or in such manner as the Board may request, shall constitute a violation of this Order.

- iii.* Dr. Straubing shall abstain from the use of any substance that may produce a positive result on a toxicology screen, including the consumption of poppy seeds or other food or liquid that may produce a positive result on a toxicology screen.

Dr. Straubing shall be held to an understanding and knowledge that the consumption or use of various substances, including but not limited to mouthwashes, hand-cleaning gels, and cough syrups, may cause a positive toxicology screen, and that unintentional ingestion of a substance is not distinguishable from intentional ingestion on a toxicology screen, and that, therefore, consumption or use of substances that may produce a positive result on a toxicology screen is prohibited under this Order.

- iv.* All urine screenings for drugs and alcohol shall be conducted through a Board-approved drug-testing facility and Board-approved collection site pursuant to the global contract between the approved facility and the Board, which provides for the Board to maintain ultimate control over the urine-screening process and to preserve the confidentiality of positive screening results in accordance with Section 4731.22(F)(5), Ohio Revised Code. The screening process for random testing shall require a daily call-in procedure. Further, in the event that the Board exercises its discretion, as provided in Paragraph (B)(5)(c), below, to approve urine screenings to be conducted at an alternative drug-testing facility, collection site, and/or supervising physician, such approval shall be expressly contingent upon the Board's retaining ultimate control over the urine-screening process in a manner that preserves the confidentiality of positive screening results.
- v.* Within 30 days of the effective date of this Order, Dr. Straubing shall enter into the necessary financial and/or contractual arrangements with the Board-approved drug-testing facility

and/or collection site (“DFCS”) in order to facilitate the screening process in the manner required by this Order.

Further, within 30 days of making such arrangements, Dr. Straubing shall provide to the Board written documentation of completion of such arrangements, including a copy of any contract entered into between Dr. Straubing and the Board-approved DFCS. Dr. Straubing’s failure to timely complete such arrangements, or failure to timely provide written documentation to the Board of completion of such arrangements, shall constitute a violation of this Order.

- vi. Dr. Straubing shall ensure that the urine-screening process performed through the Board-approved DFCS requires a daily call-in procedure, that the urine specimens are obtained on a random basis, and that the giving of the specimen is witnessed by a reliable person.

In addition, Dr. Straubing and the Board-approved DFCS shall ensure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening result.

- vii. Dr. Straubing shall ensure that the Board-approved DFCS provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Order, and whether all urine screens have been negative.
- viii. In the event that the Board-approved DFCS becomes unable or unwilling to serve as required by this Order, Dr. Straubing shall immediately notify the Board in writing, and make arrangements acceptable to the Board, pursuant to Paragraph 5.c, below, as soon as practicable. Dr. Straubing shall further ensure that the Board-approved DFCS also notifies the Board directly of its inability to continue to serve and the reasons therefor.
- ix. The Board, in its sole discretion, may withdraw its approval of any DFCS in the event that the Secretary and Supervising Member of the Board determine that the DFCS has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

- c. **Alternative Drug-testing Facility and/or Collection Site:** It is the intent of this Order that Dr. Straubing shall submit urine specimens to the Board-approved DFCS chosen by the Board. However, in the

event that using the Board-approved DFCS creates an extraordinary hardship on Dr. Straubing, as determined in the sole discretion of the Board, then, subject to the following requirements, the Board may approve an alternative DFCS or a supervising physician to facilitate the urine-screening process for Dr. Straubing.

- i.* Within 30 days of the date on which Dr. Straubing is notified of the Board's determination that utilizing the Board-approved DFCS constitutes an extraordinary hardship on Dr. Straubing, he shall submit to the Board in writing for its prior approval the identity of either an alternative DFCS or the name of a proposed supervising physician to whom Dr. Straubing shall submit the required urine specimens.

In approving a facility, entity, or an individual to serve in this capacity, the Board will give preference to a facility located near Dr. Straubing's residence or employment location, or to a physician who practices in the same locale as Dr. Straubing. Dr. Straubing shall ensure that the urine-screening process performed through the alternative DFCS or through the supervising physician requires a daily call-in procedure, that the urine specimens are obtained on a random basis, and that the giving of the specimen is witnessed by a reliable person. In addition, Dr. Straubing shall ensure that the alternative DFCS or the supervising physician maintains appropriate control over the specimen and immediately informs the Board of any positive screening result.

- ii.* Dr. Straubing shall ensure that the alternative DFCS or the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Order, and whether all urine screens have been negative.
- iii.* In the event that the designated alternative DFCS or the supervising physician becomes unable or unwilling to so serve, Dr. Straubing shall immediately notify the Board in writing. Dr. Straubing shall further ensure that the previously designated alternative DFCS or the supervising physician also notifies the Board directly of the inability to continue to serve and the reasons therefor. Further, in the event that the approved alternative DFCS or supervising physician becomes unable to serve, Dr. Straubing shall, in order to ensure that there will be no interruption in his urine-screening process, immediately commence urine screening at the Board-approved DFCS chosen by the Board, until such time, if any, that the Board

approves a different DFCS or supervising physician, if requested by Dr. Straubing.

- iv.* The Board, in its sole discretion, may disapprove any entity or facility proposed to serve as Dr. Straubing's designated alternative DFCS or any person proposed to serve as his supervising physician, or may withdraw its approval of any entity, facility or person previously approved to so serve in the event that the Secretary and Supervising Member of the Board determine that any such entity, facility or person has demonstrated a lack of cooperation in providing information to the Board or for any other reason.
- d.* **Reports Regarding Drug and Alcohol Screens:** All screening reports required under this Order from the Board-approved DFCS, the alternative DFCS and/or supervising physician must be received in the Board's offices no later than the due date for Dr. Straubing's declarations of compliance. It is Dr. Straubing's responsibility to ensure that reports are timely submitted.
- e.* **Additional Screening Without Prior Notice:** Upon the Board's request and without prior notice, Dr. Straubing shall provide a specimen of his blood, breath, saliva, urine, and/or hair for screening for drugs and alcohol, for analysis of therapeutic levels of medications that may be prescribed for Dr. Straubing, or for any other purpose, at Dr. Straubing's expense. Dr. Straubing's refusal to submit a specimen upon the request of the Board shall result in a minimum of one year of actual license suspension. Further, the collection of such specimens shall be witnessed by a representative of the Board, or another person acceptable to the Secretary and Supervising Member of the Board.
- f.* **Rehabilitation Program:** Dr. Straubing shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or C.A., no less than three times per week, or as otherwise ordered by the Board. Substitution of any other specific program must receive prior Board approval.
- Dr. Straubing shall submit acceptable documentary evidence of continuing compliance with this program, including submission to the Board of meeting attendance logs, which must be received in the Board's offices no later than the due date for Dr. Straubing's declarations of compliance.
- g.* **Comply with the Terms of Aftercare Contract:** Dr. Straubing shall maintain continued compliance with the terms of the aftercare contract(s) entered into with his treatment provider(s), provided that,

where terms of an aftercare contract conflict with terms of this Order, the terms of this Order shall control.

- h. **Absences from Ohio:** Dr. Straubing shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the suspension/probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed. Further, the Secretary and Supervising Member of the Board shall have discretion to waive part or all of the monitoring terms set forth in this Order for occasional periods of absence of 14 days or less.

In the event that Dr. Straubing resides and/or is employed at a location that is within 50 miles of the geographic border of Ohio and a contiguous state, Dr. Straubing may travel between Ohio and that contiguous state without seeking prior approval of the Secretary or Supervising Member provided that Dr. Straubing is otherwise able to maintain full compliance with all other terms, conditions and limitations set forth in this Order.

6. **Releases:** Dr. Straubing shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Straubing's chemical dependency/abuse and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluation occurred before or after the effective date of this Order. To the extent permitted by law, the above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43, Ohio Revised Code, and are confidential pursuant to statute.

Dr. Straubing shall also provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event Dr. Straubing fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.

7. **Required Reporting of Change of Address:** Dr. Straubing shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.

C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Straubing's certificate to practice medicine and surgery until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration:** Dr. Straubing shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Compliance with Interim Conditions:** Dr. Straubing shall have maintained compliance with all applicable terms and conditions set forth in Paragraph B of this Order.
3. **Demonstration of Ability to Resume Practice:** If treatment was recommended from a treatment provider approved under Section 4731.25, Ohio Revised Code per Paragraph (B)(4), Dr. Straubing shall demonstrate to the satisfaction of the Board that he can practice in compliance with acceptable and prevailing standards of care. Such demonstration shall include but shall not be limited to the following:
 - a. Certification that Dr. Straubing has successfully completed a minimum of 28 days of inpatient/residential treatment for chemical dependency/abuse at a treatment provider approved by the Board.
 - b. Evidence of continuing full compliance with an aftercare contract with a treatment provider approved under Section 4731.25, Ohio Revised Code. Such evidence shall include, but shall not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with Rule 4731-16-10, Ohio Administrative Code.
 - c. Evidence of continuing full compliance with this Order.
 - d. If treatment was recommended from a treatment provider approved under Section 4731.25, Ohio Revised Code per paragraph B.4, two written reports indicating that Dr. Straubing's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care, with respect to chemical dependency/abuse.

The reports shall have been made by physicians knowledgeable in the area of addictionology and who are either affiliated with a current Board-approved treatment provider or otherwise have been approved in advance by the Board to provide an assessment of Dr. Straubing. Further, the two aforementioned physicians shall not be affiliated with the same treatment provider or medical group practice. Prior to the assessments, Dr. Straubing shall provide the assessors with copies of patient records from any evaluation and/or treatment that he has received,

and a copy of this Order. The reports of the assessors shall include any recommendations for treatment, monitoring, or supervision of Dr. Straubing, and any conditions, restrictions, or limitations that should be imposed on Dr. Straubing's practice. The reports shall also describe the basis for the assessor's determinations.

All reports required pursuant to this paragraph shall be based upon examinations occurring within the three months immediately preceding any application for reinstatement or restoration. Further, at the discretion of the Secretary and Supervising Member of the Board, the Board may request an updated assessment and report if the Secretary and Supervising Member determine that such updated assessment and report is warranted for any reason.

4. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Straubing has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.
5. **Controlled Substances Prescribing Course(s):** At the time he submits his application for reinstatement or restoration, Dr. Straubing shall provide acceptable documentation of successful completion of a course or courses dealing with the prescribing of controlled substances. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Straubing submits the documentation of successful completion of the course(s) dealing with the prescribing of controlled substances, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

6. **Personal/Professional Ethics Course(s):** At the time he submits his application for reinstatement or restoration, Dr. Straubing shall provide acceptable documentation of successful completion of a course or courses dealing with personal/professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Straubing submits the documentation of successful completion of the course(s) dealing with personal/professional ethics, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

7. **Physician/Patient Boundaries Course(s)**: At the time he submits his application for reinstatement or restoration, Dr. Straubing shall provide acceptable documentation of successful completion of a course or courses dealing with physician/patient boundaries. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Straubing submits the documentation of successful completion of the course(s) dealing with physician/patient boundaries, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

- D. **PROBATION**: Upon reinstatement or restoration, Dr. Straubing's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:

1. **Terms, Conditions, and Limitations Continued from Suspension Period**: Dr. Straubing shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
2. **Modification of Terms**: Dr. Straubing shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.
3. **Tolling of Probationary Period While Out of Compliance**: In the event Dr. Straubing is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.

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

- F. **VIOLATION OF THE TERMS OF THIS ORDER**: If Dr. Straubing violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard,

may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

G. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER**

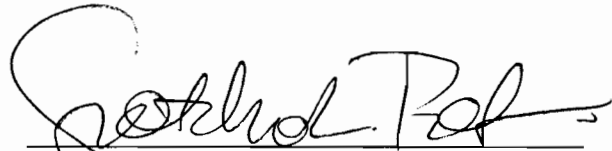
1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. Straubing shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training, and the chief of staff at each hospital or healthcare center where he has privileges or appointments. Further, Dr. Straubing shall promptly provide a copy of this Order to all employers or entities with which he contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or healthcare center where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Straubing receives from the Board written notification of the successful completion of probation as set forth in Paragraph E, above.

In the event that Dr. Straubing provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, Dr. Straubing shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services. This requirement shall continue until Dr. Straubing receives from the Board written notification of the successful completion of the probation as set forth in Paragraph E, above.

2. **Required Reporting to Other Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Straubing shall provide a copy of this Order to the proper licensing authority of any State or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Also, Dr. Straubing shall provide a copy of this Order at the time of application to the proper licensing authority of any State or jurisdiction in which he applies for any professional license or reinstatement/ restoration of any professional license. This requirement shall continue until Dr. Straubing receives from the Board written notification of the successful completion of the probation as set forth in Paragraph E, above.
3. **Required Documentation of the Reporting Required by Paragraph G:** Dr. Straubing shall provide the Board with one of the following documents as proof of each required notification within 30 days of the date of each such notification: (a) the return receipt of certified mail within 30 days of receiving that return receipt, (b) an acknowledgement of delivery bearing the original

ink signature of the person to whom a copy of the Order was hand delivered,
(c) the original facsimile-generated report confirming successful transmission
of a copy of the Order to the person or entity to whom a copy of the Order was
faxed, or (d) an original computer-generated printout of electronic mail
communication documenting the e-mail transmission of a copy of the Order to
the person or entity to whom a copy of the Order was e-mailed.

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

A handwritten signature in black ink, appearing to read "Gretchen L. Petrucci", written over a horizontal line. The signature is fluid and cursive.

Gretchen L. Petrucci
Hearing Examiner

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

EXCERPT FROM THE DRAFT MINUTES OF JULY 14, 2010

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Amato announced that the Board would now consider the Reports and Recommendations, and the Proposed Findings and Proposed Order appearing on its agenda.

Dr. Amato asked whether each member of the Board had received, read and considered the hearing records; the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: Alfred Larry Boulware, M.D.; Kevin Wayne Bowers, D.O.; Calvin Richard Brown, M.D.; Hatem Marwan Dajani, M.D.; Adam Lee Fowler; Elease Michelle Fulgham; Joseph James Koenigsmark, D.O.; Rhonda Kay Masci; Kwabena Mawulawde, M.D.; Giovanni A. Pupillo, M.D.; and Stephen Alan Straubing, M.D. A roll call was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Dr. Strafford | - aye |
| | Mr. Hairston | - aye |
| | Dr. Stephens | - aye |
| | Dr. Mahajan | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Amato | - aye |
| | Mr. Albert | - aye |
| | Dr. Madia | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |
| | Mr. Morris | - aye |
| | Dr. Ramprasad | - aye |

Dr. Amato 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: | Dr. Strafford | - aye |
| | Mr. Hairston | - aye |
| | Dr. Stephens | - aye |
| | Dr. Mahajan | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Amato | - aye |
| | Mr. Albert | - aye |
| | Dr. Madia | - aye |
| | Dr. Talmage | - aye |
| | Dr. Suppan | - aye |

Mr. Morris - aye
Dr. Ramprasad - aye

Dr. Amato noted that, in accordance with the provision in Section 4731.22(F)(2), Ohio Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters. They may, however, participate in the matter of Ms. Masci, as that case is not disciplinary in nature and concerns only Ms. Masci's qualifications for licensure. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

Dr. Amato reminded all parties that no oral motions may be made during these proceedings.

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

.....
STEPHEN ALAN STRAUBING, M.D.

Dr. Amato directed the Board's attention to the matter of Stephen Alan Straubing, M.D. He advised that objections were filed to Hearing Examiner Petrucci's Report and Recommendation and were previously distributed to Board members.

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

Dr. Straubing was accompanied by his attorney, Eric Plinke.

Mr. Plinke stated that this case was presented to the Board largely by stipulation. Mr. Plinke stated that, although the Report and Recommendation was, in general, a fair and accurate summary, Dr. Straubing did have one specific objection. Mr. Plinke requested that the Cleveland Clinic impairment evaluation be relied upon by the Board based on Dr. Straubing's belief that complete evidence was presented to the Cleveland Clinic during the conduct of the evaluation. Mr. Plinke also noted that since being contacted by Board Investigator Staples more than one-and-a-half years ago, Dr. Straubing has ceased his private practice awaiting the Board's disposition in this case. Dr. Straubing is still active with the residency program.

Dr. Straubing stated that he had great remorse for his inappropriate actions, but noted that the hearing report indicates that it was not done in a deceptive way.

Dr. Straubing stated that the issues regarding his use of medications relate to his back injuries. Dr. Straubing stated that, years ago, he suffered a lower back injury which has waxed and waned in severity.

Dr. Straubing stated that he sought multiple modalities of therapy from various providers, including medications such as hydrocodone and non-steroidals, trigger point injections by two anesthesiologists and his primary care physician, massage therapy, physical therapy, and exercise. Dr. Straubing stated that his exercise consisted of appropriate weight training and running. Eventually, Dr. Straubing started running marathons, which was not good for his back.

Dr. Straubing continued that in his very busy OB/GYN practice, he had to stand and sit repeatedly dozens of times per day. Dr. Straubing stated that he would occasionally ask employees, whom he had treated, if they had anything stronger than his own medication to alleviate the pain. Dr. Straubing stated that this allowed him to continue his work, but realizing the potential of habituation, he kept such use to a minimum. Dr. Straubing stated that he never took any narcotic medications if he knew he had a surgery to perform or was to be on-call.

Dr. Straubing stated that he stopped long-distance running approximately a year ago, but still suffers from sciatic nerve irritation and occasional back pain. Dr. Straubing stated that the organic changes in his spine have been documented in two MRIs.

Dr. Straubing stated that he prescribed some controlled substances to a few individuals while he was not in the office, with plans to chart his notes. Dr. Straubing stated that in each case, he examined the patient and took a brief history. Despite his intentions, Dr. Straubing stated that he occasionally forgot to chart when he returned to the office.

Dr. Straubing stated that, in 1997, he was separated from his wife at a very emotionally painful time for him and his children. After several months, Dr. Straubing was approached by an employee whom he had known platonically. Dr. Straubing stated that against his better judgment, this eventually became a sexual relationship and he suggested to the employee that the relationship be terminated.

Dr. Straubing stated the he readily admits that he made many mistakes and boundary violations. Dr. Straubing stated that he has learned a lot and that a day has not passed since his interview with Investigator Staples that he has not painfully regretted his errors. Dr. Straubing stated that he has shed many tears and has imbalanced his family. Dr. Straubing apologized to the Board.

Dr. Amato asked if the Assistant Attorney General wished to respond. Mr. Wilcox replied that he did wish to respond.

Mr. Wilcox stated the he supports the Proposed Order of indefinite suspension. However, Mr. Wilcox believes that the State did prove that Dr. Straubing's acts constituted deception to obtain dangerous drugs. Therefore, Mr. Wilcox asked the the Board amend Conclusion of Law #2 of the Report and Recommendation to reflect such a finding.

Mr. Wilcox stated that Dr. Straubing set up a scheme whereby he could access controlled pain medications for personal use without having to go to a physician and obtain a prescription. Mr. Wilcox stated that Dr.

Straubing did this by writing prescriptions for at least four members of his staff, whom he also treated as patients. Mr. Wilcox stated that Dr. Straubing used this scheme to essentially set up a secondary pharmacy. Mr. Wilcox argued that Dr. Straubing knew which employees had drugs and how much drugs he had, and he knew exactly when and where they would be at work. Dr. Straubing admitted at hearing that he had a pattern where he would go on an infrequent basis to these individuals and tell them he needed one of their pills, and they would provide a pill. Dr. Straubing admitted to doing this fifty to seventy times over a two year period.

Mr. Wilcox continued that in this way, Dr. Straubing was able to use the deception of prescribing to patients or co-workers and feed this apparent want or need for pain medication. Mr. Wilcox stated that Dr. Straubing knew he would be able to access these medications by simply asking the individuals for the drugs at work.

Mr. Wilcox noted that in Conclusion of Law #2, the Hearing Examiner noted that "the evidence does not establish that Dr. Straubing used deception to obtain dangerous drugs from patients 1, 3, 4, 5, or 6, which is an essential element of the offense." Mr. Wilcox stated that the State disagrees. Mr. Wilcox stated that the pharmacy issued these drugs to what they thought were the patients listed on the scripts, but that was never the complete case. Dr. Straubing wrote the prescriptions with the knowledge that the patients would eventually kick back some of the medications to him. Mr. Wilcox stated that these prescriptions were being issued by the pharmacy under false pretenses, and that is where the deception occurred. Mr. Wilcox stated that he may have agreed with the Hearing Examiner's conclusion if this was a one-time event or occurred rarely. However, Dr. Straubing did this fifty to seventy times, a pattern which shows deception.

Mr. Wilcox requested that the Board amend Conclusion of Law #2 to reflect that Dr. Straubing had used deception to obtain dangerous drugs.

Mr. Hairston moved to approve and confirm Ms. Petrucci's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Stephen Alan Straubing, M.D. Dr. Steinbergh seconded the motion.

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

Dr. Mahajan noted that Dr. Straubing has admitted that there was inappropriate behavior in the diversion of prescription medications. Dr. Mahajan also noted that Dr. Straubing cooperated with everything the Board asked of him. Dr. Mahajan stated that Dr. Straubing's actions were exceedingly wrong.

Dr. Mahajan agreed with Mr. Wilcox that Conclusion of Law #2 should be amended.

Dr. Steinbergh stated that Dr. Straubing was not charged with impairment. Dr. Straubing has admitted that he engaged in sexual contact with two patients, prescribed medications to five patients and had those patients return some of the medications to him for his personal use, and later failed to answer questions regarding these events. Further, Dr. Straubing prescribed medications to four patients without maintaining

a complete medical record or any medical chart, wrote prescriptions for Tramadol in the name of two family members and failed to maintain the patient's chart or record for such prescribing. Dr. Steinbergh stated that Dr. Straubing's reasoning for prescribing Tramadol for his family members was that he had a vacation home and he wanted to keep things on hand in case he needed pain medication.

Dr. Steinbergh stated that, although Dr. Straubing was not charged with impairment, he did state during his hearing that he did not object to the imposition of impairment-related disciplinary terms, like the Board did in the *Matter of Robert J. Eastway, Jr., D.O.* In that case, Dr. Eastway was not charged with impairment, but since the Board felt he was impaired he was put into a consent agreement for impairment. Dr. Steinbergh stated that if impairment had been one of the charges against Dr. Straubing, she would have supported permanent revocation of his Ohio medical license.

Dr. Steinbergh agreed with Dr. Mahajan and Mr. Wilcox that Conclusion of Law #2 in the Report and Recommendation should be amended and stated that there is no question that there was deception in Dr. Straubing's actions. However, Dr. Steinbergh supported the Proposed Order.

Dr. Stephens agreed that Conclusion of Law #2 should be amended. Dr. Stephens opined that Dr. Straubing is dangerous and that he created drug-dependent patients. Dr. Stephens stated that this is predatory behavior and opined that Dr. Straubing is a predator. Dr. Stephens stated that Dr. Straubing helped some patients, but only so that he could justify hurting others. Dr. Stephens stated that Dr. Straubing's actions dishonor the profession. Dr. Stephens stated that everyone has problems, such as Dr. Straubing's back pain, but this does not justify Dr. Straubing's actions.

Dr. Steinbergh moved to amend the first sentence of Conclusion of Law #2 of the Report and Recommendation to read as follows: "Dr. Straubing's acts, conduct, and/or omissions, as set forth in Finding of Fact 2, individually and/or collectively, constitute '[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,' as set forth in Section 4731.22(B)(10), Ohio Revised Code, to wit: Deception to Obtain a Dangerous Drug, in violation of Section 2925.22, Ohio Revised Code." Dr. Steinbergh also moved to delete the second sentence of Conclusion of Law #2. Dr. Mahajan seconded the motion. A vote was taken:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Dr. Strafford | - aye |
| | Mr. Hairston | - aye |
| | Dr. Stephens | - aye |
| | Dr. Mahajan | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Amato | - aye |
| | Mr. Albert | - abstain |
| | Dr. Madia | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Mr. Morris | - aye |

Dr. Ramprasad - aye

The motion carried.

Dr. Steinbergh moved to approve and confirm Ms. Petrucci's Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of Stephen Alan Straubing, M.D. Dr. Mahajan seconded the motion. A vote was taken:

| | | |
|------------|----------------|-----------|
| ROLL CALL: | Dr. Strafford | - aye |
| | Mr. Hairston | - aye |
| | Dr. Stephens | - aye |
| | Dr. Mahajan | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Amato | - aye |
| | Mr. Albert | - abstain |
| | Dr. Madia | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Mr. Morris | - aye |
| | Dr. Ramprasad | - aye |

The motion carried.

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov



August 12, 2009

Case number: 09-CRF- **105**

Stephen Alan Straubing, M.D.
3050 Mack Road, Suite 375
Fairfield, OH 45014-5378

Dear Doctor Straubing:

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) In the course of your practice, you undertook the treatment, provided care and/or prescribed medications to Patients 1 through 10, as identified in the attached Patient Key. (Key is confidential and shall be withheld from public disclosure.)

On or about December 18, 2008, you were interviewed by a Board Investigator [December 2008 interview]. During this December 2008 interview, you stated that you had engaged in sexual conduct with Patients 1 and 2.

In or around April 2009, you stated under oath that you had provided general gynecologic care to Patient 1, but you did not know the exact dates of the doctor-physician relationship. You further stated that you engaged in sexual conduct with Patient 1 from approximately September 2007 until February 2009. Patient 1's patient chart indicates that you provided medical care to her, including prescribing medications, both before and during the time you acknowledged engaging in sexual conduct with her.

You also stated under oath that you engaged in sexual conduct on one or two occasions with Patient 2 in approximately June or July 2007. Patient 2's medical records indicate that you provided medical care to her, including prescribing medications, during the time you acknowledged engaging in sexual conduct with her.

Mailed 8-13-09

- (2) During your December 2008 interview, you stated that you had prescribed medications, which included controlled substances, to Patients 1, 3, 4, 5 and 6 and then asked and had those patients return some of the medication to you for personal usage. You further stated that you learned from a pharmacist that Patient 3 was calling in her own prescriptions for medications, using your name.

When the Board requested additional information from you under oath, you did not answer certain questions asking whether you ever diverted any controlled substances, dangerous drugs or medications; split doses of medications with patients and/or other individuals; wrote prescriptions for controlled substances to Patients 1, 3, 4, 5, and 6, and then asked those patients for some of the medication back for your personal use; obtained drugs for self-use by either writing or telephoning a prescription for a controlled substance/dangerous drug in the name of a family member, or in your own name; and obtained controlled substances or dangerous drugs for self-use by ingesting controlled substances/dangerous drugs prescribed or provided to another person.

- (3) During your December 2008 interview, you stated that you had prescribed medications to Patients 7 and 8 without maintaining or keeping a medical chart. In or around April 2009, you stated under oath that you had prescribed Hydrocodone and Medrol to Patient 7, and Xanax to Patient 8, without maintaining a full medical chart.
- (4) During your December 2008 interview, you stated that while you kept some notes, you prescribed medications to Patients 9 and 10 without maintaining a complete medical chart. In or around April 2009, you stated under oath that you had prescribed Hydrocodone to Patient 9 and medications to Patient 10, without maintaining a full medical chart.
- (5) During your December 2008 interview, you further stated that you had written prescriptions for Tramadol in the name of two family members, and you had put that medication in a medicine kit that you kept at a vacation home. In or around April 2009, you stated under oath that you had written prescriptions for Tramadol in the names of two family members "to treat minor ailments especially on vacation" and that you failed to maintain a patient chart or records to reflect such prescribing.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-26-02, Ohio Administrative Code. Pursuant to Rule 4731-26-03(A), Ohio Administrative Code, a violation of Rule 4731-26-02, Ohio Administrative Code, also violates Section 4731.22(B)(6), Ohio Revised Code, which is "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.”

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Deception to Obtain a Dangerous Drug, in violation of Section 2925.22, Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-08(A), Ohio Administrative Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (3) and (4) above, individually and/or collectively, constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(D), Ohio Administrative Code. Pursuant to Rule 4731-11-02(F), Ohio Administrative Code, violation of Rule 4731-11-02(D), Ohio Administrative Code, also constitutes violation of Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (3) and (4) above, individually and/or collectively, constitute “[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Authority of Licensed Health Care Professional; Contents of Prescription, Section 3719.06(A)(1)(a), Ohio Revised Code. Pursuant to Section 3719.99(E), Ohio Revised Code, a violation of Section 3719.06, Ohio Revised Code, constitutes a misdemeanor of the third degree.

Further, your acts, conduct, and/or omissions as alleged in paragraph (5) above, individually and/or collectively, constitute “[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Persons Who May Sell, Purchase, Distribute, or Deliver Dangerous Drugs, Section 4729.51(C)(3), Ohio Revised Code. Pursuant to Section 4729.99(H), Ohio Revised Code, a violation of Section 4729.51(C)(3), Ohio Revised Code, constitutes a misdemeanor of the first degree.

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

Stephen Alan Straubing, M.D.

Page 4

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/MRB/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3936 3068 6908
RETURN RECEIPT REQUESTED

cc: Eric J. Plinke, Esq.
Dinsmore & Shohl LLP
191 W. Nationwide Blvd.
Columbus, OH 43215

CERTIFIED MAIL #91 7108 2133 3936 3068 6892
RETURN RECEIPT REQUESTED

**IN THE MATTER OF
STEPHEN ALAN STRAUBING, M.D.**

09-CRF-105

**AUGUST 12, 2009 NOTICE OF
OPPORTUNITY FOR HEARING
PATIENT KEY**

**SEALED TO
PROTECT PATIENT
CONFIDENTIALITY AND
MAINTAINED IN CASE
RECORD FILE.**