



July 14, 2023

Sherri J. Tenpenny, D.O.  
7380 Engle Road  
Middleburg Heights, OH 44130

RE: Case Number No: 22-CRF-0168

Dear Dr. Tenpenny:

Pursuant to Section 119.09, Ohio Revised Code, please find enclosed a copy of the Report and Recommendation of Kimberly A. Lee, Esq., Hearing Examiner, State Medical Board of Ohio [Board] concerning your adjudication hearing which took place on April 7 and 19, 2023. The Report and Recommendation, along with the hearing record, will also be sent to members of the Board.

**WRITTEN OBJECTIONS**

Within ten (10) days of receipt of the Report and Recommendation, you may file written objections at the office of the Board. The written objections shall be considered by the Board at its August 9, 2023, meeting, before approving, modifying, or disapproving the Report and Recommendation.

**ORAL PRESENTATIONS**

An oral presentation not to exceed five minutes will be permitted at the time the Board considers the Report and Recommendation, provided that a request to orally address is received in the Board offices no fewer than seven (7) days prior to the Board Meeting. The Office of the Attorney General will be permitted to respond to any oral presentation.

Prior to any oral presentation, the Board members will have read the entire hearing record and any objections you file. The Board will not retry the case; thus your arguments are to address the Hearing Officer's Report and Recommendation only.

Please be advised that a court reporter will not be present at the time this matter is considered by the Board. Instead, the Board's minutes serve as the official record of the meeting. If you have any objection to the absence of a court reporter, you must make arrangements to have a court reporter present at your own expense. Please refer to Rule 4731-9-01, Ohio Administrative Code. A copy of the transcript prepared by the court reporter must be supplied to the Medical Board.

**This matter will appear on the agenda for the August 9, 2023, Board meeting which is scheduled to begin at 10:00 AM at 30 E. Broad Street, 3<sup>rd</sup> Floor, Columbus, OH 43215.**

If you have further questions, please feel free to contact me at Jackie.Moore@med.ohio.gov.

Sincerely,

*Jackie Moore*  
Jackie Moore  
Hearing Unit Assistant

CERTIFIED MAIL NO. 9414 8149 0315 2968 0274 69  
RETURN RECEIPT REQUESTED

Cc: Eric A. Jones, Esq.  
CERTIFIED MAIL NO. 9414 8149 0315 2968 0274 76  
RETURN RECEIPT REQUESTED

In the matter of Sherry J. Tenpenny, D.O

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Thomas Renz, Esq.

CERTIFIED MAIL NO. 9414 8149 0315 2968 0274 83

RETURN RECEIPT REQUESTED

Melinda R. Snyder and James T. Wakley, Assistant Attorneys General

July 14, 2023

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

<b>In the Matter of</b>	*	
		<b>Case No. 22-CRF-0168</b>
<b>Sherri J. Tenpenny, D.O.,</b>	*	
<b>Respondent.</b>	*	<b>Hearing Examiner Lee</b>

**REPORT AND RECOMMENDATION**

Basis for Hearing:

In a Notice of Opportunity for Hearing dated September 14, 2022 (“Notice”), the State Medical Board of Ohio (“Board”) notified Sherri J. Tenpenny, D.O., that it proposed to take disciplinary action against her license to practice osteopathic medicine and surgery in Ohio. The Board based its proposed action on allegations that Dr. Tenpenny failed to respond to an investigator’s attempts to contact her, failed to respond to interrogatories from the Board, failed to appear at a deposition, and failed to appear at an investigative office conference.

The Board further alleged that Dr. Tenpenny’s acts, conduct, and/or omissions, individually, and/or collectively, constitute “[f]ailure to cooperate in an investigation conducted by the board under division (F) of this section, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board in an investigative interview, an investigative office conference, at a deposition, or in written interrogatories,” as that clause is used in Ohio Revised Code Section (“R.C.”) 4731.22(B)(34). (State’s Exhibit (“St. Ex.”) 1)

Accordingly, the Board advised Dr. Tenpenny of her right to request a hearing and received her written request on October 5, 2022.

Appearances:

Dave Yost, Attorney General of Ohio, and Melinda R. Snyder and James T. Wakley, Assistant Attorneys General, for the State of Ohio. Dr. Tenpenny was represented by Eric Jones, Esq., and Thomas Renz, Esq. However, only Mr. Jones appeared for the first day of hearing, and no one appeared on Dr. Tenpenny’s behalf on the second day of hearing.

Hearing Dates: April 7 and 19, 2023

### **PROCEDURAL MATTER**

1. As permitted by statute, Dr. Tenpenny submitted her defense in writing. Included in that defense were a number of exhibits, including an affidavit from Mr. Renz, one of her attorneys. Mr. Renz was not called as a witness and was not subject to cross-examination so that affidavit was not admitted to the record and was held as a proffer.
2. There were a number of filings regarding redactions to State's Exhibit 3 and Dr. Tenpenny's written defense. The final order regarding redactions was that none of those documents would contain any redactions.
3. Neither of Dr. Tenpenny's attorneys nor Dr. Tenpenny herself appeared for the second day of hearing on April 19, 2023, despite the parties' agreement upon that date as the second hearing day. Subsequently, Dr. Tenpenny, through counsel, made several filings requesting the record be reopened. Counsel argued lack of notice as to the second hearing date as well as good cause to reopen due to a back injury. The request was denied on the basis that counsel received sufficient notice as counsel participated in the selection of the second hearing date, acknowledged on the record during the first day of hearing the agreed upon date for the second day of hearing, and was sent an email from the Board's virtual hearing platform regarding the second hearing date. As for good cause, Dr. Tenpenny's counsel initially informed the hearing examiner and the State that he had been hospitalized. However, he later clarified that he suffered a back injury on Sunday, saw a chiropractor on Monday and Tuesday, rested on Wednesday (the second day of hearing), and was seen in an emergency room on Thursday. Counsel also admitted that the April 19, 2023 hearing date was not on his calendar. All requests to reopen the record were denied.
4. Several exhibits lacked labels and/or pages numbers. The hearing examiner added labels and page numbers where appropriate.

### **SUMMARY OF THE EVIDENCE**

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

#### **Background**

1. Sherri J. Tenpenny, D.O., graduated from the Kirksville College of Osteopathic Medicine in 1984. After completing a rotating internship at Michigan Osteopathic Medical Center, Dr. Tenpenny began working at Blanchard Valley Regional Health Center in Findlay, Ohio in 1986. She remained at Blanchard until 1998 and held several positions over the years including Chief of Family Practice/Emergency Medicine and Director of the Emergency Medicine Department. Since 1994, Dr. Tenpenny has also worked at what is currently

known as Tenpenny Integrative Medical Center which is described as “Combining MD, DO, DC, and L.Ac, - emphasis chronic conditions, allergies and women’s health.” (Respondent’s Written Response (“Resp. Wr. Resp.”) - Exhibit (“Ex.”) A at 1)

2. Dr. Tenpenny was initially licensed to practice osteopathic medicine and surgery in Ohio in 1984. Her license is currently active. (St. Ex. 11) Dr. Tenpenny has been certified in holistic and integrative medicine by ABHIM since 2012 and in osteopathic neuromusculoskeletal medicine by AOBNMM since 1995. (Respondent’s Written Response - Exhibit (“Ex.”) A at 1) Dr. Tenpenny was board certified in emergency medicine from 1986 to 1998. (Resp. Wr. Resp.at 3 and Ex. A at 8)
3. In addition to her medical practice, Dr. Tenpenny has authored multiple books, columns, and articles, appeared on local, national, and international television networks, participated in various documentaries and DVD productions, and been interviewed on a myriad of radio programs. (Resp. Wr. Resp. - Ex. A at 3-5) In addition, Dr. Tenpenny’s curriculum vitae lists numerous presentations and experiences in consulting. (Resp. Wr. Resp. - Ex. A)

#### **Board Investigation into Dr. Tenpenny**

4. Marcie Pastrick testified that she has been an enforcement attorney for the Board for 22 years and that her job duties include investigating complaints assigned to her in order to develop the investigation towards a resolution. She further explained that an “investigation can include interrogatories, depositions, office conferences, interviewing witnesses, asking investigators to interview witnesses.” (Hearing Transcript (“Tr.”) at 13-14)
5. Ms. Pastrick explained that investigations are triggered by complaints received by the Board and that the Board received approximately 350 complaints regarding Dr. Tenpenny. She further explained that the Board had evidence that appeared to show Dr. Tenpenny had violated the Medical Practice Act<sup>1</sup>. (Tr. at 14, 16) She later testified that at least some of the complaints made allegations that, if true, would be violations of R.C. 4731.22(B). (Tr. at 54-55) Ms. Pastrick stated that the possible violations of R.C. 4731.22(B) would “depend on what the investigations uncovered or what evidence showed through investigations.” (Tr. at 56)
6. Ms. Patrick explained that “[w]hen the Board is attempting to investigate a licensee and we attempt to contact them several times through different methods, personal interview, email, phone calls, deposition, interrogatories, and a failure to respond to any of those attempts would be considered a failure to cooperate,” and that the Board seldom acts “on one failure to respond.” (Tr. at 30)

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<sup>1</sup> R.C.4731 is also known as the Medical Practice Act.

### **Attempted Contact by Board Investigator**

7. On July 21, 2021, Jason Alameda, a Board Enforcement Investigator sent the following email to Dr. Tenpenny at [stenpenny@tenpennyimc.com](mailto:stenpenny@tenpennyimc.com):

Dr. Tenpenny, please contact me at your earliest convenience, as I would like to schedule a date and time to speak with you in regards to a matter that has been referred to the State Medical Board. I dropped a business card [off] for you at your practice last week (on 7/14/21) and wanted to ensure that you had received it. Feel free to contact me via email or telephone to arrange a time. I will be unavailable the week of 7/26 through 7/30, but will have openings beginning 8/2. Thanks very much in advance.

(St. Ex. 10 at 2)

8. Ms. Pastrick testified that Mr. Alameda attempted to speak with Dr. Tenpenny but left his business card with the receptionist when informed Dr. Tenpenny was not available. Ms. Pastrick admitted that it was not certain that Dr. Tenpenny had received the business card. (Tr. at 16, 32)
9. Ms. Pastrick testified that Mr. Alameda did not receive a response to his email. She explained that email addresses are obtained from licensees and that licensees are statutorily required to update their contact information within 30 days of any change.<sup>2</sup> (Tr. at 17) Ms. Pastrick also testified that, to the best of her recollection, Mr. Alameda informed her that he had an receipt showing his July 21, 2021 email had been received, but she also admitted it was possible the email went into Dr. Tenpenny's junk folder or was not actually received. (Tr. at 33-34)
10. In her affidavit, Dr. Tenpenny swore that she first became aware of the Board's attempts to contact her when she received a letter from the Board dated August 11, 2021 so it appears she did not see the email from Mr. Alameda or the card he left with the receptionist. (Resp. Wr. Resp. – Ex. B at 1)

### **Interrogatories**

11. On September 7, 2021, Ms. Pastrick mailed to Dr. Tenpenny the Board's First Set of Interrogatories ("Interrogatories"). The Interrogatories were mailed to Dr. Tenpenny's address of record by certified mail. (St. Ex. 2 at 2-24; St Ex. 9; Tr. at 18) Tracking information from the United States Postal Services shows that the Interrogatories were delivered on September 9, 2021. (St. Ex. 2 at 25-26) The Interrogatories asked for information regarding Dr. Tenpenny's practice in general as well as asking specifically

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<sup>2</sup> R.C. 4731.281(F) - Each person holding a license to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery shall give notice to the board of a change in the license holder's residence address, business address, or electronic mail address not later than thirty days after the change occurs.

about her practice regarding recommendations concerning, and administration of, vaccines and whether any of her patients subsequently contracted certain illnesses. The Interrogatories also specifically ask how many doses of COVID-19 vaccines she had provided and whether she had personally received a COVID-19 vaccine. (St. Ex. 2 at 7-16)

The Interrogatories also asked Dr. Tenpenny what scientific evidence she had, and specifically asked that she cite her sources for this evidence, regarding COVID-19 vaccines causing people to become magnetized or creating an interface with 5G towers; regarding the COVID-19 vaccine not injecting a real virus but strips of genetic material and patients suffering complications such as abnormal bleedings, myocarditis, strokes, and neurological complications; and regarding some major metropolitan areas liquifying dead bodies and pouring them into the water supply. (St. Ex. 2 at 18-19) Dr. Tenpenny's responses to the Interrogatories were due by October 8, 2021. (St. Ex. 2 at 2-3)

12. The Interrogatories also include the following statements:

Please note that these interrogatories involve an investigation by the Board and that failure to cooperate may result in discipline of a licensee pursuant to §4731.22(B)(34), Ohio Revised Code.

(St. Ex. 2 at 3)

If you enter an objection and refuse to answer any interrogatory in whole or in part, describe the basis for the lack of a response in sufficient detail so as to permit a court to determine the validity of said refusal.

(St. Ex. 2 at 4)

Failure to answer as instructed without substantial justification may render you subject to an Order compelling the information sought by these interrogatories and may render you or your attorney liable for the expenses of a motion.

(St. Ex. 2 at 4)

To the extent that you believe any of the interrogatories are objectionable, answer so much of the interrogatory and each subpart thereof that is not objectionable, and separately state the objection and each ground for each such objection as to each subpart.

(St. Ex. 2 at 5-6)

13. In a letter dated September 20, 2021, Thomas Renz, Esq., of Renz Law, LLC., the only licensed attorney who signed the letter<sup>3</sup>, objected to the Interrogatories in their entirety, as well as an August 11, 2021 letter from the Board regarding a method of investigation into a potential violation of R.C. 4731.22 which is not part of the Notice. (St. Ex. 3) While much of the letter addresses an issue which is not the subject of the current case, as to the Interrogatories, Mr. Renz, wrote, “The September 7<sup>th</sup> Interrogatories are invasive, irrelevant to any inquiry into [REDACTED] (St. Ex. 3 at 3) Mr. Renz further wrote that Dr. Tenpenny would not respond to the Interrogatories and asserted that “[d]eclining to cooperate in the Board’s bad faith and unjustified assault on her licensure, livelihood, and constitutional rights cannot be construed as an admission of any allegations against her.” (St. Ex. 3 at 3) Mr. Renz also wrote that most of Dr. Tenpenny’s statements which were quoted in the August 11, 2021 letter<sup>4</sup> were “based on factual reports by third parties – including peer-reviewed studies published in mainstream medical journals.” (St. Ex. 3 at 2)
14. At hearing, Ms. Pastrick testified that the Board did not respond to Mr. Renz regarding the objections raised in the September 20, 2021 letter and did not file with an appropriate court to determine the validity of the refusal or to obtain an order to compel Dr. Tenpenny to answer. (Tr. at 40-41)

### Deposition

15. On October 12, 2021, the Board issued a subpoena to Dr. Tenpenny which commanded her to appear at the Board’s offices on November 3, 2021 for an investigatory deposition. (St. Ex. 4 at 1-2) The letter that accompanied the subpoena included the following warning:

Please note that Sections 4730.25(B)(22), 4731.22(B)(34), 4759.07(A)(19), 4760.13(B)(20), 4761.09(A)(19), 4762.13(B)(21), 4774.13(B)(20), and/or 4778.14(B)(19), Ohio Revised Code, impose an obligation to cooperate in an investigation conducted by the board. This includes complying with a subpoena and answering truthfully questions presented by the Board at a deposition. As such, the failure to cooperate with a Medical Board investigation, including failure to appear for a deposition, is grounds for discipline.

(St. Ex. 4 at 1)

16. The subpoena was sent to Dr. Tenpenny at her address of record by certified mail, and a copy was also sent to Mr. Renz by certified mail. Tracking documentation shows that the subpoena was delivered to both Dr. Tenpenny and Mr. Renz on October 15, 2021. (St. Ex. 4)

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<sup>3</sup> The September 20, 2021 letter is also signed by Kristen Stoicescu. However, the hearing examiner was unable to locate Ms. Stoicescu in the Supreme Court of Ohio’s attorney directory. <<https://www.supremecourt.ohio.gov/attorneysearch/#/search>> search term “Stoicescu”, accessed July 8, 2023

<sup>4</sup> The August 11, 2021 letter is not part of the hearing record.



17. By letter dated October 31, 2021, Mr. Renz<sup>5</sup> wrote, “. . . Dr. Tenpenny is in no way obligated to and will not cooperate in the Board’s bad faith and unjustified assaults on her licensure, livelihood, and constitutional rights.” (St. Ex. 5 at 1) Mr. Renz incorporated the claims and defenses made in his September 20, 2021 letter and made several additional legal arguments. He argued that there were no legal grounds for the Board’s investigation as the Board had not presented the basis to Dr. Tenpenny, and he cited to R.C. 4731.22(F)(1)<sup>6</sup>. Mr. Renz also argued that Dr. Tenpenny, as a party at a hearing, was entitled pursuant to R.C. 119.13 to have an attorney represent her and to have that attorney cross-examine witnesses<sup>7</sup> and that the Board was attempting to mislead her on her rights by citing to R.C. 9.84 in its letter accompanying the subpoena<sup>8</sup>. (St. Ex. 5 at 1-2) Mr. Renz also alleged bad faith on the part of the Board:

Bad faith is evident by your failure to present evidence that our client violated a provision of Chapter 4731, your erroneous and misleading citation to R.C. § 9.84 regarding her right to counsel, your failure to communicate directly with our law firm regarding this subpoena, and your complete lack of any grounds whatsoever for continuing to harass Dr. Tenpenny.

(St. Ex. 5 at 2)

In addition, Mr. Renz wrote:

For the foregoing reasons, the October 12, 2021, subpoena is demonstrably unlawful and unenforceable and, therefore, Dr. Tenpenny will not participate in the Board’s ongoing illegal fishing expedition. Declining to cooperate in the Board’s bad faith and unjustified assault on her licensure, livelihood, and constitutional rights cannot be construed as an admission of any allegations against her.

(St. Ex. 5 at 3)

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<sup>5</sup> Similar to the previous letter, the October 31, 2021 letter was cosigned by Jeffrey Steltzer, but the hearing examiner was unable to locate Mr. Steltzer in the Supreme Court of Ohio’s attorney directory. <<https://www.supremecourt.ohio.gov/attorneysearch/#/search>> search term “Steltzer”, accessed July 8, 2023

<sup>6</sup> R.C. 4731.22(F)(1) addresses written reports being made to the Board by individuals that claim a violation of R.C. 4731. It does not provide for the delivery of such a report to the target of the investigations. Further R.C. 4731.22(F)(5) specifically states that such reports and complaints are confidential and not subject to discovery.

<sup>7</sup> This letter was sent to the Board in October 2021, but the Notice sent to Dr. Tenpenny pursuant to R.C. 119 was not issued until September 2022.

<sup>8</sup> R.C. 9.84 addresses the rights of a witness to counsel when appearing before a public agency, or any representative thereof, in any administrative or executive proceeding **or investigation**. (emphasis added)

Mr. Renz also wrote that further attempts to enforce the subpoena or obtain responses to the Interrogatories would result in a filing requesting declaratory and injunctive relief as well as any other available remedies. (St. Ex. 5 at 3)

18. On November 3, 2021, James Roach, an attorney for the Board, attempted to conduct the deposition of Dr. Tenpenny. After waiting approximately half an hour after the scheduled time, Mr. Roach went on the record and stated that Dr. Tenpenny had not appeared and that Ms. Pastrick had not received any communication from Mr. Renz or Dr. Tenpenny.<sup>9</sup> Mr. Roach also stated that Dr. Tenpenny's email address of record was [stenpenny@tenpennyimc.com](mailto:stenpenny@tenpennyimc.com). (St. Ex. 6)
19. At hearing, when asked if the Board had ever sought a court order to compel production of records or persons pursuant to a subpoena, Ms. Pastrick answered, "Not in my personal capacity as an enforcement attorney." (Tr. at 42-43)
20. Ms. Pastrick testified that she did not respond to the objections raised by Mr. Renz in his letter. (Tr. at 44)

### **Investigative Office Conference**

21. By letter dated June 9, 2022, the Board directed Dr. Tenpenny to appear at the Board's offices on "<DATE> at <TIME>" for an investigative office conference. (Respondent Exhibit C) On June 21, 2022, the Board sent a new letter regarding the investigative office conference, which specified it was to occur on July 26, 2022 at 1:15 p.m. at the Board's offices. (St. Ex. 7) Both letters stated that the purpose of the conference was "to discuss Dr. Tenpenny's medical care of patients" and included the following warning:

Please be advised that you are required by law to cooperate in an investigation conducted by the Board. Failure to appear for the office conference as scheduled may result in the issuance of a subpoena to compel your appearance at a deposition. Further, failure to cooperate in the Board's investigation, including failure to appear and/or failure to answer questions truthfully at the office conference, constitutes legal grounds for discipline that may potentially result in the denial, suspension, or revocation of your license to practice, as well as a civil penalty up to \$20,000.00.

(Resp. Ex. C; St. Ex. 7 at 1)

22. The June 21, 2022 letter was sent to Dr. Tenpenny by certified mail and a copy was also sent to Mr. Renz. (St. Ex. 7 at 1) The letter includes one certified mail number: 9489 0090 0027 6431 0685 85. (St. Ex. 7 at 1) Tracking information for this certified mail number

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<sup>9</sup> While Mr. Renz's letter is dated October 31, 2021, it was stamped as received by the Board on November 3, 2021. While we do not know what time that day the letter was received in the Board's office, it is reasonable to assume that the letter had not reached either Mr. Roach or Ms. Pastrick by the time Mr. Road attempted to conduct the deposition.

shows that it was delivered to Fremont, Ohio, on June 27, 2022. (St. Ex. 7 at 2-3) Mr. Renz's office is in Fremont, Ohio. (St. Exs. 3 and 5)

23. If her affidavit, Dr. Tenpenny swore that she did not receive the June 9, 2022 letter but was made aware of it by her attorney. (Resp. Wr. Resp. – Ex. B at 2) She further swore that she was not aware of the June 21, 2022 letter from the Board until after she had requested a hearing. (Resp. Wr. Resp. – Ex. B at 3)
24. At hearing, Ms. Pastrick explained what happened with the June 9 and June 21, 2022 letters: “At the time our administrative assistant retired and we had one who was not familiar with these letters draft it for us and that was simply a typo and a corrected letter, the June 21st was sent out as soon as we were aware of it.” (Tr. at 23) She later testified that she discovered the error during a review of internal documents. (Tr. at 46) Ms. Pastrick further testified that she did not reach out to either Mr. Renz or Dr. Tenpenny to inform them that another letter would be coming. (Tr. at 47)
25. When asked the difference between a subpoena and an investigative office conference, Ms. Pastrick answered, “The subpoena can be compelled for compliance. An investigative office conference is a bit more casual as a request.” (Tr. at 45)
26. By letter dated July 5, 2022, Mr. Renz informed Bruce Saferin, D.P.M., then Supervising Member of the Board, that the June 9, 2022 letter to Dr. Tenpenny regarding an investigative office conference failed to include both a date and time. Mr. Renz further wrote:

In addition, we decline because your letter is completely bereft of any cause for this hearing and Dr. Tenpenny has not been fully apprised of the violations, if any, being considered by the board. Absent an official fact-specific written statement from the Board of the allegations and accompanying written interrogatories, our client will not be answering any questions in what appears to be another of the Board's bad-faith fishing expeditions designed to harass, intimidate, and entrap another good doctor. Declining to cooperate in the Board's bad faith and unjustified assault on her licensure, livelihood, and constitutional rights cannot be construed as an admission of any allegations against her and is no grounds for disciplinary action.

(St. Ex. 8)

There is no indication in his July 5, 2022 letter that Mr. Renz received the Board's June 21, 2022 letter which corrected the oversight by providing the date and time of the investigative office conference. (St. Ex. 8)

27. Ms. Pastrick testified that she received Mr. Renz's July 5, 2022 letter. When asked if she reached out to Mr. Renz to inform him the June 9, 2022 letter was in error, Ms. Pastrick

responded, “A corrected version was sent soon after. So it was assumed that that would be the notification.” She further testified that she did not have any concerns that Mr. Renz’s July 5, 2022 letter addressed the incorrect June 9, 2022 Board letter “because our tracking showed that the corrected letter had been delivered.” (Tr. at 50)

28. Ms. Pastrick testified that she was not surprised she did not receive a response from Mr. Renz regarding the corrected letter dated June 21, 2022 as she “believe[d] that his letter of July 5<sup>th</sup> was informing the Board that they decline to participate and the third paragraph pretty much states his reasons.” (Tr. at 52)
29. Ms. Patrick testified that Dr. Tenpenny did not attend the investigative office conference. (Tr. at 23)

### **Additional Information**

30. Dr. Tenpenny swore in her affidavit, “It was my belief and understanding that the Board had accepted the objections I had filed to its requests as meritorious, otherwise the Board would have responded or sought an Order from a court to require me to comply.” (Resp. Wr. Resp. – Ex. B at 3)
31. Ms. Pastrick testified that, as of the hearing, the Board has not received any information from Dr. Tenpenny in response to its investigation. (Tr. at 27)

### **FINDINGS OF FACT**

1. On July 14, 2021, a Board investigator attempted to interview Dr. Tenpenny at her office, but she was not present. The investigator left a business card for her with the receptionist. On July 21, 2021, the investigator sent an email to Dr. Tenpenny at an email address she had previously provided the Board and requested she contact him to schedule a time to speak with him. Dr. Tenpenny did not respond to the investigator, and there is no evidence that the email was not delivered.
2. On September 7, 2021, the Board sent the Interrogatories to Dr. Tenpenny by certified mail at her credential mailing address. Dr. Tenpenny’s responses were due no later than October 8, 2021. The Interrogatories were delivered to Dr. Tenpenny’s address on September 9, 2021. By letter dated September 20, 2021, Dr. Tenpenny notified the Board through her legal counsel that she did not believe the Board had a lawful basis for sending the Interrogatories and that she would not submit responses to the Interrogatories. No response to the Interrogatories was ever received by the Board.
3. As part of an investigation, on October 12, 2021, the Board sent to Dr. Tenpenny by certified mail at her credential mail address an Investigative Subpoena for Deposition. As set forth in the subpoena, Dr. Tenpenny was ordered to appear in the offices of the Board in

Columbus, Ohio, on November 3, 2021 at 1:00 p.m. for an investigatory deposition. Dr. Tenpenny was duly notified of the subpoena and the date of the deposition as the subpoena was delivered to her address on October 15, 2021. A copy was also sent by certified mail to her legal counsel. By letter dated October 31, 2021, but not stamped as received by the Board until November 3, 2021, Dr. Tenpenny notified the Board through her legal counsel that she did not believe the Board had a lawful basis for the deposition and that she would not participate. Dr. Tenpenny failed to appear at the Board's offices on November 3, 2021 for the deposition.

4. As part of an investigation, on June 9, 2022, the Board mailed to Dr. Tenpenny at her credential mailing address, a letter directing her to attend an investigative office conference at the Board's office. However, this letter did not include the date and time of the office conference. On or about June 21, 2022, the Board mailed a corrected letter to Dr. Tenpenny at her credential mailing address which stated the investigative office conference was to be held on July 26, 2022 at 1:15 p.m. There is no evidence in the record that the June 21, 2022 letter was delivered to Dr. Tenpenny, but a copy of the June 21, 2022 letter was also mailed to Dr. Tenpenny's legal counsel by certified mail and was delivered on June 27, 2022. There is no evidence in the record that the June 21, 2022 letter was delivered to Dr. Tenpenny. By letter dated July 5, 2022, Dr. Tenpenny notified the Board through her legal counsel that she did not believe the Board had a lawful basis for the investigative office conference and would not participate. Dr. Tenpenny failed to appear at the Board's offices on July 26, 2022 for the investigative office conference.

### **CONCLUSIONS OF LAW**

Dr. Tenpenny's acts, conduct, and/or omissions as set forth in Findings of Fact 1 through 4 above, individually and/or collectively, constitute "[f]ailure to cooperate in an investigation conducted by the board under division (F) of this section, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board in an investigative interview, an investigative office conference, at a deposition, or in written interrogatories," as that clause is used in R.C. 4731.22(B)(34).

Pursuant to R.C. 4731.225, the Board is authorized to impose a civil penalty for this violation. The Board's fining guideline for this violation is as follows:

Minimum Fine: \$3,000  
Maximum Fine: \$5,000

## LEGAL DISCUSSION

It is undisputed that Dr. Tenpenny did not answer the Interrogatories, did not appear for the deposition, and did not attend the office conference. Dr. Tenpenny's refusal was based on her subjective belief that the Board had no legal basis for its investigation and that it had exceeded its investigative authority. In her written defense, Dr. Tenpenny argued that the Board failed to show any evidence that she may have violated anything in R.C. 4731.22(B), or any other statute or rule, and further argued that "it appears the Board has intentionally concealed the underlying basis of the investigation of Dr. Tenpenny including entirely omitting the basis for initiating the investigation in the [Notice]." (Resp. Wr. Resp. at 5) She further wrote, "A Board investigation initiated without any evidence that appears to show a violation of R.C. 4731.22 or other rule is unlawful, exceeds the Board's investigatory authority and is in bad faith." (Resp. Wr. Resp. at 5)

R.C. 4731.22(F)(1) states, in part, "The board **shall** investigate evidence that appears to show that a person has violated any provision of this chapter or any rule adopted under it." (emphasis added) There was uncontradicted testimony from Ms. Pastrick that the Board had received approximately 350 complaints regarding Dr. Tenpenny and that some of those complaints contained allegations that, if true, would constitute a violation of R.C. 4731.22(B). (Tr. at 16, 53-56) Pursuant to R.C. 4731.22(F)(1), the Board was statutorily required to investigate the complaints against Dr. Tenpenny that appeared to show a violation of R.C. 4731.22(B).

Dr. Tenpenny contended that the Board's investigation was "based solely upon public statements she made that the Board deemed to be dissemination of *misinformation* or *disinformation* or unapproved information about the COVID-19 vaccines; and/or political speech disapproved by the Board." (Resp. Wr. Resp. at 5) (emphasis in original) She went on to say there is no statute or rule granting the Board authority to regulate or investigate a physician's public speech "which has no bearing on their ability to practice medicine," and therefore no lawful grounds for investigation. In support of her argument she cites *Høeg v. Newsom*, No. 2:22-cv-01980 WBS AC, 2023 U.S. Dist. LEXIS 13131, at \*1 (E.D. Cal. Jan. 25, 2023) and stated that a federal district court found a specific California law regarding dissemination of COVID-19 misinformation by physicians to be unconstitutional and granted a preliminary injunction. However, a decision granting a preliminary injunction against a California statute from a federal district court in another jurisdiction is not binding on a matter in Ohio, particularly when there is no similar Ohio statute.

As to Dr. Tenpenny's claims that the Board was attempting to investigate statements which were public and/or political speech and therefore protected by the First Amendment to the U.S. Constitution, Dr. Tenpenny has not provided sufficient evidence of what those statements were in order to enable a determination to be made of whether such statements were protected speech. Further, there is insufficient evidence to show that the Board's investigation was initiated due to any protected speech.

Later in her written response, Dr. Tenpenny stated that "every substantive question [in the Interrogatories] was posed to elicit a response for the Board to determine Dr. Tenpenny's views on the extent to which she believed the COVID-19 vaccines to be safe and effective, and whether

or not she told her patients the COVID-19 vaccines were safe and effective.” (Resp. Wr. Resp. at 7) The Board also asked in the Interrogatories for Dr. Tenpenny to answer questions regarding other vaccines and whether her patients had contracted diseases for which vaccines existed and that she recommended against receiving. In addition, the Board asked Dr. Tenpenny to provide her sources regarding certain COVID-19 vaccine claims. (St. Ex. 2) A reasonable conclusion from these questions is that the Board may have been investigating whether Dr. Tenpenny’s practice was conforming to minimal standards of care. Failing to practice according to minimal standards of care may constitute a violation of R.C. 4731.22(B)(6) and is a basis for a Board investigation. The fact that the Board asked Dr. Tenpenny for her sources of certain claims indicates its willingness to consider such information.

Dr. Tenpenny’s argument that the Board did not include information in the Notice regarding the *possible* violations it was attempting to investigate is not well taken. R.C. 119.07 provides the following in regard to the allegations to be included in a notice of opportunity for hearing: “Notice shall be given by registered mail, return receipt requested, and shall include the charges or other reasons for the proposed action, the law or rule directly involved, and a statement informing the party that the party is entitled to a hearing if the party requests it within thirty days of the time of mailing the notice.” R.C. 119.07 is an integral part of providing due process in administrative law:

A fundamental requirement of due process, that is, notice and an opportunity to be heard, must be afforded an individual whose professional license is subject to [discipline] in an administrative hearing.’ ” Griffin v. State Med. Bd. of Ohio, 10th Dist. No. 11AP-174, 2011-Ohio-6089, ¶ 22, quoting Johnson v. State Med. Bd. of Ohio, 10th Dist. No. 98AP-1324 (Sept. 28, 1999). R.C. 119.07 provides, in pertinent part, that “notice shall \* \* \* include the charges or other reasons for the proposed action, the law or rule directly involved, and a statement informing the party that the party is entitled to a hearing” if the party timely requests a hearing. Further, “ ‘the right to a hearing includes the right to appear at the hearing prepared to defend oneself through testimony, evidence, or argument against the charges brought.’ ” Griffin at ¶ 22, quoting Johnson. Thus, “ ‘due process requires that an individual receive fair notice of the precise nature of the charges that will be raised at a disciplinary hearing.’ ” Id., quoting Johnson.

(*Wilson v. Ohio State Chiropractic Bd.*, 10<sup>th</sup> Dist. No. 18AP-739 2019-Ohio-3243, paragraph 27)

The Notice in this case included allegations of specific instances of the Board attempting to conduct an investigation and Dr. Tenpenny’s response to those attempts as well as an allegation that her conduct was a violation of R.C. 4731.22(B)(34). The Notice also included the required language regarding Dr. Tenpenny’s right to a hearing. R.C. 119.07 does not require the Board to include the basis for the underlying investigation in the notice of opportunity for hearing as Dr. Tenpenny was not being charged with any other violations of R.C. 4731.22. In fact, doing so

could be deemed to be prejudicial against licensees. Investigations often do not result in any formal discipline<sup>10</sup>. In such cases, the Board is required to hold all information received during the investigation confidential pursuant to R.C. 4731.22(F)(5). To make public *potential* violations prior to the completion of an investigation may cause reputational damage to the Board's licensees and applicants. Not including such information in the Notice is not evidence of bad faith by the Board but rather the opposite.

In her written defense and in Mr. Renz's September 20, 2021 letter, Dr. Tenpenny made arguments regarding a letter she received from the Board dated August 11, 2021. This letter is not in evidence, and it is not part of the allegations contained in the Notice. Neither the hearing examiner nor the Board can consider documents that are not part of the record. Dr. Tenpenny could have asked to have this document admitted but did not do so. The only information before the Board about that letter is in Dr. Tenpenny's written defense and in the arguments of Mr. Renz in State's Exhibit 3. From Mr. Renz's letter, it appears that the August 11, 2021 letter was

[REDACTED]  
(St. Ex. 3 at 1) [REDACTED]

Dr. Tenpenny incorporated in her written defense the objections listed in Mr. Renz's September 20, 2021 letter and claimed that Mr. Renz gave five objections to the Interrogatories, but the first, second, and fourth objections in his letter are directed solely at the August 11, 2021 Board letter which, as previously stated, is not the subject of an allegation in the Notice nor a document contained in the hearing record. The third objection in the September 20, 2021 letter primarily addresses the August 11, 2021 letter and only mentioned the Interrogatories to say they do not request information regarding [REDACTED] "underscores the appearance of bad faith" in the Board's August 11, 2021 letter. (St. Ex. 3 at 2) As discussed above, the Board was statutorily required to investigate complaints about Dr. Tenpenny that appeared to show a violation of R.C. 4731 or any rules adopted under it. Again, the hearing examiner and the Board cannot reach an appropriate decision on objections regarding this August 11, 2021 letter as it is not part of the record.

The fifth objection in the September 20, 2021 letter is that the Interrogatories [REDACTED]

[REDACTED] (St. Ex. 3 at 3) While there is no evidence other than Mr. Renz's letter regarding the Board's belief [REDACTED]

[REDACTED] And in order for the Board to impose discipline, it would

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<sup>10</sup> The Board's Fiscal Year 2022 Annual Report shows that 51% of complaints were closed that year after investigation with no formal disciplinary action initiated. (<https://med.ohio.gov/static/portals/0/publications/annual%20reports/sambo%20fy22%20annual%20report.pdf> at 14, accessed July 11, 2023)



need to be able to investigate a physician. Notably, Dr. Tenpenny did not request any sort of accommodation in order to respond to the Interrogatories. Instead, Mr. Renz wrote, “The September 7<sup>th</sup> Interrogatories are invasive, irrelevant to any inquiry into Dr. Tenpenny’s [REDACTED] and advised the Board that Dr. Tenpenny would not respond to them. (St. Ex. 3 at 3)

Incongruously, Dr. Tenpenny claimed in her written response that Mr. Renz’s September 20, 2021 letter “was not a refusal to cooperate, rather it put the Board on notice of her legal objections to the Board’s actions and that she intended to fully and lawfully defend her rights.” (Resp. Wr. Resp. at 9) Instructions for the Interrogatories included the following: “To the extent that you believe any of the interrogatories are objectionable, answer so much of the interrogatory and each subpart thereof that is not objectionable, and separately state the objection and each ground for each such objection as to each subpart.” (St. Ex. 2 at 5-6) Dr. Tenpenny failed to answer the Interrogatories in their entirety. Her objections were not to any particular question in the Interrogatories, but rather to the Board’s investigation itself. She failed to answer seemingly minor questions in the Interrogatories including even those regarding her practice name and location and her board certifications. (St. Ex. 2 at 7-9)

R.C. 4731.22(B)(34) provides that the Board may take disciplinary action for the following reasons:

Failure to cooperate in an investigation conducted by the board under division (F) of this section, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board in an investigative interview, an investigative office conference, at a deposition, or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue[.]

As discussed above, the Board was conducting an investigation into Dr. Tenpenny pursuant to R.C. 4731.22(F)(1). The Board attempted to question Dr. Tenpenny by written interrogatories, a deposition, and an investigative office conference. R.C. 4731.22(B)(34) specifies that the failure to comply with a Board subpoena or order or failure to answer truthfully in any of these three methods constitutes failure to cooperate in an investigation. While R.C. 4731.22(B)(34) goes on to say that to say it is not grounds for discipline if there is a court order either quashing a subpoena or permitting the withholding of testimony or evidence at issue, neither of those situations occurred here. There is no evidence in the record that either the Board or Dr. Tenpenny sought a court order in this matter. R.C. 4731.22(B)(34) does not impose the requirement that the Board seek a court order as a precondition to initiating disciplinary action. Dr. Tenpenny could have filed a motion in court to quash the Board’s subpoena for deposition or requested to be able to withhold her answers to the Interrogatories, but she did not do so.

Dr. Tenpenny also made an argument that she reasonably believed her objections were accepted by the Board. This argument might have been reasonable if the Board had ceased its

investigation after Mr. Renz's September 20, 2021 letter, but it did not. The Board continued its investigation and made both Dr. Tenpenny and her counsel aware that it was continuing its investigation. It sent her a subpoena to appear for a deposition, it asked her to appear for an investigatory office conference (albeit requiring a corrected letter after the initial letter omitted the date and time of the conference), and it then issued the Notice in September 2022. It appears to the hearing examiner that the Board was attempting to find an avenue in which Dr. Tenpenny would engage with the Board investigation in any way other than outright refusal. Further, there was nothing preventing Dr. Tenpenny from cooperating with the investigation after the Notice was issued.

Dr. Tenpenny argued that R.C. 4731.22(B)(34) is unconstitutional on its face and as applied to the current case. Administrative agencies lack the jurisdiction to determine the constitutional validity of a statute so the hearing examiner will not address those arguments. (Cleveland Gear Co. v. Limbach, 35 Ohio St. 3d 229, 231, 520 N.E.2d 188, 191 (1988))

In short, Dr. Tenpenny did not simply fail to cooperate with a Board investigation, she refused to cooperate. And that refusal was based on her unsupported and subjective belief regarding the Board's motive for the investigation. Licensees of the Board cannot simply refuse to cooperate in investigations because they decide they do not like what they assume is the reason for the investigation.

### **PROPOSED ORDER**

It is hereby ORDERED that:

- A. **SUSPENSION OF LICENSE:** The license of Sherri J. Tenpenny, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time.
- B. **FINE:** Within thirty days of the effective date of this Order, Dr. Tenpenny shall remit payment in full of a fine of three thousand dollars (\$3,000). Such payment shall be made via credit card in the manner specified by the Board through its online portal, or by other manner as specified by the Board.
- C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Tenpenny's license to practice osteopathic medicine and surgery until all of the following conditions have been met:
  1. **Application for Reinstatement or Restoration:** Dr. Tenpenny shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  2. **Payment of Fine:** Dr. Tenpenny shall have fully paid the fine as set forth in Paragraph B of this Order.

3. **Certification of Cooperation with Board Investigation:** Dr. Tenpenny shall submit a written statement from the Board's Enforcement Division that Dr. Tenpenny has fully complied with all subpoenas and interrogatories issued to her by the Board.
  4. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Tenpenny has not been engaged in the active practice of osteopathic medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of her fitness to resume practice.
- D. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Tenpenny violates the terms of this Order in any respect, the Board, after giving her notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of her license.
- E. **REQUIRED REPORTING TO THIRD PARTIES; VERIFICATION:**
1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. Tenpenny shall provide a copy of this Order to all employers or entities with which she 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 she has privileges or appointments. Further, Dr. Tenpenny shall promptly provide a copy of this Order to all employers or entities with which she 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 she applies for or obtains privileges or appointments.  
  
In the event that Dr. Tenpenny 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, she shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services.  
  
Further, within 30 days of the date of each such notification, Dr. Tenpenny shall provide documentation acceptable to the Secretary and Supervising Member of the Board demonstrating that the required notification has occurred.
  2. **Required Reporting to Other Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Tenpenny shall provide a copy of this Order by certified mail to the proper licensing authority of any state or jurisdiction in which she currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Administration, through which she

currently holds any professional license or certificate. Also, Dr. Tenpenny shall provide a copy of this Order by certified mail at the time of application to the proper licensing authority of any state or jurisdiction in which she applies for any professional license or reinstatement/restoration of any professional license.

Additionally, within 30 days of the effective date of this Order, Dr. Tenpenny shall provide a copy of this Order to any specialty or subspecialty board of the American Board of Medical Specialties or the American Osteopathic Association Bureau of Osteopathic Specialists under which she currently holds or has previously held certification.

Further, within 30 days of the date of each such notification, Dr. Tenpenny shall provide documentation acceptable to the Secretary and Supervising Member of the Board demonstrating that the required notification has occurred.

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



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Kimberly A. Lee  
Hearing Examiner