

State Medical Board of Ohio

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May 11, 2011

Emmett G. Cooper, M.D., Ph.D.
6890 Beechlands Drive
Cincinnati, OH 45237

RE: Case No. 10-CRF-066

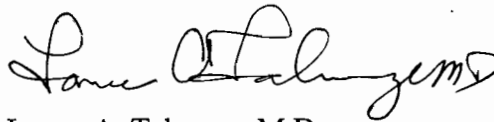
Dear Doctor Cooper:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, 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 May 11, 2011, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

Such an appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board and the Franklin County Court of Common Pleas. The Notice of Appeal must set forth the Order appealed from and state that the State Medical Board's Order is not supported by reliable, probative, and substantive evidence and is not in accordance with law. The Notice of Appeal may, but is not required to, set forth the specific grounds of the appeal. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO



Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3938 3020 1697
RETURN RECEIPT REQUESTED

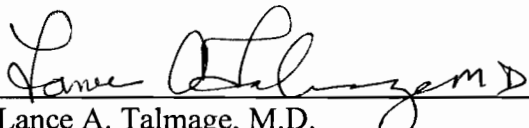
Cc: Douglas E. Graff and Levi J. Tkach, Esqs.
CERTIFIED MAIL NO. 91 7108 2133 3938 3020 1703
RETURN RECEIPT REQUESTED

Mailed 5-26-11

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, Esq., State Medical Board Hearing Examiner; and excerpt of the Minutes of the State Medical Board, meeting in regular session on May 11, 2011, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Emmett G. Cooper, M.D., Ph.D., Case No. 10-CRF-066, as it appears in the Journal of the State Medical Board of Ohio.

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



Lance A. Talmage, M.D.
Secretary

(SEAL)

May 11, 2011
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

* CASE NO. 10-CRF-066

EMMETT G. COOPER, M.D., PH.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on May 11, 2011.

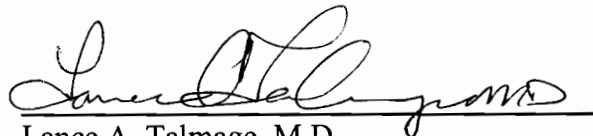
Upon the Report and Recommendation of R. Gregory Porter, Esq., State Medical Board Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated within, and upon the modification, approval and confirmation by vote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

Rationale for Amendment: Based on the record, there is no indication that the patients were engaged in drug seeking behavior.

It is hereby ORDERED that:

Emmett G. Cooper, M.D., Ph.D., is REPRIMANDED.

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


Lance A. Talmage, M.D.
Secretary

(SEAL)

May 11, 2011
Date

2011 APR 14 PM 1:06

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of	*	
Emmett G. Cooper, M.D., Ph.D.,	*	Case No. 10-CRF-066
Respondent.	*	Hearing Examiner Porter

REPORT AND RECOMMENDATION

Basis for Hearing

By letter dated June 9, 2010, the State Medical Board of Ohio [Board] notified Emmett George Cooper, M.D., Ph.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. Cooper failed to complete and maintain accurate medical records concerning his prescribing of controlled substances to three patients, identified on a confidential Patient Key. The Board also alleged that such conduct constitutes: "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: 4731-11-02(D), Ohio Administrative Code, as in effect from 1998 through the present. The Board advised Dr. Cooper that, pursuant to Rule 4731-11-02(F), Ohio Administrative Code, violation of Rule 4731-11-02(D), Ohio Administrative Code, also violates Sections 4731.22(B)(2) and (6), Ohio Revised Code, as in effect from 1998 through the present. (State's Exhibit [St. Ex.] 1)

Accordingly, the Board advised Dr. Cooper of his right to request a hearing, and received Dr. Cooper's written hearing request on July 7, 2010. (St. Ex. 1)

Appearances

Mike DeWine, Attorney General, and Lisa M. Eschbacher and Katherine J. Bockbrader, Assistant Attorneys General, for the State of Ohio. Douglas E. Graff and Levi J. Tkach, Esqs., on behalf of Dr. Cooper.

Hearing Date: March 2, 2011

PROCEDURAL MATTERS

1. In order to maintain the confidentiality of Patients 1, 2, and 3, the Hearing Transcript was redacted where Dr. Cooper's descriptions of those individuals could jeopardize their

confidentiality. A separate transcript was prepared that contains the redacted portions of the Hearing Transcript. The separate transcript was marked Board Exhibit B, sealed to protect patient confidentiality, and admitted to the hearing record. Board members may refer to Board Exhibit B when they encounter the redacted portions of the Hearing Transcript. (See Hearing Transcript [Tr.] at 35, 93, 243, 250-252, and 256-257)

2. An additional section of the transcript was redacted from the record, placed in a separate transcript, marked Board Exhibit C, sealed from public disclosure, and held as proffered material. The testimony therein, offered by Megan Marchal, R.Ph., a pharmacy representative, was deemed unnecessary following a proffer that the parties entered into following her testimony. The proffered testimony was not reviewed or considered by the Hearing Examiner in preparing this Report and Recommendation. (Tr. at 215)

Similarly, State's Exhibits 6 through 13, which consist of pharmacy records and copies of prescriptions, were also deemed unnecessary following the parties' stipulation. Those exhibits were not admitted to the record, but were sealed to protect patient confidentiality and are held as proffered material. Those exhibits were not reviewed or considered by the Hearing Examiner in preparing this Report and Recommendation. (Tr. at 215)

3. A portion of the medical record for Patient 2, marked State's Exhibit 3, was redacted per discussion at hearing. (Tr. at 89-92)
4. Post-hearing, at the request of the Hearing Examiner, the parties agreed to enter into an additional stipulation. Printouts of the parties' emails confirming that stipulation were marked Board Exhibit D. The hearing record was briefly reopened on April 12, 2011, to admit Board Exhibit D.

SUMMARY OF THE EVIDENCE

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

Background Information

1. In 1972, Emmett George Cooper, M.D., Ph.D., simultaneously obtained his medical degree and his Ph.D. in pharmacology from Howard University. From 1972 through 1973, Dr. Cooper completed a rotating internship at Long Beach Memorial Hospital in Long Beach, California. Following his internship, Dr. Cooper spent two years working for the National Institutes of Health. Subsequently, from 1975 through 1978, he completed a residency in psychiatry at the University of Cincinnati in Cincinnati, Ohio. Dr. Cooper was first licensed to practice medicine and surgery in Ohio in 1973. (Hearing Transcript [Tr.] at 222-228; Respondent's Exhibit [Resp. Ex.] A)

2. Dr. Cooper was certified by the American Board of Psychiatry and Neurology in 1992. He testified that he did not immediately pursue certification following completion of his residency. However, when managed care became more popular and credentialing processes became more stringent, Dr. Cooper sought and obtained board certification. (Tr. at 228; Resp. Ex. A)
3. After finishing his residency in 1978, Dr. Cooper became the Medical Director of the Central Community Health Board of Hamilton County [CCHB], an inner-city mental health center in Cincinnati, a position that Dr. Cooper still occupies. Dr. Cooper testified that, in the 1970s, mental health centers, such as CCHB, were assigned certain geographic “catchment areas” and charged with taking care of the indigent populations in their areas. Dr. Cooper testified that CCHB serves chronically mentally ill individuals who have been released from state hospitals and tries to re-integrate them into the community. Dr. Cooper’s position includes direct patient-care responsibilities, and he sees between 200 and 300 patients per week. (Tr. at 222-230)
4. Dr. Cooper further testified that, since 1978, he has worked in the area of addiction medicine: “I have been the medical director at the methadone program, drug treatment program at CCHB. I am also the medical director for the substance abuse program in Butler County. I was the clinical director for Warren County’s psychiatric program for about seven or eight years.” (Tr. at 231) Dr. Cooper also worked as a contract physician for the Center for Chemical Addictions in 2007 while their medical director served in Iraq. (Resp. Ex. C)
5. Dr. Cooper also works in the following areas:
 - Dr. Cooper testified that he practices forensic psychiatry and has “probably been in court a thousand times for civil, criminal, and probate” matters. He has been retained by both plaintiffs and defendants in criminal and civil matters. (Tr. at 232-233)
 - In addition, Dr. Cooper assisted the Hamilton County Probate Court establish a system for handling severely mentally ill patients who had been probated to hospitals and who require the surveillance of the court to encourage their participation in treatment. (Tr. at 233) Dr. Cooper testified:

I went to court with them; testified whether or not they should remain under probate status or be given voluntary conditions to seek treatment.

I helped set up the standard medical records. We’re getting ready to move to electronic medical records. I sat on the peer—on the quality assurance and I did the peer review of charts. Whatever was required to make sure that the patients were getting quality care, that’s what—I typically do.

(Tr. at 234) Dr. Cooper testified that he had also performed chart reviews on other physicians who were involved in that program. (Tr. at 235)

- Furthermore, Dr. Cooper testified that he has worked with the Volunteers of America. He stated that Volunteers of America has a halfway house in Cincinnati:

that's funded in part by the corrections system to attempt to reintegrate sexual predators [who are kept] on the lower floor and criminals of a nonsexual nature [who are kept] on the upper floors.

And it's a locked facility, except you may have read very recently where somebody got out and killed [a] young lady. So a very dangerous facility.

We work there on the inpatient program where patients will stay for eight months and try to rehabilitate them from the—to break the cycle of sexual predation. So I worked—I worked there for six or seven years.

(Tr. at 238)

Dr. Cooper indicated that the halfway house is still in operation, but that he no longer provides services there. (Tr. at 239)

- Also, Dr. Cooper testified that he had taught as an assistant clinical professor of psychiatry at the University of Cincinnati College of Medicine for 30 years prior to retiring in 2006 or 2007. Dr. Cooper further testified that he had been the attending physician on the psychiatric floor of University Hospital. Moreover, Dr. Cooper testified that he has admitted over 13,000 patients to the psychiatric floor. (Tr. at 239, 259-260, 263-264)
- Finally, Dr. Cooper testified that he has a private practice where he sees opiate-dependent patients for Suboxone treatment. (Tr. at 241)

Stipulation of the Parties

6. During the hearing, the parties entered into the following stipulation:

Dr. Cooper authorized or wrote the 33 prescriptions listed in the notice of opportunity for hearing dated June 9, 2010, to the three patients identified in the patient key, State's Exhibit 1-A, over a period of 11 years, December 8, 1998, to [July] 22nd, 2009.

* * *

The Board has charged Dr. Cooper solely with the failure to keep adequate records concerning these prescriptions as alleged in Paragraph 1 of the notice of opportunity for hearing.

* * * Any implication or evidence contrary to the stipulation shall not be admitted and shall be stricken from the record.

(Tr. at 214-215)

Patients 1, 2, and 3, In General

7. Dr. Cooper testified that Patients 1, 2, and 3 are colleagues at facilities where Dr. Cooper worked. However, he testified that he had not seen Patients 1, 2, or 3 at his private office or as patients of the facilities where they worked, which made it difficult to keep appropriate medical records. Dr. Cooper testified:

[S]o what I would do is when I would see them, I would write a—a pad—or, a note on a pad, put it in my pocket, take it back to my office and put it in a—in a collection there or take it home and put it in a collection there. So they weren't a part of the patient records of that organization. They weren't patients of the organization where—where I worked at that point in time.

(Tr. at 34)

8. Dr. Cooper described how Patients 1 through 3 initiated their physician/patient relationships with him:

Typically, it would start as like colleagues do, they talk to you about what they're going through in life sometimes. And when they know that you're a psychiatrist or a psychologist or a mental health professional, you know, they—they bring their issues to you, even when you don't want them to. And so that's how—that's how all of them began.

(Tr. at 254)

9. Dr. Cooper testified that he considers Patients 1, 2, and 3 to have been his patients. (Tr. at 32)
10. Dr. Cooper testified that none of the three patients at issue asked for early refills or engaged in conduct suggestive of drug-seeking behavior. (Tr. at 254-256)

Patient 1

11. Dr. Cooper testified that Patient 1, a psychologist, is a colleague whom Dr. Cooper has frequently worked with for many years. Dr. Cooper further testified that Patient 1 had been experiencing “a number of situational difficulties” including marital problems: “He’s

already a high-strung, type ‘A’ personality type of guy, and he was coming unglued.”
(Tr. at 60-61, 243-246) Moreover, Dr. Cooper testified:

[H]e would complain to me and talk to me about what he was going through, and—and this was usually when we would have a few minutes after a meeting or in between clients, something like that. And, you know, he’d be—became increasingly distraught, and anxious, and not sleeping, and losing weight. And, you know, I recommended that he see somebody, and he did.

But he was seeing a non—a nonmedical person.¹ And so at some juncture, it’s been such a long time, I can’t capture the exact words, but either he or I suggested that he take p.r.n. benzodiazepines along with the therapy he was getting until such time that he could calm down.

Well, he’s never—he’s gotten through the crises, but he still is a very high-strung person, tends to be very volatile, and reacts to—to situations. And, you know, my feeling was that—it came to the point that as long as he never asked me for increases, and as long as he didn’t take the medication more frequently than he was supposed to, and took it on a p.r.n. basis, the way it should be taken, that I would—I would write for him as long as he was seeing someone and—and functioning well.

(Tr. at 246-247)

12. Dr. Cooper testified that he could not have kept a medical record for Patient 1 at the facility where they both worked because Patient 1 did not meet the qualifications to be a patient at that facility. (Tr. at 248)
13. Dr. Cooper stipulated that he had authorized the following prescriptions for Patient 1, as set forth in the Notice:

Patient	Date of Prescription	Medication	Quantity	Refills
1	12/08/98	Alprazolam 1 mg	60	1
1	07/26/99	Alprazolam 1 mg	60	1
1	02/16/00	Alprazolam 1 mg	60	2
1	12/12/00	Alprazolam 1 mg	60	2
1	10/03/01	Alprazolam 1 mg	60	2
1	07/19/02	Alprazolam 1 mg	60	3
1	04/14/03	Alprazolam 1 mg	60	3
1	12/31/03	Alprazolam 1 mg	60	2
1	09/27/04	Alprazolam 1 mg	60	0

¹ Dr. Cooper testified that Patient 1 had been in counseling with a licensed professional clinical counselor [LPCC], and that LPCCs are not authorized to prescribe medication. (Tr. at 47-51)

Patient	Date of Prescription	Medication	Quantity	Refills
1	12/30/04	Alprazolam 1 mg	60	1
1	07/29/05	Alprazolam 1 mg	60	2
1	05/22/06	Alprazolam 1 mg	60	5
1	08/16/07	Alprazolam 1 mg	60	2
1	05/07/08	Alprazolam 1 mg	60	3
1	07/22/09	Alprazolam 1 mg	60	2

(Tr. at 37-38, 214-215; State's Exhibit [St. Ex.] 1)

14. Dr. Cooper testified that alprazolam is the generic name for Xanax and is a controlled substance. (Tr. at 23)
15. Dr. Cooper testified that he had typically called in Patient 1's prescriptions to the same Walgreens pharmacy. He further testified that, once per year, he had had Walgreens print out a log of the medications that Patient 1 had been prescribed to ensure that the dose and frequency were not increasing and that Patient 1 was not asking for early refills. (Tr. at 65-66)
16. When asked how he had tracked whether a patient's prior prescription may be out of refills, Dr. Cooper testified that, when a patient takes a medication "as needed," there is no way to track that. (Tr. at 75) Moreover, Dr. Cooper testified:

[I]t was my impression both from [Patient 1] and from the pharmacy that there was no indication that he was increasing his frequency or—or amount of alprazolam. Things that you look out for in terms of drug abuse is that the person gets a refill early, or increases the dose, or loses his prescription, or something else that—that indicates that there's increased use.

And—And my pattern would be call the pharmacy, ask them when the last refill was filled. If it was a reasonable amount of time given the amount, I would ask them to—based on how long they had it, then we would refill the prescription.

(Tr. at 76)

17. None of the prescriptions that Dr. Cooper prescribed to Patient 1 were documented in Patient 1's medical record, except the last three. However, although the last three prescriptions are documented in the medical record, they are documented inaccurately:
 - In his entry dated August 16, 2007, Dr. Cooper documented prescribing alprazolam 1 mg #30, no refills, with instructions to take one tablet every eight hours as needed. However, per the parties' stipulation, Dr. Cooper had actually prescribed 60 tablets with two refills. (Tr. at 70-72, 214-215; St. Ex. 1; St. Ex. 2)

- In his entry dated May 7, 2008, Dr. Cooper documented prescribing alprazolam 1 mg #30, no refills, with instructions to take one tablet every eight hours as needed. However, per the parties' stipulation, Dr. Cooper had actually prescribed 60 tablets with three refills. (Tr. at 74-78; 214-215; St. Ex. 1; St. Ex. 2)
- In his entry dated July 22, 2009, Dr. Cooper documented prescribing alprazolam 1 mg #30, no refills, with instructions to take one tablet every eight hours as needed. However, per the parties' stipulation, Dr. Cooper had actually prescribed 60 tablets with two refills. (Tr. at 214-215; St. Ex. 1; St. Ex. 2)

18. Dr. Cooper acknowledged that a number of prescriptions he authorized for Patient 1 pre-date the earliest entry in the medical record. Dr. Cooper explained that he had had earlier records for Patient 1, but that he could not find the older records when he received the Board's subpoena in September 2009. Dr. Cooper testified that he provided the Board with all the records he was able to find. (Tr. at 52-53; 273-274; St. Exs. 5, 5A)

Patient 2

19. Dr. Cooper testified that Patient 2 is another individual with whom he had a professional relationship in addition to a physician/patient relationship. Dr. Cooper noted that he and Patient 2 were involved in the same charitable organization, the Volunteers of America. (Tr. at 92-93)
20. Dr. Cooper testified that he could not have kept a medical record for Patient 2 with the organization that both of them served. (Tr. at 253-254)
21. Dr. Cooper testified that Patient 2 went through a period where she was having stress at work, some social problems, and problems with her son. Dr. Cooper testified that he issued prescriptions for benzodiazepines and, he believes, antidepressants contingent on Patient 2 being seen by a psychologist. Dr. Cooper further testified that he knew the psychologist that Patient 2 saw and that she was aware of Dr. Cooper's prescribing. (Tr. at 252)
22. Dr. Cooper stipulated that he had authorized the following prescriptions to Patient 2:

Patient	Date of Prescription	Medication	Quantity	Refills
2	04/22/05	Alprazolam .25 mg	60	1
2	08/05/06	Alprazolam .25 mg	60	1
2	06/17/08	Xanax 1 mg	60	0

(Tr. at 214-215; St. Ex. 1)

23. Dr. Cooper's April 22, 2005, prescription to Patient 2 was not documented in Patient 2's medical record. (Tr. at 85-86; St. Ex. 3) The other two prescriptions are documented:

- In his entry dated August 5, 2006, Dr. Cooper documented prescribing Xanax 0.25 mg #60 with one refill, with instructions to take one tablet every eight hours as needed. This is consistent with the actual prescription issued.² Further, Dr. Cooper's August 5, 2006, entry was written in a SOAP format. Under the section for subjective findings, Dr. Cooper wrote "anxiety," something about her son that is illegible to the Hearing Examiner, and "↓sleep – says she will schedule + eval – 3 PCP's." Under objective findings, it states, "anxious, [illegible]." Under assessment, Dr. Cooper indicated situational stress and to rule out two conditions that are illegible to the Hearing Examiner. Finally, under plan, it states, "Rehab therapist for eval" along with the Xanax prescription described above. (Tr. at 70-72, 214-215; St. Ex. 1; St. Ex. 3)
- In his entry dated June 17, 2008, Dr. Cooper documented prescribing alprazolam 1 mg #60, no refills, with instructions to take one-half tablet every eight hours as needed. This is consistent with the actual prescription issued.³ The rest of Dr. Cooper's note for that visit indicates that Patient 2 was still encountering a lot of stress at work and was considering leaving her job, and that her son's girlfriend was pregnant. There is some other information as well that is illegible to the Hearing Examiner. (Tr. at 214-215; St. Ex. 1, St. Ex. 3)

Patient 3

24. Dr. Cooper testified that Patient 3 is another professional acquaintance, and is a nurse practitioner. Dr. Cooper further testified that he worked with her frequently. At some point Dr. Cooper began treating her for episodic anxiety. (Tr. at 98; 257-258)
25. Dr. Cooper testified that he did not formally assess her every day that he saw her. However, when he began prescribing medication to her, as he would any other patient, he regularly assessed her for clinically significant changes in her behavior: fluency of speech, coherency of thinking, affect, mood, and concentration. Dr. Cooper testified: "And for [Patient] 3, she was probably the highest functioning of the three. She didn't have much—she wasn't as frenetic as the other two tended to be." (Tr. at 257-259)
26. Dr. Cooper stipulated that he had authorized the following prescriptions to Patient 3:

Patient	Date of Prescription	Medication	Quantity	Refills
3	01/14/02	Ambien 10 mg	30	3
3	01/14/02	Alprazolam 1 mg	90	0
3	01/17/02	Triazolam .25 mg	30	3

² The medication issued was alprazolam, the generic name for Xanax. (Tr. at 214-215; St. Ex. 1)

³ This time, the medication issued was Xanax, a brand name of alprazolam. (Tr. at 214-215; St. Ex. 1)

Patient	Date of Prescription	Medication	Quantity	Refills
3	03/15/02	Hydrocodone/APAP 7.5/500 mg	20	0
3	08/01/02	Triazolam .25 mg	60	3
3	08/27/02	Alprazolam 1 mg	90	5
3	03/19/03	Triazolam .25 mg	60	3
3	06/07/03	Alprazolam 1 mg	90	2
3	06/24/03	Ambien 10 mg	30	3
3	09/15/03	Alprazolam 1 mg	90	3
3	10/14/03	Triazolam .25 mg	60	2
3	10/13/06	Alprazolam 1 mg	60	0
3	04/18/07	Alprazolam 1 mg	60	1
3	08/06/07	Alprazolam 1 mg	60	1
3	11/11/07	Ambien CR 12.5 mg	7	2

(Tr. at 214-215; St. Ex. 1)

27. Triazolam is the generic name of Halcion, and is a controlled substance. (Tr. at 25; National Institutes of Health Daily Med [Daily Med] website, <<http://dailymed.nlm.nih.gov/dailymed/drugInfo.cfm?id=17998>>, accessed April 7, 2011) Further, hydrocodone is one of the medications in Vicodin (along with acetaminophen, abbreviated as “APAP”) and is also a controlled substance. (Tr. at 25-27; Daily Med website <<http://dailymed.nlm.nih.gov/dailymed/drugInfo.cfm?id=12391>>, accessed April 6, 2010) Finally, Ambien and Ambien CR contain the same medication, which is a controlled substance. (Tr. at 24, 27)
28. None of the prescriptions that Dr. Cooper prescribed to Patient 3 were documented in Patient 3’s medical record, except for the prescriptions dated October 13, 2006, and April 18, 2007. (Tr. at 96, 214-215; St. Ex. 1; St. Ex. 4) With respect to those two prescriptions:
- In his entry dated October 13, 2006, Dr. Cooper documented prescribing alprazolam 1 mg #60 with one refill, with instructions to take one-half tablet every eight hours as needed. This agrees with the actual prescription except that the actual prescription included no refills. (Tr. at 214-215; St. Ex. 1; St. Ex. 4)

Dr. Cooper described what he had written in his entry dated October 13, 2006:

“Stress at work. Fibroids. [Patient No. 3’s son] in trouble”—
[Patient No. 3’s son] is their son—”in trouble again.” Has “requested
BZD,” benzodiazepine. “No con [concurrent] meds.”

“Impression V code,” which is—it’s a code that’s given when you
don’t—you’re not sure that there’s something actually psych—
psychiatrically wrong with the person, but they’re under some duress.

And so rather than give them a diagnosis, such as anxiety or depression, you go—it's a situational code, is the V code.

And—But it's, "Situational stress." "P/C/D" means pros/cons discussed. "Treatment: Alprazolam 1 milligram q—No. 60 q8h—1/2 tab q8h p.r.n."

(Tr. at 97; St. Ex. 4)

When asked if he had recorded a patient history in that entry, Dr. Cooper responded:

I don't—Well, let me say this. Often, when—when you take a history in this kind of situation, you note the positives. You note significant positives. You know, you don't say "She doesn't have this; she doesn't have 'X'; she doesn't have 'Y'," unless they're really relevant to—to what's transpiring that occasion.

So to say I didn't take a history I don't think is accurate. To say I didn't document all the negatives that I would have asked her—like "con meds," for instance, means I went through her—what her medications were and what she's being treated for. So, you know, I didn't—I didn't write it out in—in the form of a history, but it was always taken.

(Tr. at 98-99)

- In his April 18, 2007, entry, Dr. Cooper documented:

Recurrent problem = [with] [illegible – person's name?], ↓sleep
No con meds
request alp. refill
V code – sit. stress

(St. Ex. 4) Dr. Cooper further documented a prescription for Xanax 1 mg #60 with instructions to take one-half tablet twice per day as needed, and that the pros and cons were discussed with the patient. This agrees with the actual prescription issued except the actual prescription included one refill; Dr. Cooper's April 18, 2007, entry does not document a refill. (St. Ex. 4)

Additional Information Concerning Dr. Cooper's Treatment of Patients 1 – 3

29. Dr. Cooper indicated that he had not seen Patients 1, 2, or 3 in an office setting; rather, he had spoken with them about their psychiatric issues informally, while at work. When Dr. Cooper had seen those individuals as patients, he had made a note of the encounter and entered the information into the patient record when he had a chance. Dr. Cooper acknowledged that "it was a ramshackle kind of way of keeping notes that * * * was based on how I was seeing these—these three folks." (Tr. at 276-277)

When asked how he would review his medical records for Patients 1 through 3, Dr. Cooper replied:

You know, these records, as I stated earlier, are atypical, the situations were atypical. I am—On a given day, especially up until a year or two ago, I would go to five or six different places per day. I would start off at the hospital, go to the methadone center, go to the drop-in center, go out to the CCAT House. I was—I was on the move.

And the setup was that I would go to these places and interview the patients, pull the chart from the medical records there, fill out the charts—most—most—most of the charts had gone to a uniform progress note, uniform chart—fill them out, you know, send them back to medical records.

The difference is that these people, while clearly, you know, they were my patients, they were—I was seeing them out of—out of rhythm. I wasn't seeing them when I was sitting down at—at a place that's there to see them. I would see them at lunch, or in between patients, or things like that. And my attempt was to—to write a note when I see them, put it in my pocket and then put—bring it to some centralized place.

Now, you know, in a perfect world, you know, I should have had a better charting system where I could keep it either there or somewhere that it would have been a comprehensive chart, you know. Manifestly, that didn't happen. And, you know, it should have happened, and I should have—I should have been as—as thorough in terms of the recordkeeping with them as I was with all my other patients.

I certainly feel I was as thorough in terms of my clinically processing what their options were or clinically trying to assess what their conditions were, trying to articulate to the client what their options were, and kind of consenting them in a sense. But in terms of the documentation, you know, I was—I was out of my rhythm.

(Tr. at 266-268)

30. Dr. Cooper testified that he had performed appropriate assessments of each of the patients. Further, Dr. Cooper testified that each of the patients had been seeing another mental health professional for ongoing consultations, and that those mental health professionals had been aware of Dr. Cooper's prescribing. (Tr. at 270-272)
31. Dr. Cooper testified that, throughout his career, his medical records have been subject to peer review and review by numerous agencies. For example, Dr. Cooper testified that all of the 13,000 records for patients he admitted to the psychiatric floor at University of

Cincinnati Hospital were subject to peer review, and that every chart was reviewed. (Tr. at 263-264)

Moreover, Dr. Cooper testified that CCHB is a publicly funded organization that is reviewed and audited by a number of authorities, including CARF [Commission on Accreditation of Rehabilitation Facilities⁴], JCAHO [Joint Commission on the Accreditation of Healthcare Organizations], ODADAS [Ohio Department of Alcohol & Drug Addiction Services⁵], the U.S. Drug Enforcement Agency, Medicaid, and Medicare. Dr. Cooper further testified that the medical records of CCHB are reviewed on a regular basis. Moreover, Dr. Cooper testified, “[W]e’ve passed every certification that that we’ve had for the last 33 years that I have been there.” (Tr. at 248-249)

32. Dr. Cooper testified that he had stopped seeing Patients 1, 2, and 3 as their psychiatrist prior to the Board contacting him. (Tr. at 281-282)
33. There is no evidence that Patients 1, 2, or 3 requested or obtained early refills of the medication that Dr. Cooper prescribed to them. (Bd. Ex. D)

Additional Information

34. Dr. Cooper presented a letter dated February 10, 2011, advising him that he is a repeat recipient of the Patient’s Choice physician award. (Resp. Ex. F)
35. Dr. Cooper testified that he has never been sued. (Tr. at 226)

Letters of Support

36. Dr. Cooper presented several letters of support from co-workers. One of these letters, dated February 10, 2011, was sent by William Kaiser, Deputy Executive Director of CCHB. Mr. Kaiser wrote, in part:

Over these 3-plus decades [of Dr. Cooper’s association with CCHB], in his capacity as Medical Director, Dr. Cooper has successfully and expertly steered all aspects of CCHB’s medical practice, including psychiatric interventions, pharmacotherapy methadone treatment and all auxiliary medical services.

For this period of time, his medical records, policies, procedures and other required documentation have been reviewed at least annually by a variety of regulatory agencies including, but not limited to the DEA, [ODADAS], CARF * * *, the Ohio Board of Pharmacy, the Ohio Department of Mental Health and the Hamilton County Board of Mental Health and Recovery Services.

⁴ CARF website <<http://www.carf.org/About/WhoWeAre/>>, accessed April 1, 2011.

⁵ ODADAS website <<http://www.odadas.state.oh.us/public/>>, accessed April 1, 2011.

CCHB remains in good standing with all of the previously mentioned entities, in large part due to his skills, qualifications, (M.D., Ph.D.), commitment to excellence and his efforts.

In conclusion, Dr. Cooper has spent his entire career assuring that those who are less able (or unable) to pay for medical treatment are provided services that at least match those from profit making provider organizations.

(Resp. Ex. B)

37. The other letters contain similar attestations of Dr. Cooper's work, and praise his dedication and his medical abilities. (Resp. Exs. B through E)
38. Ms. Eschbacher did not have an opportunity to cross-examine the authors of these letters of support.

RELEVANT STATUTES AND RULES

1. Section 4731.22(B)(2), Ohio Revised Code, as in effect at the time of Dr. Cooper's first prescription to Patient 1, prohibited the following:

Failure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease[.]

(See, 1997, Ohio SB 66)

Effective March 9, 1999, Section 4731.22(B)(2), Ohio Revised Code, was amended to its current version:

Failure to maintain minimal standards applicable to the selection or administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease[.]

(1997 Ohio HB 606)

2. Effective November 21, 1995, Section 4731.22(B)(6), Ohio Revised Code, was amended to its current version, which prohibits the following:

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[.]

(1995 Ohio HB 144)

3. The relevant language of Section 4731.22(B)(20), Ohio Revised Code, which prohibits “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,” has remained unchanged during the relevant time period and is still the current version. (See, 1997, Ohio SB 66)
4. Rule 4731-11-02(D), Ohio Administrative Code, as in effect at the time of Dr. Cooper’s first three prescriptions to Patient 1, stated:

A physician shall complete and maintain accurate medical records reflecting his examination, evaluation, and treatment of all his 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.

(Bd. Ex. A)

Effective September 1, 2000, Rule 4731-11-02(D), Ohio Administrative Code, was amended to make the language gender-neutral:

A physician shall complete and maintain accurate medical records reflecting the physician’s examination, evaluation, and treatment of all 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.

(Bd. Ex. A)

Further, although Rule 4731-11-02 was amended effective September 30, 2008, Rule 4731-11-02(D) remained unchanged. Accordingly, this is the current version of Rule 4731-11-02(D), Ohio Administrative Code.

5. Since taking effect on November 17, 1986, Rule 4731-11-02(F), Ohio Administrative Code, has stated that a violation of any provision of Rule 4731-11-02 also violates Sections 4731.22(B)(2) and (6), Ohio Revised Code. Effective September 1, 2000, Rule 4731-11-02(F) was amended only to reflect the new language of Section 4731.22(B)(2), Ohio Revised Code.

FINDINGS OF FACT

1. During the period in or about 1998 to in or about 2009, Emmett George Cooper, M.D., Ph.D., prescribed controlled substances to Patients 1 through 3 as identified on a confidential Patient Key. The following prescriptions were not documented in the patient medical records:

Finding #	Patient	Date of Prescription	Medication	Quantity	Refills
(a)	1	12/08/98	Alprazolam 1 mg	60	1
(b)	1	07/26/99	Alprazolam 1 mg	60	1
(c)	1	02/16/00	Alprazolam 1 mg	60	2
(d)	1	12/12/00	Alprazolam 1 mg	60	2
(e)	1	10/03/01	Alprazolam 1 mg	60	2
(f)	1	07/19/02	Alprazolam 1 mg	60	3
(g)	1	04/14/03	Alprazolam 1 mg	60	3
(h)	1	12/31/03	Alprazolam 1 mg	60	2
(i)	1	09/27/04	Alprazolam 1 mg	60	0
(j)	1	12/30/04	Alprazolam 1 mg	60	1
(k)	1	07/29/05	Alprazolam 1 mg	60	2
(l)	1	05/22/06	Alprazolam 1 mg	60	5
(m)	2	04/22/05	Alprazolam .25 mg	60	1
(n)	3	01/14/02	Ambien 10 mg	30	3
(o)	3	01/14/02	Alprazolam 1 mg	90	0
(p)	3	01/17/02	Triazolam .25 mg	30	3
(q)	3	03/15/02	Hydrocodone/APAP 7.5/500 mg	20	0
(r)	3	08/01/02	Triazolam .25 mg	60	3
(s)	3	08/27/02	Alprazolam 1 mg	90	5
(t)	3	03/19/03	Triazolam .25 mg	60	3
(u)	3	06/07/03	Alprazolam 1 mg	90	2
(v)	3	06/24/03	Ambien 10 mg	30	3
(w)	3	09/15/03	Alprazolam 1 mg	90	3
(x)	3	10/14/03	Triazolam .25 mg	60	2
(y)	3	08/06/07	Alprazolam 1 mg	60	1
(z)	3	11/11/07	Ambien CR 12.5 mg	7	2

2. With respect to the prescriptions identified in Findings of Fact 1(a) through 1(z), Dr. Cooper failed to complete and maintain accurate medical records of prescribing controlled substances and/or reflecting any examination, evaluation, the utilization of controlled substances and/or treatment and/or any diagnosis and/or purpose for which the controlled substances reflected in the above prescriptions were initially utilized, and/or additional information upon which any diagnosis was based.

3. Dr. Cooper documented having prescribed the following medications for Patients 1 and 3, but the prescriptions were documented inaccurately in the medical records with respect to the quantity prescribed and/or number of refills authorized:

Finding #	Patient	Date of Prescription	Medication	Quantity	Refills
(a)	1	08/16/07	Alprazolam 1 mg	60	2
(b)	1	05/07/08	Alprazolam 1 mg	60	3
(c)	1	07/22/09	Alprazolam 1 mg	60	2
(d)	3	10/13/06	Alprazolam 1 mg	60	0
(e)	3	04/18/07	Alprazolam 1 mg	60	1

4. With respect to the prescriptions identified in Findings of Fact 3(a) through 3(e), Dr. Cooper failed to complete and maintain accurate medical records of prescribing controlled substances.
5. Without expert testimony, the Hearing Examiner cannot find, with respect to the prescriptions identified in Findings of Fact 3(a) through 3(e), that Dr. Cooper failed to complete and maintain accurate medical records reflecting any examination, evaluation, the utilization of controlled substances and/or treatment and/or any diagnosis and/or purpose for which the controlled substances reflected in the above prescriptions were initially utilized, and/or additional information upon which any diagnosis was based. Nevertheless, the Board, as a panel of experts, may determine otherwise and amend this Finding of Fact accordingly. Should it choose to do so, the Board should also amend Conclusion of Law 5 to include this Finding of Fact.
6. Dr. Cooper accurately documented the following prescriptions issued to Patient 2:

Finding #	Patient	Date of Prescription	Medication	Quantity	Refills
(a)	2	08/05/06	Alprazolam .25 mg	60	1
(b)	2	06/17/08	Xanax 1 mg	60	0

7. Without expert testimony, the Hearing Examiner cannot find, with respect to the prescriptions identified in Findings of Fact 6(a) and 6(b), that Dr. Cooper failed to complete and maintain accurate medical records of prescribing controlled substances and/or reflecting any examination, evaluation, the utilization of controlled substances and/or treatment and/or any diagnosis and/or purpose for which the controlled substances reflected in the above prescriptions were initially utilized, and/or additional information upon which any diagnosis was based. Nevertheless, the Board, as a panel of experts, may determine otherwise and amend this Finding of Fact as well as corresponding Conclusions of Law 7 and 8.

CONCLUSIONS OF LAW

1. The acts, conduct, and/or omissions of Emmett George Cooper, M.D., Ph.D., as described in Findings of Fact 1(a) and 2, which occurred prior to March 9, 1999, 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: 4731-11-02(D), Ohio Administrative Code, as in effect prior to September 1, 2000.
2. Pursuant to Rule 4731-11-02(F), Ohio Administrative Code, Dr. Cooper’s violation of Rule 4731-11-02(D), Ohio Administrative Code, as described in Conclusion of Law 1, also violates 4731.22(B)(2), Ohio Revised Code, as in effect prior to March 9, 1999, and Section 4731.22(B)(6), Ohio Revised Code.
3. Dr. Cooper’s acts, conduct, and/or omissions as described in Findings of Fact 1(b), 1(c), and 2, which occurred after March 9, 1999, and before September 1, 2000, 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: 4731-11-02(D), Ohio Administrative Code, as in effect prior to September 1, 2000.
4. Pursuant to Rule 4731-11-02(F), Ohio Administrative Code, Dr. Cooper’s violation of Rule 4731-11-02(D), Ohio Administrative Code, as described in Conclusion of Law 3, also violates Sections 4731.22(B)(2) and (6), Ohio Revised Code, as currently in effect.
5. Dr. Cooper’s acts, conduct, and/or omissions as described in Findings of Fact 1(d) through 1(z), 2, 3(a) through 3(e), 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 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: 4731-11-02(D), Ohio Administrative Code, as currently in effect.
6. Pursuant to Rule 4731-11-02(F), Ohio Administrative Code, Dr. Cooper’s violation of Rule 4731-11-02(D), Ohio Administrative Code, as described in Conclusion of Law 5, also violates Sections 4731.22(B)(2) and (6), Ohio Revised Code, as currently in effect.
7. The evidence is insufficient to support a conclusion that Dr. Cooper’s conduct as set forth in Findings of Fact 6(a), 6(b), and 7 constitutes “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: 4731-11-02(D), Ohio Administrative Code, as currently in effect.

8. For the reasons described in Conclusion of Law 7, the evidence is insufficient to support a conclusion that Dr. Cooper violated Rule 4731-11-02(D), Ohio Administrative Code, for the conduct described in Findings of Fact 6(a), 6(b), and 7. Therefore, the evidence is insufficient to support a conclusion that, pursuant to Rule 4731-11-02(F), Ohio Administrative Code, Dr. Cooper's conduct as set forth in Findings of Fact 6(a), 6(b), and 7 also violates Sections 4731.22(B)(2) and (6), Ohio Revised Code, as currently in effect.

RATIONALE FOR THE PROPOSED ORDER

The evidence is clear that Dr. Cooper failed to appropriately document his prescribing of controlled substances to Patients 1, 2, and 3. However, Dr. Cooper testified credibly that the documentation of his treatment of these patients is not representative of his usual practice. Further, there are mitigating factors present in this case, which include the following:

- Dr. Cooper has never faced discipline before.
- There was no dishonest or selfish motive on the part of Dr. Cooper.
- Dr. Cooper is unlikely to engage in such informal treatment of patients in the future.
- Dr. Cooper cooperated with the Board in its investigation and was open and forthright in his testimony at hearing.
- Dr. Cooper is remorseful.
- Throughout his nearly 40 years of medical practice, Dr. Cooper has been committed to providing care to underserved and disadvantaged members of society.

The Proposed Order would reprimand Dr. Cooper and place him on probation for a period of at least two years. Further, although Dr. Cooper testified that his medical records for Patients 1, 2, and 3 are atypical for his practice, they are, nevertheless, his medical records. Accordingly, the Proposed Order would also include a requirement that Dr. Cooper complete a medical recordkeeping course during his first year of probation.

PROPOSED ORDER

It is hereby ORDERED that:

- A. **REPRIMAND:** Emmett George Cooper, M.D., Ph.D., is REPRIMANDED.
- B. **PROBATION:** The certificate of Dr. Cooper to practice medicine and surgery in the State of Ohio shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:
1. **Obey the Law:** Dr. Cooper 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. Cooper 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. Cooper 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 six 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. **Medical Records Course(s):** Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Cooper shall submit acceptable documentation of successful completion of a course or courses on maintaining adequate and appropriate medical records. 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. Cooper submits the documentation of successful completion of the course(s) on maintaining adequate and appropriate medical records, 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.

5. **Tolling of Probationary Period While Out of Compliance:** In the event Dr. Cooper 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.
 6. **Required Reporting of Change of Address:** Dr. Cooper shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.
- C. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Cooper's certificate will be fully restored.

- D. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Cooper 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.
- E. **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. Cooper 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. Cooper 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.


In the event that Dr. Cooper 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, he 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. Cooper receives from the Board written notification of the successful completion of his probation.

2. **Required Reporting to Other State Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Cooper 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 professional license or certificate. Also, Dr. Cooper 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. Cooper receives from the Board written notification of the successful completion of his probation.
3. **Required Documentation of the Reporting Required by Paragraph E:** Dr. Cooper shall provide this 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.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of the notification of approval by the Board.



R. Gregory Porter
Hearing Examiner

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

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EXCERPT FROM THE DRAFT MINUTES OF MAY 11, 2011

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

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

Dr. Suppan 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: Emmett G. Cooper, M.D.; Janet Elizabeth Despot, M.D.; Surjit Singh Dinsa, M.D.; Brian Francis Lane, M.D.; Arthur Harry Smith, M.D.; Larry Lee Smith, D.O.; and Henry J. Taylor, III, 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. Suppan	- aye
	Mr. Albert	- aye
	Dr. Madia	- aye
	Dr. Talmage	- aye
	Dr. Amato	- aye
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye

Dr. Suppan 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. Suppan	- aye
	Mr. Albert	- aye
	Dr. Madia	- aye
	Dr. Talmage	- aye
	Dr. Amato	- aye
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye

Dr. Suppan 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. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member. In addition, Dr. Amato served as Acting Supervising Member in all but two of the matters before the Board. Therefore, Dr. Amato can only vote in the matters of Dr. Dinsa and Dr. Taylor, and must abstain from voting in all other cases.

Dr. Suppan 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.

.....

EMMETT G. COOPER, M.D., Case No. 10-CRF-066

.....

Dr. Steinbergh moved to approve and confirm Mr. Porter's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Emmett G. Cooper, M.D. Dr. Mahajan seconded the motion.

.....

Dr. Madia moved to amend the Proposed Order to remove the Probation and all probationary terms and conditions, leaving the Reprimand intact. Dr. Mahajan seconded the motion.

.....

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

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

Ms. Elsass - aye
Dr. Ramprasad - aye

The motion to amend carried.

.....

Dr. Madia moved to approve and confirm Mr. Porter's Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of Emmett G. Cooper, M.D. Dr. Strafford seconded the motion.

A vote was taken on Dr. Madia's motion to approve:

ROLL CALL:

Dr. Strafford	- aye
Mr. Hairston	- nay
Dr. Stephens	- aye
Dr. Mahajan	- aye
Dr. Steinbergh	- nay
Dr. Suppan	- aye
Mr. Albert	- abstain
Dr. Madia	- aye
Dr. Talmage	- abstain
Dr. Amato	- abstain
Ms. Elsass	- nay
Dr. Ramprasad	- aye

The motion to approve 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

June 9, 2010

Case number: 10-CRF-066

Emmett George Cooper, M.D.
6890 Beechlands Drive
Cincinnati, OH 45237

Dear Doctor Cooper:

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) During the period in or about 1998 to in or about 2009, you prescribed controlled substances to Patients 1 through 3 as identified on the attached Patient Key (Patient Key confidential and to be withheld from public disclosure) as follows:

Patient	Date of Prescription	Medication	Quantity	Refills
1	12/08/98	Alprazolam 1 mg.	60	1
1	07/26/99	Alprazolam 1 mg.	60	1
1	02/16/00	Alprazolam 1 mg.	60	2
1	12/12/00	Alprazolam 1 mg.	60	2
1	10/03/01	Alprazolam 1 mg.	60	2
1	07/19/02	Alprazolam 1 mg.	60	3
1	04/14/03	Alprazolam 1 mg.	60	3
1	12/31/03	Alprazolam 1 mg.	60	2
1	09/27/04	Alprazolam 1 mg.	60	0
1	12/30/04	Alprazolam 1 mg.	60	1
1	07/29/05	Alprazolam 1 mg.	60	2
1	05/22/06	Alprazolam 1 mg.	60	5

Mailed 6-10-10

1	08/16/07	Alprazolam 1 mg.	60	2
1	05/07/08	Alprazolam 1 mg.	60	3
1	07/22/09	Alprazolam 1 mg.	60	2
2	04/22/05	Alprazolam .25 mg.	60	1
2	08/05/06	Alprazolam .25 mg.	60	1
2	06/17/08	Xanax 1 mg.	60	0
3	01/14/02	Ambien 10 mg.	30	3
3	01/14/02	Alprazolam 1 mg.	90	0
3	01/17/02	Triazolam .25 mg.	30	3
3	03/15/02	Hydrocodone/APAP 7.5/500 mg.	20	0
3	08/01/02	Triazolam .25 mg.	60	3
3	08/27/02	Alprazolam 1 mg.	90	5
3	03/19/03	Triazolam .25 mg.	60	3
3	06/07/03	Alprazolam 1 mg.	90	2
3	06/24/03	Ambien 10 mg.	30	3
3	09/15/03	Alprazolam 1 mg.	90	3
3	10/14/03	Triazolam .25 mg.	60	2
3	10/13/06	Alprazolam 1 mg.	60	0
3	04/18/07	Alprazolam 1 mg.	60	1
3	08/06/07	Alprazolam 1 mg.	60	1
3	11/11/07	Ambien CR 12.5 mg.	7	2

You failed to complete and maintain accurate medical records of prescribing controlled substances and/or reflecting any examination, evaluation, the utilization of controlled substances and/or treatment and/or any diagnosis and/or purpose for which the controlled substances reflected in the above prescriptions were initially utilized, and/or additional information upon which any diagnosis was based.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above that occurred on or before August 31, 2000, 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: 4731-11-02(D), Ohio Administrative Code, as in effect at that time. Pursuant to Rule 4731-11-02(F), Ohio Administrative Code, violation of Rule 4731-11-02(D), Ohio Administrative Code, also violates Sections 4731.22(B)(2) and (6), Ohio Revised Code, as in effect at that time.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above that occurred on or after September 1, 2000, but prior to September 30, 2008, 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: 4731-11-02(D), Ohio Administrative Code, as in effect at that time. Pursuant to Rule 4731-11-02(F), Ohio Administrative Code, violation of Rule 4731-11-02(D), Ohio Administrative Code, also violates Sections 4731.22(B)(2) and (6), Ohio Revised Code, as in effect at that time.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above that occurred on or after September 30, 2008, 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: 4731-11-02(D), Ohio Administrative Code, as currently in effect. Pursuant to Rule 4731-11-02(F), Ohio Administrative Code, violation of Rule 4731-11-02(D), Ohio Administrative Code, also violates Sections 4731.22(B)(2) and (6), Ohio Revised Code, as currently in effect.

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

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

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

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

Emmett George Cooper, M.D.
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Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in black ink that reads "Lance A. Talmage MD". The signature is written in a cursive style with a large initial "L" and "A".

Lance A. Talmage, M.D.
Secretary

LAT/DPK/fib
Enclosures

CERTIFIED MAIL #91 7108 2133 3936 3071 5493
RETURN RECEIPT REQUESTED

**IN THE MATTER OF
EMMETT GEORGE
COOPER, M.D.**

10-CRF-066

**JUNE 9, 2010 NOTICE OF
OPPORTUNITY FOR
HEARING PATIENT KEY**

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