BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :

:

WILLIAM H. HOUSER, D.O. :

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 13th day of April, 1988.

On or about September 11, 1985, the State Medical Board issued a citation letter to William H. Houser, D.O., alleging that his acts, conduct or omissions as set forth in that letter constituted violations of the Medical Practice Act. That citation letter is attached hereto and fully incorporated herein.

By Judgment Entry of the Supreme Court of Ohio on February 24, 1988, Dr. Houser's appeal of a September 11, 1985 Medical Board Order revoking his medical license was dismissed, rendering Dr. Houser's licensed revoked.

As a result of the foregoing, it is hereby ordered that the Board's September 11, 1985 citation be declared moot and that this matter be dismissed.

So ORDERED this 13th day of April, 1988.

Henry G. Cramblett, M.D.
Secretary

(SEAL)

4/22/88
Date

The Supreme Court of Ohio

Columbus

1988 TERM

To wit: February 24, 1988

William Houser, Appellant,	:	Case No. 87-44
v.	:	JUDGMENT ENTRY
Ohio State Medical Board, Appellee.	:	APPEAL FROM THE COURT OF APPEALS

This cause, here on appeal from the Court of Appeals for Hamilton County, was considered in the manner prescribed by law. Upon consideration of appellant's application to dismiss, it is ordered by the Court that said application be, and the same is hereby, granted. It is further ordered by the Court that this cause be, and the same is hereby, dismissed.

It is further ordered that the appellee recover from the appellant its costs herein expended; and that a mandate be sent to the Court of Common Pleas for Hamilton County to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Hamilton County for entry.

THOMAS J. MOYER
Chief Justice

I, Marcia J. Mengel, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing order was correctly copied from the records of said Court, to wit, from the Journal of this Court.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Supreme Court, on this 24th day of February, 1988.

'88 MAR 16 P1:53

MARCIA J. MENGEL CLERK

Rita A. Jackson DEPUTY

IN THE SUPREME COURT OF OHIO
APPEAL FROM THE COURT OF APPEALS
FIRST APPELLATE DISTRICT
HAMILTON COUNTY, OHIO

IN THE MATTER OF DR. WILLIAM H. HOUSER, D.O. RE: LICENSE REVOCATION	:	Case No. 87-44
DR. WILLIAM H. HOUSER, D.O.	:	
Plaintiff-Appellant	:	
-vs-	:	NOTICE OF DISMISSAL
THE STATE OF OHIO STATE MEDICAL BOARD	:	
Defendant-Appellee	:	

Notice is hereby given that plaintiff-appellant, Dr. William H. Houser, D.O., hereby dismisses his appeal filed in this action.

RECEIVED
ATTORNEY GENERAL'S OFFICE
FEB 8 1988
HEALTH, EDUCATION & HUMAN SERVICES SECTION

Glenn V. Whitaker
Registration No. 0018169
Attorney for Plaintiff-Appellant William H. Houser, D.O.
1900 Fifth Third Center
P.O. Box 6464
Cincinnati, Ohio 45201
(513) 621-6464

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Dismissal was served by regular U.S. mail, postage pre-paid, on February 5th, 1988 upon Christopher M. Culley and Christopher J. Costantini, Assistant Attorney Generals, State Office Tower, 10th Floor, 30 E. Broad Street, Columbus, Ohio 43215.

Glenn V. Whitaker

CM/MISCI

IN THE SUPREME COURT OF OHIO

WILLIAM H. HOUSER, D.O.	:	
Appellant,	:	CASE NO. 87-44
vs.	:	
THE STATE OF OHIO, THE STATE MEDICAL BOARD,	:	JUDGMENT ENTRY OF DISMISSAL WITH PREJUDICE
Appellee.	:	

This matter is before the Court upon the motion of the Plaintiff to voluntarily dismiss this action with prejudice. The Court being so advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above-captioned case is dismissed with prejudice, at Appellant's costs.

JUDGE

APPROVED:

Christopher M. Culley per Michael J. Harlan

Christopher M. Culley
Assistant Attorney General

Christopher J. Costantini per MJH

Christopher J. Costantini
Assistant Attorney General
Counsel for Appellee,

Michael R. Barrett
Counsel for Appellant,
William H. Houser

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OHIO STATE
MEDICAL BOARD
'87 OCT 26 P12:50

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO
CIVIL DIVISION

WILLIAM H. HOUSER, D. O.	:	Case No. A-8507908
	:	(Hon. R. Winkler)
Plaintiff-Appellant,	:	
	:	
vs.	:	
	:	
STATE OF OHIO MEDICAL BOARD	:	ENTRY VACATING
	:	STAY OF REVOCATION
Defendant-Appellee.	:	OF MEDICAL LICENSE

Upon agreement of the parties, the Appellant having withdrawn his appeal of this matter in the Supreme Court of Ohio, Case No. 87-44, and having surrendered his license to practice medicine on October 15, 1987,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the stay of the order of the State Medical Board, dated September 11, 1985, revoking Appellant's license to practice medicine be, and hereby is, vacated at Appellant's court costs.

JUDGE RALPH WINKLER

MICHAEL R. BARRETT (B574)
Counsel for Appellants
Willaim H. Houser

MICHAEL J. HARMON (H200)
Senior Assistant Attorney General
Counsel for State Medical Board

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RECEIVED
ATTORNEY GENERAL'S OFFICE
DEC 15 1986
ADMINISTRATIVE AGENCIES SECTION

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

IN THE MATTER OF: DR. WILLIAM H. HOUSER, DO.O RE: LICENSE REVOCATION	:	APPEAL NO. C-860007 CASE NO. A-8507908
Plaintiff-Appellant,	:	
vs.	:	NOTICE OF APPEAL
THE STATE OF OHIO STATE MEDICAL BOARD,	:	
Defendant-Appellee.	:	

FILED
COURTS OF APPEALS
DEC 12 1986
HAMILTON COUNTY
ROBERT D. JENNING
CLERK OF COURTS

Notice is hereby given that the Plaintiff-Appellant, Dr. William H. Houser, D.O., hereby appeals to the Supreme Court of Ohio from the judgment of the Court of Appeals entered in this action on December 3, 1986. The case involves a substantial constitutional question, and the case is of public or great general interest.

Glenn V. Whitaker
Registration No. 0018169
Attorney for Plaintiff-Appellant
Dr. William H. Houser, D.O.
1900 Fifth Third Center
P.O. Box 6464
Cincinnati, Ohio 45201
513 626-6464

CERTIFICATE OF SERVICE

Hereby certify that a true and correct copy of the foregoing Notice of Appeal was served upon Mary Joseph Maxwell, Assistant Attorney General, State Office Tower, 10th Floor, 30 East Broad Street, Columbus, Ohio 43215, by regular U.S. Mail, postage prepaid, this 12th day of December, 1986. Ms. Maxwell's telephone number is (614) 466-6410 and her Registration Number is 0022891.

Glenn V. Whitaker

RECEI
DEC 04 1986
ADMINISTRATIVE AGENCIES

IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

IN THE MATTER OF: DR. WILLIAM H. HOUSER, D.O. RE: LICENSE REVOCATION	:	APPEAL NO. C-860007 TRIAL NO. A-8507908
DR. WILLIAM H. HOUSER, D.O.,	:	
Plaintiff-Appellant,	:	D E C I S I O N.
vs.	:	
THE STATE OF OHIO STATE MEDICAL BOARD,	:	
Defendant-Appellee.	:	

FILED
COURT OF APPEALS
DEC 3 1986
CLERK OF COURTS

Civil Appeal from: Court of Common Pleas

Judgment Appealed from is: Affirmed

Date of Judgment Entry on Appeal: December 3, 1986

Mr. Glenn V. Whitaker, 1900 Fifth Third Center, P. O. Box 6464, Cincinnati, Ohio 45202, for Plaintiff-Appellant,

Ms. Mary Joseph Maxwell, Assistant Attorney General, State Office Tower, 10th Floor, 30 East Broad Street, Columbus, Ohio 43215, for Defendant-Appellee.

PER CURIAM.

This cause came on to be heard upon the appeal, the transcript of the docket, journal entries and original papers from the Court of Common Pleas of Hamilton County, Ohio, the transcript of the proceedings, the briefs and the arguments of counsel.

Dr. William Houser, appellant, was a licensed doctor of osteopathy practicing in the State of Ohio. In December of 1983 the State Medical Board, appellee, issued a letter proposing to discipline appellant for violations of the Medical Practices Act, R.C. Chapter 4731. A member of the Board held a hearing pursuant to the requirements of R.C. 119.09, the Administrative Procedure Act.

Appellant, by his attorney, was involved in settlement negotiations with the Attorney General's office during and subsequent to the hearing. A consent agreement was drafted by the Attorney General's office and presented to appellant. The agreement was signed by appellant and returned to the Attorney General's office, but was rejected by the Hearing Officer who issued a Report and Recommendation which, *inter alia*, recommended suspending appellant's license to practice for ninety days and followed by a two-year probationary period.

The Board modified the order pursuant to its authority under R.C. 119.09, and revoked appellant's license to practice. Appellant appealed to the Court of Common Pleas of Hamilton County, which affirmed the Board's order. From that decision appellant

has filed this timely appeal.

Appellant has made only one assignment of error, that the common pleas court erred in affirming the order of the Board. Under that single assignment appellant presents several distinct issues, each of which we will treat separately.

The first issue raised relates to the effect of the consent agreement. The consent agreement was not accepted by the Hearing Officer or the Board. Appellant argues with great energy that the assistant attorney general made representations that the consent agreement was somehow effective even without the signatures of the Hearing Officer or the Board. This is denied (albeit in oral argument) by the assistant attorney general, who claims she specifically told appellant's attorney that both the Hearing Officer and the Board had to approve the agreement before it became final.

In reliance on the proposed consent agreement appellant failed to request a transcript of the hearing, and did not present a post-hearing brief, as was agreed to be allowed in lieu of closing arguments. Also appellant claims the lack of a transcript denied him the right to make meaningful objections to the Hearing Officer's report to the Board. This is alleged to be a denial of procedural due process.

Appellant argues, with some justification, that the legal process that was due him necessarily includes the right to closing argument or to present a post-hearing brief. Appellant was not denied this right, but chose voluntarily, knowingly and

intelligently, as those words are used as terms of art, to waive his right to have a transcript prepared. By doing so, appellant waived any constitutional protection he might have otherwise been able to claim. *Brady v. United States* (1972), 405 U.S. 174, 92 S. Ct. 775. This decision was certainly an intentional relinquishment of a known right or privilege. *Johnson v. Zerbst* (1938), 304 U.S. 458, 58 S. Ct. 1019.

Next appellant seeks to enforce the consent agreement on a theory of equitable estoppel. The concept of equitable estoppel is that one party will not be permitted to deny something which by his words, acts, or silence has induced another to rely reasonably and in good faith to his detriment. *First Federal S. & L. Assn. v. Perry's Landing, Inc.* (1983), 11 Ohio App. 3d 135, 463 N.E.2d 636.

Assuming, *arguendo*, that equitable estoppel is appropriate in this case, appellant fails to meet the requirement of reasonable reliance. On the basis of an unsigned proposed consent decree, appellant chose to forego the preparation of a transcript, and not to submit a post-hearing brief. A transcript would have been an absolute prerequisite for any further appeal. Further, appellant received a letter from the Hearing Officer subsequent to his signing of the proposed consent decree that established a final deadline for closing briefs or the <u>submission</u> of any settlement agreement. T.d. 7, Exhibit F. This letter clearly indicates that any settlement would have to be satisfactory to and approved by the Hearing Officer. *Id.* Most impor-

tantly it states that "it is apparent the parties have been unable to reach an accord that is satisfactory to this Hearing Officer." *Id.* Considering the gravity of the charges, and the distinct possibility of appellant's license to practice being suspended or revoked, we hold that it was unreasonable to place such complete trust in an unsigned, executory consent agreement in the manner that was done here.

The third issue raised in appellant's single assignment of error is that the statute, R.C. 4731.22, is unconstitutionally vague. This argument is specious as the constitutionality of the statute has been upheld by the Ohio Supreme Court against just this challenge. *Arlen v. State Medical Board* (1980), 61 Ohio St. 2d 168, 399 N.E.2d 1243.

The final two issues urged by appellant are that the statute was unconstitutionally applied, and that the order was not supported by a preponderance of reliable credible evidence. Appellant mischaracterizes a decision by the board to impose a more severe sanction then it had in the past, as *ex post facto* change of the standards that appellant was required to adhere to in his practice. The two issues are subsumed into the same question; whether the order of the agency is supported by <u>any</u> reliable, probative, and substantial evidence in the record as a whole. R.C. 119.12 (emphasis added). Having reviewed the record in its entirety, we cannot say the common pleas court erred in finding the order was supported by reliable, probative and substantial evidence.

Finding no merit in appellant's single assignment of error, we affirm the common pleas court.

DOAN, P.J., KLUSMEIER and HILDEBRANDT, JJ.

PLEASE NOTE:

The Court has placed of record its own entry in this case on the date of the release of this Decision.

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

RECEIVED
DEC 31 1985
ADMINISTRATIVE AGENCIES SECTION

IN THE MATTER OF DR. WILLIAM H. HOUSER, D.O. RE: LICENSE REVOCATION	Case No. A8507908 (Perrino, J.)
DR. WILLIAM H. HOUSER, D.O. Plaintiff-Appellant, vs. THE STATE OF OHIO, STATE MEDICAL BOARD Defendant-Appellee.	ORDER

It is hereby ordered that the Order Staying Revocation of Medical License entered by this Court on October 23, 1985 remain in effect for a period of 15 months from the date of October 2, 1985, such period not to exceed the date on which a decision from the Court of Appeals, First Appellate District, is issued.

Judge Nicholas Perrino

Mary Joseph Maxwell/AW per Telecon

Mary Joseph Maxwell
Assistant Attorney General
State Office Tower, 10th Floor
30 E. Broad Street
Columbus, Ohio 43215
(614) 466-2980

Glenn V. Whitaker
Attorney for Plaintiff-Appellant
1900 Fifth Third Center
P.O. Box 6464
Cincinnati, Ohio 45201
(513) 621-6464

44/T/DEF8/12

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STATE OF OHIO, THE STATE MEDICAL BOARD,

Plaintiff,

vs.

WILLIAM HOUSER, D.O.

Defendant.

ENTERED
MAR 28 1986
IMAGE 359

Case No. A8507081

JUDGE WILLIAM S. MATHEWS

ENTRY

Pursuant to agreement of the parties, it is hereby ORDERED AND DECREED that William Houser, D.O. shall not dispense any drugs until the administrative process before the State Medical Board of Ohio on the Notice of Opportunity for Hearing dated September 11, 1985 is completed, and an adjudication order is issued by that Board.

FURTHER, it is ORDERED AND DECREED that William Houser, D.O. shall keep a log of every prescription written, including the name of the patient, the name of the drug or controlled substance prescribed, the amount for which the prescription is written, and the date on which the prescription is written. This log shall be sent to undersigned Counsel for the State Medical Board at least twice per week throughout the duration of this entry.

Further, it is ORDERED AND DECREED that discovery shall be stayed in this matter throughout the duration of this entry.

IT IS SO ORDERED.

JUDGE WILLIAM S. MATHEWS

GLENN V. WHITAKER
Graydon, Head & Ritchey
1900 Fifth Third Center
P.O. Box 6464
Cincinnati, Ohio 45201
Counsel for Defendant, William Houser, D.O.

/s/ Mary Joseph Maxwell
MARY JOSEPH MAXWELL
Assistant Attorney General
State Office Tower, 10th Floor
30 East Broad Street
Columbus, Ohio 43215
Counsel for Plaintiff, State Medical Board

COURT OF COMMON PLE
HAMILTON COUNTY, OHIO

WILLIAM H. HOUSOR, D.O.
Appellant
Plaintiff

-vs-

State of Ohio, State
Medical Board
Appellee
Defendant

NO. A-8507908
(Hon N. PERRINO)

ENTRY CONTINUING STAY OF REVOKATION of MEDICAL LICENSE

ENTERED
APR 14 1986
IMAGE

It is hereby ordered that the Order Staying Revokation of Medical License entered by this Court on October 23, 1985 and the Order of This Court CONTINUING the October 23, 1985 ORDER on December 27, 1985 Remain in effect until such time as the First District Court of Appeals ~~and~~ renders final decision on the issues presented for review in the brief of Appellant and Appellee and in the Application for Reinsecuration.

To all of which the defendant objects.

Michael R Barnett B574
Attorney for Appellant.

Nicholas A Perrino
JUDGE

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

ENTERED
DEC 1 1986
IMAGE 172

COSTS

IN THE MATTER OF DR. WILLIAM H. HOUSER, D.O. RE: LICENSE REVOCATION DR. WILLIAM H. HOUSER, D.O. Plaintiff-Appellant, vs. THE STATE OF OHIO, STATE MEDICAL BOARD Defendant-Appellee.	Case No. A8507908 (Perrino, J.) ENTRY AFFIRMING ORDER OF THE STATE OF OHIO, STATE MEDICAL BOARD AND DISMISSING PLAINTIFF'S COMPLAINT

This action came before the Court on the appeal filed by plaintiff-appellant, William H. Houser, D.O., from the Order of the State of Ohio, State Medical Board, revoking the license of William H. Houser, D.O., to practice medicine and on the complaint for declaratory relief filed by William H. Houser, D.O. This matter was heard on the transcript and record of the proceedings before the State Medical Board, plaintiff-appellant's Motion for Summary Judgment, the affidavits and other evidence admitted upon motion of plaintiff-appellant and the other pleadings of record. Upon consideration of the foregoing and upon oral argument of counsel, the Court finds that:

1. The Order of the State Medical Board is supported by substantial, reliable and probative evidence and is in accordance with the law;

2. The Order of the State Medical Board was not issued in violation of plaintiff-appellant's constitutional right to due process of law;

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STATE OF OHIO, COUNTY OF HAMILTON
COURT OF COMMON PLEAS
[illegible]

3. The State Medical Board was not estopped from proceeding against plaintiff-appellant by virtue of a Consent Agreement prepared by the Attorney General's office and executed by plaintiff-appellant.

4. The Sections of the Ohio Revised Code relied upon by the State Medical Board in revoking the license of plaintiff-appellant to practice medicine, namely, Sections 4731.22(B)(1)(2)(3) and (6), are not unconstitutionally vague and were not unconstitionally applied by the State Medical Board; and

5. That it is without jurisdiction to consider the complaint for declaratory relief and motion for summary judgment filed by plaintiff-appellant and that plaintiff-appellant's sole remedy is an appeal pursuant to Section 119.12 of the Ohio Revised Code.

It is therefore ORDERED, ADJUDGED AND DECREED that:

1. The Order of the State Medical Board be affirmed on appeal;
2. The Complaint and the Motion for Summary Judgment filed thereon be dismissed.

To all of which plaintiff-appellant takes exception.

Judge Nicholas A. Perrino

ENTERED
DEC 27 1985
IMAGE 173

Mary Joseph Maxwell /AOW for Telecom

Mary Joseph Maxwell
Assistant Attorney General
State Office Tower, 10th Floor
30 East Broad Street
Columbus, Ohio 43215
(614) 466-2980

Glenn V. Whitaker

Glenn V. Whitaker
Attorney for Plaintiff-Appellant
1900 Fifth Third Center
P.O. Box 6464
Cincinnati, Ohio 45201
(513) 621-6464

44/T/DEF8/06

ENTERED
DEC 2 1985
IMAGE 174

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

IN THE MATTER OF DR. WILLIAM H. HOUSER, D.O. RE: LICENSE REVOCATION	:	Case No. A8507908
DR. WILLIAM H. HOUSER, D.O. 1815 W. Galbraith Road Cincinnati, Ohio 45239 Appellant	:	NOTICE OF APPEAL AND COMPLAINT
vs	:	
STATE OF OHIO STATE MEDICAL BOARD 65 South Front Street Columbus, Ohio 43266-0315 Appellee	:	

NOTICE OF APPEAL

Appellant, Dr. William H. Houser, hereby appeals to the Court of Common Pleas of Hamilton County, Ohio from the decision of Appellee, State of Ohio State Medical Board, ("Board") made on September 11, 1985 revoking Dr. Houser's license to practice medicine in Ohio in the face of a Consent Agreement signed May 8, 1985 which resolved all pending charges. (Copy of Board's decision attached hereto as Exhibit A. Copy of Consent Agreement attached hereto as Exhibit B.) The appeal is on questions of law.

COMPLAINT

1. Dr. William H. Houser is a physician licensed to practice medicine in the State of Ohio.

2. By letter of December 7, 1983, the State Medical Board of Ohio notified Dr. Houser that it proposed to take disciplinary action against him for certain alleged violations of the Medical Practice Act.

3. On October 18, 1984, a hearing was held by Dr. Peter Lancione, M.D., member of the Board, concerning this action. At the conclusion of the hearing it was agreed by the parties and Dr. Lancione that oral argument would be waived in favor of written briefs to be submitted after a transcript of the hearing was prepared and made available to all parties.

4. Both prior and subsequent to the hearing before Dr. Lancione, Dr. Houser and the State Medical Board were engaged in settlement negotiations. On May 8, 1985, Dr. Houser signed a Consent Agreement drafted by the Attorney General's office on behalf of the State Medical Board. The Consent Agreement was returned to the Attorney General for the Board's signature on May 9, 1985. By further agreement and as a result of the resolution of this case by the Consent Agreement, a transcript of the hearing before Dr. Lancione was not prepared and neither the Attorney General's office nor Dr. Houser prepared written argument for Dr. Lancione.

5. On August 17, 1985, Dr. Lancione issued a Report and Recommendation (copy attached as Exhibit C) which suspended Dr. Houser's license for a period of 90 days to be followed by a two-year probationary period with certain conditions attached to the probationary period.

6. Dr. Lancione's Report and Recommendation was issued in the face of the binding Consent Agreement drafted by the Attorney General on behalf of the State Medical Board, and signed by Dr. Houser on May 8, 1985. However, Dr. Lancione's Report and Recommendation was issued without benefit of a transcript of the

proceedings before him and without written argument from the parties as agreed.

7. Dr. Lancione had knowledge of the Consent Agreement yet he elected to ignore the Agreement and proceed with a Report and Recommendation without a transcript and without written argument by the parties.

8. Dr. Lancione's Report and Recommendation contains several findings of fact which are clearly unsupported by the evidence, due likely to his failure to review the transcript prior to issuing the Report and Recommendation. For example:

a) With respect to paragraph 4(A) of the Report and Recommendation, Dr. Lancione fails to note that pills picked up by Mr. Young and Mr. Koehn at Dr. Houser's office were vitamin pills and not scheduled or prescription drugs;

b) With respect to paragraph 4(B) of the Report Dr. Lancione fails to note the slanderous remarks made by Charles Young to two of Dr. Houser's patients. In both cases Young told the patients that they were being mistreated and were receiving cancer causing drugs and fertility drugs. Dr. Houser's treatment has been effective in both cases.

c) With respect to paragraph 8(E) Dr. Lancione incorrectly attributes to Dr. Houser a statement that Ms. Grieco had dispensed prescrip-

tion drugs and given injections to patients while he was not present in the office.

d) With respect to paragraph 1 of Dr. Lancione's Conclusions, the statement that Dr. Houser permitted Ms. Grieco to weigh, inject and dispense pills to Gisela Wood and Sharon S. Logan while he was not on the premises is totally unsupported by the record.

9. Dr. Lancione's conclusions with respect to this matter are also incorrect and unsupported by the record. Moreover, his conclustions clearly demonstrate the fallacy of relying upon whatever memory he may have had from a hearing which occurred nearly a year prior to the issuance of his Report and Recommendation.

10. The statutes on which Dr. Lancione's report is based, Chapter 4731 et seq., are unconstitutionally vague in that they contain no definition of the alleged conduct prohibited. Moreover, there are no State Board regulations defining proper conduct by a doctor in the circumstances of this case.

11. Dr. Lancione's handling of this case demonstrates bias and prejudice.

12. On August 28, 1985, the police made an illegal search of Dr. Houser's home, apparently at the request and with the cooperation of the State Medical Board. While there, the police confiscated a quantity of drugs.

13. The Board illegally considered this extraneous evidence, without giving Dr. Houser an opportunity to object, in rendering its decision to revoke Dr. Houser's license.

14. The Board, using Dr. Lancione's report and recommendation as the basis for revoking Dr. Houser's medical license has denied Dr. Houser due process of law because it failed to follow its own administrative procedures, especially in the face of a signed Consent Agreement.

15. The Board's decision was not supported by reliable probative and substantive evidence and was not in accord with the law, thereby denying Dr. Houser due process of law.

16. The Board's decision was based on extraneous material because it considered property seized in the search of Dr. Houser's home and office, as a basis for its decision.

17. The Board's decision is invalid because it is based on unconstitutional statutes which are vague and overbroad.

WHEREFORE, Appellant, Dr. William Houser, asks for a judgment of this Court:

1. Declaring that the decision of the Board is unsupported by substantial, reliable and probative evidence, and that it is unconstitutional, illegal, arbitrary, capricious, and unreasonable.

2. Reversing the decision of the Board which revoked Dr. Houser's license.

3. Granting Dr. Houser the costs of this action, and such other relief as this Court deems appropriate.

Glenn V. Whitaker
Trial Attorney for Appellant
1900 Fifth Third Center
P. O. Box 6464
Cincinnati, Ohio 45201
(513) 629-2733

OF COUNSEL:

GRAYDON, HEAD & RITCHEY
1900 Fifth Third Center
P. O. Box 6464
Cincinnati, Ohio 45201
(513) 621-6464

19/L/GVW5/05

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of October, 1985, a copy of Appellant's Notice of Appeal and Complaint was served on the State of Ohio, State Medical Board, 65 South Front Street, Columbus, Ohio 43266-0315, by regular U.S. mail, postage prepaid.

Glenn V. Whitaker by MAD
Glenn V. Whitaker

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

WILLIAM H. HOUSER, D.O. 1815 W. Galbraith Road Cincinnati, Ohio 45249	:	Case No. A-8507908 (Judge Perrino)
Appellant,	:	
vs.	:	
STATE OF OHIO, STATE MEDICAL BOARD 65 S. Front Street Columbus, Ohio 42266-0315	:	ORDER STAYING REVOCATION OF MEDICAL LICENSE
Appellee.	:	

This cause came on to be heard on October 22, 1985, on Plaintiff-Appellant's Motion for Stay of a State Medical Board Order dated September 11, 1985, which order revokes Plaintiff-Appellant's medical license effective November 1, 1985. The Court having found that unusual hardship will result to Plaintiff-Appellant if his license is revoked pending the Court's decision on Plaintiff-Appellant's administrative appeal, that Plaintiff-Appellant has shown a likelihood of success on such appeal, and that in view of the conditions set forth below, the health, safety and welfare of the public will not be threatened by a stay or suspension of the State Medical Board's order pending the Court's ultimate decision on the appeal, it is hereby ORDERED that:

1. The State Medical Board's Order dated September 11, 1985, revoking the medical license of William H. Houser, D.O. is stayed pending decision of Plaintiff-Appellant's administrative appeal before this Court;

2. This stay is conditioned upon the continued compliance of Plaintiff-Appellant with the terms and conditions of the consent preliminary injunction entered in Case No. A-8507081, and upon the requirement that Plaintiff-Appellant continue to see every patient treated in his office; and

3. The parties are required to file with the Court within two weeks of the filing of the certified administrative record, motions and memoranda addressing the issues in this matter, with reply memoranda to be filed within one week following the filing of the initial motions and memoranda.

Judge, Court of Common Pleas

Glenn V. Whitaker
Trial Attorney for Appellant,
1900 Fifth Third Center
P.O. Box 6464
Cincinnati, Ohio 45201
(513) 629-7233

Mary Joseph Maxwell
State Office Tower, 10th Flr.
30 E. Broad Street
Columbus, Ohio 43215
(614) 466-2980

10/23/85

19/L/GVW4/04

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43215

September 11, 1985

William H. Houser, D.O.
7346 Blue Ash Road
Cincinnati, OH 45236

Dear Doctor Houser:

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 28, 1985 search warrants were executed upon your office located at 1815 West Galbraith Road, Cincinnati, Ohio and upon your residence located at 7346 Blue Ash Road, Cincinnati, Ohio. Pursuant to said search warrant and in the course of the searches the following was obtained:

    a. Approximately 162 dosage units of Methaqualone, a Schedule I controlled substance;

    b. Approximately 2,739,087 dosage units of various amphetamines including injectable detroamphetamine hydrochloride. Amphetamines are Schedule II controlled substances;

    c. Approximately 225,490 dosage units of Didrex a Schedule III controlled substance;

    d. Approximately 248,112 dosage units of phenobarbital, a Schedule IV controlled substance;

    e. Approximately 1,516,693 dosage units of various prescription drugs.

September 11, 1985

2. Further, pursuant to the searches described in paragraph (1) the following was observed and found:

   a. At the 1815 West Galbraith Road, Cincinnati, Ohio address:

      i) a nine (9) drawer filing cabinet containing numerous coded, but otherwise unidentified envelopes containing various drugs;

      ii) a three (3) drawer filing cabinet containing numerous coded, but otherwise unidentified envelopes containing various drugs;

      iii) several unmarked and unlabeled vials of injectable liquid.

      iv) bulk containers of drugs which were unlabeled and relabeled with different labels which were affixed with rubber bands, and labels with defaced expiration dates.

   b. At the 7346 Blue Ash Road, Cincinnati, Ohio address:

      i) boxes of pharmaceuticals;

3. You failed to produce an inventory of the drugs in your possession, at the time the search warrants were executed, as required by Sections 3719.07 and 3719.13, Ohio Revised Code.

4. You conduct your practice in the following manner:

   a. Upon an office visit your patients pay your receptionist, the receptionist obtains the patients' record card and finds the code stamped on it; the receptionist then obtains an envelope containing the same code, a notation is made on the patient record card and the patient is given the envelope containing drugs. At no time during the visit is the patient personally seen or examined by you or by a licensed physician in your employ.

   b. Three individuals who are not licensed pursuant to Chapter 4731., Ohio Revised Code, operate your office at 1815 West Galbraith Road, Cincinnati, Ohio in your absence on Tuesdays, Thursdays and Saturdays; patients are seen and medications dispensed by one or more of these individuals.

September 11, 1985

c. You are present at the 1815 West Galbraith Road, Cincinnati, Ohio location on Mondays and Wednesdays from 1:00 P.M. to 7:00 P.M. and Thursdays from 8:30 A.M. to 12:00 P.M. During most of this time you fill the coded envelopes with drugs.

d. You do not inform your patients of the name of the drug being dispensed to them or of the potential for addiction of the drug(s) being dispensed.

5. From January 1, 1982 through June 30, 1985 you have made excessive purchases of various drugs including but not limited to the following:

Date	Substance	Schedule	Amount in Dosage Units
04/29/82	Didrex 50 mg.	III	3,000
05/21/82	Didrex 50 mg.	III	3,000
06/01/82	Didrex 50 mg.	III	3,000
07/07/82	Didrex 50 mg.	III	6,000
08/26/82	Didrex 50 mg.	III	6,000
09/27/82	Didrex 50 mg.	III	6,000
01/11/83	Dexampex 10 mg.	II	100,000
01/25/83	Didrex 50 mg.	III	12,000
02/08/83	Didrex 50 mg.	III	60,000
02/14/83	Didrex 50 mg.	III	60,000
08/02/83	Didrex 50 mg.	III	6,000
10/04/83	Didrex 50 mg.	III	6,000
12/02/83	Didrex 50 mg.	III	24,000
12/02/83	Halcion Tabs	IV	1,000
02/24/84	Dexampex 10 mg.	II	150,000
02/24/84	Methampex 10 mg.	II	150,000
02/27/84	Didrex 50 mg.	III	24,000
02/28/84	Halcion	IV	2,500
02/29/84	Didrex 50 mg.	III	24,000
06/22/84	Acetaminophen c̄ Codeine 60mg.	III	6,000
06/22/84	Acetaminophen c̄ Codeine 60mg.	III	4,000
07/18/84	Desoxyn 15 mg.	II	24,000
09/13/84	Didrex 50 mg.	III	12,000
09/20/84	Desoxyn 15 mg.	II	48,000
09/20/84	Desoxyn 15 mg.	II	24,000
10/22/84	Didrex 50 mg.	III	12,000
11/09/84	Didrex 50 mg.	III	12,000
12/14/84	Didrex 50 mg.	III	12,000
01/22/85	Didrex 50 mg.	III	12,000
02/27/85	Didrex 50 mg.	III	12,000
03/06/85	Acetaminophen c̄ Codeine	III	3,000

September 11, 1985

Date	Substance	Schedule	Amount in Dosage Units
03/06/85	Acetaminophen c̄ Codeine	III	3,000
03/06/85	Glucamide 250 mg.	Rx	1,000
03/06/85	Indo-Lemmon 50 mg.	Rx	3,000
03/21/85	Didrex 50 mg.	III	60,000
03/28/85	Didrex 50 mg.	III	60,000
04/08/85	Dexampex 10 mg.	II	15,000
04/08/85	Methampex 10 mg.	II	10,000
06/17/85	Acetaminophen c̄ Codeine 60mg.	III	3,000

Such acts, conduct and/or omissions as listed in paragraph 4(a), (b), and (c) constitute a violation of Ohio Revised Code Section 4731.22(B)(1) to wit: permitting one's name or one's certificate of registration to be used by a person, group or corporation when the individual concerned is not actually directing the treatment given.

Such acts, conduct, and/or omissions as listed in paragraphs 1, 2, 3, 4 and 5 individually and/or collectively constitute violations of Ohio Revised Code Section 4731.22(B)(2) to wit: failure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selction of drugs or other modalities for treatment of disease.

Such acts, conduct and/or omissions as listed in paragraphs 1, 2, 4 and 5 individually and/or collectively constitute violations of Ohio Revised Code Section 4731.22(B)(3) to wit: selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes or conviction of a violation of any federal or state law regulating the possession, distribution, or use of any drug.

Such acts, conduct and/or omissions as listed in paragraphs 1, 2, 4 and 5 individually and/or collectively constitute violations of Ohio Revised Code 4731.22(B)(6) to wit: a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circusmtances, whether or not actual injury to a patient is established.

Such acts, conduct and/or omissions as listed in paragraph 4(a), (b), and (c) constitute a violation of Ohio Revised Code Section 4731.22(B)(16) to wit: violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board, specifically Section 4731.41, Ohio Revised Code, provides, "No personshall practice medicine or surgery...without a certificate from the state medical board;"

In accordance with Chapter 119., Ohio Revised Code, you are hereby advised that you have a right to a hearing in this matter. If you wish to request such a hearing, this request must be made within thirty (30) days of the time of mailing of this notice.

September 11, 1985

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

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

Please find enclosed applicable Sections of the Ohio Revised Code for your reference.

Very truly yours,

Henry G. Cramblett, M.D.
Secretary

HGC:jmb

Enclosures:

CERTIFIED MAIL #P 569 363 273
RETURN RECEIPT REQUESTED

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43215

September 26, 1985

William Houser, D.O.
7346 Blue Ash Road
Cincinnati, Ohio 45236

Dear Doctor Houser:

Please find enclosed a certified copy of the Entry of Order, the Report and Recommendation of Peter Lancione, M.D., Member, State Medical Board of Ohio; a certified copy of the Motions by the State Medical Board, meeting in regular session on September 11, 1985, amending said Report and Recommendation as the Findings and Order of the State Medical Board.

You are hereby notified that you may appeal this Order to the Court of Common Pleas of the county in which your place of business is located, or the county in which you reside. If you are not a resident and have no place of business in this state, you may appeal to the Court of Common Pleas of Franklin County, Ohio.

To appeal as stated above, you must file a notice of appeal with the Board setting forth the Order appealed from, and the grounds of the appeal. You must also file a copy of such notice with the Court. Such notices of appeal shall be filed within fifteen (15) days after the date of mailing of this letter and in accordance with Section 119.12, Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Henry G. Cramblett by WWS

Henry G. Cramblett, M.D.
Secretary

HCG:em

Enclosures

CERTIFIED MAIL NO. P 569 361 929
RETURN RECEIPT REQUESTED

cc: Glenn V. Whitaker, Esq.

CERTIFIED MAIL NO. P 569 361 930
RETURN RECEIPT REQUESTED

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43215

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Peter Lancione, M.D., Member, State Medical Board of Ohio; and the attached copy of the Motions approved by the State Medical Board, meeting in regular session on September 11, 1985, amending said Report and Recommendation as the Findings and Order of the State Medical Board, constitutes a true and complete copy of the Findings and Order of the State Medical Board in the matter of William Houser, D.O., as it appears in the Journal of the State Medical Board of Ohio.

(SEAL)

Henry G. Cramblett, M.D.
Secretary

September 26, 1985
Date

STATE OF OHIO
THE STATE MEDICAL BOARD

IN THE MATTER OF *

*

WILLIAM HOUSER, D.O. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 11th day of September, 1985.

Upon the Report and Recommendation, a true copy of which is attached hereto and incorporated herein, of Peter Lancione, M.D., Hearing Member in this matter designated pursuant to R.C. 4731.23, which Report and Recommendation was amended 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 11th day of September, 1985.

It is hereby ORDERED:

That the license of William Houser, D.O. to practice osteopathic medicine and surgery in the State of Ohio be REVOKED on the basis of his violation of Sections 4731.22(B)(1), (2), (3) and (6).

The effective date of November 1, 1985 is placed on the Order.

(SEAL)

Henry G. Cramblett by [illegible]
Henry G. Cramblett. M.D.
Secretary

September 26, 1985
Date

STATE OF OHIO
THE STATE MEDICAL BOARD

REPORT AND RECOMMENDATION
IN THE MATTER OF WILLIAM H. HOUSER, D.O.

The matter of William H. Houser, D.O., came before me, Peter Lancione, M.D., Member of the State Medical Board of Ohio, on October 18, 1984.

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INTRODUCTION AND SUMMARY OF EVIDENCE

1. By letter of December 7, 1983, the State Medical Board of Ohio notified Dr. William H. Houser, D.O., that it proposed to take disciplinary action against his license to practice osteopathic medicine and surgery in the State of Ohio for alleged violations of the Medical Practice Act. The Board's charges stemmed from specified instances of treatment of patients and dispensing of drugs purportedly undertaken by Dr. Houser's office assistant, Ms. Janet Grieco, without the doctor's immediate supervision.

2. At the request of Dr. Houser, a hearing was held in this matter on October 18, 1984. Dr. Houser appeared at the hearing and was accompanied by his attorney, Glenn Whitaker. Mary Joseph Maxwell, Assistant Attorney General, appeared on behalf of the State.

3. Prior to presentation of the State's case, Ms. Maxwell identified the following stipulated exhibits to establish the jurisdiction of the State Medical Board in these proceedings:

   A. State's Exhibit #1 is a December 7, 1983 letter from the State Medical Board to Dr. Houser notifying him of its proposal to take disciplinary action and advising him of his right to a hearing.

   B. State's Exhibit #2 is a December 22, 1983 letter from Mr. Whitaker to the State Medical Board requesting a hearing on behalf of Dr. Houser.

   C. State's Exhibit #3 is a January 3, 1984 letter from the State Medical Board to Mr. Whitaker scheduling Dr. Houser's hearing, and then continuing the hearing on the Board's motion, pursuant to Section 119.09, Ohio Revised Code.

   D. State's Exhibit #4 is a May 17, 1984 letter from the State Medical Board to Mr. Whitaker scheduling Dr. Houser's hearing for July 12, 1984.

E. State's Exhibit #5 is a May 29, 1984 letter from Mr. Whitaker to the State Medical Board requesting a continuance of the July 12, 1984 hearing.

F. State's Exhibit #6 is a June 22, 1984 letter from the State Medical Board to Mr. Whitaker rescheduling the hearing for July 26, 1984.

G. State's Exhibit #7 is a July 11, 1984 letter from Mr. Whitaker to this Hearing Officer requesting a postponement of the July 26, 1984 hearing.

H. State's Exhibit #8 is a July 26, 1984 letter from the State Medical Board to Mr. Whitaker consenting to a continuation of the adjudication hearing.

I. State's Exhibit #9 is an August 8, 1984 letter from Mr. Whitaker to the State Medical Board requesting a continuance of the hearing scheduled for August 16, 1984.

J. State's Exhibit #10 is a letter from the State Medical Board to Mr. Whitaker rescheduling the hearing for October 4, 1984.

K. State's Exhibit #11 is an October 2, 1984 letter from the State Medical Board to Mr. Whitaker rescheduling Dr. Houser's hearing for October 18, 1984.

4. Ms. Maxwell proceeded by calling Mr. Charles Young, an investigator for the State Medical Board, as the State's first witness.

A. Mr. Young testified that he and DEA officer Bruce Koehn had gone to Dr. Houser's office on May 27, 1983. Although the doctor was not on the premises, Mr. Young and Mr. Koehn saw patients entering and leaving the office, and also observed Dr. Houser's assistant, Janet Grieco, giving a young man two packages of pills in exchange for a sum of money. They were told by the young man that he was picking up medication for his neighbor with Dr. Houser's knowledge.

B. Mr. Young further testified that he had obtained the names of patients who had visited Dr. Houser's office on that date from a sign-in sheet. He contacted several of those patients, including Ms. Sharon Street Logan and Ms. Gisela Wood. Ms. Logan and Ms. Wood both provided him with samples of the pills they were given by Ms. Grieco. Mr. Young stated that he had given the pills to Mr. Koehn for analysis.

C. In response to questioning about his observations while visiting Dr. Houser's office, Mr. Young identified State's Exhibit #12 as a photograph he had taken just prior to this hearing of a sign above Dr. Houser's door bearing the names of Dr. Houser and a Dr. Chamberlain. Mr. Young testified that he understood that Dr. Chamberlain had died in 1974.

5. Ms. Maxwell next called Mr. Bruce Koehn, who identified himself as a compliance officer assigned to the Regional Enforcement Narcotics Unit in Cincinnati, Ohio.

A. In addition to corroborating Mr. Young's testimony about the events witnessed in Dr. Houser's office in May of 1983, Mr. Koehn stated that he had conducted an inventory of the drugs maintained in Dr. Houser's office with Dr. Houser's cooperation. Notes made by Mr. Koehn were identified and admitted to the record as State's Exhibit #13 over the objections of the Respondent.

B. Mr. Koehn verified that he had been given drug samples by Mr. Young, which he had then forwarded to the Hamilton County Toxicology Lab for analysis and testing.

6. The State's next witness was Mr. Clayton Klemann, criminologist for the Hamilton County Coroner's office. Mr. Klemann provided an analysis of the drugs that were given to the lab by Bruce Koehn. The analysis, marked as State's Exhibits #14 and #15 and stipulated to by the parties, identified the pills obtained from Ms. Wood and Ms. Logan as being a Schedule III benzphetamine and a Schedule II amphetamine.

7. Ms. Maxwell proceeded by calling Ms. Gisela Wood, one of Dr. Houser's weight control patients who had been contacted by Charles Young. Ms. Wood testified that when she went to Dr. Houser's office she was usually seen by Janet Grieco, who weighed her, gave her an injection, and gave her some pills. Although she usually went to the office once or twice a month, she was only seen and examined by Dr. Houser twice a year. Ms. Wood further testified that she had not been unhappy with Dr. Houser's treatment and believed that Ms. Grieco was giving her pills pursuant to Dr. Houser's instructions. She has been taking weight control pills intermittently for three or four years whenever she feels she is gaining weight.

8. The Respondent, Dr. William H. Houser, was called as a witness by the State and testified on both cross- and direct examination.

A. He explained that a considerable part of his practice involves bariatric (weight control) patients, so he orders drugs in quantity in order to get a discount. He emphasized that he conducts a daily inventory of the drugs maintained on the premises.

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B. With regard to treatment of his patients, Dr. Houser testified that he sees his bariatric patients every three or four times they come to the office. On interim visits they are seen by one of his office assistants, whom he has trained to collect pertinent information and observe for any untoward reactions. Only enough medication to last for two weeks is dispensed at one time, and a patient will not be given additional medication unless there has been demonstrated weight loss.

C. Dr. Houser explained that the notation "DW" found in the patient records of Ms. Logan and Ms. Wood (State's Exhibits #16 and #17) stood for cyanocobalamin, also known as vitamin B-12. He testified that the designation "DO" in the patient records referred to two separate medications being dispensed to these patients stimultaneously: Didrex, a Schedule III benzphetamine, and Desoxyn (Methaphetamine Hydrochloride), a Schedule II amphetamine.

D. Dr. Houser noted that he had never had any cases of patients becoming addicted to the medication he was dispensing. He testified that, "...addiction is overplayed," and "...addiction comes from overdosage. If you take the medications as it's prescribed, we haven't had any problems." (Transcript at 114-115)

E. Dr. Houser further testified that Ms. Grieco had, in fact, dispensed prescription drugs and had given injections to patients while he was not present in the office. He stated that in doing so Ms. Grieco was acting under a "standing direction" from him.

F. In response to questioning about the sign above his office door which identifies him only as W. H. Houser, Dr. Houser testified that he is aware of the code of ethics standard requiring him to identify himself as a doctor of osteopathic medicine (D.O.), but knows of several other physicians who identify themselves only as "Doctor." He further testified that he had made an attempt to remove Dr. Chamberlain's name from the sign and had advised his patients that Dr. Chamberlain was deceased.

9. Following the administrative hearing on October 18, 1984, the testimony of Ms. Sharon Street Logan, a former patient of Dr. Houser's, was submitted by deposition.

A. Ms. Logan's testimony revealed that she had been seen by Dr. Houser for weight control for approximately one year and had lost thirty pounds during the course of her treatment.

B. Ms. Logan testified that on her initial visit to Dr. Houser's office, the doctor weighted her, checked her blood pressure, and took a blood sample. She did not recall if the doctor had given her an injection or any pills on that date. She stated that she did not see Dr. Houser again after that first visit.

P.05

C. Ms. Logan further testified that on her subsequent weekly visits to the office she was seen and weighed by one of Dr. Houser's employees. She was given an injection and a package of twenty-eight pills bi-monthly. She did not know the names of the drugs she was receiving.

10. In addition to those already noted, the following exhibits were identified and admitted to the record:

A. Respondent's Exhibit A, B and C are copies of complaints filed by Charles Young against Janet Grieco in Hamilton County Municipal Court charging her with illegal practice of medicine.

B. Respondent's Exhibit D is the affidavit of Audrey Sherman, a patient of Dr. Houser's who was contacted by Charles Young.

C. Respondent's Exhibit E is the affidavit of Edith Blaise, a patient of Dr. Houser's who was contacted by Charles Young.

D. Respondent's Exhibit F is an excerpt of the Court proceedings in Hamilton County stemming from the charges brought against Janet Grieco by Charles Young.

E. Respondent's Exhibits G, H and I are pamphlets given by Dr. Houser to each bariatric patient to explain the course of treatment.

F. Respondent's Exhibit J is a document recording incoming inventory of drugs ordered by Dr. Houser.

G. Respondent's Exhibit K is a record of drugs distributed to Dr. Houser's patients.

H. Respondent's Exhibit L is a running inventory of all scheduled drugs maintained in Dr. Houser's office.

I. Respondent's Exhibit M is a record prepared by Dr. Houser of bariatric patients whose weight loss relieved other pathologies.

J. Respondent's Exhibit N is a graph prepared by Dr. Houser showing effectiveness comparisons between drugs and weight loss.

K. Respondent's Exhibit O is an excerpt from the International Journal of Obesity discussing the use of anoretic drugs for weight loss.

L. Respondent's Exhibit P is an excerpt from the "Journal of the American Geriatric Society" discussing the effectiveness of anorectic drugs.

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M. Respondent's Exhibit Q is an excerpt from the "Journal of Clinical Psychiatry" discussing the effectiveness of anorectic drugs.

N. Respondent's Exhibit R is a transcript excerpt from the Grieco trial containing the testimony of Clara Bumgardner, Dr. Houser's former office assistant.

O. Respondent's Exhibit S is an affidavit from Hazel Holt, a patient of Dr. Houser's.

P. Respondent's Exhibits T, U, V and W are drug company publications describing Desoxyn, one of the medications Dr. Houser dispenses to his bariatric patients.

FINDINGS OF FACT

1. On or about May 27, 1983, Dr. William H. Houser permitted his unlicensed office assistant, Janet Grieco, to weigh, inject, and dispense pills to patients Gisela Wood and Sharon Street Logan while he was not on the premises.

2. The pills dispensed to Ms. Wood and Ms. Logan by Janet Grieco were found to be Didrex, a Schedule III benzphetamine, and Desoxyn (methamphetamine hydrochloride), a Schedule II amphetamine.

3. Although Ms. Wood and Ms. Logan were given cyanocobalamin (B-12) injections, Didrex and Desoxyn by one of Dr. Houser's unlicensed office assistants on a monthly or bi-monthly basis, neither patient was personally seen by Dr. Houser more frequently than twice a year.

4. Dr. William H. Houser's patient records concerning Sharon Street and his explanation of the notations made thereon reveal that Ms. Street was dispensed amphetamine and benzphetamine from May, 1982 through December, 1982, as well as in April and May of 1983.

5. Dr. William H. Houser's patient records concerning Gisela Wood and his explanation of the notations made thereon reveal that Ms. Wood was dispensed amphetamine and benzphetamine from May, 1982 through July, 1983, although she exhibited no significant weight loss during that period.

6. By his own admission, Dr. William H. Houser routinely gave his unlicensed office assistants "standing directions" to dispense controlled substances, including Didrex and Desoxyn, to his bariatric patients. He personally saw these patients every three or four times they came to the office.

7. Dr. William H. Houser knowingly violated the American Osteopathic Association's Code of Ethics by using only the designation "D.O." in his advertising, thereby failing to identify himself as an osteopathic physician.

AUG 27 P 2:05

CONCLUSIONS

1. It is clear from the testimony and patient records of Sharon Street Logan and Gisela Wood that Dr. William Houser repeatedly permitted his unlicensed office assistants to dispense potentially addictive controlled substances to these individuals, although he did not personally direct the treatment given and did not examine either patient more than twice a year.

   These cases alone reflect practice in violation of Chapter 4731., Ohio Revised Code; yet Dr. Houser further compounds his infractions by admitting that he routinely conducts his practice in this manner, seeing patients only "every three or four times" they come to the office for evaluation and treatment and leaving "standing directions" that actually authorize his unlicensed employees to practice medicine in his stead. Dr. Houser's patients may not be dissatisfied with this arrangement. Nevertheless, it remains the responsibility of the practitioner to supervise the health care of his patients rather than opting for an easier route.

   Dr. Houser's choice of long-term treatment of his bariatric patients with combinations of amphetamines is also a source of great concern. Regardless of any non-scientific studies Dr. Houser may have conducted, the use of amphetamines as an adjunct to weight loss therapy is accepted only on a short-term basis. Continuous treatment for more than a few weeks subjects patients to potential dependency, while producing negligible results.

   The limited efficacy of amphetamines in bariatric treatment is substantiated not only by the advertising of the drug companies themselves (e.g., the Physician's Desk Reference), but also in the documentation submitted by Dr. Houser in support of his preferred course of treatment. "An Appraisal of Anorexiants in the Treatment of Obesity," offered as Respondent's Exhibit P, states, "Anorexiants should never be used on a long-term basis. ...(A)ny therapy of such value to the obese patient should not be prohibited if given under the supervision of an experienced physician who knows the indications of withdrawal." (emphasis added)

   Even if Dr. Houser were personally supervising the treatment of each patient, his ability to recognize danger signals is uncertain. His testimony that the addictive potential of amphetamines is "overplayed" and that "addiction comes from overdosage" clearly demonstrates his ignorance about the controlled substances he so freely authorizes his employees to dispense.

85 JUL 27 P 2:05

Dr. Houser's conduct of a medical practice in this manner constitutes a violation of the Medical Practice Act and presents grounds for discipline under the following statutory provisions:

A. Section 4731.22(B)(1), Ohio Revised Code, to wit: "Permitting one's name or one's certificate of registration to be used by a person, group or corporation when the individual concerned is not actually directing the treatment given."

B. Section 4731.22(B)(2), Ohio Revised Code, to wit: "Failure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease."

C. Section 4731.22(B)(3), Ohio Revised Code, to wit: "Selling, prescribing, giving away or administering drugs for other than legal and legitimate therapeutic purposes...."

D. Section 4731.22(B)(6), Ohio Revised Code, to wit: "A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established."

2. By his own admission, Dr. William H. Houser knowingly violated the American Osteopathic Association's code of ethics by using only the designation "doctor" in his advertising, thereby failing to identify himself as an osteopathic physician. This course of action constitutes a violation of the Medical Practice Act and presents grounds for discipline under the following statutory provisions:

A. Section 4731.22(B)(5), Ohio Revised Code, to wit; "...publishing a false, fraudulent, deceptive, or misleading statement."

B. Section 4731.22(B)(14), Ohio Revised Code, to wit: "The violation of any provision of a code of ethics of a national professional organization...."

3. It appears from Dr. Houser's testimony and from the photographic evidence contained in the record that Dr. Houser made a good faith effort to remove the name of Dr. Chamberlain from his office sign. Further, the record contains no evidence that Dr. Houser was conducting an office, "in the name of some person who has a certificate to practice medicine or surgery," as that clause is used in Section 4731.41, Ohio Revised Code. Consequently, I have concluded that the allegation that Dr. Houser's advertising constitutes a violation of Section 4731.22(B)(16), Ohio Revised Code, is without merit.

PROPOSED ORDER

1. On the basis of his violation of Sections 4731.22(B)(1), (2), (3) and (6), it is hereby ORDERED that the license of William H. Houser, D.O., to practice medicine and surgery in the State of Ohio be revoked. Such revocation is stayed, and said license is hereby suspended for a period of ninety days, to be followed by a probationary term of two years upon the following conditions:

   a. Dr. Houser shall obey all laws and all rules governing the practice of medicine in Ohio.

   b. At the start of the probationary term, Dr. Houser shall surrender his D.E.A. permit for a minimum of twelve (12) months, and shall not engage in the practice of medicine until he provides documentary proof of that surrender to the Board. Dr. Houser shall not reapply for a D.E.A. permit until he has received written permission to do so from the Board.

   c. Dr. Houser shall appear in person for interviews before the full Board or its designated representative at three month intervals or as otherwise directed by the Board.

   d. Dr. Houser shall submit quarterly reports under penalty of perjury stating whether there has been compliance with all of the conditions of probation.

   e. In the event that Dr. Houser should leave Ohio to reside or to practice outside the State, he must notify the State Medical Board in writing of the dates of departure or return. Periods of time spent outside Ohio will not apply to the reduction of this probationary term.

   f. If Dr. Houser violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may set aside the stay order and impose the revocation of Dr. Houser's medical certificate.

   g. Upon successful completion of probation, Dr. Houser's certificate will be fully restored.

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2. On the basis of his violation of Sections 4731.22(B)(5) and (B)(14), Ohio Revised Code, it is hereby ORDERED that Dr. William H. Houser be reprimanded. Hereafter, Dr. Houser shall comport with the dictates of the American Osteopathic Association's code of ethics concerning identification as an osteopathic physician, as codified under Ohio law.

This Order shall become effecive as determined by the State Medical Board of Ohio.

Peter Lancione M.D.

Peter Lancione, M.D.
Hearing Member
State Medical Board of Ohio

'85 AUG 27 P 2:05

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43266-0315

EXCERPT FROM THE MINUTES OF SEPTEMBER 11, 1985

REPORT AND RECOMMENDATION IN THE MATTER OF WILLIAM HOUSER, D.O.

Ms. Yale and Ms. Thompson remained out of the room. Mr. Culley left the room at this time.

Dr. Rauch asked if each member of the Board received, read, and considered the hearing record, the proposed findings and order, and any objections filed to the proposed findings and order in the matter of William Houser, D.O. A roll call was taken:

ROLL CALL:	Dr. Cramblett	- aye
	Dr. Lancione	- aye
	Dr. O'Day	- aye
	Dr. Buchan	- aye
	Dr. Lovshin	- aye
	Ms. Rolfes	- aye
	Dr. Oxley	- aye
	Dr. Barnes	- abstain
	Dr. Stephens	- aye

.....

MS. ROLFES MOVED TO MODIFY DR. LANCIONE'S ORDER IN THE ABOVE MATTER TO STATE:

IT IS HEREBY ORDERED THAT THE LICENSE OF WILLIAM HOUSER, D.O. TO PRACTICE OSTEOPATHIC MEDICINE AND SURGERY IN THE STATE OF OHIO BE REVOKED ON THE BASIS OF HIS VIOLATION OF SECTIONS 4731.22(B)(1), (2), (3) AND (6).

DR. LOVSHIN SECONDED THE MOTION. A discussion followed.

.....

A roll call vote was taken on Ms. Rolfes' motion:

ROLL CALL VOTE:	Dr. Cramblett	- aye
	Dr. Lancione	- nay
	Dr. O'Day	- aye
	Dr. Buchan	- abstain
	Dr. Lovshin	- aye
	Ms. Rolfes	- aye
	Dr. Oxley	- aye
	Dr. Barnes	- abstain
	Dr. Stephens	- aye

The motion carried.

DR. CRAMBLETT MOVED TO APPROVE AND CONFIRM DR. LANCIONE'S FINDINGS OF FACT, CONCLUSIONS, AND THE AMENDED ORDER IN THE MATTER OF WILLIAM HOUSER, D.O.. DR. STEPHENS SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- aye
	Dr. Lancione	- nay
	Dr. O'Day	- aye
	Dr. Buchan	- abstain
	Dr. Lovshin	- aye
	Ms. Rolfes	- aye
	Dr. Oxley	- aye
	Dr. Barnes	- abstain
	Dr. Stephens	- aye

The motion carried.

DR. LOVSHIN MOVED THAT AN EFFECTIVE DATE OF NOVEMBER 1, 1985 BE PLACED ON THE ORDER. DR. STEPHENS SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- aye
	Dr. Lancione	- nay
	Dr. O'Day	- aye
	Dr. Buchan	- aye
	Dr. Lovshin	- aye
	Ms. Rolfes	- aye
	Dr. Oxley	- aye
	Dr. Barnes	- abstain
	Dr. Stephens	- aye

The motion carried.

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43215

December 7, 1983

William H. Houser, D.O.
7346 Blue Ash Avenue
Cincinnati, OH 45236

Dear Doctor Houser:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine under the provisions of Section 4731.22, Ohio Revised Code, whether or not to limit, reprimand, revoke, suspend, place on probation, refuse to register, or reinstate your certificate to practice osteopathic medicine and surgery for one or more of the following reasons:

1. On or about May 27, 1983, you allowed Janet Grieco, your office assistant, to be in charge of your medical office located at 1815 West Galbraith Road, Cincinnati, Ohio. On said day, Janet Grieco, under your direction, saw around twenty (20) of your patients. Acts performed included examination of the patients and dispensing of drugs. You were not present at the office during these patient visits.

Your acts, conduct, or omissions, as described above, individually or collectively, constitute, "Permitting one's name or one's certificate of registration to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given," as that clause is used in Section 4731.22(B)(1), Ohio Revised Code.

Your acts, conduct, or omissions, as described above, individually or collectively, constitute, "Failure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as one or all of those clauses are used in Section 4731.22(B)(2), Ohio Revised Code.

Further, your acts, conduct, or omissions as described above, individually or collectively, constitute, "Selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes...," as that clause is used in Section 4731.22(B)(3), Ohio Revised Code.

Further, your acts, conduct, or omissions, as described above, individually or collectively, constitute, "A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

2. In particular, on or around May 27, 1983, Janet Grieco saw Patient #1 and Patient #2, identified in the attached key (to be withheld from public disclosure), in your office. She weighed them and then gave each of them about fourteen (14) tablets of Didrex, a Schedule III controlled substance, and about fourteen tablets of Dexampex, a Schedule II controlled substance. She also administered a subcutaneous shot to them. Both patients had not been examined or seen by you for around one year.

Your acts, conduct, or omissions, as described above, individually or collectively, constitute, "Permitting one's name or one's certificate of registration to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given," as that clause is used in Section 4731.22(B)(1), Ohio Revised Code.

Your acts, conduct, or omissions, as described above, individually or collectively, constitute, "Failure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as one or all of those clauses are used in Section 4731.22(B)(2), Ohio Revised Code.

Further, your acts, conduct, or omissions as described above, individually or collectively, constitute, "Selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes...," as that clause is used in Section 4731.22(B)(3), Ohio Revised Code.

Further, your acts, conduct, or omissions, as described above, individually or collectively, constitute, "A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

3. From the period of around April 24, 1974 to July 18, 1983, you dispensed amphetamines to Patient #1. From the period of around May 6, 1982 to May 27, 1983, you dispensed amphetamines to Patient #2. On the patient records for Patient #1 and Patient #2, you abbreviated the drugs dispensed, and they are designated as follows:

Patient No.	Date	Substance
1	04/24/74	DW
	04/24/74	DO
	06/06/79	DW
	06/06/79	DO
	07/16/79	DW
	07/16/79	DO
	10/10/79	DW
	10/10/79	DO
	11/10/79	DW
	11/10/79	DO
	12/26/79	DW
	12/26/79	DO

Patient No.	Date	Substance
1 (Con't)	05/24/82	DW
	05/24/82	DO
	06/21/82	DW
	06/21/82	DO
	07/12/82	DW
	07/12/82	DO
	08/02/82	DW
	08/02/82	DO
	09/08/82	DW
	09/08/82	DO
	10/18/82	DW
	10/18/82	DO
	11/03/82	DW
	11/03/82	DO
	11/23/82	DW
	11/23/82	DO
	12/20/82	DW
	12/20/82	DO
	01/12/83	DW
	01/12/83	DO
	02/07/83	DW
	02/07/83	DO
	03/04/83	DW
	03/04/83	DO
	03/23/83	DW
	03/23/83	DO
	04/11/83	DW
	04/11/83	DO
	05/04/83	DW
	05/04/83	DO
	05/27/83	DW
	05/27/83	DO
	06/15/83	DW
	06/15/83	DO
	06/29/83	DW
	06/29/83	DO
	07/18/83	DW
	07/18/83	DO

Patient No.	Date	Substance
2	05/06/82	DW
	05/06/82	Meth 10
	05/17/82	DW
	05/24/82	DW
	05/24/82	Meth 10
	06/02/82	DW
	06/07/82	DW
	06/07/82	Meth 10
	06/14/82	DW
	06/21/82	DW
	06/21/82	Meth 10
	06/28/82	DW
	07/07/82	DW
	07/07/82	DO
	07/12/82	DW
	07/19/82	DW
	07/19/82	DO
	08/02/82	DW
	08/02/82	DO
	08/16/82	DW
	08/16/82	DO
	08/30/82	DW
	08/30/82	DO
	11/15/82	DW
	11/15/82	DO
	12/01/82	DW
	12/01/82	DO
	04/22/83	DW
	04/22/83	DO
	05/09/83	DW
	05/09/83	DO
	05/27/83	DW
	05/27/83	DO

Your acts, conduct, or omissions, as described above, individually or collectively, constitute, "Failure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as one or all of those clauses are used in Section 4731.22(B)(2), Ohio Revised Code.

Further, your acts, conduct, or omissions, as described above, individually or collectively, constitute, "Selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes...," as that clause is used in Section 4731.22(B)(3), Ohio Revised Code.

Further, your acts, conduct, or omissions, as described above, individually or collectively, constitute, "A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

4. The sign outside your office door states, "Dr. Chamberlain, Dr. W. H. Houser, Physicians & Surgeons." In fact, Dr. S. A. Chamberlain died in or around 1976.

   Such advertising constitutes, "Publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

   Further, such advertising constitutes a violation of Section 4731.22(B)(16), Ohio Revised Code, in that it is a violation of Section 4731.41, Ohio Revised Code, to wit: "...no person shall conduct an office in the name of some person who has a certificate to practice medicine or surgery..."

   Further, such advertising constitutes "The violation of any provision of a code of ethics of a national professional organization..." as that clause is used in Section 4731.22(B)(14), Ohio Revised Code. The American Osteopathic Association's Code of Ethics states that it is not proper and is misleading to use only the designation, Dr., with your name; your osteopathic identification should be included.

Pursuant to Chapter 119., Ohio Revised Code, please be advised that you may request a hearing on this matter. If you wish to request such a hearing, that request must be made within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such a hearing in person, or by your attorney, or you may present your position, arguments, or contentions in writing, or that at the hearing you may present evidence and examine witnesses appearing for or against you.

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

Copies of all referenced statutes are enclosed.

Very truly yours,

Leonard L. Lovshin M.D.

Leonard L. Lovshin, M.D.
Acting-Secretary

LLL:jmb

Enclosures:

CERTIFIED MAIL #P347 350 276
RETURN RECEIPT REQUESTED