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STATE OF OHIO
THE STATE MEDICAL BOARD OF OHIO
77 SOUTH HIGH STREET
17TH FLOOR
COLUMBUS, OHIO 43215

September 15, 1989

Howard L. Aubrey, D.O.
312 East 6th Street
Wellston, Ohio 45692

Dear Doctor Aubrey:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Joan Irwin Fishel, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on September 13, 1989, including Motions approving the Findings of Fact and Conclusions of the Attorney Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO


Henry G. Cramblett, M.D.
Secretary

HGC:em
Enclosures

CERTIFIED MAIL NO. P 746 514 765
RETURN RECEIPT REQUESTED

cc: Michael K. Gire, Esq.

CERTIFIED MAIL NO. P 746 514 766
RETURN RECEIPT REQUESTED

Mailed 9/21/89

STATE OF OHIO
STATE MEDICAL BOARD

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 Joan Irwin Fishel, Attorney Hearing Examiner, State Medical Board; and attached excerpt of Minutes of the State Medical Board, meeting in regular session on September 13, 1989, including Motions approving and confirming the Findings of Fact and Conclusions of the Attorney Hearing Examiner, and adopting an amended Order, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Howard L. Aubrey, 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 of Ohio and in its behalf.

(SEAL)



Henry G. Cramblett, M.D.
Secretary

September 15, 1989

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF ★

★

HOWARD L. AUBREY, D.O. ★

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 13th day of September, 1989.

Upon the Report and Recommendation of Joan Irwin Fishel, Attorney Hearing Examiner, Medical Board, in this matter designated pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the modification, approval and confirmation by vote of the Board on September 13, 1989, the following Order is hereby entered on the Journal of the State Medical Board for the 13th day of September, 1989.

It is hereby ORDERED that the license of Howard L. Aubrey, D.O., to practice osteopathic medicine and surgery in Ohio be REVOKED.

This Order shall become effective thirty (30) days from the date of mailing of notification of approval by the State Medical Board of Ohio. In the interim, Dr. Aubrey shall not undertake the care of any patient not already under his care.

(SEAL)



Henry G. Cramblett, M.D.
Secretary

September 15, 1989

Date

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REPORT AND RECOMMENDATION
IN THE MATTER OF HOWARD L. AUBREY, D.O.

The Matter of Howard L. Aubrey, D.O., came on for hearing before me, Joan Irwin Fishel, Esq., Hearing Examiner for the State Medical Board of Ohio, on July 24, 1989.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

- A. By letter of April 5, 1989 (State's Exhibit #4), the State Medical Board notified Howard L. Aubrey, D.O., that it proposed to take disciplinary action against his license to practice osteopathic medicine and surgery in the State of Ohio based upon the summary suspension of his provisional clinical privileges at the Robert L. Thompson Strategic Hospital, Carswell Air Force Base, Texas, on or about February 3, 1988, and the subsequent revocation of his clinical privileges following hearings held on or about April 11 and 12, 1988. The Board alleged that the fact of and the basis for the Air Force actions constituted violation of Section 4731.22(B)(24), Ohio Revised Code, "...revocation, suspension, restriction, reduction, or termination of privileges by the Department of Defense...for any acts that would also constitute a violation of this Chapter", to wit: Section 4731.22(B)(6), Ohio Revised Code.
- B. On April 20, 1989, the Board received a notice of appearance and a request for hearing (State's Exhibit #3) from Michael K. Gire, Esq., on behalf of Dr. Aubrey.

II. Appearances

- A. On behalf of the State of Ohio: Anthony J. Celebrezze, Jr., Attorney General, by Rachel L. Belenker, Assistant Attorney General
- B. On behalf of the Respondent: Michael K. Gire, Esq.

III. Testimony Heard

Dr. Aubrey testified on his own behalf and was cross-examined by the State.

IV. Exhibits Examined

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

A. Presented by the State

1. State's Exhibit #1: May 23, 1989, letter to Attorney Gire from the State Medical Board scheduling the hearing for July 24, 1989.
2. State's Exhibit #2: April 27, 1989, letter to Attorney Gire from the State Medical Board advising that a hearing initially set for May 4, 1989, was postponed pursuant to Section 119.09, Ohio Revised Code.
3. State's Exhibit #5: Cover letter from Michael J. Torma, Colonel, United States Air Force, received by the Board on November 10, 1988, indicating the enclosure of copies of documents regarding Dr. Aubrey's Air Force clinical privileges.
4. State's Exhibit #6: Unsworn affidavit of Kevin P. N. O'Shea, Captain, United States Air Force, declaring Captain O'Shea to be the custodian of the Medical Professional Staffing Records (Credentials File) for Lieutenant Colonel Howard L. Aubrey and further declaring the attached documents to be exact copies of the documents contained in that file.
5. State's Exhibit #7: September 8, 1989, Memorandum to the Federation of State Medical Boards from Col. Michael J. Torma reporting the adverse action taken by the Air Force against Dr. Aubrey's clinical privileges.
6. State's Exhibit #8: First of four volumes of Air Force documents regarding the termination of Dr. Aubrey's clinical privileges. This first volume contains: Unsworn affidavit of Devere G. O'Malley, custodian of Medical Records, attesting that the documents enclosed were accurate copies of the documents contained in Dr. Aubrey's file; February 3, 1988, Notice of Summary Suspension to Dr. Aubrey from Richard A. Artim, Lt. Col., USAF, Chairperson of the Credentials Committee; patient records and accompanying audit evaluation sheets pertaining to the alleged incidents of substandard care cited in the Notice of Summary Suspension; and March 15, 1988, Notification of Privileges Hearing to Dr. Aubrey from Thomas N. Kramer, Col., USAF, Chairman of the Credentials Hearing Committee, with attached patient records and audit evaluation sheets.
7. State's Exhibit #9: Volume two of the Air Force documents containing: a continuation of the patient records and audit evaluation sheets that had been enclosed with the Notification of Privileges Hearing; various documents from Dr. Aubrey's application for clinical privileges at Carswell Air Force Base; copies of Air Force Regulations regarding credentials hearings; and part of the exhibits offered by the Air Force at Dr. Aubrey's privileges hearing, consisting of patient records and audit evaluation sheets.

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8. State's Exhibit #10: Volume three of the Air Force documents containing a continuation of the Air Force exhibits from the April, 1988, privileges hearing and part of Dr. Aubrey's exhibits from the April, 1988, privileges hearing.
9. State's Exhibit #11: Volume four of the Air Force documents containing: a continuation of Dr. Aubrey's exhibits; April 13, 1988, Findings of Fact and Recommendations of the Credentials Hearing Committee; minutes of Credentials Committee meetings on May 3, 1988; and May 3, 1988, letter to Dr. Aubrey from Col. Hoffman, Hospital Commander, informing him of the termination of his clinical privileges.

B. Presented by the Respondent

1. Respondent's Exhibit A: Two-volume set of documents consisting of Dr. Aubrey's written explanation for each of the Air Force's 57 allegations of substandard care, patient records, excerpts from periodicals and texts, and excerpts from the Physicians' Desk Reference.
2. Respondent's Exhibit B: May 3, 1988, letter to Dr. Aubrey from Peter F. Hoffman, Colonel, United States Air Force, approving the recommendation of the Credentials Committee to terminate Dr. Aubrey's clinical privileges, and encouraging Dr. Aubrey to seek formal post-graduate training in an internship-like setting. The letter also reminds Dr. Aubrey that, according to Air Force regulations, all proceedings in his case would cease as of May 6, 1988, the date of his separation from the Air Force. (This letter is also contained within State's Exhibit #11).
3. Respondent's Exhibit C: July 20, 1989, letter to the State Medical Board from Louis J. Jindra, M.D., Chief of Staff, Oak Hill Community Medical Center, regarding that hospital's decision to recruit and hire Dr. Aubrey.
4. Respondent's Exhibit D: July 17, 1989, letter to the State Medical Board from Patrick B. Ball, D.O., informing the Board of his satisfaction with Dr. Aubrey's performance during his year on the staff of Oak Hill Community Medical Center.

FINDINGS OF FACT

1. By notice dated February 3, 1988, the Credentials Committee of the Robert L. Thompson Strategic Hospital, Carswell Air Force Base, Texas, summarily suspended the clinical privileges of Lieutenant Colonel Howard L. Aubrey, D.O. Dr. Aubrey had been a physician in the Primary Care Unit at Carswell since October of 1987. This notice of summary suspension cited 57 specific instances of alleged substandard performance by Dr. Aubrey during the period from October 27, 1987, to January 22, 1988. These allegations arose from audits of Dr. Aubrey's patient records which had been done by or under the direction of Dr. Brent Wagner, Chief of Staff of Primary Care. The Notice of Summary Suspension informed Dr. Aubrey of his right to a hearing by the Credentials Committee.

These facts are established by State's Exhibit #8 and by the testimony of Dr. Aubrey (Tr. 21).

2. Dr. Aubrey requested a hearing with regard to the allegations set forth in the Notice of Summary Suspension. On March 15, 1988, he was notified that it would be held on April 11, 1988. On April 13, 1988, following hearings held on April 11 and 12, the Chairperson of the Credentials Hearing Committee reported his Committee's Findings of Fact to the Chairperson of the Credentials Committee. These findings set forth conduct of Dr. Aubrey, including:
 - A. Irresponsible attitude regarding basic medical concepts, specifically:
 1. Admitted reliance on patients to report pertinent symptoms, rather than obtaining a problem-oriented review of symptoms;
 2. Statement that, "It would be pointless for me to write a list of negative replies. To do so would be nothing more than a school boy exercise";
 3. Failure to obtain readily available, pertinent information, as demonstrated by failure to telephone the laboratory for results of a blood sugar obtained ten days prior on a patient who was being followed up for newly-diagnosed diabetes and complained of urinary frequency and urgency; and
 4. Failure to perform indicated breast, pelvic, and rectal examinations due to "inconvenience."
 - B. Demonstrated substandard management of hypertension and electrolyte imbalance, specifically:
 1. Use of potassium supplements with Maxzide;

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2. Inappropriate treatment of a patient with a serum potassium of 2.7 mEq/l;
 3. Lack of consideration of weight reduction for obese hypertensive patients;
 4. Prescribing of an alpha agonist for a patient with a diastolic blood pressure of 110; and
 5. Lack of understanding of the pharmacologic effects of B-blockers in a diabetic patient treated with an oral hypoglycemic agent.
- C. Demonstrated substandard evaluation of breast symptoms, specifically:
1. Failure to perform and understand importance of breast examinations in two patients; and
 2. Lack of understanding of the limitations of mammography.
- D. Demonstrated substandard management of thyroid disorders, specifically, inappropriate interpretation and response to significantly abnormal thyroid function tests in a patient with a previous subtotal thyroidectomy.
- E. Demonstrated substandard management of hyperlipidemia, specifically:
1. Lack of evaluation and treatment of a patient with known severe hypertriglyceridemia.
 2. Lack of understanding of efficacy of discontinuing B-blocker and thiazide diuretic in a patient with hypercholesterolemia.
- F. Demonstrated substandard management of coronary artery disease, specifically:
1. Failure to consider diagnosis in a patient presenting with new symptoms typical of angina;
 2. Failure to understand significance of "new onset" angina; and
 3. Delay in obtaining diagnostic exercise treadmill tests pending results of blood tests.
- G. Demonstrated inability to formulate and effectively utilize an appropriate differential diagnosis, specifically:
1. Fever in an elderly, chronically ill patient;
 2. Abdominal pain in two female patients;

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3. Low back pain in a patient with a history of prostatic disease;
and
4. Female patient with complaint of "lump in throat."

The Credentials Hearing Committee considered these facts to be evidence of substandard medical practice that was, or was reasonably probable of being, detrimental to patient safety or to the proper delivery of quality patient care. The majority of the committee recommended termination of Dr. Aubrey's clinical privileges.

The findings and conclusions of the Credentials Hearing Committee, including those referenced above, are fully incorporated herein by reference as findings of this Hearing Examiner.

These facts are established by State's Exhibits #8 and #11.

3. The Credentials Committee met twice on May 2, 1988, to consider the findings and recommendation of the Credentials Hearing Committee. The Committee initially voted to recommend that Dr. Aubrey's privileges be suspended pending one year of formal training and successful completion of the Federal Licensure Examination. However, a subsequent meeting of the Credentials Committee was necessitated by the fact that Dr. Attarian, who had attended the first meeting, was not the correct representative to the Committee from the Department of Surgery. At this subsequent meeting, the voting members concluded that: Dr. Aubrey's patient management and documentation was substandard; he had shown a consistent disregard toward identified deficiencies in basic medical knowledge; and he had not availed himself of educational opportunities to correct these deficiencies. Consequently, the Credentials Committee recommended to the hospital commander that Dr. Aubrey's clinical privileges at Robert L. Thompson Strategic Hospital be terminated.

By letter dated May 3, 1988, Peter F. Hoffman, Hospital Commander, notified Dr. Aubrey that he had approved the recommendation of the Credentials Committee and had terminated Dr. Aubrey's clinical privileges at the Robert L. Thompson Strategic Hospital. Colonel Hoffman encouraged Dr. Aubrey to seek formal postgraduate training in an internship-like setting.

These facts are established by State's Exhibit #11.

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4. Colonel Hoffman's May 3, 1986, letter advised Dr. Aubrey of his right to appeal. It further advised Dr. Aubrey that, according to Air Force Regulation, 168-13, paragraph 8-15, "if, during any phase of a credentials review action, ...the practitioner separates or is discharged from...the U.S. Air Force, then any further proceedings under this regulation on the practitioner's care are moot and need not be accomplished." Dr. Aubrey had applied for voluntary separation in January, 1988, prior to his summary suspension. On or about April 29, 1988, Dr. Aubrey had received notification that his separation had been approved and that his last day of service would be May 5, 1988. Thus, pursuant to Air Force regulation, Dr. Aubrey's appeal rights terminated on May 6, 1988, his last day of service. Dr. Aubrey testified at the Ohio hearing that he had wanted to appeal the credentials decision, but that the Air Force regulation had prevented him from doing so. The Notice of Summary Suspension that Dr. Aubrey had received in February of 1988 had informed him that his hearing rights were outlined in AFR 168-13, Chapter 8.

These facts are established by State's Exhibits #8, #9 and #11 and the testimony of Dr. Aubrey (Tr. 25-26, 31-33).

5. From 1965 through 1976, Dr. Aubrey had had a general private practice in Lake Milton, Ohio. In 1976, he had decided to continue his medical career in the Air Force. Over the years, his Air Force assignments became increasingly administrative in nature. Immediately prior to his assignment to Carswell Air Force Base, Dr. Aubrey had been a clinic commander in the Netherlands for two years, spending 70% of his time on administrative duties. His duties at Carswell had been 100% patient care.

These facts are established by the testimony of Dr. Aubrey (Tr. 15, 17, 50-51).

6. In 1988, following his separation from the Air Force, Dr. Aubrey began a private practice in Wellston, Ohio. Dr. Aubrey testified that, in order to get privileges at Oak Hill Community Medical Center in Wellston, he had been interviewed by the hospital's Credentials Committee. He had made the Air Force's information regarding his credentials action available to this Committee.

Other than the Air Force Credentials action and one malpractice suit in 1975, Dr. Aubrey testified that he has had no other civil suits or disciplinary actions taken against him. In fact, his Air Force privileges had been summarily suspended in 1987 while in the Netherlands. However, following investigation, the Credentials Committee had recommended full restoration of his clinical privileges. Dr. Aubrey testified that Air Force regulations permit a practitioner to answer truthfully that no disciplinary action has been taken if a Credentials Committee finds insufficient evidence to prove an allegation.

These facts are established by the testimony of Dr. Aubrey (Tr. 15-17, 34-36, 39-40, 46) and by State's Exhibits #9 and #11.

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CONCLUSIONS OF LAW

The suspension and subsequent termination of Dr. Aubrey's clinical privileges by the Air Force and the acts, conduct, and/or omissions of Howard L. Aubrey, D.O., upon which the Air Force's actions were based, as set forth in Findings of Fact #1, #2, and #3, above, constitute the "revocation, suspension, reduction, or termination of privileges by the Department of Defense...for any act or acts that would constitute a violation of this Chapter", as that clause is used in Section 4731.22(B)(24), Ohio Revised Code, to wit: 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."

State's Exhibits #8 through #11 constitute substantial, reliable, and probative evidence of the actions taken by the Air Force against Dr. Aubrey's clinical privileges, as well as substantial, reliable, and probative evidence of Dr. Aubrey's failure to conform to minimal standards of care. These records show that Dr. Aubrey fell below minimal standards, not only in his documentation of patient records, but also in his providing of substandard care with potential impact on patient well-being. On numerous occasions, Dr. Aubrey failed to order indicated diagnostic tests because he did not feel they were necessary, thus, demonstrating either an inability to recognize the importance of ruling out possible diagnoses or a deficiency in medical knowledge. The record also documents numerous instances of Dr. Aubrey's mismanagement of hypertension and hyperlipidemia. He failed to recognize and treat high blood pressure readings on at least two occasions. He also demonstrated an inability to effectively use pharmacological treatment in these two areas. In view of the documentary evidence presented in this case, Dr. Aubrey's claim that he was merely the victim of an overzealous reviewer cannot be given credence.

PROPOSED ORDER

It is hereby ORDERED that:

1. The certificate of Howard L. Aubrey, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be revoked. Such revocation shall be stayed, and Dr. Aubrey's certificate shall be suspended for an indefinite period of time, but not less than one (1) year.
2. The Board shall not consider reinstatement of Dr. Aubrey's certificate to practice unless and until all of the following minimum requirements are met:
 - a. Dr. Aubrey shall submit an application for reinstatement accompanied by all appropriate fees. Dr. Aubrey shall not make such application for at least one (1) year from the effective date of this Order.

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- b. Dr. Aubrey shall take and pass the SPEX examination or any similar written examination which the Board may deem appropriate to assess his clinical competency.
 - c. In the event that Dr. Aubrey has not been engaged in the active practice of medicine or surgery for a period in excess of two (2) years prior to the date of his application, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Aubrey's fitness to resume practice.
3. Upon reinstatement, Dr. Aubrey's certificate shall be subject to the following probationary terms, conditions, and limitations for a period of four (4) years:
- a. Dr. Aubrey shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
 - b. Dr. Aubrey shall submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the provisions of probation.
 - c. Dr. Aubrey shall appear in person for interviews before the full Board or its designated representative at six (6) month intervals or as otherwise requested by the Board.
 - d. Dr. Aubrey shall make his patient records available for review upon request by an agent of the State Medical Board.
4. Upon successful completion of probation, Dr. Aubrey's certificate will be fully restored.

This Order shall become effective thirty (30) days from the date of mailing of notification of approval by the State Medical Board of Ohio. In the interim, Dr. Aubrey shall not undertake the care of any patient not already under his care.


Joan Irwin Fishel
Attorney Hearing Examiner

EXCERPT FROM THE MINUTES OF SEPTEMBER 13, 1989

REPORT AND RECOMMENDATIONS

Dr. O'Day advised that the Findings and Orders appearing on this day's agenda are those in the matters of Harry B. Leslie, Jr., M.D.; Clyde G. Sussman, M.D.; Farid M. Abdul-Noor, M.D.; Djuro Obradovic, M.D.; Hugo A. Ramirez, M.D.; Howard L. Aubrey, D.O.; and George P. Gotsis, M.D.

Dr. O'Day asked if each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of Harry B. Leslie, Jr., M.D.; Clyde G. Sussman, M.D.; Farid M. Abdul-Noor, M.D.; Djuro Obradovic, M.D.; Hugo A. Ramirez, M.D.; Howard L. Aubrey, D.O.; and George P. Gotsis, M.D. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- aye
	Dr. Daniels	- aye
	Dr. Stephens	- aye
	Mr. Jost	- aye
	Mr. Albert	- aye
	Dr. Kaplansky	- aye
	Ms. Rolfes	- aye
	Dr. Agresta	- aye
	Dr. O'Day	- aye

REPORT AND RECOMMENDATION IN THE MATTER OF HOWARD L. AUBREY, D.O.

Dr. O'Day referred the Board to the matter of Howard L. Aubrey, D.O., and indicated that objections have been filed.

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

MR. JOST MOVED TO APPROVE AND CONFIRM MS. FISHEL'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF HOWARD L. AUBREY, D.O. DR. STEPHENS SECONDED THE MOTION.

MS. ROLFES MOVED THAT THE PROPOSED ORDER IN THE MATTER OF HOWARD L. AUBREY, D.O., BE AMENDED TO READ AS FOLLOWS:

It is hereby ORDERED that the license of Howard L. Aubrey, D.O., to practice osteopathic medicine and surgery in Ohio be REVOKED.

This Order shall become effective thirty (30) days from the date of mailing of notification of approval by the State Medical Board of Ohio. In the interim, Dr. Aubrey shall not undertake the care of any patient not already under his care.

MR. JOST SECONDED THE MOTION.

Howard L. Aubrey, D.O.

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Excerpt from the Minutes of September 13, 1989

Ms. Rolfes stated that she was concerned that there were 57 problem cases and a summary suspension. She further stated that in reading the transcript it was clear that Dr. Aubrey had difficulty in accepting other viewpoints. She continued that there is not sufficient evidence to claim this is a vendetta, because the Air Force documented its case very well. However, there may have been a personality dispute.

Mr. Jost stated that the Board's primary task is to protect the people of the State of Ohio. One main concern is the Board's dealing with incompetent physicians. The Board has found that dealing with physicians who abuse drugs, prescribe improperly or commit crimes is easier. It is much more difficult to deal with incompetent physicians.

The Board does ultimately depend upon colleagues who are familiar with a doctor's practice and competent to judge it. In this case, Dr. Aubrey's clinical privileges were summarily suspended because of 57 specific instances of substandard performance. Dr. Aubrey did have a two-day hearing before a credentials committee which substantiated a host of these charges. The credentials committee concluded that his patient management and documentation were substandard, that he had shown a consistent disregard toward identified deficiencies in basic medical knowledge, and that he had failed to avail himself of opportunities to correct these problems. Ultimately, the base hospital commander terminated his privileges.

Dr. Aubrey protests that DOD proceedings were biased against him. Mr. Jost stated that every time the Board has a disciplinary proceeding based on the proceedings of another record before it, the Board hears the same story. All the Board can do is look at the record it has. The credentials hearing committee consisted of 3 members, a credentials committee of 9 voted on the charges, and the hospital commander made the ultimate decision. Captain Wagner, who allegedly was biased against Dr. Aubrey, was not a decision-maker in either proceeding. Although Dr. Aubrey claims he lost his appeal rights because he resigned from the service, Mr. Jost stated he is troubled generally with doctors not contesting decisions taken against them, and then requesting the Board to disregard those decisions. Mr. Jost further stated that it is perhaps unfortunate that Dr. Aubrey did not appeal the decision to the highest level, but the decision the Board has seems appropriate to him.

Ultimately, the only question left under Section 4731.22(B)(24) is whether the acts for which Dr. Aubrey was disciplined by the DOD are independent violations of our statute. The hearing officer found that these acts would violate Section 4731.22(B)(6) because the acts constituted substandard practice.

Mr. Jost further stated that, unlike Dr. Gutierrez' case in August, the Board has not merely charting that wasn't done the Army's way, but also substantial findings of irresponsible diagnostic practices.

He stated that as the Board had decided last month, the object was not to apply Section 4731.22(B)(24), but rather to determine whether Dr. Aubrey's actions violated Section 4731.22(B)(6). Mr. Jost concluded that the discipline proposed in this case is clearly appropriate.

A roll call vote was taken on Ms. Rolfes amendment:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Daniels	- aye
	Dr. Stephens	- aye
	Mr. Jost	- aye
	Mr. Albert	- aye
	Dr. Kaplansky	- aye
	Ms. Rolfes	- aye
	Dr. Agresta	- aye

The motion carried.

MR. JOST MOVED TO APPROVE AND CONFIRM MS. FISHEL'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF HOWARD L. AUBREY, D.O., AS AMENDED. DR. STEPHENS SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Daniels	- aye
	Dr. Stephens	- aye
	Mr. Jost	- aye
	Mr. Albert	- aye
	Dr. Kaplansky	- aye
	Ms. Rolfes	- aye
	Dr. Agresta	- aye

The motion carried.

STATE OF OHIO
THE STATE MEDICAL BOARD
77 SOUTH HIGH STREET
17TH FLOOR
COLUMBUS OH 43215

December 8, 1988

Howard L. Aubrey, D.O.
P.O. Box 1486
APO New York, NY 09292

Dear Doctor Aubrey:

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 one or more of the following reasons:

1. On or about February 3, 1988, your provisional clinical privileges were suspended at the Robert L. Thompson Strategic Hospital, Carswell Air Force Base, Texas, based upon substandard patient management. Pursuant to hearing on or about April 11-12, 1988, your clinical privileges were revoked. You did not appeal, but elected to voluntarily separate from the Air Force on May 6, 1988.

Such acts and/or omissions constitute "...revocation, suspension, restriction, reduction, or termination of privileges by the department of defense... for any act or acts that would also constitute a violation of this chapter", as that clause is used in Section 4731.22(B)(24), Ohio Revised Code, to wit: 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 received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

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

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

Howard L. Aubrey, M.D.
Page Two

December 8, 1988

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Henry G. Cramblett, M.D.
Secretary

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Encls.

CERTIFIED MAIL #P 746 510 040
RETURN RECEIPT REQUESTED