

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

October 12, 2011

Walter Thomas Bowers, II, M.D.
765 Windings Lane
Cincinnati, OH 45220

RE: Case No. 11-CRF-049

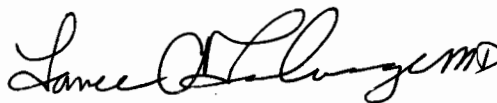
Dear Doctor Bowers:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Danielle R. Blue, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on October 12, 2011, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO



Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

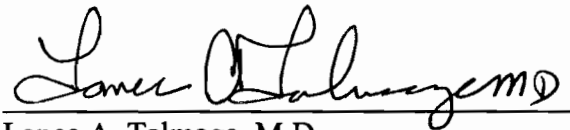
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RETURN RECEIPT REQUESTED

Mailed 10-13-11

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Danielle R. Blue, State Medical Board Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on October 12, 2011, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings 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 Walter Thomas Bowers, II, M.D., Case No. 11-CRF-049, as it appears in the Journal of the State Medical Board of Ohio.

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



Lance A. Talmage, M.D.
Secretary

(SEAL)

October 12, 2011
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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CASE NO. 11-CRF-049

WALTER THOMAS BOWERS, II, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on October 12, 2011.

Upon the Report and Recommendation of Danielle R. Blue, 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 herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

- A. **REPRIMAND:** Walter Thomas Bowers, II, M.D., is REPRIMANDED.
- B. **PROBATION:** The certificate of Dr. Bowers to practice medicine and surgery in the State of Ohio shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:
 - 1. **Obey the Law:** Dr. Bowers 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. Bowers shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there had been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. **Personal Appearances:** Dr. Bowers shall appear in person for an interview before the full Board or its designated representative during the sixth month following the month in which this Order becomes effective, or as otherwise directed by the Board. Subsequent personal appearances shall occur every six months thereafter, and/or as otherwise directed by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
 4. **Evidence of Compliance with the Order of the Kentucky Board:** At the time he submits his declarations of compliance, Dr. Bowers shall also submit declarations under penalty of Board disciplinary action and/or criminal prosecution stating whether he has complied with all terms, conditions, and limitations imposed by the Kentucky Board, Case No. 1309. Moreover, Dr. Bowers shall cause to be submitted to the Board copies of any reports that he submits to the Kentucky Board whenever and at the same time the Kentucky Board requires submission.
 5. **Notification of Change in Terms of Probation by the Kentucky Board:** Dr. Bowers shall immediately notify the Board in writing of any modification or change to any terms, conditions, or limitation imposed by the Kentucky Board in Case No. 1309, including termination of the Agreed Order.
 6. **Required Reporting of Change of Address:** Dr. Bowers shall notify the Board in writing of any change of address and/or principal practice address within 30 days of change.
 7. **Tolling of Probationary Period While Out of Compliance:** In the event Dr. Bowers 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.
- C. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Bowers' certificate will be fully restored.
- D. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Bowers violates the terms of this Order in any respect, the Board, after giving his notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- E. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER:**

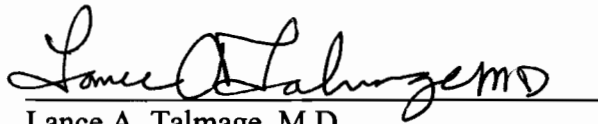
1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. Bowers shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving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

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

2. **Required Reporting to Other State Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Bowers shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Also, Dr. Bowers 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. Bowers receives from the Board written notification of the successful completion of his probation.
3. **Required Documentation of the Reporting Required by Paragraph E:** Dr. Bowers shall provide this Board with **one** of the following documents as proof of each required notification within 30 days of the date of each such notification: (a) the return receipt of certified mail within 30 days of receiving that return receipt, (b) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (c) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (d) an original

computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

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



Lance A. Talmage, M.D.
Secretary

(SEAL)

October 12, 2011
Date

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STATE MEDICAL BOARD
OF OHIO

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of

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Case No. 11-CRF-049

Walter Thomas Bowers, II, M.D.,

*

Hearing Examiner Blue

Respondent.

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REPORT AND RECOMMENDATION

Basis for Hearing:

By letter dated May 11, 2011, the State Medical Board of Ohio [Board] notified Walter Thomas Bowers, II, M.D., that it intended to determine whether to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board stated that its proposed action was based on an allegation that on January 20, 2011, the Kentucky Board of Medical Licensure [Kentucky Board] issued an Agreed Order that temporarily limits Dr. Bowers' license to practice medicine in the Commonwealth of Kentucky.

The Board further alleged that the Kentucky Board's Agreed Order constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as set forth in Ohio Revised Code Section [R.C.] 4731.22(B)(22). (State's Exhibit [St. Ex.] 1A)

Finally, the Board advised Dr. Bowers of his right to request a hearing in this matter, and the Board received Dr. Bowers' request for a hearing on May 23, 2011. (St. Exs. 1A, 1B)

Appearances:

Mike DeWine, Attorney General of Ohio, and Melinda Ryans Snyder, Assistant Attorney General, for the State of Ohio. Walter Thomas Bowers, II, M.D., on his own behalf.

Hearing Date: August 11, 2011

SUMMARY OF THE EVIDENCE

All evidence admitted in this matter, including the testimony, even if not specifically mentioned, was thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

Background Information

1. Walter Thomas Bowers, II, M.D., was born in 1945 in Orangeburg, South Carolina. In 1975, Dr. Bowers graduated from the University of Michigan Medical School. He then completed a four-year residency in obstetrics and gynecology [OB/GYN] at the University of Cincinnati Medical School in 1979. Dr. Bowers testified that, from 1979 to 1988, he had a joint OB/GYN practice with Dr. Albert Nelson in Cincinnati. From 1988 to the present, he has been a solo practitioner in Cincinnati. (St. Ex. 3; Respondent's Exhibit [Resp. Ex.] B; Hearing Transcript [Tr.] at 15-16)
2. Dr. Bowers described his practice as an "urban practice. * * * My practice is primarily, for lack of a better term, a paying practice. I see about 10, 12 percent Medicaid. The rest of my practice is fee for service, HMO, PPO activities." Dr. Bowers testified that his practice is "full" and "quite busy." (Tr. at 45)
3. Dr. Bowers testified that he stopped managing obstetric patients in November 2010 and now focuses solely on gynecology patients. (Tr. at 11) He explained why he stopped the practice of obstetrics:

This is a career step having been planned for many, many years. I'm now 65 years old and I'm in the process of winding down my practice activities. I'm sort of semi-retired now. Just doing gynecology.

(Tr. at 11-12)

4. In addition to his medical practice, Dr. Bowers is a faculty member at the University of Cincinnati Medical School and serves on the Ohio Commission on Minority Health. He also serves in leadership positions in professional associations and community service groups in the Cincinnati area. (Resp. Exs. A, B)
5. Dr. Bowers was initially licensed to practice medicine and surgery in Ohio in 1976 and currently holds an active license. He also holds licenses in Indiana and Kentucky. (Tr. at 12)

Kentucky Board's Agreed Order

6. On January 20, 2011, Dr. Bowers and the Kentucky Board entered into an Agreed Order which temporarily limits Dr. Bowers' license to practice in Kentucky. The Agreed Order provides that, among other things, Dr. Bowers shall refrain from engaging in the practice of obstetrics and from performing any obstetric procedure in Kentucky for a period of five years. The Agreed Order went into effect on January 20, 2011, and is still in effect today. (St. Ex. 2)
7. The Agreed Order included the following Stipulations of Fact:
 3. On January 17, 2007, a malpractice action was filed against the licensee, alleging that the patient's fetus died as a result of the licensee permitting a patient to continue to take the anti-hypertensive drug, Benicar HC, during her pregnancy. The date of the occurrence as July 18, 2006. The licensee settled the claim against him on May 5, 2008 for \$250,000.

* * *

5. On review, a Board member recommended that the case be reviewed by a Board consultant.
6. In a report dated August 30, 2009, the Board consultant concluded that the treatment of this patient was "below minimum standards," and constituted gross negligence. The consultant further concluded,

I assume that Dr. Bowers knew she was taking Benicar, and it was his responsibility to decide if its use was appropriate. The Obstetrician has to identify all medications a pregnant person is taking, and decide if its use is appropriate.

The package insert says Benicar should be discontinued as soon as pregnancy is detected; that it does cause renal problems. Drugs in Pregnancy and Lactation, authored by Briggs, Freeman, and Yaffe, says the use of the drug in the second and third trimesters may cause teratogenicity and severe fetal and neonatal toxicity. It is a drug labeled as a risk factor of D in the third trimester. This means there is positive evidence of human fetal risk, but the benefits from use in pregnant women may be acceptable despite the risk [e.g. if the drug is needed in a life threatening situation or for a serious disease for which safer drugs cannot be used or are ineffective.]

At delivery, the infant had multiple abnormalities, including renal tubular dysgenesis. I do not know if the drug was the direct cause of the infant's abnormalities; I suspect you could find experts to testify to both sides of this issue.

It is clearly below the standard of care for an Obstetrician to allow a pregnant patient to continue Benicar, even though it was prescribed by another Physician, without a documented discussion of the risks and benefits. If the drug was to be continued, a consultation with a Perinatologist would have been in order. To ignore the warnings in the package insert without serious discussion with the patient, and an absolute need for the drug, is a failure to conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky.

This borders on gross ignorance, and is malpractice. Dr. Bowers may benefit from further training in the medical treatment of hypertension in pregnancy, and better evaluation of the history obtained from his patients.

7. Following this initial review, the Board obtained an additional five patient records for review by its consultant. The consultant concluded, in part, his care for all five patients [was] within minimum standards in the Commonwealth of Kentucky. However, the consultant also noted that Dr. Bowers' record keeping is poor with very few notes in the charts, and nothing to indicate his plan of care for complicated patients. There is apparently no effort made to obtain information about prior complicated pregnancies or medical illnesses.
8. Following its review of the consultant reports, the Panel initially asked the licensee to complete a clinical skills assessment, to assist the Panel in determining appropriate action. The licensee declined, citing his plans to discontinue his practice of obstetrics in December 2010 and the "prohibitive" costs of this assessment. After further review, the Panel asked the licensee, at a minimum, to successfully complete an approved Documentation Seminar and Post-program. The licensee has determined to do what the Panel has asked, in order to resolve this matter amicably, even though he plans to fully retire from the practice of medicine in approximately 2 years.

(St. Ex. 2)

8. The Agreed Order also contained the following Stipulated Conclusion of Law:

Based upon the Stipulations of Fact, the licensee has engaged in conduct which violates the provisions of [Kentucky Revised Statutes] KRS 311.595(9), as illustrated by KRS 311.597(3) and (4).¹ Accordingly, there are legal grounds for the parties to enter into this Agreed Order.

(St. Ex. 2)

9. In addition to the temporary limitation placed on his Kentucky license, the Agreed Order also required Dr. Bowers to comply with the following terms and conditions:

- Enroll in the Documentation Seminar at the Center for Personalized Education for Physicians (CPEP) in Denver, Colorado, at own expense;
- Provide the Kentucky Board with written verification that he has successfully completed CPEP's Documentation Seminar;
- Enroll in the 6-month Personalized Implementation Program (PIP) and provide the Kentucky Board with written verification that he has successfully completed the program; and

¹ KRS 311.595(9) states in pertinent part:

The board may limit or restrict a license * * * upon proof that the licensee has: * * * (9) Engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof[.]

KRS 311.597(3) and (4) state in pertinent part:

As used in KRS 311.595(9), "dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof" shall included but not be limited to the following acts by a licensee:

* * *

(3) A serious act, or a pattern of acts committed during the course of his medical practice which, under the attendant circumstances, would be deemed to be gross incompetence, gross ignorance, gross negligence, or malpractice.

(4) Conduct which is calculated or has the effect of bringing the medical profession into disrepute, including but not limited to any departure from, or failure to conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky, and any departure from, or failure to conform to the principles of medical ethics of the American Medical Association or the code of ethics of the American Osteopathic Association. For purposes of this subsection, actual injury to a patient need not be established.

- Ensure CPEP sends copies of all evaluations from the Documentation Course and PIP.

(St. Ex. 2)

Dr. Bowers' Response

10. In regard to the malpractice lawsuit filed against him, Dr. Bowers testified that:

In January 2007, a malpractice action was brought against me and two other physicians for the management of pregnancy and the use of an antihypertensive medication. The date of the occurrence was 18 July 2006.

The patient is a chronic hypertensive who had delivered two previous pregnancies without complication. She had been under my OB/GYN care from 1994-2006. Her hypertensive disease was managed by her internist. It was agreed that the pregnancy would be managed jointly by them and me. The medication in question was Benicar.

On 20 June 2006 with discussion with her internist, I changed the medication at 30 weeks gestation to Aldomet for continued hypertensive management. During the pregnancy, I nor any of my representatives ordered the medication.

(Resp. Ex. A; Tr. at 39-40)

11. Dr. Bowers stated that he changed the patient's medication from Benicar to Aldomet at 30 weeks gestation because the patient was complaining of headaches "which she attributed to the medication." Dr. Bowers testified that the patient had been taking Benicar for 2 to 3 years prior to this pregnancy. (Tr. at 25)
12. Dr. Bowers admitted that he did not discuss with the patient the risks and benefits of continuing to take Benicar during her pregnancy. (Tr. at 49) According to Dr. Bowers, Benicar is

an anti-hypertensive drug which it's a very good drug used in the management of difficult hypertensive cases. The downside of the - - Well, the drug is listed a Category C which means that the benefits should outweigh the risks involved.

* * *

Category C means that there's maybe some presumptive evidence as to some teratogenicity for the medication.

(Tr. at 23-24)

13. In regard to whether he believed the Benicar caused the malformation of the fetus, Dr. Bowers stated "that's a matter for debate." (Tr. at 32) In retrospect, Dr. Bowers testified that he would have handled the patient differently:

If I had to do it all over again knowing what I know now, I would refer to a perinatologist for the entire pregnancy. I would just - - But, you know, in the past, uh, prior to us having the whole subspecialty of perinatology, we managed hypertensive disease in conjunction with the internal medicine doctor.

(Tr. at 32)

14. In regard to the Kentucky Board's Agreed Order, Dr. Bowers testified:

In Kentucky, unlike Ohio, there is an annual renewal process for licensure. In the renewal process[,] questions are asked of any malpractice actions from the previous year. In answering in the affirmative, I was asked by the investigator to provide details of the action. The request was fully complied with. During the process[,] a consultant asked for review of similar cases. Those cases were found to meet minimal standards of care.

The [Kentucky] Medical Board counsel asked me to enter into an Interim Agreed Order (Diversion) to do remediation on hypertension and pregnancy. I informed the Board through its counsel that I would no longer be practicing obstetrics effective the end of November 2010, entering semi retirement and that the Diversion would be of little value because I was no longer accepting new pregnancy patients. The practice was now solely confined to Gynecological care.

The financial responsibilities for travel and course fee were prohibitive. Because of my position not to enter Diversion a formal complaint was issued. I waived the right to a formal hearing and signed the Agreed Order.

The Board's consultant felt that I needed to enter a documentation program as part of the order. I used the ACOG standard pregnancy form with other supporting data, but it was determined that more information could have been supplied.

To comply with the Board's order, I am currently enrolled in the Center for Personalized Education for Physicians (CPEP), Denver, CO, documentation program. I attended a seminar in February 2011 and have submitted charts for review and critique as required. The evaluation process is for 6 months.

During the entirety of his case, it's never been determined that I was endangering the lives of the people that I care for.

(Resp. Ex. A; Tr. at 41-42)

15. Dr. Bowers testified that he was completely surprised at the temporary limitation placed on his Kentucky license. He explained:

To my surprise, and I was not expecting this, that I would be limited for a five-year period of time for doing obstetrics. So the [Kentucky Board] counsel said, "Well, that's of no consequence." But now I know that it is of some consequence because I'm now struggling to have some - - some medical practice and whatever for the remainder of my career.

(Tr. at 29-30)

* * *

Had I known [the Kentucky Board was] going to put this five years in here, I would have gone to this hearing and pleaded [my] case and what have you. I probably would have found some money to go to Denver to do this remediation. I - - But I felt that my practice, I'm going to stop in two months, you know, what's the point. Well, I guess there was a point and I'm suffering the point.

(Tr. at 55)

16. Dr. Bowers completed the documentation seminar at CPEP on March 11, 2011. He also testified that he has been complying with the PIP. He further stated that he has submitted his charts for review twice and has received favorable reviews. He stated that he has one more review left to be completed. (Resp. Exs. C-D; Tr. at 30, 54)
17. Dr. Bowers testified as to how his life would be affected if this Board took action against his license:

It would be devastating if the State of Ohio would place restrictions on my license. To continue teaching and enjoying full hospital privileges, my license can not be encumbered. My continued participation is predicated

on a favorable response to this hearing. My faculty status, the ability to teach residents, medical students, [and] hospital indemnification would be compromised.

I no longer practice obstetrics. My malpractice insurance is only for gynecology effective December 2010. In order to maintain current [faculty] status, I need full privileges in OB/GYN.

I am currently in negotiations with The Christ Hospital for absorption of my practice into their system. All actions have been suspended pending review and action by this panel.

I hope and pray that a favorable decision be rendered in my behalf.

(Resp. Exs. A, E-H; Tr. at 42-43)

FINDING OF FACT

On January 20, 2011, Walter Thomas Bowers, II, M.D. and the Kentucky Board of Medical Licensure [Kentucky Board] entered into an Agreed Order that temporarily limits Dr. Bowers' license to practice medicine in the Commonwealth of Kentucky. The Agreed Order provides, among other things, that Dr. Bowers shall refrain from engaging in the practice of obstetrics and from performing any obstetric procedure in the Commonwealth of Kentucky for a period of five years.

CONCLUSION OF LAW

The Kentucky Board's Agreed Order as set forth in the Finding of Fact constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as set forth in R.C. 4731.22(B)(22).

DISCUSSION OF PROPOSED ORDER

Counsel for the State asks that this Board "take appropriate action given all of the mitigating circumstances." Dr. Bowers asks that this Board refrain from placing a

restriction upon his license so he may continue to serve on the faculty at the University of Cincinnati Medical School and also to wind down his practice.

It is undisputed that Dr. Bowers entered into an Agreed Order with the Kentucky Board to refrain from practicing obstetrics and performing any obstetric procedure in Kentucky for five years due to a malpractice action against him. The Hearing Examiner also recognizes that while under Dr. Bowers' obstetrical care, a patient lost her fetus. However, the Hearing Examiner agrees with the State that there are mitigating factors present in this case that should be considered by this Board.

First, Dr. Bowers has been punished. Dr. Bowers settled a malpractice claim for \$250,000 and then he was disciplined by the Kentucky Board.

Second, since the incident, Dr. Bowers has completed additional training as required by the Kentucky Board. Furthermore, his chart reviews have approved his work.

Third, Dr. Bowers was forthcoming and candid regarding the incident. He also showed extreme regret and remorse.

Fourth, the Hearing Examiner is convinced that Dr. Bowers is winding down his practice. He last practiced obstetrics in November 2010, his malpractice insurance for obstetrics has expired, and his practice is now focused on gynecology only. He is also currently in negotiations with a hospital to absorb his practice.

Finally, prior to this incident, Dr. Bowers had a long, distinguished career as an OB/GYN in the Cincinnati area, and no prior disciplinary history.

Based on the foregoing, the Hearing Examiner believes that a reprimand and a probationary term are sufficient in this matter to make sure that Dr. Bowers complies with all aspects of the Kentucky Order. Therefore, it is recommended that Dr. Bowers' Ohio certificate be placed on probation for a period of at least two years, with the understanding that Dr. Bowers can request modification after probation has been in place for one year.

PROPOSED ORDER

It is hereby ORDERED that:

- A. **REPRIMAND:** Walter Thomas Bowers, II, M.D., is REPRIMANDED.
- B. **PROBATION:** The certificate of Dr. Bowers to practice medicine and surgery in the State of Ohio shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:

1. **Obey the Law:** Dr. Bowers 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. Bowers shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there had been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
3. **Personal Appearances:** Dr. Bowers shall appear in person for an interview before the full Board or its designated representative during the sixth month following the month in which this Order becomes effective, or as otherwise directed by the Board. Subsequent personal appearances shall occur every six months thereafter, and/or as otherwise directed by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
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- C. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Bowers' certificate will be fully restored.
- D. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Bowers violates the terms of this Order in any respect, the Board, after giving his notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- E. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER:**
1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. Bowers 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. Bowers shall promptly provide a copy of this Order to all employers or entities with which he contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or healthcare center where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Bowers receives from the Board written notification of the successful completion of his probation.

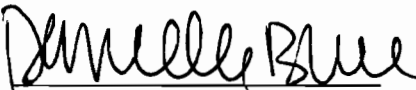
In the event that Dr. Bowers provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services. This requirement shall continue until Dr. Bowers receives from the Board written notification of the successful completion of his probation.
 2. **Required Reporting to Other State Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Bowers shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Also, Dr. Bowers 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. Bowers receives from the Board written notification of the successful completion of his probation.

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

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

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


Danielle R. Blue, Esq.
Hearing Examiner



State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

EXCERPT FROM THE DRAFT MINUTES OF OCTOBER 12, 2011

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

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

Dr. Mahajan 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: Daniel Howard Brumfield, M.D.; David C. Blocker, M.D.; Walter Thomas Bowers, II, M.D.; Stephen Leon Edge, M.D.; Michelle M. Walter; Mark A. Wangler, M.D.; Adil Younis Yamour, M.D. A roll call was taken:

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Steinbergh	- aye
	Dr. Mahajan	- aye
	Dr. Madia	- aye
	Dr. Talmage	- aye
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye

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

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Steinbergh	- aye
	Dr. Mahajan	- aye
	Dr. Madia	- aye
	Dr. Talmage	- aye
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye

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

Dr. Mahajan 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.

.....
WALTER THOMAS BOWERS, II, M.D., Case No. 11-CRF-049
.....

Dr. Talmage exited the meeting prior to this discussion
.....

Dr. Steinbergh moved to approve and confirm Ms. Blue's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of Walter Thomas Bowers, II, M.D. Mr. Hairston seconded the motion.
.....

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

ROLL CALL:	Dr. Madia	- aye
	Ms. Elsass	- aye
	Dr. Ramprasad	- aye
	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Steinbergh	- aye
	Dr. Mahajan	- aye

The motion to approve carried.

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

May 11, 2011

Case number: 11-CRF-049

Walter Thomas Bowers II, M.D.
765 Windings Lane
Cincinnati, OH 45220

Dear Doctor Bowers:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio [Board] intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) On or about January 20, 2011, the Kentucky Board of Medical Licensure [Kentucky Board] issued an Agreed Order which temporarily limits your license to practice medicine in the Commonwealth of Kentucky. Specifically, the Agreed Order provides, *inter alia*, that you shall refrain from engaging in the practice of obstetrics and from performing any obstetric procedure in the Commonwealth of Kentucky for a period of five years. A copy of the Agreed Order is attached hereto and incorporated herein.

The Agreed Order, as alleged in paragraph (1) above, constitutes “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that clause is used in Section 4731.22(B)(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.

Mailed 5-12-11

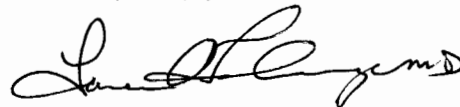
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lance A. Talmage, M.D.", with a stylized flourish at the end.

Lance A. Talmage, M.D.
Secretary

LAT/AMM/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3938 3023 5128
RETURN RECEIPT REQUESTED

JAN 20 2011

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1309

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF
KENTUCKY HELD BY WALTER T. BOWERS, M.D., LICENSE NO. 32910,
3131 HARVEY AVENUE, #204, CINCINNATI, OHIO 45229

AGREED ORDER

Comes now the Kentucky Board of Medical Licensure ("the Board"), acting by
and through its Hearing Panel B, and Walter T. Bowers, M.D. ("the licensee"), and,
based upon their mutual desire to fully and finally resolve the pending Complaint, hereby
ENTER INTO the following AGREED ORDER:

STIPULATIONS OF FACT

The parties stipulate the following facts, which serve as the factual bases for this
Agreed Order:

1. At all relevant times, Walter T. Bowers, M.D., was licensed by the Board to practice
medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is obstetrics/gynecology.
3. On January 17, 2007, a malpractice action was filed against the licensee, alleging that
the patient's fetus died as the result of the licensee permitting a patient to continue to
take the anti-hypertensive drug, Benicar HC, during her pregnancy. The date of the
occurrence was July 18, 2006. The licensee settled the claim against him on May 5,
2008 for \$250,000.
4. In his letter of explanation to the Board, the licensee stated, in part,

The patient has had pregnancies on two separate occasions which were managed and
delivered without difficulty. She is a chronic hypertensive and has been managed by
her internist. The patient was seen initially for this pregnancy on January 2, 2006.
At that time she was being managed by her internist for control of hypertension with

atenolol and Benicar HCT. There were no untoward events during the antepartum period....The outcome of this pregnancy was fetal demise secondary to malformation incompatible with life....It was alleged that the fetal demise was secondary to the patient being maintained on the anti-hypertensive agent, Benicar HCT. The patient was managed for hypertension during this pregnancy by her internist, who continued the Benicar HCT. On July 20, 2006 with discussion with her internist, I changed the medication at 30 weeks gestation to Aldomet for continued hypertension management. During the period of gestation, hypertensive medication in question was never prescribed or renewed by me or my representatives. The hypertension management was solely the responsibility of the internal medicine practitioner. ...

5. On review, a Board member recommended that the case be reviewed by a Board consultant.
6. In a report dated August 30, 2009, the Board consultant concluded that the licensee's treatment of this patient was "below minimum standards," and constituted gross negligence. The consultant further concluded,

...I assume that Dr. Bowers knew she was taking Benicar, and it was his responsibility to decide if it's use was appropriate. The Obstetrician has to identify all medications a pregnant patient is taking, and decide if its use is appropriate.

The package insert says Benicar should be discontinued as soon as pregnancy is detected; that it does cause renal problems. *Drugs in Pregnancy and Lactation*, authored by Briggs, Freeman, and Yaffe, says the use of the drug in the second and third trimesters may cause teratogenicity and severe fetal and neonatal toxicity. It is a drug labeled as a risk factor of D in the third trimester. This means there is positive evidence of human fetal risk, but the benefits from use in pregnant women may be acceptable despite the risk [e.g. if the drug is needed in a life threatening situation or for a serious disease for which safer drugs cannot be used or are ineffective.]

At delivery, the infant had multiple abnormalities, including renal tubular dysgenesis. I do not know if the drug was the direct cause of the infant's abnormalities; I suspect you could find experts to testify to both sides of this issue.

It is clearly below the standard of care for an Obstetrician to allow a pregnant patient to continue Benicar, even though it was prescribed by another Physician, without a documented discussion of the risks and benefits. If the drug was to be continued, a consultation with a Perinatologist would have been in order. To ignore the warnings in the package insert without serious discussion with the patient, and an absolute need for the drug, is a failure to conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky.

This borders on gross ignorance, and is malpractice. Dr. Bowers may benefit from further training in the medical treatment of hypertension in pregnancy, and better evaluation of the history obtained from his patients.

7. Following this initial review, the Board obtained an additional five patient records for review by its consultant. The consultant concluded, in part,

...His care for all five patients is within minimum standards in the Commonwealth of Kentucky. His record keeping is poor with very few notes in the charts, and nothing to indicate his plan of care for complicated patients. There is apparently no effort made to obtain information about prior complicated pregnancies or medical illnesses.
8. Following its review of these consultant reports, the Panel initially asked the licensee to complete a clinical skills assessment, to assist the Panel in determining appropriate action. The licensee declined, citing his plans to discontinue his practice of obstetrics in December 2010 and the "prohibitive" costs of the assessment. After further review, the Panel asked the licensee, at a minimum, to successfully complete an approved Documentation Seminar and Post-program. The licensee has determined to do what the Panel has asked, in order to resolve this matter amicably, even though he plans to fully retire from the practice of medicine in approximately 2 years.

STIPULATED CONCLUSIONS OF LAW

The parties stipulate the following Conclusions of Law, which serve as the legal bases for this Agreed Order:

1. The licensee's medical license is subject to regulation and discipline by the Board.
2. Based upon the Stipulations of Fact, the licensee has engaged in conduct which violates the provisions of KRS 311.595(9), as illustrated by KRS 311.597(3) and (4). Accordingly, there are legal grounds for the parties to enter into this Agreed Order.

3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve this pending Complaint without an evidentiary hearing by entering into an informal resolution such as this Agreed Order.

AGREED ORDER

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to fully and finally resolve this pending Complaint without an evidentiary hearing, the parties hereby ENTER INTO the following

AGREED ORDER:

1. The license to practice medicine within the Commonwealth of Kentucky held by Walter T. Bowers, M.D., SHALL BE SUBJECT to this Agreed Order for a period of five (5) years from the date of filing of the Agreed Order.
2. During the effective period of this Agreed Order, the licensee's medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:
 - a. The licensee SHALL NOT engage in the practice of Obstetrics and SHALL NOT perform any obstetric procedure;
 - b. Within twenty (20) days of the filing of this Agreed Order, the licensee SHALL make all necessary arrangements to enroll in the Documentation Seminar at the Center for Personalized Education for Physicians (CPEP), 7351 Lowry Boulevard, Suite 100, Denver, Colorado 80230 – 303/577-3232, at the earliest time available. The licensee shall complete the Documentation Seminar at the time and date(s) scheduled, at his expense;

- c. The licensee SHALL provide the Board's staff with written verification that he has successfully completed CPEP's Documentation Seminar, and has enrolled in the 6-month Personalized Implementation Program (PIP);
- d. The licensee SHALL successfully complete PIP and SHALL provide the Board's staff with written verification that he has successfully completed the 6-month CPEP Personalized Implementation Program promptly after completing that program.
- e. The licensee SHALL take all steps necessary, including signing any waiver and/or consent forms required to ensure that CPEP will provide a copy of any evaluations from the Documentation Course and Personalized Implementation Program to the Board's Legal Department promptly after its completion;
- e. The licensee SHALL permit the Board's agents to inspect, copy and/or obtain relevant records, upon request, for review by the Board's agents and/or consultants;
- f. The licensee SHALL reimburse the Board fully for the costs of each consultant review performed pursuant to this Agreed Order. Once the Board receives the invoice from the consultant(s) for each review, it will provide the licensee with a redacted copy of that invoice, omitting the consultant's identifying information. The licensee SHALL pay the costs noted on the invoice within thirty (30) days of the date on the Board's written notice. The licensee's failure to fully reimburse the Board within that time frame SHALL constitute a violation of this Agreed Order;

- g. The licensee understands and agrees that at least one consultant review must be performed, on terms determined by the Panel or its staff, before the Panel will consider a request to terminate this Agreed Order.
 - h. The licensee SHALL pay the costs of the investigation in the amount of \$300.00 within six (6) months from entry of this Agreed Order;
 - i. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. The licensee expressly agrees that if he should violate any term or condition of the Agreed Order, the licensee's practice will constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive information that he has violated any term or condition of this Agreed Order, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that a violation has occurred, after an *ex parte* presentation of the relevant facts by the Board's General Counsel or Assistant General Counsel. If the Panel Chair should issue such an Emergency Order, the parties agree and stipulate that a violation of any term or condition of this Agreed Order would render the licensee's practice an immediate danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Agreed Order.

4. The licensee understands and agrees that any violation of the terms of this Agreed Order would provide a legal basis for additional disciplinary action, including revocation, pursuant to KRS 311.595(13).

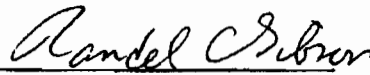
SO AGREED on this 20th day of January, 2011.


FOR THE LICENSEE:


WALTER T. BOWERS, M.D.

COUNSEL FOR THE LICENSEE
(IF APPLICABLE)

FOR THE BOARD:


RANDEL C. GIBSON, D.O.
CHAIR, HEARING PANEL B

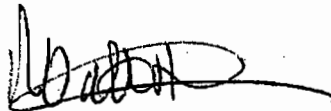

C. LLOYD VEST II
General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
(502) 429-7150

WAIVER OF RIGHTS

I, Walter T. Bowers, M.D., am presently the Respondent in Kentucky Board of Medical Licensure Case No. 1309. I understand that, under 201 KAR 9:082, I must waive certain rights if I wish to resolve this matter by informal dispensation. Accordingly, I WAIVE my right to raise any constitutional, statutory or common law objection(s) I may have to the Hearing Panel rejecting the proposed informal dispensation or to the curtailment of such a settlement by the Board's General Counsel or Assistant General Counsel.

Furthermore, if the Hearing Panel accepts the proposed Agreed Order as submitted, I WAIVE my right to demand an evidentiary hearing or to raise additional constitutional or statutory objections in this matter. However, if the Hearing Panel should reject the proposed Agreed Order, I understand that further proceedings will be conducted in accordance with KRS 311.530 et seq, and I will have the right to raise any objections normally available in such proceedings.

Executed this 26th day of January, 2011.



WALTER T. BOWERS, M.D.
Respondent

COUNSEL FOR THE RESPONDENT
(IF APPLICABLE)