



November 13, 2014

Richard Hodges, Director  
Ohio Department of Health  
246 N. High Street  
Columbus, Ohio 43215

Dear Mr. Hodges:

My name is Cheryl Sullenger and I serve as Senior Policy Advisor for Operation Rescue, based in Wichita, Kansas. Part of my duties involves researching and documenting abuses perpetrated by abortion providers around the country.

It has come to my attention that Thomas William Michaelis, a former abortion doctor at the Toledo Women's Center, has recently been indicted by a grand jury on federal criminal charges related to the possession and distribution of child pornography.

The grand jury investigation took place in April and May, 2014, during the time that Michaelis was employed by the Toledo Women's Center, an abortion facility that is subject to your department's regulatory oversight.

This disturbing case has prompted concerns for the welfare of minor abortion patients, especially in light of Michaelis' history of improper sexual conduct with minors dating back to 1991 when he was convicted of Attempted Gross Sexual Imposition, Voyeurism, Public Indecency, all involving minor girls who came to his home to visit his young daughter.

I am asking you to order an investigation into the Toledo Women's Center abortion facility to determine whether any patients, especially minor girls, were ever subjected to improper sexual conduct by Michaelis. It is possible that other employees of Toledo Women's Center may have information that could help your department to determine if violations took place.

I understand that Michaelis' medical license was permanently revoked in June, 2014 by the Ohio Medical Board, but any culpability of the clinic owners or staff in failing to disclose possible sex crimes at the Toledo Women's Center should still be thoroughly investigated.

If you discover that women were abused by Michaelis during vulnerable times at the clinic, we urge that your findings be immediately reported to appropriate law enforcement authorities and that the abortion facility be immediately closed.

I have enclosed two documents for your information and convenience, including Michaelis' indictment and most recent medical board order documenting his previous child sex offenses.

Thank you for your consideration of this request for an investigation of the Toledo Women's Center. Please feel free to contact me directly at 316-516-3034 if I can be of service.

Sincerely,

A handwritten signature in black ink, reading "Cheryl Sullenger". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Cheryl Sullenger  
Senior Policy Advisor  
Operation Rescue

*enclosures*

FILED

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CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
TOLEDO

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

THOMAS W. MICHAELIS,

Defendant.

INDICTMENT

JUDGE:

**3 : 14 C R 0400**

C.R. No. \_\_\_\_\_

18 U.S.C. § 2252(a)(2)

18 U.S.C. § 2252(a)(4)(B)

**JUDGE HELMICK**

COUNT I

MAG. JUDGE JAMES R. KNEPP II

(Receipt and Distribution of Material Involving the Sexual Exploitation of a Child)

The Grand Jury charges:

From on or about April 21, 2014 to on or about May 12, 2014, in the Northern District of Ohio, Western Division, and elsewhere, the defendant, THOMAS W. MICHAELIS, did knowingly receive and distribute numerous visual depictions using any means or facility of interstate commerce, the production of such visual depictions involved the use of minors engaged in sexually explicit conduct, and such visual depictions were of such conduct, in violation of 18 U.S.C. § 2252(a)(2).

ORIGINAL

COUNT 2

(Possession and Access with Intent to View of  
Material Involving the Sexual Exploitation of a Child)

The Grand Jury further charges:

From on or about January 13, 2014 to on or about May 12, 2014, in the Northern District of Ohio, Western Division, and elsewhere, the defendant, THOMAS W. MICHAELIS, did knowingly possess and access with intent to view one or more Internet websites which contained numerous visual depictions that had been shipped and transported using any means and facility of interstate commerce, the production of such visual depictions involved the use of minors engaged in sexually explicit conduct, and such visual depictions were of such conduct, in violation of 18 U.S.C. § 2252(a)(4)(B).

FORFEITURE SPECIFICATION

The Grand Jury further charges:

1. The allegations contained in Counts 1 and 2 of this Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeiture, pursuant to the provisions of 18 U.S.C. § 2253.

2. Pursuant to 18 U.S.C. § 2253, upon conviction of an offense, in violation of 18 U.S.C. § 2252, the defendant, THOMAS W. MICHAELIS, shall forfeit to the United States of America, the following property:

- a) Any visual depiction described in Title 18, United States Code, sections 2251, 2251A, or 2252, or any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped or received in violation of Title 18, United States Code, Chapter 110;
- b) Any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from the offense[s]; and

- c) Any property, real or personal, used or intended to be used to commit or to promote the commission of the offense[s].

3. The property to be forfeited by the defendant, THOMAS W. MICHAELIS, includes, but is not limited to, the following:

- a) Western Digital external hard drive, serial number WCAZA3094030, seized from 5679 Monroe Street, #1119, Sylvania, Ohio on or about May 12, 2014; and
- b) iMac computer, serial number QP8360SPZE3, seized from 5679 Monroe Street, #1119, Sylvania, Ohio on or about May 12, 2014.

A TRUE BILL.

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :  
:  
THOMAS WILLIAM MICHAELIS, M.D. :

**ENTRY OF ORDER**

On May 27, 2014, Thomas William Michaelis, M.D., executed a Surrender of his license to practice medicine and surgery in Ohio with consent to permanent revocation, which document is attached hereto and fully incorporated herein.

Wherefore, upon ratification by the Board of the surrender, it is hereby ORDERED that Certificate No. 35-032590 authorizing Thomas William Michaelis, M.D., to practice medicine and surgery in the state of Ohio be permanently REVOKED.

This Order is hereby entered upon the Journal of the State Medical Board of Ohio for the 2nd day of June 2014, and the original thereof shall be kept with said Journal.

(SEAL)

*Mark A. Bechtel, M.D. /baj*  
Mark A. Bechtel, M.D. *by authorization*  
Secretary

June 2, 2014  
Date

**STATE OF OHIO  
THE STATE MEDICAL BOARD  
PERMANENT SURRENDER OF CERTIFICATE  
TO PRACTICE MEDICINE AND SURGERY**

**Do not sign this agreement without reading it. An individual who permanently surrenders a certificate issued by the Board is forever thereafter ineligible to hold a certificate to practice or to apply to the Board for reinstatement of the certificate or issuance of any new certificate. You are permitted to be accompanied, represented and advised by an attorney, at your own expense, before deciding to sign this voluntary agreement.**

I, Thomas William Michaelis, M.D., am aware of my rights to representation by counsel, the right of being formally charged and having a formal adjudicative hearing, and do hereby freely execute this document and choose to take the actions described herein.

I, Thomas William Michaelis, M.D., do hereby voluntarily, knowingly, and intelligently surrender my certificate to practice medicine and surgery, License #35.032590, to the State Medical Board of Ohio [Board], thereby relinquishing all rights to practice medicine and surgery in Ohio.

I understand that as a result of the surrender herein I am no longer permitted to practice medicine and surgery in any form or manner in the State of Ohio.

I agree that I shall be ineligible for, and shall not apply for, reinstatement or restoration of certificate to practice medicine and surgery License #35.032590 or issuance of any other certificate pursuant to the authority of the State Medical Board of Ohio, on or after the date of signing this Permanent Surrender of Certificate to Practice Medicine and Surgery. Any such attempted reapplication shall be considered null and void and shall not be processed by the Board.

I hereby authorize the State Medical Board of Ohio to enter upon its Journal an Order permanently revoking my certificate to practice medicine and surgery, License #35.032590, in conjunction with which I expressly waive the provision of Section 4731.22(B), Ohio Revised Code, requiring that six (6) Board Members vote to revoke said certificate, and further expressly and forever waive all rights as set forth in Chapter 119., Ohio Revised Code, including but not limited to my right to counsel, right to a hearing, right to present evidence, right to cross-examine witnesses, and right to appeal the Order of the Board revoking my certificate to practice medicine and surgery.

I, Thomas William Michaelis, M.D., hereby release the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This document shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data

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STATE MEDICAL BOARD  
OF OHIO

MEDICAL BOARD

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banks and governmental bodies. I, Thomas William Michaelis, acknowledge that my social security number will be used if this information is so reported and agree to provide my social security number to the Board for such purposes.

I stipulate and agree that I am taking the action described herein in lieu of further investigation and/or formal disciplinary proceedings pursuant to Section 4731.22(B)(10), Ohio Revised Code.

**EFFECTIVE DATE**

It is expressly understood that this Permanent Surrender of Certificate is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.

Thomas W. Michaelis, M.D.  
THOMAS WILLIAM MICHAELIS, M.D.

5/27/2014  
DATE

Mark A. Bechtel, M.D. /bij  
MARK A. BECHTEL, M.D. by authorization  
Acting Secretary

June 2, 2014  
DATE

Bruce R. Saferin, D.P.M. /bij  
BRUCE R. SAFERIN, D.P.M. by authorization  
Acting Supervising Member

June 2, 2014  
DATE

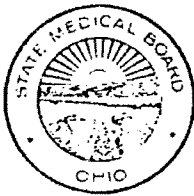
Rebecca J. Marshall  
REBECCA J. MARSHALL, ESQ.  
Chief Enforcement Attorney

May 29, 2014  
DATE

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OF OHIO  
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MAY 29 2014





## STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

May 15, 1992

Thomas W. Michaelis, M.D.  
6206 Meyers Drive  
Cincinnati, Ohio 45215

Dear Doctor Michaelis:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Kevin P. Byers, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on May 13, 1992, including Motions approving and confirming the Findings of Fact and Conclusions of Law of the Hearing Examiner, and adopting an amended Order.

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

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

*Carla S. O'Day*  
Carla S. O'Day, M.D.  
Secretary

CS0:em

Enclosures

CERTIFIED MAIL RECEIPT NO. P 741 123 727  
RETURN RECEIPT REQUESTED

cc: Lawrence H. Brenner, Esq.

CERTIFIED MAIL NO. P 741 123 728  
RETURN RECEIPT REQUESTED

*Mailed 5/21/92*



## STATE MEDICAL BOARD OF OHIO

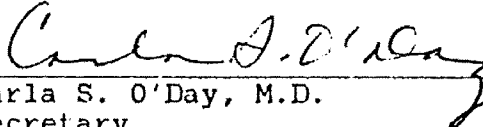
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### CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; copy of the Report and Recommendation of Kevin P. Byers, Attorney Hearing Examiner, State Medical Board; and an excerpt of Minutes of the State Medical Board, meeting in regular session on May 13, 1992, including a Motion approving and confirming the Findings of Fact and Conclusions of Law of the Hearing Examiner, and adopting an amended Order, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Thomas W. Michaelis, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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

(SEAL)

  
\_\_\_\_\_  
Carla S. O'Day, M.D.  
Secretary

  
\_\_\_\_\_  
Date



## STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

### BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

★

★

THOMAS W. MICHAELIS, M.D.

★

### ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 13th day of May, 1992.

Upon the Report and Recommendation of Kevin P. Byers, Attorney Hearing Examiner, Medical Board, in this matter designated pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the modification, approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board for the above date.

It is hereby ORDERED that:

1. The certificate of Thomas W. Michaelis, M.D., to practice medicine and surgery in the State of Ohio, shall be permanently REVOKED. Such revocation is stayed, and Dr. Michaelis' certificate is hereby SUSPENDED for an indefinite period of time, but not less than one (1) year, such time to be calculated from July 1, 1991.
2. The State Medical Board shall not consider reinstatement of Dr. Michaelis' certificate to practice medicine and surgery in Ohio unless and until all of the following minimum requirements are met:
  - a. Dr. Michaelis shall submit an application for reinstatement, accompanied by appropriate fees. Dr. Michaelis shall not make such application for at least one (1) year from July 1, 1991.



## STATE MEDICAL BOARD OF OHIO

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Thomas W. Michaelis, M.D.

- b. Dr. Michaelis shall provide the Board with written reports of evaluation by two (2) psychiatrists acceptable to the Board indicating that his ability to practice has been assessed and that he has been found capable of practicing in accordance with acceptable and prevailing standards of care. Each report shall describe with particularity the bases for these determinations and shall set forth any recommended limitations upon Dr. Michaelis' practice.
  - c. Dr. Michaelis shall provide documentation acceptable to the Board indicating continued psychological counseling during the period of suspension.
  - d. Dr. Michaelis shall provide documentation acceptable to the Board indicating his adjustment and progress under felony probation supervision through the Lucas County Adult Probation Department.
  - e. In the event that Dr. Michaelis has not been engaged in the active practice of medicine and surgery for a period in excess of two (2) years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Revised Code, and require additional evidence of his fitness to resume practice.
3. Upon reinstatement, Dr. Michaelis' certificate shall be subject to the following probationary terms, conditions and limitations for a minimum period of five (5) years:
  - a. Dr. Michaelis shall obey all federal, state and local laws and all rules governing the practice of medicine in Ohio.
  - b. Dr. Michaelis shall submit quarterly declarations under penalty of perjury stating that there has been compliance with all the terms of probation.
  - c. Dr. Michaelis shall appear in person for interviews before the full Board or its designated representative at three (3) month intervals or as otherwise directed by the Board.
  - d. Dr. Michaelis shall comply with all limitations under paragraph 2b, above, which are imposed by the Board at the time of reinstatement of his certificate to practice medicine and surgery.



## STATE MEDICAL BOARD OF OHIO

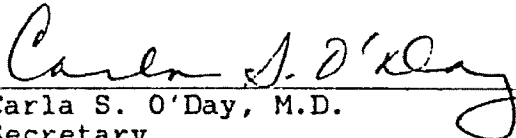
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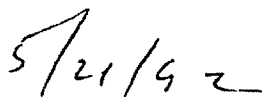
Thomas W. Michaelis, M.D.

- e. Dr. Michaelis shall continue counseling with a counselor approved by the Board, at such intervals as are deemed appropriate by the counselor, but not less than once per month, until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the counselor. Dr. Michaelis shall ensure that these reports are forwarded to the Board on a quarterly basis, or as otherwise directed by the Board.
  - f. Dr. Michaelis shall have a third party present during all examinations and treatments of patients.
  - g. In the event that Dr. Michaelis should leave Ohio for three (3) consecutive months or reside or practice outside the state, he must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
4. If Dr. Michaelis violates the terms of this Order in any respect, the Board, after giving him notice and an opportunity to be heard, may set aside the stay order and impose the permanent revocation of his certificate.
5. Upon successful completion of probation, Dr. Michaelis' license will be fully restored.

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

  
Carla S. O'Day, M.D.  
Secretary

SEAL)

  
Date

REPORT AND RECOMMENDATION  
IN THE MATTER OF THOMAS W. MICHAELIS, M.D. 92 MAR 27 AM 9:10

On January 23, 1992, the Matter of Thomas W. Michaelis, M.D., came on for hearing before Kevin P. Byers, Attorney Hearing Examiner for the State Medical Board of Ohio.

## INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

- A. By letter dated September 11, 1991, mailed September 12, 1991 (State's Exhibit #1), the State Medical Board notified Thomas W. Michaelis, M.D., that it intended to determine whether to limit, revoke, suspend, refuse to register or reinstate his certificate to practice medicine and surgery, or to reprimand or place him on probation for the following reasons:

On or about August 6, 1991 Dr. Michaelis pleaded guilty in the Lucas County Court of Common Pleas to: two counts of Attempted Gross Sexual Imposition, first degree misdemeanors, in violation of Sections 2923.02 and 2907.05, Revised Code; one count of Voyeurism, a third degree misdemeanor of the third degree in violation of Section 2907.08, Revised Code; and, one count of Public Indecency, a fourth degree misdemeanor in violation of Section 2907.09, Revised Code.

The Board alleged that the foregoing acts, conduct, and/or omissions, individually or collectively, constituted "a plea of guilty to, or a judicial finding of guilt of, a misdemeanor involving moral turpitude", pursuant to Section 4731.22(B)(13), Revised Code.

- B. By letter received by the Board on October 9, 1992 (State's Exhibit #2), Dr. Michaelis, through counsel, requested a hearing in this Matter.

II. Appearances

- A. On behalf of the State of Ohio: Lee I. Fisher, Attorney General, by Lisa A. Sotos, Assistant Attorney General
- B. On behalf of the Respondent: Lawrence H. Brenner, Esq., and Gerald P. Moran, Esq.

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### III. Testimony Heard

Presented by the Respondent

Thomas W. Michaelis, M.D.

### IV. Exhibits Examined

In addition to those noted previously, the following exhibits were identified and admitted into evidence in this Matter:

#### A. Presented by the State

1. State's Exhibit #3: October 9, 1991 letter to Mr. Brenner from the State Medical Board advising him that a hearing set for October 23, 1991 was postponed until further notice pursuant to Section 119.09, Revised Code.
2. State's Exhibit #4: October 16, 1991 letter to Mr. Brenner from the State Medical Board scheduling Dr. Michaelis' hearing for December 12, 1991.
3. State's Exhibit #5: Respondent's continuance request received by the State Medical Board on December 10, 1991.
4. State's Exhibit #6: December 10, 1991 Entry by the Attorney Hearing Examiner granting Dr. Michaelis' continuance request and rescheduling the hearing for January 17, 1992.
5. State's Exhibit #7: The December 18, 1991 appearance of counsel for the State.
6. State's Exhibit #8: Respondent's Motion for Continuance received by the Medical Board on January 13, 1992.
7. State's Exhibit #9: Entry by the Attorney Hearing Examiner granting Dr. Michaelis' continuance request and rescheduling the hearing for January 23, 1992.
8. State's Exhibit #10: Six pages of documents containing a four-page Information in Case No. CR 91-6703, Dr. Michaelis' August 26, 1991 Waiver of Prosecution by Indictment, and the certification from the clerk of court that the copies are accurate.
9. State's Exhibit #11: Five pages of documents from the Lucas County Court of Common Pleas which contain three written guilty pleas by Dr. Michaelis involving four

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misdemeanor offenses, a copy of the court docket with the last entry of August 6, 1991, and the clerk's certification that the copies are accurate.

10. State's Exhibit #12: Eight pages of documents containing duplicate copies of State's Exhibit #11, three sentencing entries by Judge Franks of the Lucas County Common Pleas Court, and a copy of the court's docket showing the last entry of October 1, 1991. Also included in this document is the clerk of courts' certification that the copies are accurate.
11. State's Exhibit #13: December 18, 1991 affidavit of Jerome Phillips, the attorney who represented Dr. Michaelis in his criminal cases in Lucas County, a copy of the court docket with the last entry dated October 7, 1991, and a copy of the clerk's certification.
12. State's Exhibit #14: Thirty-four page transcript of the August 6, 1991 sentencing hearing before Judge Franks.

B. Presented by the Respondent

1. Respondent's Exhibit A: January 17, 1992 two-page letter from Marvin E. Gottlieb, M.D., to Larry Brenner, Attorney-At-Law.
2. Respondent's Exhibit B: February 6, 1992 two-page affidavit of William G. Bruggemann, M.D., regarding his personal knowledge of Dr. Michaelis.
3. Respondent's Exhibit C: February 3, 1992 letter to Attorney Moran from Charlene A. Cassel, Ph.D.
4. Respondent's Exhibit D: January 3, 1992 cover letter from Attorney Phillips with enclosed thirteen letters of support which were received by Attorney Phillips in the course of his criminal representation of Dr. Michaelis in Lucas County.
5. Respondent's Exhibit E: Eight-page curriculum vitae of Dr. Gottlieb.
6. Respondent's Exhibit F: First page of September 6, 1991 letter from the Court Diagnostic and Treatment Center to Judge Franks, an eight-page diagnostic assessment completed by Judy Smith-Forgac, a September 3, 1991 two-page MMPI interpretation, and Ms. Smith-Forgac's September 25, 1991 two-page addendum.



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7. Respondent's Exhibit G: February 13, 1992 five-page letter to Attorney Brenner from Marty White, Psychology Assistant and Edward Praul, Ph.D., Supervising Psychologist of Jacob J. Elliott and Associates, Inc., Mental Health Services.

V. Other Matters

By Entry of February 11, 1992 the parties were granted additional time to submit post-hearing documents requested by the Hearing Examiner in order to ensure a complete and accurate record. Numerous attempts were made to obtain a complete set of Respondent's Exhibit F, however, the Hearing Examiner consistently received only one page of a September 6, 1991 letter which is included as the first page of the exhibit. The record was closed on February 26, 1992.

FINDINGS OF FACT

1. On or about August 6, 1991 Dr. Michaelis pled guilty to two counts of Attempted Gross Sexual Imposition, first degree misdemeanors, one count of Voyeurism, a third degree misdemeanor, and one count of Public Indecency, a fourth degree misdemeanor. As a result of his guilty pleas, Dr. Michaelis was convicted of all four offenses. On September 26, 1991 Dr. Michaelis was sentenced to a total of fifteen months incarceration and fined \$2,750. The imposition of incarceration was suspended and he was placed under five years probation with conditions which included: Serving 60 days in the Correctional Center of Northwest Ohio; private psychological counseling until further order of the court; successful completion of the Parents United Program; fund a trust with \$10,000 for reimbursement of counseling expenses incurred by his four minor victims; payment of the \$2,750 fine within six months of probation; payment of the prosecution costs; and, conformity with any treatment required by his probation officer.

These facts are established by State's Exhibits #10, #11, #12, #13 and #14.

2. In sworn testimony at his sentencing hearing, Dr. Michaelis admitted that he watched a minor girl uncover her breasts; attempted to touch another minor girl on the buttocks; attempted to touch a third minor girl on the breasts; and exposed his penis to a fourth minor girl. At hearing before the Board, Dr. Michaelis testified that he watched a girl undress to go "skinny dipping," gave a "wedgie" to a girl as the spoils of victory in a video game, tickled and rubbed a girl's back "near the breast," and "mooned" another girl as part of a game of "Truth or Dare." All of these incidents occurred in Dr. Michaelis' home and

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involved friends of his youngest daughter who is presently fourteen.

These facts are established by State's Exhibit #14, pp. 24 and 26-27 and the testimony of Dr. Michaelis (Tr. at 22).

3. Dr. Michaelis sought psychological counseling from a private source prior to the criminal charges which resulted in his convictions. Following his conviction, he was ordered by the court to undergo counseling with a clinical psychologist who also enrolled Dr. Michaelis in group therapy composed of convicted sex offenders. Dr. Michaelis' current treating psychologist has diagnosed him as suffering from Sexual Disorder, Not Otherwise Specified, and believes that this is a treatable condition, although several years may be necessary to complete treatment. She also opines that Dr. Michaelis expresses a certain amount of responsibility for his behavior but at the same time offers many disclaimers, a common trait during the early stages of psychological treatment.

These facts are established by Respondent's Exhibit C and the testimony of Dr. Michaelis (Tr. at 28, 32-34, 37-38).

4. For the purposes of the Board hearing, Dr. Michaelis underwent a two-hour assessment by Marvin E. Gottlieb, M.D., on January 14, 1992. Dr. Gottlieb did not find any evidence of psychopathology, psychosis, serious emotional disturbance, severe anxiety disorder, severe depression, or severe characterologic problems. Nor did Dr. Gottlieb find any evidence of pedophilia, sexual deviation, or improper medical practice or impaired clinical judgment by Dr. Michaelis. Dr. Gottlieb concluded that a recurrence of the behavior which led to Dr. Michaelis' convictions would be unlikely and that Dr. Michaelis' underlying immaturity should benefit from his present psychotherapy regimen. Dr. Michaelis expresses shame and guilt for his conduct.

These facts are established by Respondent's Exhibit A and the testimony of Dr. Michaelis (Tr. at 30).

5. Dr. Michaelis' fifteen years of OB-GYN practice in Toledo were with one group and without incident. He was highly regarded by his patients and his peers. He has not practiced since his July, 1991, voluntary resignation from Sunforest OB-GYN.

These facts are established by Respondent's Exhibits B and D.

#### CONCLUSIONS

Dr. Michaelis' August 6, 1991, convictions of two counts of Attempted Gross Sexual Imposition, in violation of Sections 2923.02 and 2907.05, Revised Code; one count of Voyeurism, in violation of Section 2907.08,

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Revised Code; and, one count of Public Indecency, in violation of Section 2907.09, Revised Code, constitute "a judicial finding of guilt of a misdemeanor involving moral turpitude," under Section 4731.22(B)(13), Revised Code, and thereby subject Dr. Michaelis to disciplinary action by this Board.

PROPOSED ORDER

It is hereby ORDERED that:

1. The certificate of Thomas W. Michaelis, M.D., to practice medicine and surgery in the State of Ohio, shall be permanently REVOKED. Such revocation is stayed, and Dr. Michaelis' certificate is hereby SUSPENDED for an indefinite period of time, but not less than one (1) year.
2. The State Medical Board shall not consider reinstatement of Dr. Michaelis' certificate to practice medicine and surgery in Ohio unless and until all of the following minimum requirements are met:
  - a. Dr. Michaelis shall submit an application for reinstatement, accompanied by appropriate fees. Dr. Michaelis shall not make such application for at least one (1) year from the effective date of this Order.
  - b. Dr. Michaelis shall provide the Board with written reports of evaluation by two (2) psychiatrists acceptable to the Board indicating that his ability to practice has been assessed and that he has been found capable of practicing in accordance with acceptable and prevailing standards of care. Each report shall describe with particularity the bases for these determinations and shall set forth any recommended limitations upon Dr. Michaelis' practice.
  - c. Dr. Michaelis shall provide documentation acceptable to the Board indicating continued psychological counseling during the period of suspension.
  - d. Dr. Michaelis shall provide documentation acceptable to the Board indicating his adjustment and progress under felony probation supervision through the Lucas County Adult Probation Department.
  - e. In the event that Dr. Michaelis has not been engaged in the active practice of medicine and surgery for a period in excess of two (2) years prior to application for reinstatement, the Board may exercise its discretion

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under Section 4731.222, Revised Code, and require additional evidence of his fitness to resume practice.

3. Upon reinstatement, Dr. Michaelis' certificate shall be subject to the following probationary terms, conditions and limitations for a minimum period of five (5) years:
  - a. Dr. Michaelis shall obey all federal, state and local laws and all rules governing the practice of medicine in Ohio.
  - b. Dr. Michaelis shall submit quarterly declarations under penalty of perjury stating that there has been compliance with all the terms of probation.
  - c. Dr. Michaelis shall appear in person for interviews before the full Board or its designated representative at three (3) month intervals or as otherwise directed by the Board.
  - d. Dr. Michaelis shall comply with all limitations under paragraph 2b, above, which are imposed by the Board at the time of reinstatement of his certificate to practice medicine and surgery.
  - e. Dr. Michaelis shall continue counseling with a counselor approved by the Board, at such intervals as are deemed appropriate by the counselor, but not less than once per month, until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the counselor. Dr. Michaelis shall ensure that these reports are forwarded to the Board on a quarterly basis, or as otherwise directed by the Board.
  - f. Dr. Michaelis shall have a third party present during all examinations and treatments of patients.
  - g. In the event that Dr. Michaelis should leave Ohio for three (3) consecutive months or reside or practice outside the state, he must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.

Report and Recommendation  
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STATE MEDICAL BOARD  
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4. If Dr. Michaelis violates the terms of this Order in any respect, the Board, after giving him notice and an opportunity to be heard, may set aside the stay order and impose the permanent revocation of his certificate.
5. Upon successful completion of probation, Dr. Michaelis' license will be fully restored.

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

KEVIN P. BYERS  
Kevin P. Byers  
Attorney Hearing Examiner



## STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

### EXCERPT FROM THE MINUTES OF MAY 13, 1992

#### REPORTS AND RECOMMENDATIONS

Dr. Gretter announced that the Board would now consider the findings and orders appearing on the Board's agenda.

Dr. Gretter asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of Alan J. Block, D.P.M.; Eric Burstein, M.D.; Shakir M. Fattah, M.D.; David E. Little, D.O.; Thomas W. Michaelis, M.D.; Seldon R. Nelson, D.O.; Ohio Permanente Medical Group, Inc., Roland S. Philip, M.D., Responsible Physician; Scott L. Shook, M.D.; and Advanced Heart & Lung Surgeons, Inc., Thomas Hillman, M.D., Responsible Physician. A roll call was taken:

ROLL CALL:	Dr. O'Day	- aye
	Mr. Albert	- aye
	Dr. Stienecker	- aye
	Mr. Jost	- abstain
	Dr. Garg	- aye
	Dr. Kaplansky	- aye
	Dr. Heidt	- aye
	Dr. Hom	- aye
	Dr. Agresta	- aye
	Dr. Gretter	- aye

Dr. Hom indicated that she did not read the materials in the matter of Seldon R. Nelson, D.O., and would abstain in this case.

The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.

.....

#### REPORT AND RECOMMENDATION IN THE MATTER OF THOMAS W. MICHAELIS, M.D.

Dr. Gretter stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and order in the above matter. No objections were voiced by Board members present.

Dr. Gretter advised Mr. Brenner that there is not a court reporter present, but instead the Board's minutes serve as the Board's official record of the meeting. Mr. Brenner stated that he did not have any objection to the absence of a court



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reporter.

Dr. Gretter reminded Mr. Brenner that the Board members have read the entire hearing record, including the exhibits and any objections filed. He added that the Board will not retry the case at this time, and that pursuant to Section 4731.23(C), Revised Code, oral arguments made at this time are to address the proposed findings of fact and conclusions of the hearing examiner. Dr. Gretter stated that Mr. Brenner would be allowed approximately five minutes for his address.

Mr. Brenner stated that he asked to appear only to answer any questions that the Board might have. He urged the Board to adopt the recommendations of the Hearing Officer, but asked that the effective date be retroactive to December, since that is when Dr. Michaelis voluntarily withdrew from practice.

Dr. Gretter asked the Assistant Attorney General to respond.

Ms. Sotos also urged the Board to adopt the Hearing Officer's Report and Recommendation. She stated that she believes it is appropriate based on the testimony and evidence presented at the hearing.

DR. AGRESTA MOVED TO APPROVE AND CONFIRM MR. BYERS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF THOMAS W. MICHAELIS, M.D. DR. STIENECKER SECONDED THE MOTION.

Dr. Gretter asked if there were any questions or comments concerning the proposed findings of fact, conclusions, and order in the above matter.

Dr. Heidt agreed with Mr. Brenner's suggestion, noting that Dr. Michaelis has refrained from the practice of medicine since July 1991 due to his problems. In all fairness, the suspension should run from the start of his self-suspension.

DR. HEIDT MOVED TO AMEND PARAGRAPH 1 OF THE PROPOSED ORDER TO STATE THAT DR. MICHAELIS' CERTIFICATE IS HEREBY SUSPENDED FOR AN INDEFINITE PERIOD OF TIME, BUT NOT LESS THAN THREE (3) MONTHS.

Dr. Heidt stated that this amendment would, in effect, equal the proposed one-year suspension.

Mr. Jost stated that Mr. Brenner indicated that Dr. Michaelis stopped practicing in December, not July.

Mr. Brenner stated that Dr. Michaelis formally withdrew from his practice in December; however, he hasn't practiced since July.



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DR. STIENECKER SECONDED DR. HEIDT'S MOTION.

Mr. Albert spoke against the amendment, stating that he believed Dr. Michaelis was fortunate that the Board didn't move to revoke his license. Mr. Albert added that he doesn't believe that the incident in question was the first that had occurred, and he believes this is a very serious matter.

Dr. Gretter stated that Dr. Michaelis' license is being revoked under the Proposed Order; however, the revocation is being stayed.

Mr. Albert stated that he didn't feel it should be stayed. Mr. Albert stated that it is not right for a father to allow his teenage daughter and her guests to go skinny dipping. This case bothered him. Mr. Albert added that he hopes Dr. Michaelis has learned a lesson from this and can be rehabilitated.

Dr. Garg also spoke against the amendment.

Dr. Heidt stated that Dr. Michaelis has practiced for 15 years without any other incident. He added that the case did not involve patients.

Mr. Jost asked Dr. Heidt whether he would be willing to reword his amendment to state that the one-year suspension would begin effective July 1, 1991. He was concerned that, without official recognition of time already served, it would appear that the Board considered a three-month suspension an appropriate sanction.

Dr. Heidt and Dr. Steinecker, as second, agreed to Mr. Jost's suggestion.

Ms. Sotos suggested that it might be appropriate for the Board to approve the one year suspension effective this date, and to recognize time served since July 1, 1991. She explained that she is concerned about the repercussions of imposing a retroactive suspension.

Mr. Jost agreed with Ms. Sotos' concerns.

Dr. Heidt restated his motion to amend as follows:

DR. HEIDT MOVED TO AMEND PARAGRAPH 1 OF THE PROPOSED ORDER TO INCLUDE RECOGNITION OF THE TIME SINCE JULY 1, 1991 THAT DR. MICHAELIS DID NOT PRACTICE MEDICINE.

DR. STIENECKER SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. O'Day	- aye
	Mr. Albert	- nay
	Dr. Stienecker	- aye
	Mr. Jost	- abstain





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Dr. Garg	- nay
Dr. Kaplansky	- aye
Dr. Heidt	- aye
Dr. Hom	- nay
Dr. Agresta	- aye

The motion carried.

DR. HEIDT MOVED TO APPROVE AND CONFIRM MR. BYERS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF THOMAS W. MICHAELIS, M.D. DR. O'DAY SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. O'Day	- aye
	Mr. Albert	- nay
	Dr. Stienecker	- aye
	Mr. Jost	- abstain
	Dr. Garg	- nay
	Dr. Kaplansky	- aye
	Dr. Heidt	- aye
	Dr. Hom	- nay
	Dr. Agresta	- aye
	Dr. Gretter	- aye

The motion carried.



## **STATE MEDICAL BOARD OF OHIO**

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

September 11, 1991

Thomas W. Michaelis, M.D.  
3740 W. Sylvania Suite 103  
Toledo, OH 43623

Dear Doctor Michaelis:

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

- (1) On or about August 6, 1991 in the Lucas County Court of Common Pleas you pleaded guilty to two (2) counts of Attempted Gross Sexual Imposition, each count a misdemeanor of the first degree, in violation of Sections 2923.02 and 2907.05, Ohio Revised Code; one (1) count of Voyeurism, a misdemeanor of the third degree, in violation of Section 2907.08, Ohio Revised Code; and one (1) count of Public Indecency, a misdemeanor of the fourth degree, in violation of Section 2907.09, Ohio Revised Code.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "a plea of guilty to, or a judicial finding of guilt of, a misdemeanor involving moral turpitude," as that clause is used in Section 4731.22(B)(13), 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 (30) days of the time of mailing of this notice.

You are further advised that 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.

*Mailed 9/12/91*

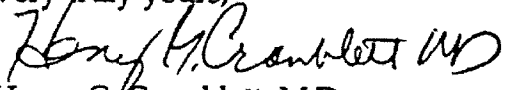
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In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,

  
Henry G. Cramblett, M.D.  
Secretary

HGC:jmb

Enclosures:

CERTIFIED MAIL #P 055 328 922  
RETURN RECEIPT REQUESTED

scheme, he is guilty of conspiring with them whether he knows of their identity or not. Also, if hindsight shows that under the circumstances the crime which was the object of the conspiracy could not have been committed, this does not relieve the conspirators of liability for planning and acting to execute the crime.

By its nature, a conspiracy is a course of conduct rather than a single act or omission, and the section spells out that a conspiracy terminates when its object is accomplished or when it is abandoned by all conspirators. If there is no abandonment, a conspirator cannot defend on the ground that no offense which was the object of the conspiracy was actually committed.

The section also states that even though a conspiracy may include plans to commit more than one offense, it is still one conspiracy when these offenses are part of the same plan, agreement, or continuous conspiratorial relationship. The section prohibits conviction of conspiracy to commit an offense, when the offender is convicted of committing or attempting to commit, or of complicity in committing or attempting to commit the same offense. Also, the section provides that a person may not be convicted of conspiracy upon the uncorroborated evidence of a co-conspirator.

Defenses to conspiracy include (1) that a conspirator prevented the success of the conspiracy under circumstances showing he had completely and voluntarily renounced his criminal plan; or (2) that the conspirator divorced himself from the plan prior to an attempt to commit, or commission of any crime which was the object of the conspiracy, either by telling all the conspirators of his abandonment or by informing law enforcement authorities of the plan and his part in it.

Although this section does not replace any other conspiracy offenses defined in the Revised Code, the rules, exceptions, and defenses defined in this section are expressly made applicable to such other offenses.

Conspiracy is: a felony of the first degree if its object is aggravated murder or murder; a felony of the next lesser degree if its object is a felony of the first, second, or third degree; and a first degree misdemeanor if its object was a fourth degree felony.

### [§§ 2923.01.1, 2923.01.2]

§§ 2923.011, 2923.012 Repealed, 134 v H 511, § 2 [131 v 676; 132 v H 1; 133 v H 288]. Eff 1-1-74.

These sections concerned carrying firearms, explosives and other concealed weapons.

### § 2923.02 Attempt.

(A) No person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, shall engage in conduct which, if successful, would constitute or result in the offense.

(B) It is no defense to a charge under this section that, in retrospect, commission of the offense which was the object of the attempt was impossible under the circumstances.

(C) No person who is convicted of committing a specific offense, of complicity in the commission of such offense, or of conspiracy to commit such offense, shall be convicted of an attempt to commit the same offense in violation of this section.

(D) It is an affirmative defense to a charge under this section that the actor abandoned his effort to commit the offense or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

(E) Whoever violates this section is guilty of an attempt to commit an offense. An attempt to commit aggravated murder or murder is a felony of the first degree. An attempt to commit an aggravated felony of the first or second degree is an aggravated felony of the next lesser aggravated degree than the aggravated felony attempted. An attempt to commit an aggravated felony of the third degree is a felony of the fourth degree. An attempt to commit any other offense is an offense of the next lesser degree than the offense attempted. In the case of an attempt to commit an offense other than a violation of Chapter 3734, of the Revised Code that is not specifically classified, an attempt is a misdemeanor of the first degree if the offense attempted is a felony, and a misdemeanor of the fourth degree if the offense attempted is a misdemeanor. In the case of an attempt to commit a violation of any provision of Chapter 3734, of the Revised Code, other than section 3734.18 of the Revised Code, that relates to hazardous wastes, an attempt is a felony punishable by a fine of not more than twenty-five thousand dollars or imprisonment for not more than eighteen months, or both. An attempt to commit a minor misdemeanor, or to engage in conspiracy, is not an offense under this section.

HISTORY: 134 v H 511 (Eff 1-1-74); 140 v S 210 (Eff 7-1-83); 140 v H 651. Eff 10-1-84.

Not analogous to former RC § 2923.02 (GC §§ 12819-1, 12819-2; 102 v 124; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2. Eff 1-1-74.

#### Committee Comment to H 511

This section is a general attempt statute which consolidates several specific attempt provisions in former law, and, with three exceptions, establishes an attempt to commit any offense as an offense in itself. The exceptions are an attempt to commit conspiracy, an attempt to commit a minor misdemeanor, and an attempt to commit any offense which in itself is defined as an attempt—in these cases, attempt is not an offense.

Under the section, an attempt must be purposely or knowingly committed. If the offense attempted specifies that purpose is the culpable mental state required for its commission, then the attempt must be purposeful. Purposely or knowingly attempting to commit a crime is sufficient to make the attempt an offense if the crime attempted requires knowledge, recklessness, or negligence for its commission.

In order to prove an attempt to commit an offense, it must be shown that particular conduct directed toward commis-

Unsuccessful

shows that the other person subject is unaware that the act is

shows that the other person subject mistakenly identifies the spouse.

the other person's natural or stepparent, or guardian, custodian, or parent.

on is in custody of law or a or other institution, and the or disciplinary authority

es this section is guilty of sex-f the third degree.

EH 1-1-74.

RC § 2907.03 (GC § 12433-1; 113 v 541; 1-1-53), repealed 134 v H 511, § 2, eff 1-

[ 511 is set by section 4 of the act.

#### H 511

sexual conduct with a person other se in a variety of situations where icious advantage of the victim.

duct by coercion, which is some- or t by force—one of the key nc. . sexual conduct when the viously impaired, or when the m submits because he or she is cause he or she mistakenly identi- her spouse. Incestuous conduct is efined in broader terms than for- t only sexual conduct by a parent ual conduct by a step-parent with i with his ward, or a custodian or ith his charge. Finally, the section t with a prisoner, or with a patient by an offender who has supervi- y over the victim.

attery are lesser included offenses

y of the third degree.

#### Corruption of a minor.

hteen years of age or older, conduct with another, not the r, when the offender knows er twelve but not over fifteen offender is reckless in that

as this section is guilty of cor- felony of the third degree. If an four years older than the tion of a minor is a misde- ree.

EH 1-1-74.

RC 1.04 (RS § 6832; S&C 457a, 13 v 541; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date of H 511 is set by section 4 of the act.

#### Committee Comment to H 511

This section prohibits sexual conduct when the offender is age 18 or over and knows his or her partner is age 13 to 15.

The rationale for this is that the risk of physical harm from sexual conduct is less for the early adolescent than for the pre-puberty victim, though the risk of psychic harm remains great. Moreover, sexual conduct with an early adolescent is often viewed as more serious when the offender is substantially older than the victim, because under such circumstances the offender's conduct suggests highly amoral behavior. Accordingly, the offense is a felony when committed by a person who is 4 or more years older than the victim, and a misdemeanor when the offender is less than 4 years older than the victim. When both partners are juveniles, there is no offense under the section, although the actors would be liable to being adjudged unruly children in a juvenile proceeding. See, section 2151.022 of the Revised Code.

Under former law, consensual sexual intercourse by a male age 18 with a female under 16 was a felony, regardless of the age difference between the partners.

Corruption of a minor is a felony of the third degree, unless the offender is less than 4 years older than the victim, in which case the offense is a misdemeanor of the first degree.

#### § 2907.05 Gross sexual imposition.

(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons, to have sexual contact when any of the following apply:

(1) The offender purposely compels the other person, or one of the other persons, to submit by force or threat of force.

(2) For the purpose of preventing resistance, the offender substantially impairs the other person's, or one of the other persons', judgment or control by administering any drug or intoxicant to the other person, surreptitiously or by force, threat of force, or deception.

(3) The other person, or one of the other persons, is less than thirteen years of age, whether or not the offender knows the age of such person.

(B) Whoever violates this section is guilty of gross sexual imposition. Violation of division (A)(1) or (2) of this section is a felony of the fourth degree. Violation of division (A)(3) of this section is a felony of the third degree.

(C) A victim need not prove physical resistance to the offender in prosecutions under this section.

(D) Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender, and only to the

extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

Evidence of specific instances of the defendant's sexual activity, opinion evidence of the defendant's sexual activity, and reputation evidence of the defendant's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, the defendant's past sexual activity with the victim, or is admissible against the defendant under section 2945.59 of the Revised Code, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

(E) Prior to taking testimony or receiving evidence of any sexual activity of the victim or the defendant in a proceeding under this section, the court shall resolve the admissibility of the proposed evidence in a hearing in chambers, which shall be held at or before preliminary hearing and not less than three days before trial, or for good cause shown during the trial.

(F) Upon approval by the court, the victim may be represented by counsel in any hearing in chambers or other proceeding to resolve the admissibility of evidence. If the victim is indigent or otherwise unable to obtain the services of counsel, the court may, upon request, appoint counsel to represent the victim without cost to the victim.

HISTORY: 134 v H 511 (Eff 1-1-74); 136 v S 144 (Eff 8-27-75); 137 v H 134. Eff 8-8-77.

Not analogous to former RC § 2907.05 (RS § 6833; S&C 425; 54 v 162; GC § 12435; 113 v 541; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

#### Committee Comment to H 511

This section defines an offense analogous to rape, though less serious. Its elements are identical to those of rape, except that the type of sexual activity involved is sexual contact, rather than sexual conduct. See, section 2907.02.

Gross sexual imposition is a felony of the fourth degree when the sexual contact is committed by force or threat or with the use of drugs or intoxicants. When the victim of the offense is under age 13, regardless of the means used to commit the offense, gross sexual imposition is a felony of the third degree.

#### § 2907.06 Sexual imposition.

(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following apply:

(1) The offender knows that the sexual contact is offensive to the other person, or one of the other persons, or is reckless in that regard.

(D) Whoever violates this section is guilty of importuning. Violation of division (A) or (B) of this section is a misdemeanor of the first degree. Violation of division (C) of this section is a misdemeanor of the fourth degree.

**HISTORY:** 134 v H 511. Eff 1-1-74.

Not analogous to former RC § 2907.07 (RS § 6834; S&C 432; 72 v 149; CC § 12436; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Analogous to former RC § 2905.30 (RS § 7026; S&S 289; 59 v 32; 89 v 127; CC § 13032; 121 v 557(573); Bureau of Code Revision, 10-1-53; 129 v 1670; 130 v 659; 131 v 672), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date of H 511 is set by section 4 of the act.

#### Committee Comment to H 511

This section prohibits soliciting a person under 13 to engage in sexual activity, or soliciting a person age 13 to 15 to engage in sexual conduct when the solicitor is age 18 or over and 4 or more years older than the person solicited. The solicitation of homosexual or lesbian activity is also prohibited, when the solicitor knows or has reasonable cause to believe the solicitation is offensive to the person solicited.

The section represents an exception to the general rule that "just asking" is not a criminal offense. In the case of underage victims, the rationale for the offense is that mere solicitation carries a significant potential for harm because of the immature judgment of adolescents and the risk of adverse consequences from their engaging in sexual activity. The rationale for prohibiting indiscreet solicitation of deviate conduct is that the solicitation in itself can be highly repugnant to the person solicited, and there is a risk that it may provoke a violent response.

Importuning is a misdemeanor of the first degree when it involves solicitation of a person under age 13 or solicitation of homosexual or lesbian conduct, and a misdemeanor of the fourth degree when it involves solicitation of an early adolescent.

### § 2907.08 Voyeurism.

(A) No person, for the purpose of sexually arousing or gratifying himself or herself, shall commit trespass or otherwise surreptitiously invade the privacy of another, to spy or eavesdrop upon another.

(B) Whoever violates this section is guilty of voyeurism, a misdemeanor of the third degree.

**HISTORY:** 134 v H 511. Eff 1-1-74.

Not analogous to former RC § 2907.08 (Bureau of Code Revision, 10-1-53; 132 v H 996), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date of H 511 is set by section 4 of the act.

#### Committee Comment to H 511

This section is aimed at curbing "peeping toms," although its purview is considerably broader than the usual law of its type. It prohibits not only trespass, but any invasion of privacy, to eavesdrop or spy on another for the purpose of obtaining a vicarious sexual thrill. Thus, it covers not only the trespassing voyeur, but the voyeur who uses binoculars from his own or public property, or who peeks over the transom, or who eavesdrops with a stethoscope to the bridal

suite wall. The offense had no counterpart in former law, and was punishable as trespass, if at all.

Voyeurism is a misdemeanor of the third degree.

### [§§ 2907.08.1, 2907.08.2]

§§ 2907.081, 2907.082 Repealed, 134 v H 511, § 2 [129 v 562; 131 v 674]. Eff 1-1-74.

These sections concerned penalty and intentional injury or damage to public or private property.

### § 2907.09 Public indecency.

(A) No person shall recklessly do any of the following, under circumstances in which his or her conduct is likely to be viewed by and affront others, not members of his or her household:

- (1) Expose his or her private parts, or engage in masturbation;
- (2) Engage in sexual conduct;
- (3) Engage in conduct which to an ordinary observer would appear to be sexual conduct or masturbation.

(B) Whoever violates this section is guilty of public indecency, a misdemeanor of the fourth degree.

**HISTORY:** 134 v H 511. Eff 1-1-74.

Not analogous to former RC § 2907.09 (RS § 6835; 69 v 10; 82 v 161; 95 v 561; 96 v 14; 98 v 3; CC § 12437; 100 v 5; 101 v 128; Bureau of Code Revision, 10-1-53; 129 v 1426), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date of H 511 is set by section 4 of the act.

#### Committee Comment to H 511

The gist of this section is to prohibit sexual exposures or actual or simulated sexual displays, when done under circumstances in which such exposures or displays are likely to be seen by and offend persons not members of the offender's household.

Nudist camps would not be prohibited under this section if the inmates take reasonable precautions to insure their privacy, since their lack of clothing is not likely to offend each other. Answering an urgent call of nature *al fresco* would not be an offense if the actor takes reasonable precautions against discovery, although if he or she is imprudent in choosing a site the act might constitute disorderly conduct under new section 2917.11(A)(5).

Public indecency is a misdemeanor of the fourth degree.

§ 2907.10 Repealed, 139 v S 199, § 2 [136 v S 144; 137 v H 565; 138 v H 900]. Eff 7-1-83.

This section concerned actual incarceration.

### § 2907.11 [Suppress information upon request.]

Upon the request of the victim or offender in a prosecution under sections 2907.02 to 2907.07 or section 2907.12 of the Revised Code, the judge before whom any person is brought on a charge of