

MAR 17 2016  
STATE MEDICAL BOARD  
OF OHIO

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of

\*

Case No. 15-CRF-117

David M. Burkons, M.D.,

\*

Hearing Examiner Porter

Respondent.

\*

ENTRY

With the agreement of the parties, on Tuesday, August 23, 2016, at 10:00 a.m., the Hearing Examiner will initiate a telephone conference with counsel for Dr. Burkons and counsel for the State. The purpose of this conference will be to confirm the need for an evidentiary hearing, determine whether matters may be stipulated, discuss other procedural matters, and address any questions.



R. Gregory Porter  
Hearing Examiner  
614-752-8210  
Greg.Porter@med.ohio.gov

Served upon:

Douglas E. Graff and Levi J. Tkach, Esqs., counsel for Dr. Burkons  
Kyle C. Wilcox, Assistant Attorney General

JAN 2 1 2016

STATE MEDICAL BOARD  
OF OHIO

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of	*	
David M. Burkons, M.D.,	*	Case No. 15-CRF-117
Respondent.	*	Hearing Examiner Porter

ENTRY

On December 9, 2015, the State Medical Board of Ohio (“Board”) issued a notice of opportunity for hearing to David M. Burkons, M.D., the Respondent in this matter, who thereafter requested a hearing. On December 22, 2015, the Board notified him by certified mail of the date, time, and place of the hearing; however, the Board then postponed the hearing pursuant to Section 119.09, Ohio Revised Code.

**New Hearing Date**

**The hearing on this matter will commence on Monday, September 19, 2016, at 9:30 AM, and continue as necessary through Thursday, September 22, 2016, at the Board’s offices in the James A. Rhodes State Office Tower, 30 East Broad Street, Third Floor, Columbus, Ohio.**

**Status Conference**

**On Thursday, March 17, 2016, at 10:00 AM, the Hearing Examiner will initiate a telephone conference with counsel for Dr. Burkons and counsel for the State.** The purpose of this conference will be to confirm the need for an evidentiary hearing, determine whether matters may be stipulated, discuss other procedural matters, and address any questions.

**Filing Documents with the Board**

Whenever a document is required to be filed with the Board in this matter, the original shall be filed with the Hearing Unit, State Medical Board of Ohio, 30 East Broad Street, Third Floor, Columbus, Ohio, 43215-6127, or it may be faxed to the attention of Alana Noward, Hearing Unit Assistant, at 614-728-5946. (Filing documents via email is not permitted at this time.) A copy shall be served on opposing counsel with a corresponding certificate of service. **The case number must be placed on all filings.**

**Continuances**

Hearings are not continued on a party’s motion unless a showing of good cause and due diligence is made. A motion for continuance received in the Board’s offices later than five days prior to the

scheduled hearing will not be granted unless the party demonstrates that an extraordinary situation exists that could not have been anticipated that would justify the granting of a continuance.

### **Marking Exhibits**

During the hearing, any party intending to introduce an exhibit shall present the original document plus a minimum of three copies: one copy for the Hearing Examiner, one copy for the opposing party, and one copy for the use of witnesses. The parties are required to mark each exhibit that they intend to introduce at the hearing, with the State using numbers (e.g., State's Exhibit 1) and the Respondent using letters (e.g., Respondent's Exhibit A). If an exhibit consists of more than 10 pages, each page shall be numbered in the lower right-hand corner.

### **Patient Confidentiality; Social Security Numbers**

All parties shall maintain the confidentiality of patient-identifying information. **Documents that contain patient-identifying information are confidential.** Patient-identifying information includes but is not limited to the patients' name, the names of patients' close relatives, and patients' addresses, telephone numbers, and dates of birth. If confidential documents are exchanged between the parties, the parties shall maintain the confidentiality of those documents. **Confidential documents presented as exhibits at hearing must either be sealed to protect patient confidentiality or have patient-identifying information redacted. This is true even if the documents would be considered public records in another forum.**

Furthermore, patient confidentiality shall be maintained during the hearing. Patients shall be referred to during hearing by patient number rather than by name. Relatives of patients shall be referred to by their relationship to the patient, e.g., Spouse of Patient 1, Sister of Patient 1, et cetera. However, if the patient is a relative of the Respondent, such as in a case where the physician is alleged to have prescribed medication to a spouse, then the patient shall be referred to simply as the Respondent's family member to avoid identifying that patient. **Moreover, in cases involving multiple patients, if a patient witness is asked to identify him- or herself from a patient key, or if a relative of a patient is asked to identify his or her patient-relative from a patient key, then the names of other patients on the patient key shall be masked from the witness's view.** However, the patient key need not be masked for expert witnesses, the Respondent, Medical Board staff, law enforcement personnel, or past or current employees of the Respondent's medical practice.

Additionally, if an exhibit includes a Social Security number, unless that exhibit will be sealed to protect patient confidentiality, the number shall be redacted before the exhibit is offered into evidence unless the number is a necessary item of evidence.

### **Settlement**

The parties are expected to comply with the Board's post-citation settlement policy.

**Distribution of Entries**

A copy of this Entry is being provided to the Respondent; however, Respondent's copies of future entries will be sent only to the Respondent's counsel. In addition, entries will be distributed via email only. Should counsel require a hard copy of an entry, it will be provided on request.

**Procedural Authority**

This proceeding is governed by Sections 119.07 and 119.09, and Chapter 4731, Ohio Revised Code, and the administrative rules promulgated thereunder. Chapter 4731 and the administrative rules controlling this proceeding are available upon request at the Board offices or from its website, (<http://med.ohio.gov/>).



R. Gregory Porter  
Hearing Examiner  
614-752-8210  
greg.porter@med.ohio.gov

Served upon:

David M. Burkons, M.D., via regular U.S. Mail  
Douglas E. Graff and Levi J. Tkach, Esqs., counsel for Dr. Burkons, via email  
Kyle C. Wilcox, Assistant Attorney General, via email



# USPS Tracking®

HOW-BURKONS / ATTY GRAFT

Tracking Number: 9171999991703483919011



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## Product & Tracking Information

Postal Product:  
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Features:  
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DATE & TIME	STATUS OF ITEM	LOCATION
December 28, 2015 , 10:53 am	Delivered	COLUMBUS, OH 43215

Your item was delivered at 10:53 am on December 28, 2015 in COLUMBUS, OH 43215.

December 24, 2015 , 2:13 am	Departed USPS Facility	COLUMBUS, OH 43218
December 22, 2015 , 11:53 pm	Arrived at USPS Facility	COLUMBUS, OH 43218
December 22, 2015 , 10:38 pm	Accepted at USPS Origin Sort Facility	COLUMBUS, OH 43215
December 22, 2015	Pre-Shipment Info Sent to USPS	

## Available Actions

Return Receipt Electronic

Text Updates

Email Updates

## Track Another Package

Tracking (or receipt) number

9171999991703483919011

Track It

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### LEGAL INFORMATION

- Privacy Policy
- Terms of Use
- FOIA
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Search or Enter a Tracking Number

Date: January 4, 2016

jackie moore:

The following is in response to your January 4, 2016 request for delivery information on your Certified Mail™ item number 9171999991703483919011. The delivery record shows that this item was delivered on December 28, 2015 at 10:53 am in COLUMBUS, OH 43215. The scanned image of the recipient information is provided below.

Signature of Recipient :



Address of Recipient :

604 E. Bick

Thank you for selecting the Postal Service for your mailing needs.

If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,  
United States Postal Service



# USPS Tracking®

HOW-BURKONS

Tracking Number: 9171999991703483919028



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## Product & Tracking Information

Postal Product:  
First-Class Mail®

Features:  
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DATE & TIME	STATUS OF ITEM	LOCATION
December 31, 2015 , 5:00 pm	Delivered	BEACHWOOD, OH 44122

Your item was delivered at 5:00 pm on December 31, 2015 in BEACHWOOD, OH 44122.

December 28, 2015 , 1:47 pm	Notice Left (No Authorized Recipient Available)	BEACHWOOD, OH 44122
December 24, 2015 , 6:17 pm	Notice Left (No Authorized Recipient Available)	BEACHWOOD, OH 44122
December 24, 2015 , 9:13 am	Arrived at Unit	BEACHWOOD, OH 44122
December 23, 2015 , 11:34 pm	Departed USPS Facility	CLEVELAND, OH 44101
December 23, 2015 , 12:05 pm	Arrived at USPS Facility	CLEVELAND, OH 44101
December 22, 2015 , 11:53 pm	Arrived at USPS Origin Facility	COLUMBUS, OH 43218
December 22, 2015 , 10:38 pm	Accepted at USPS Origin Sort Facility	COLUMBUS, OH 43215
December 22, 2015	Pre-Shipment Info Sent to USPS	

## Available Actions

Return Receipt Electronic

Text Updates

Email Updates

## Track Another Package

Tracking (or receipt) number

9171999991703483919028

Track it

## Manage Incoming Packages

Track all your packages from a dashboard. No tracking numbers necessary.

Sign up for My USPS ›



Search or Enter a Tracking Number



Date: January 4, 2016

jackie moore:

The following is in response to your January 4, 2016 request for delivery information on your Certified Mail™ item number 9171999991703483919028. The delivery record shows that this item was delivered on December 31, 2015 at 5:00 pm in BEACHWOOD, OH 44122. The scanned image of the recipient information is provided below.

Signature of Recipient :



David Barker

Address of Recipient :

21249 S. Woodlon  
Shaker Heights  
44122

Thank you for selecting the Postal Service for your mailing needs.

If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,  
United States Postal Service



**THE STATE MEDICAL BOARD OF OHIO**  
**ATTN: Case Control Office**  
30 E. Broad Street, 3<sup>rd</sup> Floor  
Columbus, Ohio 43215

In the Matter of:

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

Hearing Examiner:

Case No. 15-CRF-117

---

**NOTICE OF APPEARANCE OF COUNSEL**

---

Pursuant to Ohio Administrative Code § 4731-13-01 (D), Assistant Attorney General KYLE C. WILCOX hereby enters his appearance as counsel for the State Medical Board of Ohio in the above captioned matter. Please direct all future notices, pleadings, orders, motions, and filings to the undersigned at the address listed below.

Respectfully submitted,

**MICHAEL DEWINE** (0009181)  
Attorney General of Ohio



---

**KYLE C. WILCOX** (0063219)  
Assistant Attorney General  
Health and Human Services Section  
30 East Broad Street, 26<sup>th</sup> Floor  
Columbus, Ohio 43215-3400  
Telephone (614) 466-8600  
Facsimile (614) 466-6090  
[kyle.wilcox@ohioattorneygeneral.gov](mailto:kyle.wilcox@ohioattorneygeneral.gov)

STATE MEDICAL BOARD  
OF OHIO

2015 DEC 28 PM 4:09

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing *State's Notice of Appearance of Counsel* was sent via regular U.S. mail on this 28th day of December 2015, to:

Douglas E. Graff  
Graff & McGovern LPA  
604 East Rich Street  
Columbus, Ohio 43215  
(*Counsel for Respondent*)



---

**KYLE C. WILCOX** (0063219)  
Assistant Attorney General

STATE MEDICAL BOARD  
OF OHIO  
2015 DEC 28 PM 4: 09

**THE STATE MEDICAL BOARD OF OHIO**  
**ATTENTION: Case Control Office**  
30 East Broad Street, 3<sup>rd</sup> Floor  
Columbus, Ohio 43215

In the Matter of:

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

Hearing Examiner:

Case No. 15-CRF-117

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**STATE MEDICAL BOARD OF OHIO'S REQUEST  
FOR LIST OF WITNESSES AND DOCUMENTS  
AND COPIES OF DOCUMENTS**

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Pursuant to Ohio Administrative Code §§ 4731-13-18(A) and (B), the State Medical Board of Ohio requests the following: (1) a list of both the witnesses and documents intended to be introduced by David M. Burkons, M.D. at hearing, and (2) copies of documents intended to be introduced by David M. Burkons, M.D. at hearing.

The Board submits that this request is continuing and ongoing and that David M. Burkons, M.D. is to inform the State of any additional witnesses or documents he intends to introduce at hearing as they become known to him and to provide copies of such documents to the State.

Respectfully submitted,

**MICHAEL DEWINE** (0009181)  
Attorney General of Ohio



---

**KYLE C. WILCOX** (0063219)  
Assistant Attorney General  
Health and Human Services Section  
30 East Broad Street, 26<sup>th</sup> Floor  
Columbus, Ohio 43215-3400  
Telephone (614) 466-8600  
Facsimile (614) 466-6090  
[kyle.wilcox@ohioattorneygeneral.gov](mailto:kyle.wilcox@ohioattorneygeneral.gov)

STATE MEDICAL BOARD  
OF OHIO

2015 DEC 28 PM 4: 09

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Request for List of Witnesses and Documents was served via regular U.S. Mail on this 28th day of December 2015, upon the following:

Douglas E. Graff  
Graff & McGovern LPA  
604 East Rich Street  
Columbus, Ohio 43215  
(*Counsel for Respondent*)



---

**KYLE C. WILCOX (0063219)**  
Assistant Attorney General

STATE MEDICAL BOARD  
OF OHIO  
2015 DEC 28 PM 4: 09

December 22, 2015

Douglas E. Graff, Esq.  
Levi J. Tkach, Esq.  
GRAFF & MCGOVERN, LPA  
604 East Rich Street  
Columbus, OH 43215-5341

RE: David M. Burkons, M.D.  
Case Number No.: 15-CRF-117

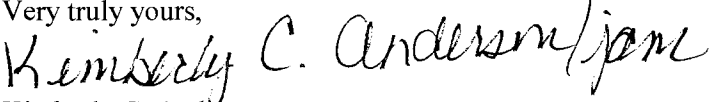
Dear Mr. Graff and Mr. Tkach:

This is in response to your letter received in the Medical Board offices on December 18, 2015, requesting a formal hearing in the matter of David M. Burkons, M.D.

Please be advised that the State Medical Board of Ohio initially set Dr. Burkons' hearing for Thursday, December 31, 2015, at 1:30 p.m., in the offices of the State Medical Board of Ohio, 30 E. Broad Street, 3<sup>rd</sup> Floor, Columbus, Ohio; however, in order to more efficiently conduct its business, this Board postponed the hearing pursuant to Section 119.09, Revised Code, and you will be advised of the rescheduled date.

The Board's rules governing administrative hearings (Chapter 4731-13, Ohio Administrative Code), disciplinary guidelines, and advisory on post-citation settlement agreements are available through the Board's website at <http://med.ohio.gov>. Please note that, in order to maintain orderly administration of the hearing process, no settlement agreements will be executed within 72 hours of the first day of hearing and that no continuances will be granted for purposes of settlement discussions. It is thus imperative that the office of the Attorney General be contacted immediately at (614) 466-8600, should you be contemplating settlement.

Very truly yours,



Kimberly C. Anderson  
Chief Legal Counsel

CERTIFIED MAIL NO. 91 7199 9991 7034 8391 9011  
RETURN RECEIPT REQUESTED

cc: David M. Burkons, M.D.  
CERTIFIED MAIL NO. 91 7199 9991 7034 8391 9028  
RETURN RECEIPT REQUESTED

Katherine J. Bockbrader, Assistant Attorney General

DEC 18 2015

**BEFORE THE STATE MEDICAL BOARD OF OHIO**STATE MEDICAL BOARD  
OF OHIO

IN THE MATTER OF:

Case No: 15-CRF-117

David M. Burkons, M.D.

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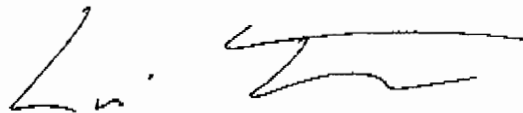
**REQUEST FOR A HEARING & REQUEST TO APPEAR BEFORE BOARD**

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Now comes the Respondent, David M. Burkons, M.D., by and through counsel and requests a Hearing before the State Medical Board of Ohio, regarding any and all matters in the citation letter and Notice of Opportunity for Hearing.

Respondent requests the opportunity to appear at any hearing before the Board when it reviews any Report and Recommendation of a Hearing Examiner in this matter. Respondent further moves for the Board to conduct all deliberations of any Report and Recommendation exclusively during the portions of its meetings that are open to the public in accordance with R.C. 121.22(A) as such deliberations constitute the "record" of the proceedings as that term is used in R.C. 119.09 and R.C. 4731.06.

Respectfully submitted,  
**GRAFF & McGOVERN, L.P.A.**



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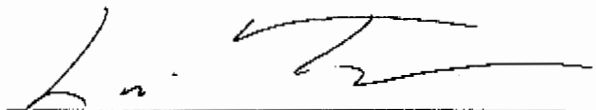
Douglas E. Graff, Esq. (0013222)  
Levi J. Tkach, Esq. (0086025)  
Counsel for David M. Burkons, M.D.  
604 East Rich Street  
Columbus, Ohio 43215-5341  
(614) 228-5800  
Fax: (614) 228-8811  
[Doug@GraffLaw.com](mailto:Doug@GraffLaw.com)  
[Levi@GraffLaw.com](mailto:Levi@GraffLaw.com)

DEC 18 2015

STATE MEDICAL BOARD  
OF OHIO

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Request for Hearing and Request to Appear Before the Board by David M. Burkons, M.D., was sent via facsimile this 18<sup>th</sup> day of December, 2015, to Kyle Wilcox, Esq., Assistant Attorney General, 30 East Broad Street, 26<sup>th</sup> Floor, Columbus, Ohio 43215.



---

Douglas E. Graff, Esq.  
Levi J. Tkach, Esq.

DEC 18 2015

STATE MEDICAL BOARD  
OF OHIO

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF:

Case No: 15-CRF-117

David M. Burkons, M.D.

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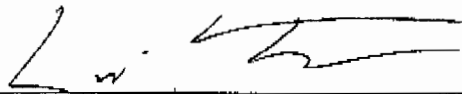
**REQUEST FOR LIST OF WITNESSES AND DOCUMENTS**

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David M. Burkons, M.D., by and through counsel, requests that Respondent be provided with a list of those witnesses to be called and a full and complete copy of any and all the documents, exhibits, reports, information or other data intended to be submitted into evidence by the State of Ohio at the Administrative Hearing on the above-captioned matter.

Respondent submits that this request is continuing and that the Board is to inform Counsel for Respondent of any additional witnesses or documents the Board intends to introduce, as they become known.

Respectfully submitted,  
**GRAFF & McGOVERN, L.P.A.**



---

Douglas E. Graff, Esq. (0013222)  
Levi J. Tkach, Esq. (0086025)  
Counsel for David M. Burkons, M.D.  
604 East Rich Street  
Columbus, Ohio 43215-5341  
(614) 228-5800  
Fax: (614) 228-8811  
[Doug@GraffLaw.com](mailto:Doug@GraffLaw.com)  
[Levi@GraffLaw.com](mailto:Levi@GraffLaw.com)

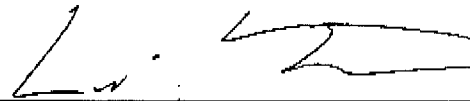


DEC 16 2015

STATE MEDICAL BOARD  
OF OHIO

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Request for List of Witnesses and Documents by David M. Burkons, M.D., was sent via facsimile this 18<sup>th</sup> day of December, 2015, to Kyle Wilcox, Esq., Assistant Attorney General, 30 East Broad Street, 26<sup>th</sup> Floor, Columbus, Ohio 43215.



---

Douglas E. Graff, Esq.  
Levi J. Tkach, Esq.

DEC 18 2015

## BEFORE THE STATE MEDICAL BOARD OF OHIO

STATE MEDICAL BOARD  
OF OHIO

IN THE MATTER OF:

Case No: 15-CRF-117

David M. Burkons, M.D.

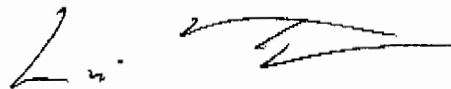
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**MOTION TO REVIEW THE HEARING EXAMINER'S RULINGS ON  
EVIDENCE, MOTIONS AND PROCEDURAL MATTERS**

---

Respondent, by and through counsel, requests the State Medical Board of Ohio to review Respondent's objections to rulings on evidence, motions and on procedural matters adopted by the Hearing Examiner, upon presentation to the Board of the proposed Findings of Facts and Conclusions of Law of the Hearing Examiner. Respondent specifically renews all Respondent's objections raised in the hearing, transcript, pre-hearing and post-hearing proceedings.

Respectfully submitted,  
**GRAFF & MCGOVERN, L.P.A.**

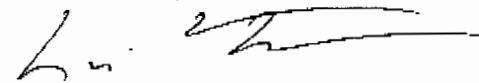


---

Douglas E. Graff, Esq. (0013222)  
Levi J. Tkach, Esq. (0086025)  
Counsel for David M. Burkons, M.D.  
604 East Rich Street  
Columbus, Ohio 43215-5341  
(614) 228-5800  
Fax: (614) 228-8811  
[Doug@GraffLaw.com](mailto:Doug@GraffLaw.com)  
[Levi@GraffLaw.com](mailto:Levi@GraffLaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Motion to Review the Hearing Examiner's Rulings on Evidence, Motions and Procedural Matters by David M. Burkons, M.D., was sent via facsimile this 18<sup>th</sup> day of December, 2015, to Kyle Wilcox, Esq., Assistant Attorney General, 30 East Broad Street, 26<sup>th</sup> Floor, Columbus, Ohio 43215.



---

Douglas E. Graff, Esq.  
Levi J. Tkach, Esq.

DEC 18 2015

STATE MEDICAL BOARD  
OF OHIO**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF:

Case No: 15-CRF-117

David M. Burkons, M.D.

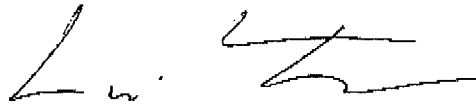
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**REQUEST FOR PRE-HEARING CONFERENCE**

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David M. Burkons, M.D., by and through counsel, requests a pre-hearing conference be held to determine the matters to be heard in the Administrative Hearing and the service and enforcement of Respondent's subpoenas on witnesses and subpoenas duces tecum.

Respectfully submitted,  
**GRAFF & McGOVERN, L.P.A.**



---

Douglas E. Graff, Esq. (0013222)  
Levi J. Tkach, Esq. (0086025)  
Counsel for David M. Burkons, M.D.  
604 East Rich Street  
Columbus, Ohio 43215-5341  
(614) 228-5800  
Fax: (614) 228-8811  
[Doug@GraffLaw.com](mailto:Doug@GraffLaw.com)  
[Levi@GraffLaw.com](mailto:Levi@GraffLaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Request for Pre-Hearing Conference by David M. Burkons, M.D., was sent via facsimile this 18<sup>th</sup> day of December, 2015, to Kyle Wilcox, Esq., Assistant Attorney General, 30 East Broad Street, 26<sup>th</sup> Floor, Columbus, Ohio 43215.



---

Douglas E. Graff, Esq.  
Levi J. Tkach, Esq.

DEC 18 2015

**BEFORE THE STATE MEDICAL BOARD OF OHIO**STATE MEDICAL BOARD  
OF OHIO

IN THE MATTER OF:

Case No: 15-CRF-117

David M. Burkons, M.D.

---

**PUBLIC RECORDS REQUEST TO THE STATE MEDICAL BOARD OF OHIO**

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Now comes, David M. Burkons, M.D., by and through counsel, and makes a Public Records Request and other similar statutes to the State Medical Board of Ohio ("Board"), for the following Public Records:

- David M. Burkons, M.D.'s Board application and each license renewal application;
- All correspondence sent by Dr. Burkons to the Board;
- All correspondence the Board has sent or delivered to Dr. Burkons, specifically directed to, but not limited to, the following,
  - Copies of **all subpoenas** served on Dr. Burkons;
  - Cautionary letters.
  - Requests for interview(s) by and/or with Board investigators.
  - Follow up correspondence from Board investigators, post interview(s) with Dr. Burkons.
  - Copies of any updates or notices regarding statutory changes by the Ohio State Legislature to the practice of medicine in Ohio.
  - Copies of any complaint closure letters.
- All **correspondence** regarding Dr. Burkons, including letters, records and/or files, sent by the Board to the **Drug Enforcement Administration**, within the last three (3) years.

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STATE MEDICAL BOARD  
OF OHIO

- All **correspondence** regarding Dr. Burkons, including letters, records and/or files, received by the Board from the **Drug Enforcement Administration**, within the last three (3) years.
- The **names, addresses and phone numbers of each witness**, including potential witnesses and/or expert witnesses, who reviewed any of Dr. Burkons's files or records within the last three (3) years.
- The draft copies of the Notice of Opportunity for Hearing that was issued to Dr. Burkons, within the last three (3) years.
- A copy of each **report and/or summary and/or review and/or similarly titled document** (including all accompanying charts, graphs, or notes, if they exists) created by an expert witness(es), or potential expert witness(es) who, at the request of the Board reviewed Dr. Burkons's files and/or records within the last three (3) years.
- The draft copies of each **report and/or summary and/or review and/or similarly titled document** (including all accompanying charts, graphs, or notes, if they exists) created by an expert witness(es), or potential expert witness(es) who, at the request of the Board reviewed Dr. Burkons's files and/or records within the last three (3) years.
- A copy of the **bill/invoice** or similar document reflecting the **charges and time spent by each expert witness** or potential expert witness(es) who reviewed any of Dr. Burkons's files or records.
- A copy of the **retainer agreement or similarly titled contract** between the Board and any expert witness who reviewed the documents of Dr. Burkons.
- All other reports, notes, memos, writings, or emails in the possession of the State Board of Medicine, concerning David M. Burkons, M.D., within the last five (5) years;

DEC 18 2015

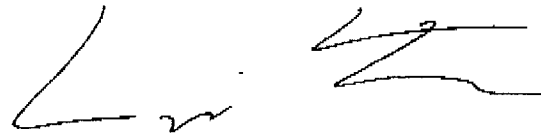
STATE MEDICAL BOARD  
OF OHIO

- All information, data, database information, compilations, work papers or writings in the possession of the State Board of Medicine concerning David M. Burkons, M.D., within the last five (5) years;
- All non-confidential materials related to any and all investigations of David M. Burkons, M.D., within the last five (5) years;
- All reports, notes, memos, writings, or emails regarding matters raised in the Board's Notice of Opportunity for Hearing Letter sent to David M. Burkons, M.D.;
- All written and printed materials reviewed by, read or referred to by Board members, staff, agents, investigators, witnesses, expert witnesses, attorneys, or assigns in consideration of the matters raised in the Board's Notice of Opportunity for Hearing Letter sent to Dr. Burkons.
- A copy of all prior disciplinary matters, including but not limited to the complete record of the proceedings as mentioned in Section 119.12 of the Revised Code, the drafts of any Notices of Opportunity for Hearing that were issued, any Report(s) and Recommendation that were issued, any objections filed in response to a Report and Recommendation, the minutes and the audio recordings from any Board Meeting where a Report and Recommendation came before the Board, any consent agreements entered into by Dr. Burkons with the Board, and the drafts of any consent agreements that may have been offered to Dr. Burkons.
- A copy of all documents concerning Dr. Burkons received by FCVS, the Federation Credentials Verification Service, within the last five (5) years.
- A copy of all documents sent to the Federation of State Medical Boards, within the last five (5) years.

- A copy of all correspondence received about Dr. Burkons from other states or countries, within the last five (5) years.
- A copy of the records retention schedule for the Board.

If you are uncertain about the nature of any of the above requested documents, please contact my office immediately for clarification. If you find any of the documents listed in the above bulleted sections to be too broad to allow efficient or practical response to that (those) requested documents, please contact my office immediately for clarification that (those) specific bulleted sections. If you have any other questions or concerns, please contact my office at your earliest convenience.

Respectfully submitted,  
**GRAFF & McGOVERN, L.P.A.**



Douglas E. Graff, Esq. (0013222)  
Levi J. Tkach, Esq. (0086025)  
Counsel for David M. Burkons, M.D.  
604 East Rich Street  
Columbus, Ohio 43215-5341  
(614) 228-5800  
Fax: (614) 228-8811  
[Doug@GraffLaw.com](mailto:Doug@GraffLaw.com)  
[Levi@GraffLaw.com](mailto:Levi@GraffLaw.com)

DEC 19 2015  
STATE MEDICAL BOARD  
OF OHIO

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Public Records Request by David M. Burkons, M.D., was sent via facsimile this 18<sup>th</sup> day of December, 2015, to Kyle Wilcox, Esq., Assistant Attorney General, 30 East Broad Street, 26<sup>th</sup> Floor, Columbus, Ohio 43215.



Douglas E. Graff, Esq.  
Levi J. Tkach, Esq.

DEC 18 2015

STATE MEDICAL BOARD  
OF OHIO



DEC 18 2015

STATE MEDICAL BOARD  
OF OHIO**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF:

Case No: 15-CRF-117

David M. Burkons, M.D.

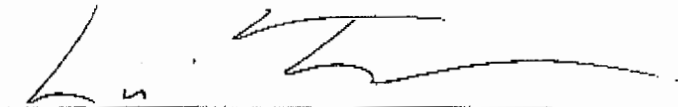
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**NOTICE OF APPEARANCE OF COUNSEL**

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Notice is hereby given that the law firm of Graff & McGovern, L.P.A. has been retained to represent David M. Burkons, M.D. in the above-captioned matter.

Respectfully submitted,  
**GRAFF & MCGOVERN, L.P.A.**

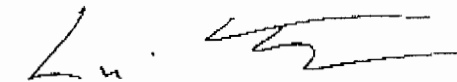


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Douglas E. Graff, Esq. (0013222)  
Levi J. Tkach, Esq. (0086025)  
Counsel for David M. Burkons, M.D.  
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Columbus, Ohio 43215-5341  
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Fax: (614) 228-8811  
[Doug@GraffLaw.com](mailto:Doug@GraffLaw.com)  
[Levi@GraffLaw.com](mailto:Levi@GraffLaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Notice of Appearance of Counsel by David M. Burkons, M.D., was sent via facsimile this 18<sup>th</sup> day of December, 2015, to Kyle Wilcox, Esq., Assistant Attorney General, 30 East Broad Street, 26<sup>th</sup> Floor, Columbus, Ohio 43215.



---

Douglas E. Graff, Esq.  
Levi J. Tkach, Esq.



# GRAFF & MCGOVERN, LPA

ATTORNEYS & COUNSELORS AT LAW

604 E. Rich Street, Columbus, Ohio 43215

Phone (614) 228-5800  
Fax (614) 228-8811  
GraffMcGovernLaw.com

Friday, December 18, 2015

Attention: Case Control  
State Medical Board of Ohio  
30 East Broad Street, 3rd Floor,  
Columbus, Ohio 43215-6127

Re: David M. Burkons, M.D.  
Case No. 15-CRF-117

DEC 18 2015

STATE MEDICAL BOARD  
OF OHIO

Dear Sir or Madam:

Enclosed please find the following for the above matter:

1. Notice of Appearance of Counsel;
2. Request for a Hearing & Request to Appear Before Board;
3. Motion to Review the Hearing Examiner's Rulings on Evidence, Motions and Procedural Matters;
4. Request for Pre-Hearing Conference;
5. Request for List of Witnesses and Documents; and
6. Public Records Request to the State Medical Board of Ohio.

Please send a confirmation of receipt of this letter in writing. If you have any questions or comments, please feel free to contact me at your earliest convenience.

Sincerely,

Jennifer Bateman  
Legal & Administrative Assistant  
[Jennifer@grafflaw.com](mailto:Jennifer@grafflaw.com)

Enclosures



**GRAFF & MCGOVERN, LPA**

ATTORNEYS & COUNSELORS AT LAW

604 E. Rich Street, Columbus, Ohio 43215

**Fax**

Phone (614) 228-5800  
Fax (614) 228-8811  
GraffMcGovernLaw.com

<b>To:</b> SMBO Case Control	<b>From:</b> Jennifer Bateman, Legal Assistant
<b>Fax:</b> (614) 728-5946	<b>Pages:</b> 14 w/ Cover Page
<b>Phone:</b> (614) 466-3934	<b>Date:</b> Friday, December 18, 2015
<b>Re:</b> David M. Burkons, M.D. Case No. 15-CRF-117	<b>cc:</b> Kyle Wilcox, Esq. Assistant Attorney General

Urgent     Please Confirm Receipt     Please call our office     Original to Follow

● **Comments:**

Attached please find the following for the above matter:

1. Notice of Appearance of Counsel
2. Request for a Hearing & Request to Appear Before Board
3. Motion to Review the Hearing Examiner's Rulings on Evidence, Motions and Procedural Matters
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6. Public Records Request to the State Medical Board of Ohio

DEC 18 2015

STATE MEDICAL BOARD  
OF OHIO

Please send a confirmation of receipt of this letter in writing. If you have any questions or comments, please feel free to contact me at your earliest convenience.



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# CITE - BURKONS

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December 18, 2015 , 11:54 am	Delivered	BEACHWOOD, OH 44122

Your item was delivered at 11:54 am on December 18, 2015 in BEACHWOOD, OH 44122.

December 12, 2015 , 2:36 pm	Notice Left (No Authorized Recipient Available)	BEACHWOOD, OH 44122
December 12, 2015 , 5:08 am	Departed USPS Facility	CLEVELAND, OH 44101
December 11, 2015 , 10:21 am	Arrived at USPS Facility	CLEVELAND, OH 44101
December 10, 2015 , 7:27 pm	Arrived at USPS Origin Facility	COLUMBUS, OH 43218
December 10, 2015 , 6:12 pm	Accepted at USPS Origin Sort Facility	COLUMBUS, OH 43215

## Available Actions

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Tracking (or receipt) number

9171999991703483844511

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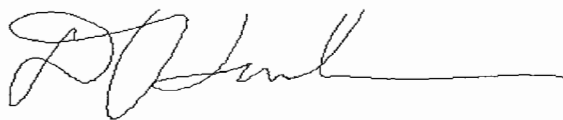
Search or Enter a Tracking Number

Date: December 21, 2015

Jackie moore:

The following is in response to your December 21, 2015 request for delivery information on your Certified Mail™ item number 9171999991703483844511. The delivery record shows that this item was delivered on December 18, 2015 at 11:54 am in BEACHWOOD, OH 44122. The scanned image of the recipient information is provided below.

Signature of Recipient :

  
David B. McKens

Address of Recipient :

21249 S. Woodrow  
Shaker Hts  
44122

Thank you for selecting the Postal Service for your mailing needs.

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Sincerely,  
United States Postal Service

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*CITE - BURKONS/ATTY GRAFF*

Tracking Number: 9171999991703483844528

Expected Delivery Day: Saturday, December 12, 2015

## Product & Tracking Information

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**Features:**  
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**DATE & TIME**

**STATUS OF ITEM**

**LOCATION**

December 11, 2015 , 10:38 am

Delivered

COLUMBUS, OH 43215

December 11, 2015 , 3:19 am

Departed USPS Facility

COLUMBUS, OH 43218

December 10, 2015 , 7:25 pm

Arrived at USPS Facility

COLUMBUS, OH 43218

December 10, 2015 , 6:10 pm

Accepted at USPS Origin Sort Facility

COLUMBUS, OH 43215

Your item was delivered at 10:38 am on December 11, 2015 in COLUMBUS, OH 43215.

## Available Actions

Return Receipt Electronic

Text Updates

Email Updates

## Track Another Package

Tracking (or receipt) number

9171999991703483844528

Track It

## Manage Incoming Packages

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### LEGAL INFORMATION

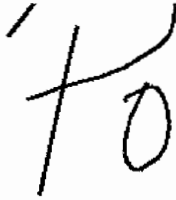
- Privacy Policy
- Terms of Use
- FOIA
- No FEAR Act EEO Data

Date: December 21, 2015

Jackie Moore:

The following is in response to your December 21, 2015 request for delivery information on your Certified Mail™ item number 9171999991703483844528. The delivery record shows that this item was delivered on December 11, 2015 at 10:38 am in COLUMBUS, OH 43215. The scanned image of the recipient information is provided below.

Signature of Recipient :



Address of Recipient :



Thank you for selecting the Postal Service for your mailing needs.

If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,  
United States Postal Service

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 that reads "Kim G. Rothermel M.D.".

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.**