



# STATE MEDICAL BOARD OF OHIO

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

January 10, 1997

David H. Brown, D.O.  
11629 Market Street Extension  
Box 158  
North Lima, Ohio 44452

Dear Doctor Brown:

Please find enclosed certified copies of the Entry of Order; the Report of Goldman Hearing and Recommendation of Sharon W. Murphy, Esq., Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on January 8, 1997, including Motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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 a copy of that Notice of Appeal with 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

Thomas E. Gretter, M.D.  
Secretary

TEG:ll  
Enclosures

CERTIFIED MAIL RECEIPT NO. P 152 983 568  
RETURN RECEIPT REQUESTED

cc: David H. Brown, D.O., Inmate #52327-060  
Federal Correctional Institution, P.O. Box 1000  
Morgantown, WV 26507-1000

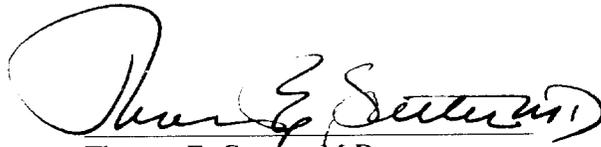
Certified Mail No. P 152 983 569 Return Receipt Requested

Mailed January 16, 1997

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 Sharon W. Murphy, Esq., Attorney Hearing Examiner, State Medical Board; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on January 8, 1997, including Motions approving and confirming the Findings of Fact, Conclusions of Law and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio,; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of David H. Brown, 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.



Thomas E. Gretter, M.D.  
Secretary

(SEAL)

1/14/97

\_\_\_\_\_  
Date



# STATE MEDICAL BOARD OF OHIO

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

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

\*

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DAVID H. BROWN, D.O.

\*

## ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 8th day of January, 1997.

Upon the Report and Recommendation of Sharon W. Murphy, 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 approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

The certificate of David H. Brown, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be permanently REVOKED.

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

Thomas E. Gretter, M.D.  
Secretary

(SEAL)

1/14/97  
Date

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**REPORT OF GOLDMAN HEARING AND RECOMMENDATION  
IN THE MATTER OF DAVID H. BROWN, D.O.**

The Matter of David H. Brown, D.O., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio, on December 3, 1996.

**INTRODUCTION**

**I. Basis for the Goldman Hearing**

- A. By letters dated February 14, 1996, and September 5, 1996, the State Medical Board of Ohio [Board] notified David H. Brown, D.O., that, pursuant to Section 3719.121(C), Ohio Revised Code, the Board had immediately suspended Dr. Brown's certificate to practice osteopathic medicine and surgery in the State of Ohio. This action was based on Dr. Brown's December 13, 1995, plea of guilty to and a judicial finding of guilt of one felony count of conspiracy to distribute controlled substance in violation of Title 21, Sections 846 and 841(a)(1) and (b)(1)(C), United States Code. The Board further notified Dr. Brown that continued practice of osteopathic medicine or surgery would be considered practicing without a certificate, in violation of Section 4731.41, Ohio Revised Code.

In addition, the Board alleged that the acts underlying the plea and judicial finding of guilt include conspiracy to illegally distribute Percocet and Percodan, both Schedule II narcotic controlled substances. Moreover, Dr. Brown wrote prescriptions for Percocet and Percodan, without any medical basis, in order to obtain a supply of these drugs for further distribution. Accordingly, the Board advised that it had proposed to take disciplinary action against Dr. Brown's certificate to practice osteopathic medicine and surgery in this state. The Board alleged that Dr. Brown's conduct and conviction constitute:

1. "(s)elling, 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";
2. "a plea of guilty to, or a judicial finding of guilt of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,' as that clause is used in Section 4731.22(B)(3), Ohio Revised Code"; and
3. "[a] plea of guilty to, or a judicial finding of guilt of, a felony,' as that clause is used in Section 4731.22(B)(9), Ohio Revised Code."

(State's Exhibits 1, 4).

- B. Pursuant to Chapter 119., Ohio Revised Code, the Board advised Dr. Brown of his right to request a hearing in this Matter. (State's Exhibits 1, 4). Dr. Brown did not request a hearing. Accordingly, the Board provided Dr. Brown with courtesy notice that, on December 3, 1996, the Board would hold a *Goldman* hearing at which the State would present evidence in this matter. (State's Exhibit 5) (See *Douglas S. Goldman, C.T. v. State Medical Board of Ohio* [Mar. 29, 1996], Franklin App. No. 95APE10-1358, unreported).

II. Appearances

On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by James M. McGovern, Assistant Attorney General.

**EVIDENCE EXAMINED**

- I. Testimony Heard: No witnesses were presented.

II. Exhibits Examined

The following exhibits were identified and admitted into evidence:

- A. State's Exhibit 1: Copy of the February 14, 1996, Notice of Immediate Suspension and Opportunity for Hearing, with signed certified mail receipts. (4 pp.)
- B. State's Exhibit 2: Copy of an August 1, 1996, letter to Dr. Brown from the Board advising that a *Goldman* hearing had been scheduled for August 29, 1996.
- C. State's Exhibit 3: Copy of an August 30, 1996, Entry advising that the August 29, 1996, *Goldman* proceeding, which had been based on the February 14, 1996, Notice of Immediate Suspension and Opportunity for Hearing, had been determined to be moot. The decision was based on the State's representation that Dr. Brown may have been imprisoned at the time the Notice of Immediate Suspension and Opportunity for Hearing was mailed. Therefore, the State had decided to send a second Notice of Immediate Suspension and Opportunity for Hearing, in order to assure that Dr. Brown would receive sufficient notice and have the ability to request a hearing in this matter.

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- D. State's Exhibit 4: Copy of the Notice of Immediate Suspension and Opportunity for Hearing, sent to the Federal Correctional Institution at Morgantown, West Virginia, on September 5, 1996, with signed certified mail receipt. (4 pp.)
- E. State's Exhibit 5: Copy of a November 7, 1996, letter to Dr. Brown from the Board advising that a *Goldman* hearing had been scheduled for December 3, 1996.
- F. State's Exhibit 6: Copy of the Prosecutor's Reporting Form, with attached certified copies of documents filed in the United States District Court, Northern District of Ohio, Eastern Division, in *United States of America v. David H. Brown, D.O.*, Case No. 4:95CR166. (22 pp.)
- G. State's Exhibit 7: Copy of Title 21, Section 841, United States Code. (6 pp.)
- H. State's Exhibit 8: Affidavit of Debra H. Jones, Chief of Continuing Medical Education, Records and Renewal for the Board, verifying the last known addresses of Dr. Brown.

### FINDINGS OF FACT

1. On April 12, 1995, in the United States District Court for the Northern District of Ohio, Eastern Division, an Indictment was filed in *United States of America v. David H. Brown, D.O.*, Case No. 4:95CR166. The Indictment charged that Dr. Brown had conspired with others in "knowingly and intentionally distributing Percocet and Percodan, both Schedule II narcotic controlled substances, without a legitimate medical purpose; in violation of Title 21, United States Code, Section 841(a)(1)." (State's Exhibit [St. Ex.] 6 at 3). More specifically, the Indictment charged that, on five specific occasions between January 1991 and January 1994, Dr. Brown wrote prescriptions for 40 tablets of Percodan or Percocet for Joe Hudak "without any medical basis," in violation of Title 21, United States Code, Section 846. (St. Ex. 6 at 4-5).
2. On September 14, 1995, Dr. Brown entered a plea of guilty to charges contained in the Indictment. As part of the plea agreement, Dr. Brown admitted that he had conspired to illegally distribute Percocet and Percodan by writing prescriptions for Joseph Hudak and other Hudak family members without any medical basis. Dr. Brown further admitted that the prescriptions were written for the purpose of obtaining a supply of the controlled substances for further distribution. Dr. Brown agreed that Joe Hudak had filled the illegal prescriptions at fourteen different pharmacies in order to conceal the conspiracy. (St. Ex. 6 at 8). Finally, Dr. Brown

agreed that he had "abused his medical license and position as a doctor to commit the charged offense." (St. Ex. 6 at 11).

3. On December 13, 1995, Dr. Brown appeared for sentencing. The Court sentenced Dr. Brown to be imprisoned for a term of thirty-seven months. Following the term of imprisonment, Dr. Brown must submit to supervised release for an additional three years and perform with 300 hours community service. In addition, the Court ordered that Dr. Brown forfeit his certificate to practice osteopathic medicine and surgery, and that he not seek reinstatement of his certificate for a period of eight years. Moreover, the Court ordered that Dr. Brown never reapply for registration with the United States Drug Enforcement Administration. Finally, the court ordered that Dr. Brown pay a fine of \$50.00. (St. Ex. 6 at 18-20).

### CONCLUSIONS OF LAW

1. The conduct of David H. Brown, D.O., constitutes "(s)elling, 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.
2. Dr. Brown's conviction constitutes "a plea of guilty to, or a judicial finding of guilt of, a violation of any federal or state law regulating the possession, distribution, or use of any drug," as that clause is used in Section 4731.22(B)(3), Ohio Revised Code.
3. Dr. Brown's conviction constitutes "[a] plea of guilty to, or a judicial finding of guilt of, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

### PROPOSED ORDER

It is hereby ORDERED that:

The certificate of David H. Brown, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be permanently REVOKED.

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

  
Sharon W. Murphy  
Attorney Hearing Examiner



# STATE MEDICAL BOARD OF OHIO

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

## EXCERPT FROM THE DRAFT MINUTES OF JANUARY 8, 1997

### REPORTS AND RECOMMENDATIONS

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

Ms. Noble asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Daniel A. Breitenbach, M.D.; Jeffrey Chaitoff, M.D.; Myron S. Lee, M.D.; Dennis P. Orr, D.O.; Bruce W. Sherrets; Rajinder Singh, M.D.; Paul W. Wilson, D.O.; and the hearing records and reports of *Goldman* hearings and recommendations on the following: Valerie Shearman Gilreath, D.O.; David H. Brown, D.O.; Tatsuko Morimoto and the All Hawaiian School of Massage; Daniel M. Kavanaugh, D.P.M.; Michael D. Reynolds, M.D.; and Dennis L. Farr, M.D.

A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Dr. Buchan	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Ms. Noble	- aye

Mr. Sinnott stated that he would recuse himself in the matters of Myron S. Lee, M.D., and Paul W. Wilson, D.O.

Dr. Stienecker stated that he would recuse himself in the matters of Myron S. Lee, M.D. and Michael D. Reynolds, M.D.

Dr. Garg stated that he would recuse himself in the matter of Dennis P. Orr, D.O.

Ms. Noble asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye

Dr. Buchan	- aye
Dr. Stienecker	- aye
Dr. Agresta	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye
Ms. Noble	- aye

In accordance with the provision in Section 4731.22(C)(1), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of this matter.

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

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REPORT OF GOLDMAN HEARING AND RECOMMENDATION IN THE MATTER OF DAVID H. BROWN, D.O.

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**DR. BUCHAN MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF DAVID H. BROWN, D.O. DR. STIENECKER SECONDED THE MOTION.**

.....

A vote was taken on Dr. Buchan's motion to approve and confirm:

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Dr. Buchan	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye

The motion carried.



# **STATE MEDICAL BOARD OF OHIO**

77 South High Street, 17th Floor • Columbus, Ohio 43260-0713 • (614) 466-3931

February 14, 1996

## **NOTICE OF IMMEDIATE SUSPENSION**

**AND**

## **OPPORTUNITY FOR HEARING**

David H. Brown, D.O.  
11629 Market Street Extension, Box 158  
North Lima, OH 44452

Dear Doctor Brown:

In accordance with Section 2929.17, Ohio Revised Code, the Department of Justice, Office of the United States Attorney, Northern District of Ohio, reported that on or about December 13, 1995, in the United States District Court, Northern District of Ohio, you pleaded guilty to and were found guilty of one (1) felony count of Conspiracy to Distribute Controlled Substances in violation of 21 U.S.C. Sections 846 and 841(a)(1) and (b)(1)(C).

Therefore, pursuant to Section 3719.121(C), Ohio Revised Code, you are hereby notified that your license to practice osteopathic medicine and surgery in the State of Ohio is immediately suspended. Continued practice after this suspension shall be considered practicing osteopathic medicine without a certificate in violation of Section 4731.43, Ohio Revised Code.

Furthermore, 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:

Mailed 2/15/96

February 14, 1996

- (1) On or about December 13, 1995, in the United States District Court, Northern District of Ohio, you pleaded guilty to and were found guilty of one (1) felony count of Conspiracy to Distribute Controlled Substances in violation of 21 U.S.C. Sections 846 and 841(a)(1) and (b)(1)(C).

The acts underlying your guilty plea and the judicial finding of guilt include that you conspired with others to illegally distribute Percocet and Percodan, both Schedule II narcotic controlled substances, and that you, without any medical basis, wrote prescriptions for Percocet and Percodan for another co-conspirator and members of his family, in order to obtain a supply of these controlled substances for further distribution.

The acts, conduct, and/or omissions underlying your guilty plea and the judicial finding of guilt, as alleged in paragraph (1) above, individually and/or collectively, constitute "(s)elling, 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 guilty plea and the judicial finding of guilt, as alleged in paragraph (1) above, individually and/or collectively, constitute "a plea of guilty to, or a judicial finding of guilt of, a violation of any federal or state law regulating the possession, distribution, or use of any drug," as that clause is used in Section 4731.22(B)(3), Ohio Revised Code.

Further, your guilty plea and the judicial finding of guilt, as alleged in paragraph (1) above, individually and/or collectively, constitute "(a) plea of guilty to, or a judicial finding of guilt of, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

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

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

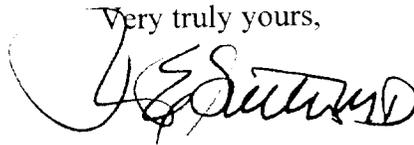
DAVID H. BROWN, D.O.  
PAGE 3

February 14, 1996

register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. E. Gretter', written in a cursive style.

Thomas E. Gretter, M.D.  
Secretary

TEG/bjm

Enclosures

CERTIFIED MAIL # P 348 887 273  
RETURN RECEIPT REQUESTED

cc: J. Gerald Ingram, Esq.  
CERTIFIED MAIL # P 348 887 293  
RETURN RECEIPT REQUESTED