



State Medical Board of
Ohio

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July 12, 2017

David M. Burkons, M.D.
1611 South Green Road, Suite 004
South Euclid, OH 44121

RE: Case No. 15-CRF-117

Dear Doctor Burkons:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 12, 2017, including motions modifying the Conclusions of the Hearing Examiner, approving and confirming the Findings of Fact and Order of the State Medical Board of Ohio.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Any such appeal must be filed in accordance with all requirements specified in Section 119.12, Ohio Revised Code, and must be filed with the State Medical Board of Ohio and the Franklin County Court of Common Pleas within (15) days after the date of mailing of this notice.

THE STATE MEDICAL BOARD OF OHIO

Kim G. Rothermel, M.D.
Secretary

KGR:jam
Enclosures

CERTIFIED MAIL NO. 91 7199 9991 7036 7571 2536
RETURN RECEIPT REQUESTED

cc: Douglas E. Graff, Esq.
CERTIFIED MAIL NO. 91 7199 9991 7036 7571 2543
RETURN RECEIPT REQUESTED

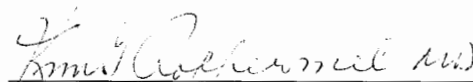
Mailed 8-8-17

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 draft Minutes of the State Medical Board, meeting in regular session on July 12, 2017, including motions modifying the Conclusions of the Hearing Examiner; approving and confirming the Findings of Fact and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of David M. Burkons, M.D., Case No. 15-CRF-117, 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.

(SEAL)



Kim G. Rothermel, M.D.

Secretary

July 12, 2017

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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CASE NO. 15-CRF-117

DAVID M. BURKONS, M.D.

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ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on July 12, 2017.

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.

Amended Conclusion of Law No. 4: The acts, conduct, and/or omissions of Dr. Burkons as described in Finding of Fact 4, independent of any rule violation, constitute a “departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established,” as that clause is used in R.C. 4731.22(B)(6).

It is hereby ORDERED that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of David M. Burkons, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for a period of 180 days.
- B. **PROBATION:** Upon reinstatement, Dr. Burkons’ certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:
 - 1. **Obey the Law:** Dr. Burkons 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. Burkons 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 Dr. Burkons' certificate is restored or reinstated. 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. Burkons shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. Burkons' certificate is restored or reinstated, 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. **Monitoring Physician:** Within 30 days of the date of Dr. Burkons' reinstatement or restoration, or as otherwise determined by the Board, Dr. Burkons shall submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary and Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary and Supervising Member will give preference to a physician who practices in the same locale as Dr. Burkons and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Burkons and his medical practice, and shall review Dr. Burkons' patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Burkons and his medical practice, and on the review of Dr. Burkons' patient charts. Dr. Burkons shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Burkons' declarations of compliance.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Burkons shall immediately so notify the Board in writing. In addition, Dr. Burkons shall make arrangements acceptable to the Board for another monitoring physician within 30 days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Dr. Burkons shall further ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

The Board, in its sole discretion, may disapprove any physician proposed to serve as Dr. Burkons' monitoring physician, or may withdraw its approval of any physician previously approved to serve as Dr. Burkons' monitoring physician, in the event that the Secretary and Supervising Member of the Board determine that any such monitoring physician has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

5. **Tolling of Probationary Period While Out of Compliance:** In the event Dr. Burkons 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. Burkons 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. Burkons' certificate will be fully restored.

D. **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. Burkons 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. Burkons 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.

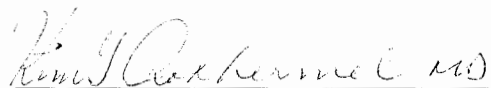
In the event that Dr. Burkons provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.

These requirements shall continue until Dr. Burkons receives from the Board written notification of the successful completion of his probation.

2. **Required Reporting to Other Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Burkons 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 Administration, through which he currently holds any professional license or certificate. Also, Dr. Burkons 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. Burkons receives from the Board written notification of the successful completion of his probation.
3. **Required Documentation of the Reporting Required by Paragraph D:** Dr. Burkons 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.

E. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Burkons 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.

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



Kim G. Rothermel, M.D.

Secretary

(SEAL)

July 12, 2017

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of

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Case No. 15-CRF-117

David M. Burkons, M.D.,

*

Hearing Examiner Porter

Respondent.

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REPORT AND RECOMMENDATION

Basis for Hearing

In a notice of opportunity for hearing dated December 9, 2015, the State Medical Board of Ohio ("Board") notified David M. Burkons, 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 upon Dr. Burkons' admission that he had provided pre-signed prescription blanks to his office staff to complete; he had prescribed controlled substances and/or rendered other care and treatment to 14 patients identified on a confidential Patient Key without documenting such prescribing or care; and that he had provided controlled substances on a protracted basis to six of those patients without first obtaining or documenting obtaining or accessing reports from the Ohio Automated Rx Reporting System ("OARRS") at the times and frequency required by Board rule. (State's Exhibit ("St. Ex.") 19A)

In addition, the Board alleged:

- Dr. Burkons' alleged conduct with respect to pre-signing prescription blanks constitutes "[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 Ohio Revised Code Section ("R.C.") 4731.22(B)(12), to wit: Authority of Licensed Health Professional; Contents of Prescription, R.C. 3719.06(C). The Board alleged that, pursuant to R.C. 3719.99(E), a violation of R.C. 3719.06 constitutes a misdemeanor of the third degree.
- Dr. Burkons' alleged conduct that occurred on or after November 30, 2011, with respect to prescribing controlled substances to patients on a protracted basis without appropriately utilizing OARRS 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 R.C. 4731.22(B)(20), to wit: Standards and Procedures for Review of OARRS, Ohio Administrative Code Rule ("Rule") 4731-11-11(C).

- Dr. Burkons' alleged conduct in providing controlled substances and other treatment without proper documentation 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 R.C. 4731.22(B)(20), to-wit: General Provisions, Rule 4731-11-02.

Further, Pursuant to Rule 4731-11-02(F), a violation of any provision of Rule 4731-11-02 also violates R.C. 4731.22(B)(2), "failure to maintain minimal standards applicable to the selection or administration of drugs," and R.C. 4731.22(B)(6), "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."

- Dr. Burkons' alleged conduct in providing care and treatment to patients without appropriate documentation constitutes a "departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in R.C. 4731.22(B)(6).

Accordingly, the Board advised Dr. Burkons of his right to request a hearing, and received his written request on December 18, 2015. (St. Exs. 19A, 19B)

Appearances

Mike DeWine, Attorney General, and Kyle C. Wilcox, Assistant Attorney General, for the State of Ohio. Douglas E. Graff, Esq., on behalf of Dr. Burkons.

Hearing Date: February 9, 2017

PROCEDURAL MATTERS

1. Following the hearing, the record was held open to give the Respondent an opportunity to submit redacted versions of Respondent's Exhibits D and E. (See the Hearing Transcript at pages 108-111.) Those documents were provided and admitted to the record post-hearing. The hearing record closed on March 15, 2017.
2. During the hearing, Dr. Burkons identified a clinic where he had worked that had been investigated by the DEA. However, Dr. Burkons testified that the investigation did not lead to any form of action being taken against either him or the clinic. The name of the clinic is in no way relevant to the issues addressed in the Board's notice. Accordingly, the name of the clinic was redacted from the Hearing Transcript at page 39 without objection.

SUMMARY OF THE EVIDENCE

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

Background Information

1. David M. Burkons, M.D., obtained his medical degree in 1973 from the University of Michigan Medical School, then, from 1973 through 1977, he participated in and completed a residency in obstetrics and gynecology ("OB/GYN") at that same institution. After completing his residency in 1977, Dr. Burkons joined a group practice in South Euclid, Ohio. Dr. Burkons testified that he has worked in that same medical office building since that time, although he has changed office locations within that building. In 2009, he separated from the group practice and went into solo practice. (Hearing Transcript ("Tr.") at 20-21, 24-25; Respondent's Exhibit ("Resp. Ex.") A)

Dr. Burkons was certified by the American Board of Obstetrics and Gynecology in 1980. He testified that he is not required to periodically recertify. (Resp. Ex. A; Tr. at 23)

Dr. Burkons was initially licensed to practice medicine and surgery in Ohio in June 1977 and his license is currently active. Dr. Burkons testified that he had also held a medical license in Michigan but allowed it to expire. (Tr. at 23-24; Ohio eLicense Center, <<https://license.ohio.gov/lookup/>>, search terms "Burkons" and "David," accessed April 21, 2017)

2. Dr. Burkons testified that he is on the teaching faculty of the Case Western Reserve University School of Medicine and University Hospitals in Cleveland, Ohio. Dr. Burkons added that he had previously been on the teaching faculty of a number of other institutions in northern Ohio, including the Cleveland Clinic, Metro General Hospital, Aultman Hospital, the Summa System, and the University of Toledo Medical School. Dr. Burkons noted that he has won a number of teaching awards over the years. (Tr. at 25, 28-30; Resp. Ex. A)
3. Dr. Burkons testified that he currently holds courtesy privileges at University Hospitals main campus. Dr. Burkons testified that he formerly held full staff privileges there and at Wright Surgical Center where he performed a lot of his surgeries; however, Dr. Burkons testified that he gave up surgical practice in 2012. Dr. Burkons added that, after he gave up surgery, there was no need for him to maintain full admitting privileges. (Tr. at 25-26)

4. Dr. Burkons testified that he has served on many committees at University Hospitals, and is still a member of the Medical School and Resident Education Committee. (Tr. at 28)
5. Dr. Burkons testified that he had previously discontinued his obstetrical practice, and delivered his last baby on Halloween 2002. However, Dr. Burkons testified that, until January 15, 2017, he would still follow his pregnant patients during their first few months of pregnancy, but that he ceased performing deliveries in 2002. Moreover, Dr. Burkons testified that, on January 15, 2017, in anticipation of what may result from this case, he closed his practice. Dr. Burkons noted that he had recently celebrated his 70th birthday, and that it's not unusual for someone of his age to close their private practice. (Tr. at 26-28, 91)

DEA / Board Investigation

6. Dr. Burkons testified that, around February 2013, agents from the U.S. Drug Enforcement Administration ("DEA") came to a clinic where Dr. Burkons was working, and Dr. Burkons met and talked with them. During that visit, the agents found one pre-signed, blank prescription that had been signed by Dr. Burkons. (Tr. at 30-31)

Dr. Burkons testified that, when patients would come in and have procedures, if the patient wanted birth control pills, he would prescribe them and they would be given to the patients by the recovery room nurse. However, "[v]ery often [Dr. Burkons] would be somewhere else," so he would leave pre-signed prescriptions that were supposed to be stamped with the medication prescribed. (Tr. at 41, 78-80) Dr. Burkons further testified, "I subsequently found out that even that is not proper, even to have it without a patient's name on it. In other words, even the birth control pill prescription you can't have signed without the patient's name on it." (Tr. at 41)

7. Dr. Burkons testified that the focus of the DEA investigation had actually been the clinic. Dr. Burkons testified that the administrator of the clinic had forgotten to renew the clinic's Terminal Distributor of Dangerous Drugs license with the Pharmacy Board, so the agents came out to investigate. However, Dr. Burkons testified that he had active DEA registration during this time and could legally prescribe controlled substances. (Tr. at 31-33)
8. Dr. Burkons testified that later, possibly around May 2013, he met with a Board investigator and provided a signed statement. (Tr. at 32-33)
9. Dr. Burkons testified that, from late 2014 to early 2015, he answered three sets of interrogatories sent to him by the Board. Dr. Burkons further testified that he answered them truthfully. (Tr. at 33-34, 42)
10. Dr. Burkons testified that, after the contact with the DEA agents and the Board investigator, he started taking steps to improve his practice. Dr. Burkons testified that, on

May 8 and 9, 2014, he took the Intensive Course in Medical Record Keeping offered by Case Western Reserve University School of Medicine. The following month, from June 3 through 6, 2014, Dr. Burkons took the Intensive Course in Controlled Substance Prescribing offered by the same institution. Dr. Burkons testified that he found both courses to be very informative. (Tr. at 34-36; Resp. Ex. B)

Dr. Burkons further testified that he signed up for OARRS around February 2014. Dr. Burkons testified that he checks OARRS whenever he issues a prescription for a controlled substance. Dr. Burkons testified that he writes numerous prescriptions for controlled substances, but only a few would actually require checking OARRS. However, Dr. Burkons determined that it would be better to check OARRS every time, especially in the clinics where he works. He testified that he does not know these patients and that OARRS can be helpful in his determination of what he is going to do for them. (Tr. at 36-38)

Dr. Burkons testified that he made these improvements to his practice prior to being sent the interrogatories:

Because I realized that I had been -- you know, been maybe practicing the old way, and the old way wasn't the best way. And that, you know, just particularly when you're more or less a solo practitioner, you kind of get the idea that what I'm doing is right because I know the patients. I'm not sharing them with five or six other people, that I'd keep track of everything, and the courses I took showed me that nobody is that smart.

(Tr. at 38)

11. Dr. Burkons described Respondent's Exhibit C as a series of emails between him and DEA personnel. He testified that, after the DEA completed its investigation, no action was taken against him or the clinic, and the DEA had wanted to return the prescription along with other documentation that they had removed from the clinic. (Tr. at 38-40; Resp. Ex. C)

Stipulations

12. Dr. Burkons and the State entered into the following written stipulations, which were accepted and admitted into the record:

Respondent David M. Burkons, M.D. ("Dr. Burkons") and the State of Ohio hereby agree and stipulate as follows:

1. In February, 2013 Dr. Burkons met with a DEA investigator who found a single pre-signed prescription in the locked safe in the clinic Dr. Burkons served. In or around May, 2013 a Board investigator interviewed

Dr. Burkons about the blank prescription. Dr. Burkons admitted to the Board investigator, and subsequently admitted under oath, that he had pre-signed prescriptions for birth control pills which were left [in a] locked office safe for staff to complete at a later date.

2. Since on or about November 30, 2011, Dr. Burkons provided care and treatment to Patients 1, 2, 3, 12, 13 and 14, and in the course of that treatment, Dr. Burkons prescribed controlled substances for longer than 90 days. Dr. Burkons failed to access reports from the Ohio Automated Rx Reporting System prior to prescribing for this patient. Further, Dr. Burkons did not sign up for the OARRS system database until December of 2014. Dr. Burkons stipulates that his conduct violates Ohio Revised Code Section 4731.22(B)(20) and Ohio Administrative Code 4731-11-11(C).
3. Although Dr. Burkons prescribed medications, including controlled substances, for Patients 1 through 14, from at least in or around May 2011, through at least in or around February 2014, Dr. Burkons failed to record in the patient's record all of the controlled substances Dr. Burkons prescribed. Examples of such conduct for Patients 1 through 14 include, but are not limited to, the following:
 - a. Between in or around May 2011, to in or around June 2013, on one or more occasions, Dr. Burkons prescribed alprazolam/Xanax, a controlled substance, for Patient 1. Dr. Burkons failed to document these prescriptions in the medical record maintained by his office for Patient 1. [St. Ex. 1; St. Ex. 1A at 1-5]
 - b. Between in or around December 2011, to in or around September 2013, on one or more occasions, Dr. Burkons prescribed controlled substances to Patient 2. These included Adderall, Xanax, diazepam/Valium and Lorazepam/Ativan. Dr. Burkons failed to document these prescriptions in in the medical record maintained by his office for Patient 2. [St. Ex. 2; St. Ex. 2A at 7, 11, 18, 23, 25-39, 44, 46, 47, 52, 56, 60]
 - c. Between in or around January 2012, to in or around April 2013, on one or more occasions, Dr. Burkons prescribed controlled substances to Patient 3. These included Adderall, Percocet, Xanax and Vicodin. Dr. Burkons failed to document these prescriptions in the medical record maintained by his office for Patient 3. [St. Ex. 3; St. Ex. 3A at 3; St. Ex. 3B; St. Ex. 3C; St. Ex. 3D at 11, 13, 15, 19, 21, 23; St. Ex. 3E at 11; St. Ex. 3F at 7]

- d. Between in or around January 2013 to in or around April 2013, Dr. Burkons prescribed controlled substances to Patient 4. These included Xanax, Valium and lorazepam. Dr. Burkons failed to document these prescriptions in a medical record for Patient 4, as he created no record for Patient 4. [St. Ex. 4A at 7-9]
- e. Between in or around December 2011 to in or around July 2012, on one or more occasions, Dr. Burkons prescribed controlled substances to Patient 5. These included Xanax and Hycodan syrup. Dr. Burkons failed to document these prescriptions in the medical record maintained for Patient 5. [St. Ex. 5; St. Ex. 5B at 8; St. Ex. 5C at 7, 13; St. Ex. 5D at 8]
- f. In or around February 2013, Dr. Burkons prescribed Xanax to Patient 6. Xanax is a controlled substance. Dr. Burkons failed to document this prescription in a medical record for Patient 6. [St. Ex. 6B at 19, 21]
- g. In or around May 2012, Dr. Burkons prescribed Vicodin to Patient 7. Vicodin is a controlled substance. Dr. Burkons failed to document this prescription in a medical record for Patient 7. [St. Ex. 7B at 15; St. Ex. 7C at 7]
- h. Between in or around February 2011 to in or around January 2012, on one or more occasions, Dr. Burkons prescribed controlled substances to Patient 8. These included Adderall and Ambien. Dr. Burkons failed to document these prescriptions in a medical record for Patient 8. [St. Ex. 8A at 12-18, duplicates at 26-32]
- i. Between in or around January 2012, to in or around July 2012, on one or more occasions, Dr. Burkons prescribed Adderall to Patient 9. Adderall is a controlled substance. Dr. Burkons failed to document these prescriptions in the medical record maintained for Patient 9. [St. Ex. 9; St. Ex. 9A at 10, 22, 23]
- j. On or about March 6, 2012, Dr. Burkons prescribed Vicodin to Patient 10. Vicodin is a controlled substance. Dr. Burkons failed to document this prescription in a medical record for Patient 10. [St. Ex. 10A at 14]
- k. Between in or around February 2012, to in or around September 2012, on one or more occasions, Dr. Burkons prescribed Xanax/alprazolam, a controlled substance, to Patient 11. Dr. Burkons failed to document these

prescriptions in a medical record for Patient 11. [St. Ex. 11A at 11-13, 32; St. Ex. 11B at 51, 53]

- l. Between in or around October 2011, to in or around December 2012, on one or more occasions, Dr. Burkons prescribed controlled substances to Patient 12. These included Xanax, Ativan, Lomotil and Tylenol #3. Dr. Burkons failed to document these prescriptions in the medical record maintained by his office for Patient 12. [St. Ex. 12; St. Ex. 12A at 8-13, 17-47]
 - m. Between in or around August 2012, to in or around February 2014, on one or more occasions, Dr. Burkons prescribed controlled substances to Patient 13. These included Xanax, Adderall and Ambien/zolpidem. Dr. Burkons failed to document these prescriptions in [a] medical record maintained by his office for Patient 13. [St. Ex. 13; St. Ex. 13A at 3-5; St. Ex. 13B at 5; St. Ex. 13C at 14-15]
 - n. Between in or around March 2012, to in or around August 2013, on one or more occasions, Dr. Burkons prescribed medication containing hydrocodone to Patient 14. Hydrocodone is a controlled substance. [St. Ex. 14 at 11-12; St. Ex. 14A at 14, 16, 25]
4. From at least in or around January 2010, to at least in or around February 2014, Dr. Burkons provided care and treatment to [P]atients 1 through 14. Dr. Burkons failed to keep and maintain complete medical records on the care and treatment Dr. Burkons provided to Patients 1 through 14.
 5. By his failure to maintain complete medical records, Dr. Burkons further stipulates that the above conduct listed in paragraphs 3 & 4 constitutes a violation of Ohio Revised Code Section 4731.22(B)(20) and Ohio Administrative Code Section 4731-11-02. Further, Dr. Burkons admits that by violating any provision of Ohio Administrative Code Section 4731-11-02, he also violated Ohio Revised Code 4731.22(B)(2) and 4731.22(B)(6).
 6. The State and Dr. Burkons further stipulate that all the conduct in the citation letter of December 9, 2015 occurred before September 29, 2015 and is therefore not subject to civil penalty by the State Medical Board.

(Joint Exhibit 1)

Testimony of Dr. Burkons Concerning Individual Patients

13. Reviewing the list of 14 patient names on the Patient Key, Dr. Burkons acknowledged that they were all his patients. Dr. Burkons noted that some of the patients are related to each other. For example, Patients 5, 6, and 7 are a mother, father, and their eldest son. Likewise, Patient 10 is the father of Patients 9 and 11. (Tr. at 43-45; St. Ex. 15)

Dr. Burkons testified that Patients 5, 6, and 7 are very good friends of Dr. Burkons and his family. Dr. Burkons testified that Patient 6, who is now 38 years old, and Dr. Burkons' youngest son began playing travel hockey when both were eight years old. The two families have been close friends ever since. Dr. Burkons indicated that he is familiar with their medical conditions and discussed their health issues with each of them. He acknowledged that he prescribed medication to them but did not keep medical records. (Tr. at 45-46)

Dr. Burkons further testified that the wife of Patient 10, who is also the mother of Patients 9 and 11, is one of his earliest patients. She originally came to him for fertility services, which were successful, and Dr. Burkons delivered their three children. Dr. Burkons testified that she continues to be his patient, that their two families have become friends, and that she recently worked as a nanny for Dr. Burkons' oldest son. Dr. Burkons testified that he kept complete medical records for the wife, who is not identified as a patient in this matter. However, Dr. Burkons did not keep medical records for his prescribing to Patients 9, 10, and 11. Dr. Burkons testified that he had been familiar with their medical problems. Moreover, Dr. Burkons testified that he now understands the requirement that he keep medical records. (Tr. at 46-47; Joint Exhibit 1)

Patient 1 – Between in or around May 2011, to in or around June 2013, on one or more occasions, Dr. Burkons prescribed alprazolam/Xanax, a controlled substance, for Patient 1. Dr. Burkons failed to document these prescriptions in the medical record maintained by his office for Patient 1. [St. Ex. 1; St. Ex. 1A at 1-5]

14. Dr. Burkons testified that Patient 1, a female born in 1918, was a long-term patient who, unfortunately, became a very disagreeable person in her old age. (Tr. at 47; St. Ex. 15)
Dr. Burkons further testified:

Her son who looked after her, I mean, was literally browbeaten by her all the time. And they lived near our office, and like many of the older people in the area they kind of used the cafeteria or lunchroom as sort of a meeting place, and I would see them all the time.

And I saw her for medical care, and the son really just -- he says she's driving me crazy, she's mean, she's anxious, she won't sleep, she's up all night, so I

agreed to prescribe Xanax for her. And to some extent I have to admit, I think it was more for him than her.

Q. [Mr. Graff] When you say that, I have to stop. Are you saying that he was taking it?

A. No, no, I mean for his sanity that she would be under control. And there were a couple times he actually had to call the police when she would throw things at him when she would get so out of control.

I would see them several -- two or three times a week just walking by to get my lunch, stop and talk to them and see how she -- for a woman of her age she was in really, physically, pretty darn good shape, and he thanked me for making his life livable and hers more livable. She then eventually went to a nursing home and has since passed away.

(Tr. at 48-49)

Dr. Burkons added that some of the prescriptions he wrote for Patient 1 were not documented in the patient record. He believes that he may have seen them in the cafeteria, talked to them, and written a prescription but forgot to document it in Patient 1's chart.

(Tr. at 49)

Patient 2 – Between in or around December 2011, to in or around September 2013, on one or more occasions, Dr. Burkons prescribed controlled substances to Patient 2. These included Adderall, Xanax, diazepam/Valium and Lorazepam/Ativan. Dr. Burkons failed to document these prescriptions in the medical record maintained by his office for Patient 2. [St. Ex. 2; St. Ex. 2A at 7, 11, 18, 23, 25-39, 44, 46, 47, 52, 56, 60]

15. Dr. Burkons described Patient 2, a female born in 1963, as a long-term patient who lives around the corner from him. Dr. Burkons testified that she is a wonderful woman but that she is a very nervous person. Dr. Burkons testified that normal life events made her nervous, but when her husband developed a significant cardiac problem it “drove her off the edge.” (Tr. at 49; St. Ex. 15) Dr. Burkons testified that Patient 2 would contact him on his cell phone or at home and he would prescribe anti-anxiety agents for her. Dr. Burkons further testified that he had prescribed Adderall for her as well. She had difficulty concentrating during a period when her husband was very ill. Dr. Burkons testified that sometimes these prescriptions were called in at night or during the weekend and were not recorded in her medical record. (Tr. at 49-50)

Patient 3 – Between in or around January 2012, to in or around April 2013, on one or more occasions, Dr. Burkons prescribed controlled substances to Patient 3. These included Adderall,

Percocet, Xanax and Vicodin. Dr. Burkons failed to document these prescriptions in the medical record maintained by his office for Patient 3. [St. Ex. 3; St. Ex. 3A at 3; St. Ex. 3B; St. Ex. 3C; St. Ex. 3D at 11, 13, 15, 19, 21, 23; St. Ex. 3E at 11; St. Ex. 3F at 7]

16. Dr. Burkons testified that he began treating Patient 3, a female born in 1969, around 2005. Dr. Burkons testified that Patient 3 has a history of bipolar disorder and depression, but “when she’s taking her medications she seems like a pretty normal person * * *.” (Tr. at 50; St. Ex. 15) Dr. Burkons further testified that she was frequently hospitalized and that, following an ankle fracture, she developed reflex sympathetic dystrophy (“RSD”), which he described as an incredibly painful condition. (Tr. at 51) Dr. Burkons testified that he became “sort of her lifeline.” (Tr. at 51) He further testified that she would call him at all hours and on weekends, and that many of those prescriptions were not documented in her medical record. (Tr. at 51-52) Dr. Burkons indicated that she has since had a nerve stimulator installed in her spine “which has really taken care of her pain.” (Tr. at 51)

Patient 4 – Between in or around January 2013 to in or around April 2013, Dr. Burkons prescribed controlled substances to Patient 4. These included Xanax, Valium and lorazepam. Dr. Burkons failed to document these prescriptions in a medical record for Patient 4, as he created no record for Patient 4. [St. Ex. 4A at 7-9]

17. Dr. Burkons testified that Patient 4, a male born in 1964, is the significant other of a friend of his, and knows him through the Patients 9 – 11 family.¹ Dr. Burkons acknowledged that he did not maintain a patient record for Patient 4. (Tr. at 52; St. Ex. 15) Dr. Burkons further testified:

We all lived in the same area. We were often at events in the area, we would run into them. And there was a time during the recession that he was in construction where he lost his job and his benefits, plus his significant other’s mother, they didn’t get along, moved into the house, and the -- my patient approached me would I consider talking to him about getting him something to get -- they knew she was going to be there for a few months, to help out, so I talked to him and prescribed him Xanax to help him get through this very difficult time.

And subsequently his employment situation got better, the mother moved out, and subsequently has passed on, and that was -- and I didn’t ever have a chart on this patient.

(Tr. at 52-53)

¹ Dr. Burkons referred to these individuals as Patients 8, 9, and 10, but it was clear from the context that he was referring to Patients 9, 10, and 11. (Tr. at 52; St. Ex. 15)

Patient 5 – Between in or around December 2011 to in or around July 2012, on one or more occasions, Dr. Burkons prescribed controlled substances to Patient 5. These included Xanax and Hycodan syrup. Dr. Burkons failed to document these prescriptions in the medical record maintained for Patient 5. [St. Ex. 5; St. Ex. 5B at 8; St. Ex. 5C at 7, 13; St. Ex. 5D at 8]

18. As referenced previously, Patient 5, a male born in 1948, is a very close friend of Dr. Burkons. Patient 5 is the husband of Patient 7 and the father of Patient 6. Patient 5 had worked as a pipefitter for a steel company. Shortly after Patient 5 retired, the steel company he had worked for went bankrupt. Patient 5 lost about half of his pension, so he went back to work as a pipefitter. Dr. Burkons testified that it is a very physical job, and often involves working outside; however, Patient 5 is close to Dr. Burkons in age. Dr. Burkons testified that the main thing he prescribed for Patient 5 had been Hycodan cough syrup when he got a bad cold. Dr. Burkons testified that he would talk to Patient 5 and listen to his chest. (Tr. at 53-54; St. Ex. 15)

Patient 6 – In or around February 2013, Dr. Burkons prescribed Xanax to Patient 6. Xanax is a controlled substance. Dr. Burkons failed to document this prescription in a medical record for Patient 6. [St. Ex. 6B at 19, 21]

19. Dr. Burkons testified that Patient 6, a male born in 1979, is the child of Patients 5 and 7. He is now nearly 38 years old. Dr. Burkons testified that Patients 5 and 7 came to him during a family event, pulled him aside, and told him that Patient 6 had become addicted to prescription pain medication. Patient 6 confessed to them that he had been buying OxyContin on the street. Dr. Burkons testified that he helped Patient 6 get into a treatment program and, because he was very upset and depressed, he prescribed Paxil and Xanax to Patient 6 to get him through until he could enter into a program. Dr. Burkons testified that, following one relapse, Patient 6 has remained clean. (Tr. at 54-56; St. Ex. 15)

Patient 7 – In or around May 2012, Dr. Burkons prescribed Vicodin to Patient 7. Vicodin is a controlled substance. Dr. Burkons failed to document this prescription in a medical record for Patient 7. [St. Ex. 7B at 15; St. Ex. 7C at 7]

20. Dr. Burkons testified that Patient 7, a female born in 1948, is the wife of Patient 5 and the mother of Patient 6. Dr. Burkons testified that on one occasion Patient 6 developed a bad knee to the point where Dr. Burkons thought she may need a knee replacement. She made an appointment with an orthopedist but could not get in right away. Dr. Burkons testified that she came over to Dr. Burkons' house and he examined her knee, and he wrote a single prescription for Vicodin to get her through until her orthopedist appointment. Dr. Burkons testified that she subsequently underwent a knee replacement and is doing well. (Tr. at 54; St. Ex. 15)

Patient 8 – Between in or around February 2011 to in or around January 2012, on one or more occasions, Dr. Burkons prescribed controlled substances to Patient 8. These included Adderall and Ambien. Dr. Burkons failed to document these prescriptions in a medical record for Patient 8. [St. Ex. 8A at 12-18, duplicates at 26-32]

21. Dr. Burkons testified that he got to know Patient 8, a female born in 1967, through Dr. Burkons' association with the Patients 9 – 11 family. Dr. Burkons testified that, at one point, Patient 8 was having a bad time following a divorce and job loss during the recession. (Tr. at 56; St. Ex. 15) Dr. Burkons further testified:

[S]he went over about how she was having trouble with jobs, and she couldn't sleep, she couldn't concentrate, so I agreed to prescribe her Adderall and some antidepressants, which I -- I would follow up, make sure that she only took them in the amount that I gave her and never came early for them.

I would always talk to her before giving her the prescriptions, but because of the relationship I had with her, I never had a chart.

She subsequently has remarried, has a -- lives here in Columbus, has a very good job, and hasn't needed the stuff anymore.

(Tr. at 56-57)

Patient 9 – Between in or around January 2012, to in or around July 2012, on one or more occasions, Dr. Burkons prescribed Adderall to Patient 9. Adderall is a controlled substance. Dr. Burkons failed to document these prescriptions in the medical record maintained for Patient 9. [St. Ex. 9; St. Ex. 9A at 10, 22, 23]

22. Dr. Burkons testified that Patient 9, a female born in 1986, is the daughter of Patient 10. Dr. Burkons testified that Patient 10's business was another casualty of the recession, and that the family lost their insurance. Dr. Burkons testified that Patient 10 was in college and having to work two or three jobs to pay for it, and that she came to Dr. Burkons' office with her mother and asked about Adderall. (Tr. at 57-58; St. Ex. 15) Dr. Burkons further testified:

At the time Adderall was getting a lot of press about being this really great drug for getting people to concentrate, and certainly I had experienced it in my own family with one of my sons, took it on an intermittent basis prescribed by a psychiatrist, then it was very, very helpful.

And I agreed to -- I agreed to prescribe it for her, and followed along, you know. Any time I would -- usually then she would call at night or in after

hours and would refill the prescriptions, would refill the prescriptions for her because they seemed to be helping her.

(Tr. at 58)

Patient 10 – On or about March 6, 2012, Dr. Burkons prescribed Vicodin to Patient 10. Vicodin is a controlled substance. Dr. Burkons failed to document this prescription in a medical record for Patient 10. [St. Ex. 10A at 14]

23. Patient 10, a male born in 1949, is the father of Patients 9 and 11. Dr. Burkons testified:

He has very, very severe -- and still to this day does have severe migraine headaches. He also, through most of his adult life, was a judo competitor, and, you know, one of the problems with that was that he had a lot of orthopedic problems for which he's had various operations, and there was a time when I prescribed for him his antimigraine medication, but also gave him some Vicodin to get him through until he could get in to see a neurologist. And he still is on quite a bit of medication, but it's not coming from me anymore.

(Tr. at 58; St. Ex. 15)

Patient 11 – Between in or around February 2012, to in or around September 2012, on one or more occasions, Dr. Burkons prescribed Xanax/alprazolam, a controlled substance, to Patient 11. Dr. Burkons failed to document these prescriptions in a medical record for Patient 11. [St. Ex. 11A at 11-13, 32; St. Ex. 11B at 51, 53]

24. Dr. Burkons testified that Patient 11, a male born in 1981, is the oldest child of Patient 10 and his wife. Dr. Burkons testified that his mother requested that he speak with Patient 11 during the late 2000s. Patient 11 was trying to get into music production, having to work a lot, and was very nervous. Dr. Burkons spoke with him and agreed to prescribe Xanax.

(Tr. at 59; St. Ex. 15)

Dr. Burkons further testified that Patient 11 eventually changed his career path and became a fashion photographer. Dr. Burkons testified that he “[s]till is, a very good one, but has to travel a lot.” (Tr. at 59) However, Dr. Burkons testified, “he’s not a good flier, so I would renew prescriptions for him for Xanax. So again, always talked to him to see how he was doing, but again, did not create a chart.” (Tr. at 59-60)

Patient 12 – Between in or around October 2011, to in or around December 2012, on one or more occasions, Dr. Burkons prescribed controlled substances to Patient 12. These included Xanax, Ativan, Lomotil and Tylenol #3. Dr. Burkons failed to document these prescriptions in the medical record maintained by his office for Patient 12. [St. Ex. 12; St. Ex. 12A at 8-13, 17-47]

25. Dr. Burkons testified that Patient 12, a female born in 1937, was originally a patient of Dr. Burkons' father, and that his father delivered all of her children. Dr. Burkons eventually took over her care. He described Patient 12 as "kind of a sad-sac sort of person" who suffered from chronic diarrhea and a lot of orthopedic pain. Dr. Burkons testified that he prescribed Lomotil for her diarrhea and Tylenol No. 3 for her pain. Dr. Burkons further testified, "And it became -- in fact, it became apparent to me that I felt she had become addicted to it and I noted that in my records, and between her daughter and I we got her off of the Tylenol No. 3." (Tr. at 60; St. Ex. 15)

Patient 13 – Between in or around August 2012, to in or around February 2014, on one or more occasions, Dr. Burkons prescribed controlled substances to Patient 13. These included Xanax, Adderall and Ambien/zolpidem. Dr. Burkons failed to document these prescriptions in a medical record maintained by his office for Patient 13. [St. Ex. 13; St. Ex. 13A at 3-5; St. Ex. 13B at 5; St. Ex. 13C at 14-15]

26. Dr. Burkons testified that Patient 13, a female born in 1956, was a long-time patient. Dr. Burkons testified that he delivered her children. Dr. Burkons further testified that Patient 13 went through a bad divorce and was raising two children on her own. Moreover, Dr. Burkons testified that she was trying to start a small business and was having trouble concentrating, so he prescribed Adderall for her. At one point, her son became addicted to heroin, which was very stressful for her, and Dr. Burkons prescribed Ambien to help her sleep. (Tr. at 61; St. Ex. 15) Dr. Burkons testified that he did keep a chart for Patient 13; however:

I have to be candid that I didn't -- because most of my patients have my cellphone number and would call me in the evening or whatever, because they didn't want to, quote, bother me during the day, so they bother me at night. And, you know, plus my schedule was such I was doing a lot of things.

Sometimes I wasn't in the office, quite frankly, and I would prescribe for her by phone and neglected to write all these down.

(Tr. at 61-62)

Patient 14 – Between in or around March 2012, to in or around August 2013, on one or more occasions, Dr. Burkons prescribed medication containing hydrocodone to Patient 14. Hydrocodone is a controlled substance. [St. Ex. 14 at 11-12; St. Ex. 14A at 14, 16, 25]

27. Dr. Burkons testified that Patient 14, a female born in 1952, was “an extremely long-time patient” who he treated for fibromyalgia with Vicodin. (Tr. at 62; St. Ex. 15) Dr. Burkons testified that State’s Exhibit 14 only includes his record going back to 2009, but he had treated her for many years before that. Dr. Burkons further testified:

I kept trying to get her into pain management, but I guess I didn’t push hard enough, and continued prescribing the Vicodin for her.

Again, I think most of them are noted on the charts, but I didn’t never check the OARRS because I wasn’t part of OARRS. And eventually I told her in 2013 that I would write one more prescription and then she would have to see a pain management person, which she subsequently has.

(Tr. at 62)

28. According to the medical record for Patient 14 as well as her prescription records, Dr. Burkons failed to document the following prescriptions for Vicodin in Patient 14’s medical record prescriptions for Vicodin dated on or around April 2 and June 25, 2012, and June 3, 2013. (St. Ex. 14 at 11-12; St. Ex. 14A at 14, 16, 25)

Additional Testimony

29. Dr. Burkons testified that Patients 2, 3, 9, 12, and 14 were still active patients when he closed his practice on January 15, 2017. (Tr. at 63)
30. Dr. Burkons testified concerning this experience and the remedial courses he has taken, “I realize that no matter how much good you want to do for some people, you have to follow the rules that have been put in place to protect the patients, to protect -- and to protect you, and that’s what I’ve learned from it.” (Tr. at 71)
31. Dr. Burkons testified concerning what he learned from Dr. Parran’s course with respect to pre-signing prescription blanks:

Well, what you find is no matter how careful you are, if somebody really wants to -- it’s how clever or devious, I guess would be a better way to put it, people who will either want to get the pills for themselves or get them and sell them, could get one of these blanks and write for, you know, 300 OxyContin or something and my signature is on it.

So, you know, again, at other places I've worked in the past, sometimes we would actually -- I wouldn't sign them until it was actually stamped.

Even that's -- but if you want to get free birth control pills, I don't think there's a big black market for birth control pills. But even that is wrong.

But certainly by leaving a blank like that on a signed, unfilled-out prescription, there's certainly a potential, no matter how careful you are, that somebody can use those for nefarious reasons.

(Tr. at 80-81)

32. Dr. Burkons testified that, since February 2014, he has not prescribed any controlled substances to family friends or acquaintances. He has prescribed such substances to others who are his patients, and on those occasions he charted the prescriptions. (Tr. at 91-92)
33. Dr. Burkons testified that it is not unusual for an OB/GYN to act as his patients' primary care physician, particularly in regard to younger patients. Dr. Burkons testified that OB/GYNs receive training in family medicine or internal medicine because of that. (Tr. at 92)
34. Dr. Burkons testified that he has continued to actively teach medical students and indicates that he was scheduled to give a lecture at University Hospitals about one month following the hearing. (Tr. at 98-99) Dr. Burkons was asked how long he plans to continue to teach and replied:

Teaching I'd like to do as long as I can. I just -- I just ran into -- I went to make an eye appointment yesterday and one of the people that had worked for an internist long retired was up there, he said, "Have you seen Fred? He's 86 and he's doing rounds, endocrinology rounds at University Hospital."

I'm hoping at 86 I could do something like that. I mean, I was a good doctor, I was a good surgeon. I do things in medicine that a lot of people don't do; I have that to offer.

And even after I'm finished practicing I wouldn't mind imparting that kind of knowledge to the students and the residents.

(Tr. at 105)

35. Dr. Burkons acknowledged that his handwriting is not good and that it has gotten worse over the years. He testified that, when he took the recordkeeping course, it was recommended to him that he print rather than write in cursive, and that he does print a lot more. (Tr. at 101) Dr. Burkons was asked what else he learned to improve his recordkeeping, and replied:

Well, I mean, instead of just putting in -- for instance, I remember on Patient 14, who over a period of many years I gave a lot of Vicodin to, would be to note, you know, how the patient's doing, not just write that I reviewed it, but that, you know, I talked to the patient, how is she doing, what's her pain level, you know, those sort of things, rather than -- in other words, make a full note even if you didn't examine the patient, at least you talked to her and -- which I did, but I didn't document it.

(Tr. at 102)

36. Dr. Burkons testified that, in the future, if he is allowed to continue to practice, he plans to only prescribe about two days' worth of pain medication to his patients, enough to get them through the day of a procedure and the following day. Dr. Burkons further testified that, if any of his patients require medication on a longer-term basis, he will refer them to other physicians. He asked that any limitation placed on his license allow him to do that. (Tr. at 97-98)
37. When asked on cross-examination if he would like to add anything to his testimony, Dr. Burkons testified:

I think I've learned a lot from the process, and certainly in the last over two years have used that in the proper way.

I realized that, you know, just saying you're sorry for something doesn't mean you don't get punished for what you -- mistakes that you made, but I think that I would like to see it taken into account is that because I was expecting this to happen in a different way, as of January 15th, I've -- even though I have a license, I'm on inactive as far as my malpractice insurance.

I've contracted people to cover me at my clinics. Essentially I stopped practicing medicine. So I'd like to have that taken into account. And I did that, you know, under good faith, I guess is the best way to put it.

(Tr. at 106-107)

38. In addition, Dr. Burkons testified:

I still would like to practice, obviously on a somewhat decreased basis, you know, for a few years to come.

I'm still healthy and I still think that I have things to offer to patients, particularly in more specialized areas that aren't so available, and that I would like to practice at least for a few more years.

(Tr. at 72)

Letters of Support

39. Dr. Burkons provided a number of cards, letters, and emails that were sent to him by his patients upon the patients' learning of his retirement from practice. The letters express appreciation for his many years of service along with their high opinion of and gratitude for his compassion, medical skill, and sense of humor. (Resp. Ex. E) Dr. Burkons testified that he was amazed and gratified by some of the small things that had happened many years before that his patients remembered. (Tr. at 67-68)
40. Dr. Burkons also presented letters of support written on his behalf by medical colleagues. The first, dated August 17, 2016, was authored by Lance A. Talmage, M.D., an OB/GYN and a former member of the Board. Dr. Burkons testified that Dr. Talmage had been his chief resident when Dr. Burkons was an intern at the University of Michigan. Dr. Burkons testified that they have stayed close ever since. (Resp. Ex. D at 1-2; Tr. at 69)

In his letter, Dr. Talmage stated, among other things:

Dr. Burkons contacted me regarding an issue of prescribing to friends and family and pre-signing prescriptions for contraception. * * * He unfortunately was unaware, as are many physicians, of the restrictions regarding prescribing to family and friends particularly when a complete medical record is not recorded. The pre-signing is known for controlled medication but I think such things as oral contraceptives aren't viewed with so much caution. His experience with Dr. Parran's courses taught him much more about these issues and I think he has a complete understanding of the error of his previous ways. He has engaged Doug Graff as his attorney and has taken his advice to enroll in the Case Western course on prescribing as well as a thorough grounding in the regulations of the state medical board. It is my feeling in talking to Dave that he has a thorough understanding of what he did wrong and will not get into that situation again.

It was my observation as secretary of the board for 9 years that the issue of prescribing to family and close friends is very poorly understood by physicians. I remember many heated debates regarding the appropriateness of prescribing to your own family. Those debates actually extended to the AMA where the attitude of organized medicine was very mixed. The need for a medical record which confirmed the diagnosis and justified the prescribing was often felt to be superfluous. As a member of the medical board I came to fully understand and fully appreciate the need for documentation particularly when the prescription was for a controlled substance even in an emergency situation. In the newsletter which came out quarterly we reminded physicians of the need to comply with this rule, however I have seen very little publicity on the issue in the last several years. The problem will always exist that any educational material is often not read even though it may be electronic and repetitive.

Even though Dr. Burkons clearly did not comply with the board rules in this regard, I feel that he is a good practitioner who provides absolutely essential service to the female patients that he serves. * * * The voluntary remediation Dr. Burkons has undergone is indication of his desire to do the right thing. I feel that Dr. Burkons is a very intelligent and dedicated practitioner, there is little potential for future problems.

(Resp. Ex. D at 1-2)

41. Laura J. David, M.D., provided a letter dated September 25, 2016. Dr. David indicated that she is an OB/GYN and fellow member of the faculty at Case Medical Center/University Hospitals of Cleveland. She further indicated that she is a Past President of the Academy of Medicine of Cleveland and Northern Ohio, and that she recently served as Chair of the Ohio Section of the American College of Obstetricians and Gynecologists. (Resp. Ex. D at 4) In her letter, Dr. David stated, in part:

I am writing on behalf of Dr. David Burkons, whom I have known since 1978 as a colleague in community practice in suburban Cleveland, as a fellow teacher and faculty member at Case Medical Center/University Hospitals of Cleveland, and as a well-respected health care provider for women in the area of reproductive health, contraceptive services, and cancer screening. * * *

It is common place for community physicians to be confronted by family members, neighbors, friends and absentee patients requesting simple prescription refills. I have known Dr. Burkons for over thirty years and am confident that his previous mishandling of these situations in its very essence

was not meant to be either devious or deceptive or self-serving. Rather, Dr. Burkons' very nature of generous care for his patients and perpetual kindness were more at fault. I believe that he has recognized and acknowledged his short comings and has readily accepted and completed new training and educational modules in prescribing and record documentation with a sincere willingness to improve and conform to Medical Board recommendations and guidelines.

Dr. Burkons has provided much needed care for many female patients in the State of Ohio. He is an excellent clinician, surgeon and mentor, and a loss of his experience and expertise in the field of Reproductive Health Services would surely be a significant loss of medical care in Ohio. I have never had any reservations about referring women to his practice and I hope that you will consider his longstanding service to patients in your considerations.

(Resp. Ex. D at 4)

42. In a letter dated September 14, 2016, from Michael P. Hopkins, M.D., an OB/GYN and Chair of the Department of Obstetrics and Gynecology at Northeast Ohio Medical University, Dr. Hopkins stated that he had known Dr. Burkons since 1980 when he was in residency. Dr. Hopkins spoke highly of Dr. Burkons' medical knowledge and skill, and stated that a restriction of his practice would be detrimental to the community.
(Resp. Ex. D at 3)

FINDINGS OF FACT

1. In February, 2013 David M. Burkons, M.D., met with a DEA investigator who found a single pre-signed prescription in the locked safe in the clinic Dr. Burkons served. In or around May, 2013 a Board investigator interviewed Dr. Burkons about the blank prescription. Dr. Burkons admitted to the Board investigator, and subsequently admitted under oath, that he had pre-signed prescriptions for birth control pills which were left locked office safe for staff to complete at a later date.
2. Since on or about November 30, 2011, Dr. Burkons provided care and treatment to Patients 1, 2, 3, 12, 13 and 14, and in the course of that treatment, Dr. Burkons prescribed controlled substances for longer than 90 days. Dr. Burkons failed to access reports from the Ohio Automated Rx Reporting System ("OARRS") prior to prescribing for this patient. Further, Dr. Burkons did not sign up for the OARRS system database until December of 2014.
3. Although Dr. Burkons prescribed medications, including controlled substances, for Patients 1 through 14, from at least in or around May 2011, through at least in or around

February 2014, Dr. Burkons failed to record in the patient's record all of the controlled substances Dr. Burkons prescribed. Examples of such conduct for Patients 1 through 14 include the following:

- a. Between in or around May 2011, to in or around June 2013, on one or more occasions, Dr. Burkons prescribed alprazolam/Xanax, a controlled substance, for Patient 1. Dr. Burkons failed to document these prescriptions in the medical record maintained by his office for Patient 1.
- b. Between in or around December 2011, to in or around September 2013, on one or more occasions, Dr. Burkons prescribed controlled substances to Patient 2. These included Adderall, Xanax, diazepam/Valium and Lorazepam/Ativan. Dr. Burkons failed to document these prescriptions in the medical record maintained by his office for Patient 2.
- c. Between in or around January 2012, to in or around April 2013, on one or more occasions, Dr. Burkons prescribed controlled substances to Patient 3. These included Adderall, Percocet, Xanax and Vicodin. Dr. Burkons failed to document these prescriptions in the medical record maintained by his office for Patient 3.
- d. Between in or around January 2013 to in or around April 2013, Dr. Burkons prescribed controlled substances to Patient 4. These included Xanax, Valium and lorazepam. Dr. Burkons failed to document these prescriptions in a medical record for Patient 4.
- e. Between in or around December 2011 to in or around July 2012, on one or more occasions, Dr. Burkons prescribed controlled substances to Patient 5. These included Xanax and Hycodan syrup. Dr. Burkons failed to document these prescriptions in the medical record maintained for Patient 5.
- f. In or around February 2013, Dr. Burkons prescribed Xanax to Patient 6. Xanax is a controlled substance. Dr. Burkons failed to document this prescription in a medical record for Patient 6.
- g. In or around May 2012, Dr. Burkons prescribed Vicodin to Patient 7. Vicodin is a controlled substance. Dr. Burkons failed to document this prescription in a medical record for Patient 7.
- h. Between in or around February 2011 to in or around January 2012, on one or more occasions, Dr. Burkons prescribed controlled substances to Patient 8. These included Adderall and Ambien. Dr. Burkons failed to document these prescriptions in a medical record for Patient 8.

- i. Between in or around January 2012, to in or around July 2012, on one or more occasions, Dr. Burkons prescribed Adderall to Patient 9. Adderall is a controlled substance. Dr. Burkons failed to document these prescriptions in a medical record maintained for Patient 9.
 - j. On or about March 6, 2012, Dr. Burkons prescribed Vicodin to Patient 10. Vicodin is a controlled substance. Dr. Burkons failed to document this prescription in a medical record for Patient 10.
 - k. Between in or around February 2012, to in or around September 2012, on one or more occasions, Dr. Burkons prescribed Xanax/alprazolam, a controlled substance, to Patient 11. Dr. Burkons failed to document these prescriptions in a medical record for Patient 11.
 - l. Between in or around October 2011, to in or around December 2012, on one or more occasions, Dr. Burkons prescribed controlled substances to Patient 12. These included Xanax, Ativan, Lomotil and Tylenol #3. Dr. Burkons failed to document these prescriptions in the medical record maintained by his office for Patient 12.
 - m. Between in or around August 2012, to in or around February 2014, on one or more occasions, Dr. Burkons prescribed controlled substances to Patient 13. These included Xanax, Adderall and Ambien/zolpidem. Dr. Burkons failed to document these prescriptions in [a] medical record maintained by his office for Patient 13.
 - n. Between in or around March 2012, to in or around August 2013, on one or more occasions, Dr. Burkons prescribed medication containing hydrocodone to Patient 14. Hydrocodone is a controlled substance. Most were documented; however, Dr. Burkons failed to document three of these prescriptions in a medical record for Patient 14.
4. From at least in or around January 2010, to at least in or around February 2014, Dr. Burkons provided care and treatment to Patients 1 through 14. Dr. Burkons failed to keep and maintain complete medical records on the care and treatment Dr. Burkons provided to Patients 1 through 14.

CONCLUSIONS OF LAW

- 1. The acts, conduct, and/or omissions of David M. Burkons, M.D., as described in Finding of Fact 1, 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 R.C. 4731.22(B)(12), to-wit: Authority of Licensed Health Professional; Contents of Prescription, R.C. 3719.06(C), which requires, among other things, that “[e]ach written prescription shall be properly executed, dated, and signed by the prescriber on the day when issued and shall bear the full name and address of the person for whom * * * the controlled substance is prescribed.” (R.C. 3719.06[C]) Pursuant to R.C. 3719.99(E), a violation of R.C. 3719.06 constitutes a misdemeanor of the third degree.

2. The acts, conduct, and/or omissions of Dr. Burkons that occurred on or after November 30, 2011, as described 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 this chapter or any rule promulgated by the board,” as that clause is used in R.C. 4731.22(B)(20), to-wit: Standards and Procedures for Review of OARRS, Rule 4731-11-11(C).
3. The acts, conduct, and/or omissions of Dr. Burkons as described 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 this chapter or any rule promulgated by the board,” as that clause is used in R.C. 4731.22(B)(20), to-wit: General Provisions, Rule 4731-11-02.

Pursuant to Rule 4731-11-02(F), a violation of any provision of Rule 4731-11-02 also violates R.C. 4731.22(B)(2), “failure to maintain minimal standards applicable to the selection or administration of drugs,” and R.C. 4731.22(B)(6), “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.”

4. The Hearing Examiner, as a non-physician, cannot conclude that the acts, conduct, and/or omissions of Dr. Burkons as described in Finding of Fact 4, independent of any rule violation, constitute a “departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established,” as that clause is used in R.C. 4731.22(B)(6). Dr. Burkons did not stipulate to this violation independent of his violation of Rule 4731-11-02. However, the Board, as a panel of experts, may reach that conclusion and modify this Conclusion of Law accordingly.

RATIONALE FOR THE PROPOSED ORDER

The violations to which Dr. Burkons stipulated are serious in nature. However, the record makes it abundantly clear that Dr. Burkons has acknowledged those violations, and has done his best to learn from this experience. He signed up for OARRS, and engaged in remedial efforts by

completing courses in medical recordkeeping and prescribing controlled substances. It appears very unlikely that Dr. Burkons would ever repeat these violations. Accordingly, the Proposed Order would suspend Dr. Burkons' certificate for a period of 180 days, followed by probationary monitoring for a minimum of three years. In addition to the standard requirements, Dr. Burkons' medical recordkeeping would be subject to review by a monitoring physician.

Because the conduct giving rise to these violations occurred prior to September 29, 2015, the Board is not authorized to impose a civil penalty for these violations pursuant to R.C. 4731.225.

PROPOSED ORDER

It is hereby ORDERED that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of David M. Burkons, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for a period of 180 days.
- B. **PROBATION:** Upon reinstatement, Dr. Burkons' certificate shall be subject to the following **PROBATIONARY** terms, conditions, and limitations for a period of at least three years:
 - 1. **Obey the Law:** Dr. Burkons 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. Burkons 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 Dr. Burkons' certificate is restored or reinstated. 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. Burkons shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which Dr. Burkons' certificate is restored or reinstated, 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. **Monitoring Physician:** Within 30 days of the date of Dr. Burkons' reinstatement or restoration, or as otherwise determined by the Board, Dr. Burkons shall submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary and Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary and Supervising Member will give preference to a physician who practices in the same locale as Dr. Burkons and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Burkons and his medical practice, and shall review Dr. Burkons' patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Burkons and his medical practice, and on the review of Dr. Burkons' patient charts. Dr. Burkons shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Burkons' declarations of compliance.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Burkons shall immediately so notify the Board in writing. In addition, Dr. Burkons shall make arrangements acceptable to the Board for another monitoring physician within 30 days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Dr. Burkons shall further ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

The Board, in its sole discretion, may disapprove any physician proposed to serve as Dr. Burkons' monitoring physician, or may withdraw its approval of any physician previously approved to serve as Dr. Burkons' monitoring physician, in the event that the Secretary and Supervising Member of the Board determine that any such monitoring physician has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

5. **Tolling of Probationary Period While Out of Compliance:** In the event Dr. Burkons 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. Burkons 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. Burkons' certificate will be fully restored.
- D. **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. Burkons 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. Burkons 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. Burkons 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.

These requirements shall continue until Dr. Burkons receives from the Board written notification of the successful completion of his probation.

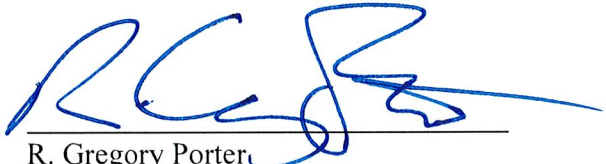
2. **Required Reporting to Other Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Burkons shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Administration, through which he currently holds any professional license or certificate. Also, Dr. Burkons 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. Burkons receives from the Board written notification of the successful completion of his probation.

3. **Required Documentation of the Reporting Required by Paragraph D:**

Dr. Burkons 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.

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

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



EXCERPT FROM THE DRAFT MINUTES OF JULY 12, 2017

REPORTS AND RECOMMENDATIONS

Dr. Soin announced that the Board would now consider the Reports and Recommendations appearing on its agenda.

Dr. Soin 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: David M. Burkons, M.D.; Robert Raymond Daiber, M.D.; Michael Garber, M.D.; Anna G. Pollack, M.D.; David Antonio Velasquez, M.D.; and Sandra S. Vonderembse, M.D. A roll call was taken:

ROLL CALL:	Dr. Rothermel	- aye
	Dr. Saferin	- aye
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- aye

Dr. Soin 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. Rothermel	- aye
	Dr. Saferin	- aye
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Gonidakis	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- aye

Dr. Soin 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 any disciplinary matters. In the matters before the Board today, Dr. Rothermel served as Secretary, Dr. Saferin served as Supervising Member, and Dr. Bechtel served as Secretary and/or Supervising Member.

Dr. Soin 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.

.....
DAVID M. BURKONS, M.D.
.....

Mr. Gonidakis exited the meeting room prior to this discussion.
.....

Dr. Steinbergh moved to approve and confirm Mr. Porter's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of David M. Burkons, M.D. Dr. Schottenstein seconded the motion.

Dr. Soin stated that he will now entertain discussion in the above matter.

Dr. Schottenstein stated that Dr. Burkons has admitted that he provided pre-signed blank prescriptions for his office staff to complete, which is a third-degree misdemeanor. Dr. Schottenstein stated that Dr. Burkons also prescribed controlled substances to patients on an ongoing basis without checking the Ohio Automated Rx Reporting System (OARRS) and he provided controlled substances to multiple patients without proper documentation. Dr. Schottenstein noted that Dr. Burkons is on the teaching faculty of Case Western Reserve University (CRWU), he delivered his last baby in 2002, and he gave up surgical practice in 2012. On January 15, 2017, in anticipation of this case being heard by the Board, Dr. Burkons closed his practice.

Dr. Schottenstein continued that in February 2013, agents from the Drug Enforcement Administration (DEA) came to the clinic where Dr. Burkons was working in order to investigate the failure of the clinic to renew its Terminal Distributor of Dangerous Drugs (TDDD) license. While there, the agents found one blank prescription that had been signed by Dr. Burkons. Dr. Burkons subsequently met with a Medical Board investigator,

provided a signed statement, and answered three sets of interrogatories from the Board. Dr. Schottenstein noted that Dr. Burkons took the Intensive Course in Medical Record-Keeping in May 2014 and the Intensive Course in Prescribing Controlled Substances in June 2014, both offered by CRWU. Dr. Schottenstein further noted that Dr. Burkons signed up for OARRS in December 2014 and he now checks OARRS whenever he prescribes a controlled substance.

Dr. Schottenstein stated that Dr. Burkons has essentially stipulated to almost everything in the Board's Notice of Opportunity for Hearing. Dr. Schottenstein briefly reviewed the stipulations:

- Dr. Burkons pre-signed prescriptions for birth control pills that were left in a locked office safe for staff to complete at a later date;
- Since November 30, 2011, Dr. Burkons provided treatment to multiple patients and, in the course of treatment, prescribed controlled substances for longer than 90 days;
- Dr. Burkons failed to access OARRS appropriately and did not sign up for OARRS until December 2014;
- From May 2011 to February 2014, Dr. Burkons failed to record all the controlled substances that he has prescribed in the appropriate medical records, including, but not limited to, prescriptions for Adderall, Percocet, Xanax, Vicodin, Valium, Ativan, Hycodan syrup, Ambien, Lomotil, Tylenol #3, and hydrocodone.

Dr. Schottenstein stated that in the case of six of Dr. Burkons' patients, there was no medical record at all.

Dr. Schottenstein stated that Dr. Burkons has shared multiple cards, letters, and emails sent by his patients expressing sentiments of gratitude and appreciation when they learned he was retiring from practice. In addition, letters of support were written on Dr. Burkons' behalf by medical colleagues, including Lance A. Talmage, M.D., a previous Secretary of the Medical Board.

Dr. Schottenstein stated that since February 2014, Dr. Burkons has not prescribed any controlled substances to family, friends, or acquaintances. Dr. Burkons has testified that if he is allowed to continue prescribing, he plans to prescribe his patients only two days of pain medication, enough for the day of the procedure and the following day. Dr. Burkons has also indicated that he would like to practice on a decreased basis going forward.

Dr. Schottenstein stated that the Hearing Examiner, considering both the seriousness of Dr. Burkons' violations and Dr. Burkons' substantial degree of remediation, including courses, has recommended suspending Dr. Burkons' medical license for 180 days followed by probationary monitoring for a minimum of three years with a monitoring physician.

Dr. Schottenstein commented that the pre-signing of prescriptions and the failure to check OARRS regularly are relatively straight-forward violations, and Dr. Burkons has taken it upon himself to address these issues by modifying his behavior and signing up for OARRS. However, Dr. Schottenstein opined that the lack of documentation when prescribing controlled substances is not as straight-forward. Dr. Schottenstein quoted from the objections filed by Dr. Burkons' attorney:

Gaps in recording are due to Dr. Burkons' passion and compassion, his willingness to see his long-term patients outside of normal office hours, and his dedication to ensuring those patients had access to the medicine they required.

Dr. Schottenstein agreed with this statement and opined that Dr. Burkons seems to be passionate and compassionate. However, Dr. Schottenstein asked how the documentation issue could be a result of Dr. Burkons' passion, compassion, and willingness to see patients outside normal office hours. Dr. Schottenstein stated that the willingness to see patients outside of normal hours, while laudable, led to boundary issues with Dr. Burkons' patients. Dr. Schottenstein stated that a boundary is a border of professional behavior; there is a necessary psychological and social distance between a physician and patients, which Dr. Schottenstein felt was missing in this case.

Dr. Schottenstein continued that the boundary issue in the matter of Dr. Burkons was what is called a boundary crossing, which is a deviation from the therapeutic aspect of the physician/patient relationship but is relatively harmless. Dr. Schottenstein stated that boundary crossings do not exploit or harm the patient and can even add to the course of treatment. Dr. Schottenstein stated that being available to patients at all hours of the day and night for non-urgent matters, giving out one's cell phone number, and spending time in patients' homes, and the physician's children being friends with the patient's children are examples of boundary crossings. Dr. Schottenstein stated that the difficulty arises when the physician and the patient are overly-familiar within the office setting, which could compromise the therapeutic relationship and the physician's objectivity. Dr. Schottenstein stated that that level of friendliness combined with that level of access can result in an informality that leads to carelessness, negligence, and a general looseness on the part of the physician.

Dr. Schottenstein stated that it is not a coincidence that the patients in question either knew Dr. Burkons well outside the professional setting, had family members who had a relationship with Dr. Burkons, or had been in Dr. Burkons' practice for a long time. Dr. Schottenstein opined that a substantial familiarity led to an informality in the practice of medicine with regard to these patients. Dr. Schottenstein commented that if a physician chooses to be available to patients at all hours for non-urgent matters and to give out their cell phone number, Dr. Schottenstein would applaud that but would also advise the physician to be particularly cautious that the relationship does not deteriorate into the familiar. For those relationships in which the physician is already familiar, such as with

family and friends, Dr. Schottenstein would advise the physician to refer those patients to another physician.

Regarding the matter of Dr. Burkons, Dr. Schottenstein stated that he agrees with the Hearing Examiner's Findings of Fact, Conclusions of Law, and Proposed Order. Dr. Schottenstein noted that in Conclusion of Law #4, the Hearing Examiner stated that he could not, as a non-physician, conclude that Dr. Burkons' acts, conduct, and/or omissions constitute a "departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in 4731.22 (B)(6), Ohio Revised Code. The Hearing Examiner further stated that the Board, as a panel of experts, may conclude that there was such a departure and modify the Conclusion of Law accordingly. Dr. Schottenstein opined that there was a departure from minimal standards with regard to a lack of documentation.

Dr. Steinbergh agreed with Dr. Schottenstein's comments, particularly with regard to the boundary issue. Dr. Steinbergh also agreed with the Hearing Examiner's Proposed Order. Dr. Steinbergh noted the following portion of the Proposed Order regarding a monitoring physician:

The monitoring physician shall monitor Dr. Burkons and his medical practice, and shall review Dr. Burkons' patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Dr. Steinbergh felt that it should be emphasized that the monitoring physician "shall monitor Dr. Burkons and his medical practice," indicating that the monitoring goes beyond just monitoring patient records. Dr. Schottenstein agreed.

Dr. Schottenstein moved to amend Conclusion of Law #4 of the Report and Recommendation to find that there was departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, as that clause is used in 4731.22(B)(6), Ohio Revised Code. Dr. Schottenstein further moved to emphasize the phrase "shall monitor Dr. Burkons and his medical practice" in the section of the Proposed Order regarding a monitoring physician. Dr. Steinbergh seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Kenney	- aye

Dr. Schachat	- aye
Dr. Factora	- aye
Dr. Edgin	- aye
Dr. Bechtel	- abstain

The motion to approve carried.

Dr. Steinbergh moved to approve and confirm Mr. Porter's Findings of Fact, Conclusions of Law, and Proposed Order, as amended, in the matter of David M. Burkons, M.D. Dr. Schottenstein seconded the motion. A vote was taken:

ROLL CALL:	Dr. Rothermel	- abstain
	Dr. Saferin	- abstain
	Dr. Schottenstein	- aye
	Dr. Steinbergh	- aye
	Mr. Giacalone	- aye
	Dr. Soin	- aye
	Mr. Kenney	- aye
	Dr. Schachat	- aye
	Dr. Factora	- aye
	Dr. Edgin	- aye
	Dr. Bechtel	- abstain

The motion to approve carried.



**State Medical Board
of Ohio**

30 E. Broad St., 3rd Floor
Columbus, Ohio 43215
Phone: (614) 466-3934
Web: www.med.ohio.gov

December 9, 2015

Case number: 15-CRF- 117

David M. Burkons, M.D.
21249 South Woodland Road
Shaker Hts., Ohio 44122

Dear Doctor Burkons:

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 or around May 2013, a Board investigator interviewed you about blank prescriptions you had signed and left with your office staff to use when you were not available. You admitted to the Board investigator, and subsequently admitted under oath, that you had signed blank prescriptions and left the pre-signed prescriptions with your staff to complete at a later date.
- (2) Since on or about November 30, 2011, you have provided care and treatment to Patients 1, 2, 3, 12, 13 and 14, and in the course of that treatment, you prescribed controlled substances on a protracted basis. You failed to obtain and/or document obtaining or accessing a report from the Ohio Automated Rx Reporting System at the times and frequency as required by Board rule.
- (3) Although you prescribed medications, including controlled substances, for Patients 1 through 14, from at least in or around May 2011, through at least in or around February 2014, you failed to record in a patient record all of the controlled substances you prescribed. Examples of such conduct for Patients 1 through 14 include, but are not limited to, the following:
 - (a) Between in or around May 2011, to in or around June 2013, on one or more occasions, you prescribed alprazolam/Xanax, a controlled substance, for Patient 1. You failed to document these prescriptions in a medical record for Patient 1.

Mailed 12-10-15

- (b) Between in or around December 2011, to in or around September 2013, on one or more occasions, you prescribed controlled substances to Patient 2. These included Adderall, Xanax, diazepam/Valium and lorazepam/Ativan. You failed to document these prescriptions in a medical record for Patient 2.
- (c) Between in or around January 2012, to in or around April 2013, on one or more occasions, you prescribed controlled substances to Patient 3. These included Adderall, Percocet, Xanax and Vicodin. You failed to document these prescriptions in a medical record for Patient 3.
- (d) Between in or around January 2013 to in or around April 2013, on one or more occasions, you prescribed controlled substances to Patient 4. These included Xanax, Valium and lorazepam. You failed to document these prescriptions in a medical record for Patient 4.
- (e) Between in or around December 2011 to in or around July 2012, on one or more occasions, you prescribed controlled substances to Patient 5. These included Xanax and Hycodan syrup. You failed to document these prescriptions in a medical record for Patient 5.
- (f) In or around February 2013, you prescribed Xanax to Patient 6. Xanax is a controlled substance. You failed to document this prescription in a medical record for Patient 6.
- (g) In or around May 2012, you prescribed Vicodin to Patient 7. Vicodin is a controlled substance. You failed to document this prescription in a medical record for Patient 7.
- (h) Between in or around February 2011 to in or around January 2012, on one or more occasions, you prescribed controlled substances to Patient 8. These included Adderall and Ambien. You failed to document these prescriptions in a medical record for Patient 8.
- (i) Between in or around January 2012, to in or around July 2012, on one or more occasions, you prescribed Adderall to Patient 9. Adderall is a controlled substance. You failed to document these prescriptions in a medical record for Patient 9.
- (j) On or about March 6, 2012, you prescribed Vicodin to Patient 10. Vicodin is a controlled substance. You failed to document this prescription in a medical record for Patient 10.
- (k) Between in or around February 2012, to in or around September 2012, on one or more occasions, you prescribed Xanax/alprazolam, a

controlled substance, to Patient 11. You failed to document these prescriptions in a medical record for Patient 11.

- (l) Between in or around October 2011, to in or around December 2012, on one or more occasions, you prescribed controlled substances to Patient 12. These included Xanax, Ativan, Lomotil and Tylenol #3. You failed to document these prescriptions in a medical record for Patient 12.
 - (m) Between in or around August 2012, to in or around February 2014, on one or more occasions, you prescribed controlled substances to Patient 13. These included Xanax, Adderall and Ambien/zolpidem. You failed to document these prescriptions in a medical record for Patient 13.
 - (n) Between in or around March 2012, to in or around August 2013, on one or more occasions, you prescribed medication containing hydrocodone to Patient 14. Hydrocodone is a controlled substance. You failed to document these prescriptions in a medical record for Patient 14.
- (4) From at least in or around January 2010, to at least in or around February 2014, you provided care and treatment to patients 1 through 14. You failed to keep and maintain records on the care and treatment you provided to Patients 1 through 14.

Your acts, conduct, and/or omissions as alleged in paragraph (1) 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 Professional; Contents of Prescription, Section 3719.06(C), 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.

Additionally, your acts, conduct, and/or omissions that occurred on or after November 30, 2011, 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: Standards and Procedures for Review of OARRS, Rule 4731-11-11(C), 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: General Provisions, Rule 4731-11-02, Ohio Administrative Code.

Pursuant to Rule 4731-11-02(F), Ohio Administrative Code, a violation of any provision of Rule 4731-11-02, Ohio Administrative Code, also violates Section 4731.22(B)(2), Ohio Revised Code, "failure to maintain minimal standards applicable to the selection or administration of drugs," and Section 4731.22(B)(6), Ohio Revised Code, "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."

Additionally, your acts, conduct, and/or omissions as alleged in paragraph (4) above, individually and/or collectively, constitute a "departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Furthermore, for any violations that occurred on or after September 29, 2015, the board may impose a civil penalty in an amount that shall not exceed twenty thousand dollars, pursuant to Section 4731.225, Ohio Revised Code. The civil penalty may be in addition to any other action the board may take under section 4731.22, Ohio Revised Code.

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

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

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

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

accept an application for reinstatement of the certificate or for issuance of a new certificate.”

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Kim G. Rothermel".

Kim G. Rothermel, M.D.
Secretary

KGR/CDP/pev
Enclosures

CERTIFIED MAIL #91 7199 9991 7034 8384 4511
RETURN RECEIPT REQUESTED

CC: Douglas E. Graff
Graff & McGovern, LPA
604 East Rich Street
Columbus, Ohio 43215

CERTIFIED MAIL #91 7199 9991 7034 8384 4528
RETURN RECEIPT REQUESTED

**IN THE MATTER OF
DAVID M. BURKONS, M.D.**

15-CRF-117

**DECEMBER 9, 2015, NOTICE OF
OPPORTUNITY FOR HEARING -
PATIENT KEY**

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