

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

JAMES F. McKEEVER, D.O. )  
Appellant ) CASE NO. 110714  
-vs- ) JUDGE BURT W. GRIFFIN  
STATE OF OHIO )  
THE STATE MEDICAL BOARD )  
Appellee ) CONSENT ENTRY

It is hereby agreed by and between the parties that a Consent Order shall be issued and that the Order is based upon the following stipulations:

- 1) Appellant is permitted to practice Osteopathic Medicine in the State of Ohio from the retroactive date of June 5, 1986 until September 1, 1986.
- 2) Appellant must voluntarily surrender his Drug Enforcement Administration License as of June 5, 1986, a condition which has been satisfied as of the date of this Entry.
- 3) Appellant may neither prescribe nor dispense controlled substances in his practice of medicine between the dates of June 5, 1986 and September 1, 1986.
- 4) Appellant must voluntarily retire from the practice of medicine on September 1, 1986, and he may never reapply for a medical license in the State of Ohio.
- 5) Appellant may not apply to any other state for a medical license between June 5, 1986 and September 1, 1986.

It is further agreed that upon satisfaction of the above-noted conditions, the instant appeal will hereby be dismissed and the ninety (90) day Stay Order will expire on September 1, 1986.

Costs shall be paid by Appellant.

IT IS SO ORDERED.

\_\_\_\_\_  
JUDGE BURT W. GRIFFIN

APPROVED BY:

Mark A. Stanton  
MARK A. STANTON, ATTORNEY FOR APPELLANT

Mary Joseph Maxwell  
MARY JOSEPH MAXWELL, ATTORNEY FOR APPELLEE

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IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

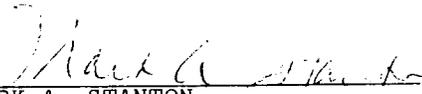
JAMES F. McKEEVER, D.O.	)	CASE NO.:
25929 Euclid Avenue	)	
Euclid, Ohio 44132	)	
	)	
Appellant	)	
	)	
-vs-	)	JUDGE
	)	
STATE OF OHIO	)	
THE STATE MEDICAL BOARD	)	
65 South Front Street, Suite 510	)	
Columbus, Ohio 43216	)	
	)	<u>MOTION TO STAY ORDER OF</u>
Appellee	)	<u>ADMINISTRATIVE AGENCY</u>

Now comes the Appellant, James F. McKeever, by and through his Counsel, Mark A. Stanton, and hereby moves this Honorable Court for an Order which Stays the Implementation of the May 14, 1986 Order of Appellee wherein the Medical Board mandated a one (1) year suspension of Appellant's License, among other restrictions, to practice Osteopathic Medicine in the state of Ohio, said Order to be implemented as of May 31, 1986. (See attached Exhibits A and A-1).

This Motion has been filed by Appellant because the imposition of Appellee's Order would create an unusual hardship for Appellant and a Stay of said Order will not endanger the health, welfare and safety of the public at large. The rationale for such a Motion is contained in the Memorandum which is attached hereto and incorporated herein by reference.

ORAL HEARING REQUESTED.

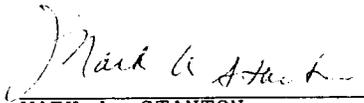
Respectfully submitted,

  
 MARK A. STANTON  
 GARDNER, MCGINTY & STANTON  
 1276 West Third St. #409  
 Cleveland, Ohio 44113  
 (216) 621-5900

Counsel for Appellant

S E R V I C E

A copy of the foregoing Motion to Stay was sent by Certified  
Mail this 28<sup>th</sup> day of May, 1986 to Ms. Mary Joseph Maxwell,  
Assistant Attorney General, 30 East Broad Street, 17th Floor,  
Columbus, Ohio 43215.



MARK A. STANTON

ATTORNEY FOR APPELLANT

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MEMORANDUM

The appeal of an Administrative Order is authorized by the language of Section 119.12, Ohio Revised Code. More specifically, an appeal from an order promulgated by the Ohio State Medical Board may be suspended by the applicable Court of Common Pleas if certain prerequisites delineated in Section 119.12, O.R.C. are satisfied.

In pertinent part, Section 119.12, O.R.C. states:

".....In the case of an appeal from the State Medical Board, the court may grant a suspension and fix its terms if it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order pending determination of the appeal and the health, safety, and welfare of the public will not be threatened by suspension of the order..."

A review of this portion of the statute reveals two (2) salient factors which must be presented to validate an order of suspension: (1) unusual hardship to Appellant and (2) no threat to health, welfare and safety of the public.

In the first instance, the execution of the Medical Board's Order will place Appellant in a position whereby he cannot support himself and his wife on an economic level which is consistent with the mere avoidance of welfare or public assistance. A perusal of Appellant's Affidavit reveals few, if any, assets which would permit Appellant and his wife to live in a fashion which could be termed as "marginally self-sufficient". (See attached Exhibit B to B-1).

In this regard, Appellant has always been a sole practitioner who has not shared in the profits of a professional association, partnership or corporation. Appellant's practice has been characterized by the local nature of his clientele and it has never exceeded ten (10) to fifteen (15) patients per day during its existence for the past thirty (30) years in Euclid, Ohio.

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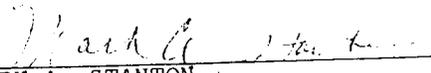
On a parallel note, Appellant's wife does not possess extensive employment experience which would facilitate her transition to a high salaried position. In truth, Mrs. McKeever has assisted Appellant for the past five (5) years as a receptionist, but she was primarily occupied with the responsibilities of a housewife prior to her present employment.

In short, an immediate execution of the Agency's Order would create a simultaneous loss of employment and income for Appellant and his wife. In light of each individual's inability to secure and adapt to new employment at this stage of their lives, the resulting hardship would be unusual, if not devastating.

The second condition relates the danger, real or potential, which a suspension of the Order would create for the public. Simply stated, a suspension creates no danger when an overview of Appellant's prior and present practice is presented to the Court.

Although these matters will be presented at the hearing of the matter, it should be noted that Appellant has never been subjected to criminal prosecution and/or investigations during his thirty-two (32) years of active practice, nor has he ever been the subject of a Civil Malpractice Suit during the same period.

The transition is apparent. An interrelation of the foregoing facts with the relevant statutory authority dictates that a suspension of Appelle's Order is authorized. It is respectfully requested that this Honorable Court concur in this perception and issue a Suspension Order forthwith.

  
MARK A. STANTON  
GARDNER, MCGINTY & STANTON  
1276 West Third St. #409  
Cleveland, Ohio 44113  
(216) 621-5900

COUNSEL FOR APPELLANT

STATE OF OHIO  
THE STATE MEDICAL BOARD  
Suite 510  
65 South Front Street  
Columbus, Ohio 43226-0315

May 22, 1986

James F. McKeever, D.O.  
25929 Euclid Avenue  
Euclid, Ohio 44132

Dear Doctor McKeever:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Leonard L. Lovshin, M.D., Hearing Member, State Medical Board of Ohio; a certified copy of the Motion by the State Medical Board, meeting in regular session on May 14, 1986, approving and confirming 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 wus*  
Henry G. Cramblett, M.D.  
Secretary

HGC:em

Enclosures

CERTIFIED MAIL NO. P 569 365 686  
RETURN RECEIPT REQUESTED

cc: Mark A. Stanton, Esq.  
Attorney at Law  
1276 West Third St., #409  
Cleveland, Ohio 44113

CERTIFIED MAIL NO. P 569 365 687  
RETURN RECEIPT REQUESTED

STATE OF OHIO  
THE STATE MEDICAL BOARD  
Suite 510  
65 South Front Street  
Columbus, Ohio 43226-0315

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 Leonard L. Lovshin, M.D., Hearing Member of the State Medical Board of Ohio; and the attached copy of the Motion by the State Medical Board, meeting in regular session on May 14, 1986, approving and confirming 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 James F. McKeever, D.O., as it appears in the Journal of the State Medical Board of Ohio.

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

(SEAL)

Henry G. Oramblett, M.D.  
Henry G. Oramblett, M.D.  
Secretary

May 22, 1986  
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF                   \*  
  \*  
JAMES F. MCKEEVER, D.O.        \*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 14th day of May, 1986.

Upon the Report and Recommendation of Leonard L. Lovshin, M.D., Hearing Member in this matter designated pursuant to R.C. 119.09, a true copy of which is attached hereto and incorporated herein, which Report and Recommendation was approved and confirmed 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 14th day of May, 1986.

It is hereby ORDERED:

That the license of James F. McKeever, D.O., to practice osteopathic medicine and surgery in the State of Ohio be REVOKED. Such revocation is stayed and said license is hereby SUSPENDED for a minimum period of one (1) year, to be followed by a probationary term of five (5) years, upon the following terms and conditions:

1. Dr. McKeever shall obey all federal, state and local laws and all rules governing the practice of medicine in Ohio.
2. Dr. McKeever shall immediately surrender his D.E.A. permit and shall hereafter not reapply for or hold same. Dr. McKeever shall not engage in the practice of medicine until he has provided documentary proof of that surrender to the Board.
3. Prior to reinstatement of his medical license, Dr. McKeever shall sit for and pass the clinical competency portion (FLEX Component 2) of the Ohio examination for medical licensure.
4. Dr. McKeever shall submit quarterly declarations under penalty of perjury stating whether there has been compliance with all conditions of probation.
5. Dr. McKeever shall appear for interviews before the full Board or its designated representative at three (3) month intervals or as otherwise requested by the Board.

JAMES F. MCKEEVER, D.O.

ENTRY OF ORDER

6. In the event that Dr. McKeever should leave Ohio for three continuous months, or to reside or to practice outside the State, Dr. McKeever must notify the State Medical Board in writing of the dates of departure or return. Period of time spent outside of Ohio will not apply to the reduction of this probationary period.
7. If Dr. McKeever violates any conditions of probation, whether during suspension or probation, the Board, after giving Dr. McKeever notice and the opportunity to be heard, may set aside the stay order and impose the revocation of his medical certificate.
8. Upon successful completion of probation, Dr. McKeever's license to practice medicine and surgery will be restored, but shall be LIMITED in that Dr. McKeever shall be forever ineligible to apply for or hold a Drug Enforcement Administration certification to prescribe, administer, or dispense controlled substances.

An effective date of May 31, 1986, is hereby placed on this ORDER.

(SEAL)

Henry G. Cramblett HGW  
Henry G. Cramblett, M.D.  
Secretary

May 22, 1986

\_\_\_\_\_  
Date

STATE OF OHIO  
THE STATE MEDICAL BOARD

REPORT AND RECOMMENDATION  
IN THE MATTER OF JAMES F. MCKEEVER, D.O.

The matter of James F. McKeever, D.O., came before me, Leonard L. Lovshin, M.D., Member of the State Medical Board of Ohio, on October 29, and December 5, 1985.

INTRODUCTION AND SUMMARY OF EVIDENCE

1. By letter of August 25, 1985, the State Medical Board notified James F. McKeever, D.O., that it proposed to take disciplinary action against his license to practice medicine and surgery in the State of Ohio. The Board's proposal was based upon allegations regarding Respondent's treatment of Gary Stephen Webb, a patient under Respondent's care. Dr. McKeever was advised that these allegations posed potential violations of the Medical Practice Act, to wit:
  - A. Section 4731.22(B)(2), Ohio Revised Code, "failure to use reasonable discrimination in the administration of drugs" and "failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease."
  - B. Section 4731.22(B)(3), Ohio Revised Code, "selling, prescribing, giving away or administering drugs for other than legal and legitimate therapeutic purposes."
  - C. Section 4731.22(B)(6), Ohio Revised Code, "a departure from, or the failure to conform to minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established."
2. By letter dated September 6, 1985, Dr. McKeever requested a hearing on the Board's proposed action through his attorney, Leo Amirault. Mr. Amirault appeared at a scheduled hearing on October 29, 1985, and disqualified himself as counsel for the doctor due to a possible conflict of interest. Continuances were granted until December 5, 1985, to allow Dr. McKeever to obtain new counsel and to adequately prepare his case, with the stipulation that Dr. McKeever would not prescribe, dispense or administer any controlled substances during the interim period.

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3. Dr. McKeever was present at the December 5, 1985, hearing and was accompanied by his attorney, Mark A. Stanton. Assistant Attorney General Mary Joseph Maxwell appeared on behalf of the State.
4. The following exhibits were marked and admitted into the record during the proceeding on behalf of the State:
  - A. State's Exhibits #1, #7 and #14: Pill packages marked with the doctor's name, office address, and instructions for administration, and bearing the code "PNY"
  - B. State's Exhibits #2, #8 and #15: Pill packages marked with the doctor's name, office address, and instructions for administration, and bearing the code "PDP"
  - C. State's Exhibits #3, #9 and #16: Pill packages marked with the doctor's name, office address, and instructions for administration, and bearing the code "L-1"
  - D. State's Exhibit #4: Booklet entitled, "The Lighter Side of Life," a guide to be used in a weight reduction program
  - E. State's Exhibit #5: Photocopy of the receipt for ninety dollars, payment received from Steve Webb for a December 18, 1984, visit to Dr. McKeever
  - F. State's Exhibit #6: Dr. McKeever's business card noting a January 15, 1985 appointment for Steve Webb
  - G. State's Exhibit #10: Pill package with the doctor's name, office address, and instructions for administration, and bearing the code "HD-1"
  - H. State's Exhibit #11: Pill package with the doctor's name, office address, and instructions for administration, and bearing the code "PH-1"
  - I. State's Exhibit #12: Photocopy of a receipt for thirty-five dollars indicating payment received by Dr. McKeever from Steve Webb for a January 21, 1985, visit
  - J. State's Exhibit #13: Dr. McKeever's business card noting a February 18, 1985 appointment for Steve Webb
  - K. State's Exhibit #17: Photocopy of a receipt for thirty dollars indicating payment received by Dr. McKeever from Steve Webb for a February 18, 1985, visit
  - L. State's Exhibit #18: Marked envelope containing 110 yellow pills

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- M. State's Exhibit #19: Marked envelope containing 27 white pills
- N. State's Exhibit #20: Marked envelope containing 83 yellow capsules
- O. State's Exhibit #21: Marked envelope containing 68 pink pills
- P. State's Exhibit #22: Marked envelope containing 28 peach-colored pills
- Q. State's Exhibit #23: Marked envelope containing miscellaneous pill fragments
- R. State's Exhibit #24A: August 26, 1985, citation letter from the State Medical Board of Ohio to James F. McKeever, D.O.
- S. State's Exhibit #24B: September 9, 1985, letter to the State Medical Board from Dr. McKeever, requesting a hearing
- T. State's Exhibit #24C: September 11, 1985, letter to Dr. McKeever from the State Medical Board advising that the hearing had been scheduled and postponed pursuant to Section 119.09, Ohio Revised Code
- U. State's Exhibit #24D: September 17, 1985, letter to Dr. McKeever from the State Medical Board scheduling his hearing for October 22, 1985
- V. State's Exhibit #24E: September 26, 1985, letter to the Board from Leo Amirault, Esq., noting his representation of the doctor and requesting a continuance
- W. State's Exhibit #24F: October 7, 1985, letter to Mr. Amirault from the State Medical Board continuing the hearing to October 29, 1985
- X. State's Exhibit #24G: November 3, 1985, letter to Dr. McKeever from the State Medical Board rescheduling the hearing to November 21, 1985, to afford him time to seek new counsel
- Y. State's Exhibit #24H: November 13, 1985, letter to the State Medical Board from Mark Stanton, Esq., noting his representation of the doctor and requesting a continuance
- Z. State's Exhibit #24I: Joint Entry dated November 20, 1985

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5. The following exhibits were marked and admitted to the record during the proceeding on behalf of the Respondent:
- A. Respondent's Exhibit A: Typed page entitled "Suggested Exercise Program" and bearing Dr. McKeever's name and address
  - B. Respondent's Exhibit B: Four-page printed document entitled "1000 Calorie Diet"
  - C. Respondent's Exhibit C: Patient information sheet for Steve Webb listing dates seen, measurements, and medications
  - D. Respondent's Exhibit D: Patient history sheet for Steve Webb
  - E. Respondent's Exhibit E: November 27, 1985 letter from William and Kathryn Pennybacker to the State Medical Board regarding Dr. McKeever's care
  - F. Respondent's Exhibit F: December 2, 1985, letter from John Costa to the State Medical Board regarding Dr. McKeever's care
  - G. Respondent's Exhibit G: Laboratory results from Clinical Health Laboratories, Inc., for blood tests performed on Steve Webb
  - H. Respondent's Exhibit H: Photocopy of patient information sheet for Steve Webb
  - I. Respondent's Exhibit I: Photocopy of an EKG tape
  - J. Respondent's Exhibit J: Photocopy of account record
6. Ms. Maxwell proceeded by calling Gary Stephen Webb, who testified on both direct and cross-examination as follows:
- A. That he is employed as a reporter for the Cleveland Plain Dealer.
  - B. That he had called Dr. McKeever's office several days before December 18, 1984, and told the receptionist that his name was Stephen Webb, that he was a law student, and that he wanted to lose weight.
  - C. That he had gone to Dr. McKeever's office on December 18, 1984, and alleged the following occurred:
    - 1. That he was weighed, his blood pressure was measured, an EKG was performed, his ears, nose and throat were examined, and blood and urine samples were taken.

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2. That Dr. McKeever had told him he did not look like he needed to lose any weight, but that Mr. Webb had replied that he felt fat. He further testified that Dr. McKeever had told him, "...this seems like an expensive way to lose a couple of pounds." (Transcript at 21)
  3. That Dr. McKeever had consulted some charts and given him three packages marked with the doctor's name, office address, instructions for administration, and the codes "PNY", "PDP" and "L-1."
  4. That Dr. McKeever had given him a booklet called "The Lighter Side of Life," a sheet entitled "Suggested Exercise Program" and a pamphlet labeled "1000 Calorie Diet," and he was told to read them. He alleged that neither calorie intake nor what the pills were was discussed, and that on subsequent visits he was never asked if he had read the materials or performed the exercises.
  5. That he and the doctor had agreed that 165 pounds was a good weight for his build, although he never achieved it.
  6. That his clothes were not removed when the various testing was done.
  7. That the receptionist told him the pills he had been given would last for 28 days and that after they ran out he should "come back and get some more." (Transcript at 65)
  8. That he was given a bill for that visit and Dr. McKeever's business card with the next appointment noted.
- D. That he returned to Dr. McKeever's office a second time on or about January 15, 1985, and alleged that the following occurred:
1. He was weighed and his blood pressure was taken, after which he was told he had high blood pressure.
  2. That Dr. McKeever told him his blood pressure was "pretty bad" and stated, "I am going to give you something to slow you down." (Transcript at 31)
  3. That he was given five pill packages, marked as before and bearing the codes "PNY", "PDP", "L-1", "HD-1" and "PH-1." The packages did not identify the pills by name.
  4. That he was given a receipt for his payment for the visit and a business card indicating his next appointment.

- E. That he returned to Dr. McKeever's office a third time on February 18, 1985, and alleged the following:
1. That his weight and blood pressure were taken and recorded and that he had still not lost weight.
  2. He was given three pill packages printed as before and bearing the codes "PNY", "PDP" and "L-1." The packages did not identify the pills by name.
  3. That he was given a receipt for his payment.
- F. That he was not given the names of the drugs dispensed to him on any of the three visits, nor was he given any indication of what the codes on the pill packages meant.
7. In response to questioning by the hearing officer, Mr. Webb testified:
- A. That he did not remove any clothing when he was examined.
  - B. That he was not informed of the results of the blood sample analysis.
  - C. That Dr. McKeever did not examine his neck, abdomen, genitalia or the strength in his extremities.
  - D. That Dr. McKeever mentioned that one of the pills was for the thyroid gland.
8. Ms. Maxwell continued by calling Dr. McKeever, who testified on cross-examination as follows:
- A. That his office has been at the same location since 1962, and that approximately 50 percent of his patients are being treated for weight control.
  - B. That he uses the following internal codes in his office for identifying medications:  
  
PNY- Phentermine Yellow  
PDP - Phendimetrazine Pink  
L-1 - Levothyroxine Sodium, .1 mg.  
HD-1 - Hydrodiuril, .25 mg.  
PH-1 - Phenobarbital, .15 mg.
  - C. That he dispensed Phentermine, Phendimetrazine and Levothyroxine to help Mr. Webb lose weight.

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- D. That on the second visit he told Mr. Webb that his blood pressure was elevated, noting that it was 160/80.
  - E. That he dispensed Hydrodiuril to Mr. Webb because the patient's blood pressure had remained elevated since the first visit and that "many times a mild diuretic will help bring down the pressure to a normal level." (Transcript at 103)
  - F. That he dispensed Phenobarbital as a mild tranquilizer to Mr. Webb because the patient said he was a law student and was possibly under a lot of pressure.
  - G. That the anorexics he dispensed and Phenobarbital have opposing effects. (Transcript at 105)
  - H. That according to his weight charts, Mr. Webb was approximately 11.5 pounds overweight.
  - I. That the booklet he gave to Mr. Webb (State's Exhibit #4) does state that drugs are or may be useful for weight loss during the early weeks of a weight control regimen, and that he considers three months to be within that period. (Transcript at 109)
  - J. That he is familiar with the Physician's Desk Reference and the indication therein that anorexics are only effective in a weight control regimen for a few weeks. (Transcript at 110)
9. Mr. Stanton proceeded with his case by calling Suzanne Reiman, who testified:
- A. That she is a Certified Medical Assistant.
  - B. That she worked for Dr. McKeever from July, 1984 to August, 1985.
  - C. That her duties at Dr. McKeever's office were to weigh and measure patients, take blood pressure and pulse, administer injections and complete billing.
  - D. That Mr. Webb had come to the office for weight control.
  - E. That standard procedure was to take patient histories on the "white card." She identified Respondent's Exhibits #C and #D as photocopies of Mr. Webb's history sheet.
  - F. That on Mr. Webb's second visit on January 21, 1984, she had asked him if the "nerve" pills were necessary, so that she could convey this information to the doctor.
  - G. That Dr. McKeever's reputation in the community is good.

10. Mr. Stanton then called Mr. William Bridge, who testified:

- A. That he has known Dr. McKeever since 1972 and has been a patient since 1980.
- B. That his wife had gone to Dr. McKeever for weight control on an irregular basis and that the program did not involve medication alone.
- C. That Dr. McKeever's reputation in the community is good.

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'86 APR 18 14:28 Next Mr. Stanton called Margaret Geiger, who testified:

- A. That Dr. McKeever has been her doctor for about nine years.
- B. That she has been treated by the doctor for weight control on a program including medication, a dietary plan, and an exercise plan.
- C. That Dr. McKeever had discussed the medication he dispensed to her and when it should be taken.
- D. That she was prescribed medication for weight control for as long as, "four months, perhaps." (Transcript at 154)

12. Thereafter Mr. Stanton read into the record the following letters from patients of Dr. McKeever who were unable to attend the hearing:

- A. A letter from William and Kathryn Pennybacker stating that Dr. McKeever had been their family physician for fifteen years, and that his services have been professional and superior.
- B. A letter from John Costa stating that he had met the doctor through a charitable organization, has been treated by the doctor for ten years, and remembers an incident where the doctor opened the office on Sunday for him. He commended Dr. McKeever for the timely diagnosis of his Hodgkins condition.

13. Mr. Stanton next called Dr. McKeever, who testified on direct-examination:

- A. That he is 63 years old, married, and has five children.
- B. That he graduated from the Des Moines College of Osteopathic Medicine and Surgery in 1951, and went directly into practice.
- C. That he left his practice in 1961 and took an internship at the Richmond Heights General Hospital in Richmond Heights, Ohio.
- D. That upon completion of the internship in 1962, he set up his practice in Euclid, Ohio.
- E. That he keeps current in his field through seminars and periodicals.

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- F. That it is standard procedure to take a patient's medical history and test for cholesterol triglycerides, glucose and other products of metabolism. The results of this testing are in the laboratory report.
- G. That he gave Mr. Webb the 1000 Calorie Diet sheet, the exercise sheet, and the "Lighter Side of Life" booklet. He also measured the patient's weight and, at least on the first visit, did laboratory work, a dectrocardiogram and a urinalysis, as evidenced in the account record. (Respondent's Exhibit J)
- H. That when he dispenses medication, he tells the patient what the drug is and what it will do. He testified that "each medication is gone over packet by packet." (Transcript at 176)
- I. That he told Mr. Webb what the medications were, their strength, and when they should be taken.
- J. That he noted Mr. Webb's age, the size of his chest and his pelvic size and, after checking a set of charts, determined that the patient's normal weight could be 167 pounds.
- K. That when a patient comes to the office and says he is fat, that patient is not automatically given medication. (Transcript at 180)
- L. That he did not dispense the thyroid medication (Levothyroxine sodium) because Mr. Webb had a thyroid problem, but because it is common bariatric practice to administer "small amounts of thyroid (to) enhance the individual's metabolism." (Transcript at 182)
- M. That he prescribed the Hydrodiuril because the patient's blood pressure was maintaining a systolic pressure of 160 m.Hg., which indicated a definite hypertensive condition.
- N. That he discontinued the Hydrodiuril because the patient was losing enough water and discontinued the Phenobarbital because it had no effect on Mr. Webb's blood pressure.
- O. That in his treatment of bariatric patients, it is his standard procedure to maintain patients on medication for as short as a month and, "Unless they have a gross obesity problem, probably no longer than four to five months," even if they show no significant weight loss. (Transcript at 190)
- P. That when he gave Mr. Webb the materials marked as State's Exhibit #4 and Respondent's Exhibits A and B, he told him to read them thoroughly, especially Chapter 5 of the "Lighter Side of Life," which concerns behavior modification.

- Q. That he believes he conformed to minimal standards of care, used reasonable care discrimination in the administration of drugs to Mr. Webb, and dispensed the medication for legitimate and therapeutic purposes.
14. Ms. Maxwell then cross-examined Dr. McKeever, who testified:
- A. That although it was his opinion that Mr. Webb did not need to lose weight, he prescribed medication anyway because Mr. Webb believed he needed to lose weight. He added, "I liken it to someone who might want a facelifting." (Transcript at 199)
15. In response to questioning by the hearing officer, Dr. McKeever testified:
- A. That he failed to complete the physical examination sheet with regard to skin, head, eyes, ears, nose, mouth, neck, chest, lungs, heart, rectum, abdomen, pelvis, genitals, extremities, reflexes and lymph nodes, because he only completes it when the patient is in for a general physical, and that section does not need to be filled out for prescribing amphetamine-like and thyroid-like substances. (Transcript at 202)
- B. That he is aware that for the administration of amphetamine-like Schedule III and IV medications, hypertension is a contraindication; however, he dispensed the anorexics concurrently with a known hypertensive state because he "didn't feel that (Mr. Webb) had a specific high blood pressure, per se." (Transcript at 203)
- C. That although "sedative will only slightly counter-effect the nervous irritability caused by an anorexic," it was not contraindicated in this case, because the dosage was not excessive. (Transcript at 203-204) He added that the sedative "still may have some effect with the diuretic to bring his blood pressure down..." (Transcript at 204)
- D. That although he does not overlook salt restriction in the control of hypertension, he failed to recommend it to Mr. Webb for control of high blood pressure.

#### FINDINGS OF FACT

1. James F. McKeever, D.O., dispensed the controlled substances Phentermine and Phendimetrazine, along with a thyroid medication, to his patient Gary Stephen Webb for the purpose of inducing weight loss, although he did not believe that the patient needed to lose weight.

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This fact is established by Dr. McKeever's testimony, Transcript II at pages 180, 198, 199, and 201.

2. James F. McKeever, D.O., dispensed the diuretic Hydrodiuril and the barbiturate Phenobarbital to his patient Gary Stephen Webb for the purpose of treating hypertension. These medications were dispensed to Mr. Webb in conjunction with the hypertensive substances Phentermine, Phendimetazine, and Levothyroxine.

These facts are established by Dr. McKeever's testimony, Transcript II at page 96-104.

3. Although he was aware that the controlled amphetamine-like substances Phentermine and Phendimetazine and the barbiturate Phenobarbital have opposing affects, James F. McKeever, D.O., simultaneously dispensed these medications to his patient Gary Stephen Webb because he did not believe the dosages were excessive.

This fact is established by Dr. McKeever's testimony, Transcript II at p. 204.

4. It is Dr. James F. McKeever's standard procedure to maintain his bariatric patients on anorexic medications for as short as a month and, "unless they have a gross obesity problem, probably no longer than four or five months," even if they show no significant weight loss.

This fact is established by Dr. McKeever's testimony, Transcript II at p. 190.

5. James F. McKeever, D.O., is aware of recommendations that anorexic medications are effective in a weight control regime for a few weeks, and considers three months to be within that period.

This fact is established by Dr. McKeever's testimony, Transcript II at pages 109 and 110.

#### CONCLUSIONS

In support of the claim that Dr. James F. McKeever is conducting his medical practice in a manner which violates the law, the State has offered the testimony of a single witness. Ordinarily, the limited information which that witness was able to provide might not substantiate broad allegations by the State. Yet Dr. McKeever readily admits that his treatment of Gary "Steve" Webb essentially comported with his standard method for treating bariatric patients and, in fact, suggests that such treatment is entirely appropriate. It is on the basis of these admissions, in conjunction with the testimony of Mr. Webb, that I have reached these conclusions.

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Due to their addictive nature and high abuse potential, amphetamines and amphetamine-like medications should be used as an adjunct to weight loss therapy only in cases of extreme obesity, and then only for a limited duration. It is commonly agreed that treatment with these medications should not exceed a few weeks. The booklet distributed by Dr. McKeever echoes that opinion. In spite of these warnings, Dr. McKeever has persisted in administering these scheduled substances to his bariatric patients for months at a time, even when no significant weight loss has occurred. The doctor's statement that it is his standard practice to maintain patients on medication for as short as a month and, "unless they have a gross obesity problem, probably no longer than four or five months," betrays a complete lack of understanding about the actions and efficacy of the medication he so freely dispenses.

Dr. McKeever's failure to comprehend the pharmacology of sympathomimetic drugs, as well as the potential health hazard they pose, is further evidenced by his pattern of administering medication as an automatic part of the weight control regime without first exploring other available remedies. This approach is particularly disconcerting in the case of a patient like Mr. Webb, who did not appear even by Dr. McKeever's standards to be a good candidate for bariatric therapy. Permitting a patient to influence him to provide unnecessary treatment, particularly when drugs were involved, demonstrates irresponsibility on the part of Dr. McKeever, and clearly fails to conform to minimal standards of care.

Dr. McKeever's general dispensing practices also generate concern. The doctor admits to dispensing hypertensive medications to Mr. Webb on his first visit, despite the patient's elevated blood pressure. When Mr. Webb's blood pressure remained elevated on his second visit, Dr. McKeever chose to augment the course of treatment with antihypertensives, rather than simply discontinuing the contraindicated hypertensive drugs. Dr. McKeever's explanation that the combination of stimulants and depressants was not inappropriate because the dosages were not excessive evidences an unreasonable assumption that the medications would not be misused or abused. This over-zealous dispensing is all the more disconcerting when one considers that Mr. Webb's reputed weight problem was viewed by Dr. McKeever as strictly cosmetic, rather than a legitimate threat to his health. Dispensing drugs in this manner constitutes a reckless disregard for the best interests of his patient.

For these reasons, I find James F. McKeever, D.O., in violation of Section 4731.22(B)(2), Ohio Revised Code due to his "failure to use reasonable care discrimination in the administration of drugs or other modalities for treatment of disease."

Further, I find James F. McKeever, D.O., in violation of Section 4731.22(B)(6) of the Ohio Revised Code for conducting his medical practice in a manner which constitutes "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under like or similar circumstances."

Although Dr. McKeever's dispensing practices are clearly inappropriate, there is no evidence that the doctor was involved in the sale of drugs for expressly illegal purposes. Consequently, I do not find sufficient grounds to substantiate the State's allegation that Dr. McKeever has sold, prescribed, given away, or administered drugs for other than legal and legitimate therapeutic purposes in violation of Section 4731.22(B)(3) of the Ohio Revised Code.

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PROPOSED ORDER

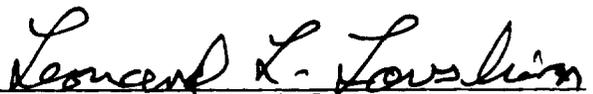
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MEDICAL BOARD

It is hereby ORDERED that the license of James F. McKeever, D.O., to practice osteopathic medicine and surgery in the State of Ohio be REVOKED.

Such revocation is stayed and said license is hereby suspended for a minimum period of one (1) year, to be followed by a probationary term of five (5) years, upon the following terms and conditions:

1. Dr. McKeever shall obey all federal, state and local laws and all rules governing the practice of medicine in Ohio.
2. Dr. McKeever shall immediately surrender his D.E.A. permit and shall hereafter not reapply for or hold same. Dr. McKeever shall not engage in the practice of medicine until he has provided documentary proof of that surrender to the Board.
3. Prior to reinstatement of his medical license, Dr. McKeever shall sit for and pass the clinical competency portion (FLEX Component 2) of the Ohio examination for medical licensure.
4. Dr. McKeever shall submit quarterly declarations under penalty of perjury stating whether there has been compliance with all conditions of probation.
5. Dr. McKeever shall appear for interviews before the full Board or its designated representative at three (3) month intervals, or as otherwise requested by the Board.
6. In the event that Dr. McKeever should leave Ohio for three continuous months, or to reside or to practice outside the state, Dr. McKeever must notify the State Medical Board in writing of the dates of departure or return. Period of time spent outside of Ohio will not apply to the reduction of this probationary period.
7. If Dr. McKeever violates any conditions of probation, whether during suspension or probation, the Board, after giving Dr. McKeever notice and the opportunity to be heard, may set aside the stay order and impose the revocation of his medical certificate.
8. Upon successful completion of probation, Dr. McKeever's license to practice medicine and surgery will be restored, but shall be LIMITED in that Dr. McKeever shall be forever ineligible to apply for or hold a Drug Enforcement Administration certification to prescribe, administer, or dispense controlled substances.

An effective date of May 31, 1986, is hereby placed on this Order.

  
Leonard L. Lovshin, M.D.  
Hearing Member  
State Medical Board of Ohio

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EXCERPT FROM THE MINUTES OF MAY 14, 1986

REPORT AND RECOMMENDATION IN THE MATTER OF JAMES F. MCKEEVER, D.O.

Dr. Rauch asked if each member of the Board had 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 James F. McKeever, D.O. A roll call was taken:

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

.....

DR. STEPHENS MOVED TO APPROVE AND CONFIRM THE FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER OF LEONARD L. LOVSHIN, M.D., IN THE MATTER OF JAMES F. MCKEEVER, D.O. MS. ROLFES SECONDED THE MOTION.

.....

Dr. Rauch indicated that he had 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 James F. McKeever, D.O.

A roll call vote was taken on Dr. Stephens' motion:

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

The motion carried.

State of Ohio  
The State Medical Board  
Suite 510  
65 South Front Street  
Columbus, Ohio 43266-0315

August 26, 1985

James F. McKeever, D. O.  
25929 Euclid Avenue  
Euclid, Ohio 44132

Dear Doctor McKeever:

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 osteopathic medicine and surgery or to reprimand or place you on probation for the following reasons:

1. On or about December 18, 1984, you were paid an office visit by one Gary Webb, who claimed that he wished to lose weight. You weighed the patient, and the scale indicated that he weighed 178 pounds fully clothed. You recorded the patient's blood pressure at one hundred and sixty over ninety. You advised the patient that he did not look like he needed to lose any weight, and that according to your charts his weight was "just right". The patient replied that he felt fat, to which you responded "Well, it's your money". You dispensed to the patient twenty-eight (28) tablets of phendimetrazine, a Schedule 3 Controlled Substance; twenty-eight (28) tablets of phentermine, a Schedule 4 Controlled Substance; and twenty-eight (28) tablets of levothyroxine sodium, a prescription drug under Federal Law. Although you provided the patient with diet books, you did not discuss with him his past weight-loss efforts or counsel him on proper weight-loss techniques.
2. On or about January 15, 1985, you were paid a return office visit by one Gary Webb. You weighed the patient while he was fully clothed and wearing a pair of heavy boots. The scale showed a weight of 179 pounds, and you recorded 172 pounds on your patient chart. You recorded the patient's blood pressure, and commented that it was one hundred and sixty over ninety, the same as at the last visit. You advised the patient that this was "pretty bad", and that you would have to give him something to slow him down. You dispensed to the patient twenty-eight (28) tablets of phendimetrazine; twenty-eight (28) tablets of phentermine; twenty-eight (28) tablets of levothyroxine sodium; twenty-eight (28) tablets of phenobarbital, a Schedule 4 Controlled Substance; and twenty-eight (28) tablets of hydrochlorothiazide, a prescription drug under Federal Law.

August 26, 1985

Page Two  
James F. McKeever, D. O.

3. On or about February 18, 1985, you were paid a return office visit by one Gary Webb. You did not personally examine the patient, but delegated that task to an assistant who is not licensed pursuant to Chapters 4730. or 4731., Ohio Revised Code. You stopped in the examining room and commented to the patient that your assistant had advised you that he had gained weight. You dispensed to the patient twenty-eight (28) tablets of phendimetrazine; twenty-eight (28) tablets of phentermine; and twenty-eight (28) tablets of levothyroxine sodium.

Your acts in the above paragraphs (1), (2), and (3), individually and/or collectively, constitute "failure to use reasonable care discrimination in the administration of drugs" and "failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease, as those clauses are used in Section 4731.22 (B)(2), Ohio Revised Code.

Further, such acts in the above paragraphs (1) (2), and (3), individually and/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, such acts in the above paragraphs (1), (2), and (3), individually and/or collectively, constitute "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established", as that clause is used in Section 4731.22 (B)(6), Ohio Revised Code.

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, 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 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.

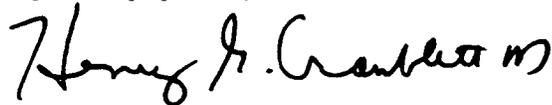
In the event that there is no request for such hearing made within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate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

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James F. McKeever, D. O.

August 26, 1985

Copies of all referenced statutes are enclosed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Henry G. Cramblett M.D.", written in a cursive style.

Henry G. Cramblett, M. D.  
Secretary

HGC:caa

enclosures

CERTIFIED MAIL NO. P 569 361 803  
RETURN RECEIPT REQUESTED