



**State Medical Board
of Ohio**

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

December 9, 2015

Case number: 15-CRF- 117

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

Dear Doctor Burkons:

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

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

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- (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

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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,



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.**
