BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of	*
	*
Robert J. Eastway, Jr., D.O.	*

ENTRY

Pursuant to the instructions of the Tenth District Court of Common Pleas in its Decision rendered on June 20, 1996 and documented by Entry on June 24, 1996, the Entry and Order of the State Medical Board of Ohio in the Matter of Robert J. Eastway, Jr., D.O., dated April 23, 1995 is hereby modified to delete the probationary terms set forth in paragraphs 3d and 3i.

This Order shall be considered effective as of June 24, 1996.

(SEAL)

Thomas E. Gretter, M.D.
Secretary

5/28/97
Date

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In the Matter of: Dr. Robert J. Eastway, Jr., D.O., (Appellant).	: : :	 No. 95APE12-1662 (REGULAR CALENDAR)

JOURNAL ENTRY OF JUDGMENT

For the reasons stated in the opinion of this court rendered herein on June 20, 1996, appellant's first, second, and fifth assignments of error are overruled; appellant's third and fourth assignments of error are sustained in part, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is modified and affirmed as modified, and the stay of execution is lifted directing the board to proceed with appellant's suspension pursuant to its order as modified in accordance with law consistent with said opinion.

TYACK, CLOSE & GREY, JJ.

By _____
Judge Lawrence Grey, retired, of the Fourth Appellate District, assigned to active duty under authority of Section 6(C), Article IV, Ohio Constitution.

cc: Clifford R. Cloud, Esq.
Betty D. Montgomery, AG
Anne Berry Strait, AAG

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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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In the Matter of:
Dr. Robert J. Eastway, Jr., D.O.,

(Appellant).

No. 95APE12-1662

(REGULAR CALENDAR)

O P I N I O N

Rendered on June 20, 1996

Cloud, Koenig & Owen, and *Clifford R. Cloud*, for appellant.

Betty D. Montgomery, Attorney General, and *Anne Berry Strait*, for State Medical Board of Ohio.

APPEAL from the Franklin County Court of Common Pleas.

GREY, J.

This case has been going on for almost five years and is before this court for a second time. In the prior appeal, the State Medical Board (board) found Dr. Eastway guilty of several drug violations and revoked his license subject to certain conditions. The trial court upheld the board's action, Eastway appealed, and this court reversed and remanded the case to the board with certain instructions. The crux of the case now before us is whether the previous order of the court has been complied with, so an exposition of what transpired in the first case is necessary.

In 1991, the Ohio State Medical Board charged that on six occasions in 1989, Eastway had obtained Schedule II narcotics for his personal use. He did this by falsely writing prescriptions in the names of employees who were not his

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patients, he was also charged with having prescribed controlled substances to five patients without maintaining patient records on them. Appellant has never disputed the facts underlying the charges brought against him by the board.

These facts were presented at an October 1991 hearing, and the board's hearing examiner concluded they were true. Based upon the hearing examiner's report and recommendation, the board ordered, in March 1992, that appellant's certificate to practice osteopathic medicine and surgery in Ohio be revoked. The board noted that Eastway had recognized his drug problem and had sought treatment, and its order of revocation was stayed. Appellant's license to practice was suspended for an indefinite period of time, but not less than one year. The order then set out conditions whereby Eastway might return to the practice of medicine. The conditions contemplated a two step process—reinstatement, followed by a period of probation.

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In order to apply for reinstatement after one year, Eastway had to meet six minimum requirements which were set out in the board's order before his request for reinstatement would be considered. The conditions of reinstatement pertinent to this appeal are:

> "2 b. Dr. Eastway shall provide the Board with written reports of evaluation by two physicians acceptable to the Board stating that Dr. Eastway is no longer drug dependent and is able to practice according to acceptable and prevailing standards of care. Each of these evaluations shall be in writing and shall state with particularity the bases for this determination and shall set forth any recommended limitations upon Dr. Eastway's practice.
>
> "2 c. Dr. Eastway shall provide the Board with a certification from an approved treatment provider that

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he has successfully completed any required inpatient treatment and is continuing in full compliance with regard to any outpatient treatment and/or aftercare.

"2 d. Dr. Eastway shall provide satisfactory documentation of continuous participation in a drug and alcohol rehabilitation program acceptable to the Board, such as AA, NA or Caduceus, no less than 4 times per week.

"2 e. Dr. Eastway shall provide documentation acceptable to the Board of continuing psychiatric counseling at intervals as deemed appropriate by a treating psychiatrist approved by the Board."

If Eastway were reinstated after one year, the order provided that he would then have to serve a probationary term of not less than two years. The order set forth thirteen conditions of probation which he would be subject to for the two years following his reinstatement. The conditions of probation which are pertinent to the present appeal are the following:

"3 d. Dr. Eastway shall continue counseling with a psychiatrist approved by the Board at such intervals as are deemed appropriate by the counselor or treating psychiatrist, but not less than once per month, until such time as the Board determines that no further treatment is necessary. ***"

"***

"3 i. Dr. Eastway shall maintain participation in an alcohol and drug rehabilitation program acceptable to the Board, such as AA, NA, or Caduceus, no less than four (4) times per week or as otherwise directed by the Board. At Dr. Eastway's appearances before the Board or its designated representative, Dr. Eastway shall submit acceptable documentary evidence of continuing compliance with this program."

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It is important for an understanding of this case to recognize that the conditions of reinstatement relating to continuing psychiatric treatment and

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continuing participation in a rehabilitation program such as AA are virtually identical to the conditions of probation which require continuing psychiatric treatment and AA participation.

This identity of conditions is important because appellant objected to these conditions in his first appeal which for clarity's sake, we shall call *Eastway I*? *In re Eastway* (1994), 95 Ohio App.3d 516. In *Eastway I*, there were several issues raised which are not relevant to the present appeal because those assignments of error were overruled. The decision in *Eastway I* did, however, sustain appellant's assignments of error relating to conditions of continuing treatment and rehabilitation which the order contained. The court found that there was no factual basis for these conditions in the record and that the board's order was not supported by the evidence.

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Having found there was a lack of evidence to support the continuing treatment conditions, the court's decision in *Eastway I* concludes with the following language:

> "For the foregoing reasons, appellant's first and third assignments of error are sustained *as they relate to the conditions for reinstatement* (c), (d), and (e) imposed by the board, which are not supported by the factual findings; otherwise they are overruled; appellant's second, fourth and fifth assignments of error are overruled; the judgment of the Franklin County Court of Common Pleas is reversed; and this cause is remanded to that court with instructions to affirm the State Medical Board of Ohio's decision except as to conditions of reinstatement and to remand the matter to the State Medical Board for further proceedings, consistent with this opinion and in accordance with law." (Emphasis added.) *Id.* at 526.

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The emphasized part of the entry above is the source of the issue on appeal in this case. The entry specifically refers to "conditions for reinstatement" but does not refer to the conditions of probation.

On remand, the board met on April 12, 1995, and adopted a new order identical to its original March 1992 order except that it deleted paragraphs 2(c), 2(d), and 2(e) from the conditions for reinstatement. Except for the deletions, the order issued on remand and mailed May 4, 1995, was verbatim the same order it originally issued in March 1992, that is, it contained the requirements for continuing treatment and rehabilitation as conditions of probation.

After the board mailed this order to appellant on May 4, 1995, he appealed to the common pleas court. In a December 1995 decision, the common pleas court affirmed the board after finding that the new order complied with the instructions on remand and was in accordance with law. Appellant appeals the judgment of the common pleas court and asserts five assignments of error.

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"**Assignment of Error No. 1:**

"The Common Pleas Court Erred Or Abused Its Discretion, To The Prejudice Of The Appellant, In Concluding That The Principle Of Stare Decisis Precluded Review Of The State Medical Board's Action And Consideration Of The Issues Raised By Appellant On Appeal.

"**Assignment of Error No. 2:**

"The Common Pleas Court Erred Or Abused Its Discretion, To The Prejudice Of Appellant, In Finding That 'The Principle Of Res Judicata' Barred Consideration Of The Issues Raised By Appellant On Appeal.

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"**Assignment Of Error No. 3:**

"The Common Pleas Court Erred Or Abused Its Discretion, To The Prejudice Of Appellant, In Affirming The May 4, 1995 Order Of The State Medical Board, Since That Order Is Not Supported By Reliable, Probative, And Substantial Evidence.

"**Assignment Of Error No. 4:**

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"The Common Pleas Court Erred Or Abused Its Discretion, To The Prejudice Of The Appellant, In Affirming The May 4, 1995 Order Of The State Medical Board, Since That Order Is Not 'In Accordance With Law.'

"**Assignment of Error No. 5:**

"The State Medical Board's Failure At Its April 12, 1995 Meeting To Permit Appellant's Counsel To Speak To The Board Regarding Dr, [*sic*] Eastway's Remand Motion, And Its Failure To Reopen The Record Or Hold An Evidentiary Record, Or Provide For Such An Evidentiary Hearing, Violated The Appellant's Right To Due Course Of Law And Due Process Of Law Guaranteed By Article I, Section 6 Of The Ohio Constitution And By Section 1 of the Fourteenth Amendment To The U.S. Constitution, And Constituted An Abuse Of Discretion."

We shall begin with a discussion of assignments of error three and four. In these assignments of error, appellant asserts that the part of the order suspending him from practicing for one year is not supported by the evidence. Appellant argues that the board's reason for suspending him was its erroneous assumption that he still had a serious addiction problem and that this presumption is not supported by the record. This issue is not before us; it has already been decided in *Eastway I*.

In *Eastway I*, this court found that "R.C. 4731.22 authorizes such a penalty" and upheld the board's authority to suspend appellant for one year based

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upon his illegal use of drugs and drug documents. When the board's sanction is within its statutory authority, courts have no authority to reverse or modify the sanction. *In re Vaughn* (Nov. 30, 1995), Franklin App. No. 95APE05-645, unreported (1995 opinions 5007). The decision in *Eastway I* held that the suspension is a proper punishment imposed for the violation and is unrelated to the board's view that appellant continues to have a serious addiction problem.

The court in *Eastway I* also found that "most, but not all, of the conditions for reinstatement, including terms of probation imposed by the board," at 521, were valid. It held that conditions requiring continuing treatment, specifically, paragraphs 2(c), 2(d) and 2(e) relating to reinstatement and paragraphs 3(d) and 3(i) relating to probation were "at issue." In deciding the issue, the court found that the imposition of these conditions was not supported by reliable, probative, and substantial evidence and was not in accordance with law. The primary issue to be determined in the present appeal is whether the board's May 1995 order properly executes this court's mandate in *Eastway I*. As this is a question of law, the standard of review is plenary—not abuse of discretion as the board has argued.

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"Absent extraordinary circumstances, ***, an inferior court has no discretion to disregard the mandate of a superior court in a prior appeal in the same case." *Nolan v. Nolan* (1984), 11 Ohio St.3d 1, syllabus; *State ex rel. Smith v. O'Connor* (1995), 71 Ohio St.3d 660. When a case is remanded to a lower tribunal, that tribunal is bound by the decree of the higher court as the law of the case and must execute the decree according to the mandate. *State ex rel.*

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Heck v. Kessler (1995), 72 Ohio St.3d 98, quoting *In re Sanford Fork & Tool Co.* (1895), 160 U.S. 247, 255-256. The lower tribunal may not consider the remanded case for any other purpose, may not give any other or further relief, may not review for apparent error, and may not otherwise intermeddle with it except to settle so much as has been remanded. *Heck*.

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> " *** 'If the [lower court] mistakes or misconstrues the decree of this court, and does not give full effect to the mandate, its action may be controlled, either upon a new appeal *** or by a writ of mandamus ***. But the [lower court] may consider and decide any matters left open by the mandate of this court; and its decision of such matters can be reviewed by a new appeal only. *** The opinion delivered by this court, at the time of rendering its decree, may be consulted to ascertain what was intended by its mandate; and, either upon an application for a writ of mandamus, or upon a new appeal, it is for this court to construe its own mandate, and to act accordingly.' *** " *Id.* at 101, quoting *In re Sanford* at 255-256.

In *Eastway I*, this court found that appellant had "*successfully completed* the very programs and aftercare the board ordered him to participate in" under conditions for reinstatement 2(c), 2(d), and 2(e) and terms of probation 3(d) and 3(i) of the March 1992 order. This court concluded that "[a]bsent evidence in the record and a finding by the board that appellant is in need of additional repetitive counseling, imposition of the drug and alcohol and psychiatric 'treatment' is without factual foundation and, therefore, not supported by reliable, probative, and substantial evidence and not in accordance with law." *Eastway I, at 522*. Thus, while this court found that "most, but not all, of the conditions for reinstatement, including terms of probation imposed by the board" were proper, we found the conditions requiring additional inpatient

treatment, continuous participation in a drug and alcohol rehabilitation program, and continuing psychiatric counseling to be improper.

The board argues that in deleting paragraphs 2(c), 2(d) and 2(e), from the conditions for reinstatement, it fully complied with *Eastway I*. To be sure, the language in *Eastway I* is not as precise as might be hoped. After having found that conditions for reinstatement and *the identical conditions for probation* were not supported by the evidence, the opinion thereafter used only the phrase, conditions of reinstatement. The board relies on this to support its position that it was only required to delete paragraphs 2(c), 2(d), and 2(e). The clear intent and mandate of *Eastway I* is that the probation conditions set forth in paragraphs 3(d) and 3(i) should also be removed from the order. If there was no evidence to support the condition of continuing treatment for reinstatement, then there was no evidence to support the condition of continuing treatment for probation either. It is the worst kind of sophistry to insist on the reimposition of conditions which have already been found not to be supported by the evidence.

Appellant asserts in assignments of error three and four that *Eastway I* also mandated deletion from the order of paragraph 2(b) which requires appellant to provide the board with written reports of evaluation by two physicians stating the appellant is no longer drug dependent and is able to practice according to acceptable and prevailing standards of care as a condition of his reinstatement. *Eastway I* did not discuss this condition, but it is not contrary to *Eastway I*. This court recognizes the board's interest in establishing that

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appellant's drug abuse problem remains in remission at the time of his reinstatement. We also emphasize that it was the court in *Eastway I*, and not this court, which has decided this case.

Based on the foregoing, appellant's third and fourth assignments of error are found to be well-taken and are sustained. We shall make a disposition of these Assignments of Error at the end of this opinion which we hope will be more precise and more useful to the parties than was done in *Eastway I*.

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In his fifth assignment of error, appellant asserts that the failure to allow his counsel to address the board on his remand motion at its April 12, 1995 meeting, and its failure to reopen the record to hold an evidentiary hearing, violated his right to due course of law and due process of law guaranteed by Article I, Section 16, Ohio Constitution and Section 1 of the Fourteenth Amendment, United States Constitution, and was an abuse of discretion.

Appellant fails to understand that the purpose of the April 12, 1995 meeting was to consider the order of the board on remand. The matter had been remanded to the board, not for it to reconsider its original sanctions, but to modify its original order by removing the conditions which were found to be unsupported by the evidence. There is no right to a new hearing and due process rights do not attach to such a situation. *In re Vaughn*. The board had the power to decline to open the record for any purpose other than what the remand specified, *Heck*, although it was within the discretion of the board to do so, and one cannot help but feel that the whole problem with the conditions of probation

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might have been avoided had appellant's counsel been given the opportunity to speak to the board. Assignment of error five is not well-taken.

Appellant's first and second assignments of error are directed towards the actions of the common pleas court. He asserts that the court erroneously relied upon *stare decisis* and *res judicata* in improperly refusing to consider issues which appellant had presented to the court. The common pleas court may have incorrectly cited to *stare decisis* and *res judicata* when it declined to consider appellant's arguments. However, appellant's appeal to that court attempted to raise claims that had already been decided, *e.g.*, the one year suspension, and was not limited to a claim that the board imposed conditions of probation which had been struck down. The court correctly concluded that appellant could not argue matters that were not the subject of the proceedings on remand. If the common pleas court did not understand appellant's arguments concerning the board's refusal to eliminate the conditions, it may well have been the result of the way appellant attempted to present a mixture of claims. In such a situation we are hesitant to find error. In light of our decision, we find that no prejudicial error flowed from the common pleas court, and if error intervened, it was harmless at most. Appellant's first and second assignments of error are not well-taken.

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Appellant's first, second, and fifth assignments of error are overruled. Appellant's third and fourth assignments of error are sustained in part. Pursuant to the authority granted to this court under App.R. 12(B), we modify the order of the State Medical Board of April 23, 1995 by striking

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paragraphs 3(d) and 3(i) from the board's order. The board's order is affirmed as modified. Pursuant to App.R. 27, this court issues a mandate lifting the stay of execution and directing the board to proceed with appellant's suspension pursuant to its order as modified.

Judgment modified and affirmed as modified.
Stay of execution lifted.

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TYACK and CLOSE, JJ., concur.

GREY, J., retired, of the Fourth Appellate District, assigned to active duty under authority of Section 6(C), Article IV, Ohio Constitution.

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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In the Matter of: Dr. Robert J. Eastway, Jr., D.O.,	:	
(Appellant).	:	No. 95APE12-1662
	:	(REGULAR CALENDAR)
	:	

JOURNAL ENTRY

Appellant not having demonstrated that this matter is not finally adjudicated, appellant's motion for a stay of execution of the judgment of this court is denied.

Judge G. Gary Tyack

Judge Michael L. Close

cc: Clifford R. Cloud
Betty D. Montgomery, AG
Anne Berry Strait, AAG

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

ROBERT J. EASTWAY, JR., D.O.	:	On Appeal From The State Medical Board of Ohio
Appellant,	:	
v.	:	Case No. 95CVF 05-3185
STATE MEDICAL BOARD OF OHIO	:	Judge David L. Johnson
Appellee.	:	

ORDER AND ENTRY CONTINUING THE SUSPENSION OF THE ORDER OF THE STATE MEDICAL BOARD AND STAYING EXECUTION OF THIS COURT'S JUDGMENT AFFIRMING THE MAY 4, 1995 ORDER OF THE STATE MEDICAL BOARD

Upon the application of the Appellant Robert J. Eastway, Jr., D.O., and pursuant to the authority of Section 119.12, Revised Code of Ohio, Rule 7(A) of the Ohio Rules of Appellate Procedure, Rule 62(B) of the Ohio Rules of Civil Procedure, and the inherent authority of this Court, this court finds that: (1) execution of the May 4, 1995 Order of the State Medical Board of Ohio will result in unusual hardship to the Appellant; (2) the health, safety, and welfare of the public will not be threatened by continued suspension of that order, and; (3) that a stay of execution of the December 8, 1995 decision and subsequent judgment of this Court affirming the May 4, 1995 Order of the State Medical Board of Ohio, and any proceedings to enforce that judgment is appropriate.

Therefore, it is hereby ORDERED, that the Order of the State Medical Board of Ohio, entered in this matter and mailed to the Appellant on May 4, 1995, shall continue to be stayed and suspended pending final adjudication of the Appellant's appeal to the Tenth District Court of Appeals.

It is further ORDERED that this continued stay and suspension shall be conditioned upon the Appellant being prohibited from prescribing medication for himself or members of his family.

It is further ORDERED that the execution of the decision and judgment of this Court affirming the May 4, 1995 Order of the State Medical Board of Ohio, and any proceedings to enforce the said judgment, shall be and are hereby stayed pending final adjudication of the Appellant's appeal to the Tenth District Court of Appeals, conditioned upon the filing with the Clerk of the Court a supersedeas bond in the amount of _____ Dollars.

DATE: _____ _____
JUDGE

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

ROBERT J. EASTWAY, JR., D.O.	:	On Appeal From The State Medical Board of Ohio
Appellant,	:	
v.	:	Case No. 95CVF 05-3185
STATE MEDICAL BOARD OF OHIO	:	Judge David L. Johnson
Appellee.	:	

ENTRY DENYING APPELLE'S MOTION TO VACATE, FILED OCTOBER 30, 1995

For the reasons stated in the decision of this court rendered on December 12, 1995 and filed on December 13, 1995, which decision is hereby incorporated herein by reference as if fully rewritten herein, it is hereby:

ORDERED, ADJUDGED AND DECREED, that the appellee's "Motion To Vacate The Suspension Of The Order Of The State Medical Board Of Ohio Filed May 8, 1995," which motion was filed October 30, 1995, is hereby **DENIED.**

DATE

JUDGE DAVID L. JOHNSON

Clifford R. Cloud (0022916)
CLOUD KOENIG & OWEN
5354 North High Street, 3D
Columbus, Ohio 43214
Phone: (614) 221-3621

Counsel for Appellant
Robert J. Eastway, Jr., D.O.

Anne Berry Strait (0012256)
Assistant Attorney General
Health and Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3428

Counsel for Appellee
The State Medical Board of Ohio

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

ROBERT J. EASTWAY, JR. D.O.	:	
	:	CASE NO.95CVF-05-3185
Appellant,	:	JUDGE DAVID L. JOHNSON
vs.	:	
STATE MEDICAL BOARD OF OHIO,	:	
Appellee.	:	

JUDGMENT ENTRY
AFFIRMING THE MAY 4, 1995
ORDER OF THE STATE MEDICAL BOARD OF OHIO

This case is before the Court upon the appeal, pursuant to R.C. 119.12, of the May 4, 1995 order of the State Medical Board of Ohio. For the reasons stated in the decision of this Court rendered and filed on December 8, 1995, which decision is incorporated by reference as if fully rewritten herein, it is hereby

ORDERED, ADJUDGED AND DECREED that judgment is hereby entered in favor of Appellee, State Medical Board of Ohio, and the May 4, 1995 order of the State Medical Board in the matter of Robert J. Eastway, Jr. D.O. is hereby AFFIRMED. Costs to Appellant.

IT IS SO ORDERED.

_____ _____
DATE JUDGE DAVID L. JOHNSON

APPROVED:

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Counsel for Appellee

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

ROBERT J. EASTWAY, JR. D.O.,	]	FINAL APPEALABLE ORDER
APPELLANT,	]	CASE NO. 95CVF-05-3185
vs.	]	JUDGE DAVID L. JOHNSON
STATE MEDICAL BOARD OF OHIO,	]	TRANSACTION NO. X
APPELLEE,	]	BY

DECISION ON THE MERITS OF APPEAL

Rendered this 8th day of December, 1995.

JOHNSON, J.

The instant action comes before the Court upon appeal by Dr. Robert Eastway from the decision of the State Medical Board of Ohio ("Board") dated May 4, 1995. That decision kept in place a revocation of Appellant's license to practice medicine which was originally imposed in the Board's Order of March 16, 1992. Appellant appealed the 1992 decision of the Board through both the Common Pleas and the Tenth District Court of Appeals level, with a final denial of review by the Supreme Court. The dispositive holding is contained in *re Eastway* (1995) 95 Ohio App.3d 516, 642 N.E.2d 1135. The Court of Appeals instructed the trial court to remand the matter to the Board to remove the restrictions contained in parts (c), (d), and (e) of its Order of 1992 relating to conditions for reinstatement.

The conditions are as follows:

> c. Dr. Eastway shall provide the Board with a certification from an approved treatment provider that he has successfully completed any required inpatient treatment and is continuing in full compliance with regard to any outpatient treatment and/or aftercare.

d. Dr. Eastway shall provide satisfactory documentation of continuous participation in a drug and alcohol rehabilitation program acceptable to the Board, such as AA, NA or Caduceus, no less than four (4) times per week.

e. Dr. Eastway shall provide documentation acceptable to the Board of continuing psychiatric counseling at intervals deemed appropriate by a treating psychiatrist approved by the Board.

Immediately prior to listing these conditions, the Court stated

> "A review of the record reveals that most, but not all, of the conditions for reinstatement, including terms of probation imposed by the Board, are supported by reliable, probative and substantial evidence and are otherwise in accordance with law." at page 522

The Court concluded its holding with instructions to affirm the Board's decision except as to the conditions of reinstatement listed above.

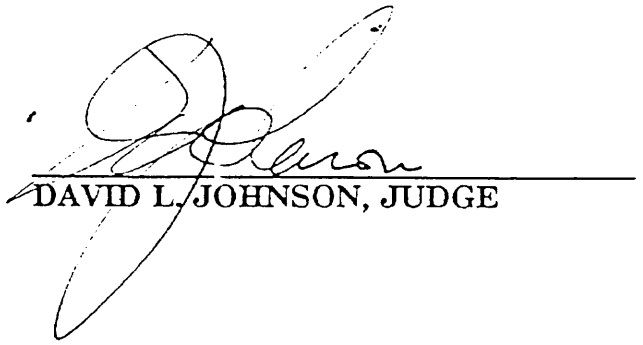
Appellant now seeks to again have the Court review the action of the Board. Included in this review are arguments as to constitutional violations for failure of the Board to hold an evidentiary hearing on remand, that the conditions and actions of the Board constitute "cruel and unusual punishment", and failure to provide due process to Appellant. Appellant also contends that the Board should have considered evidence of mitigation pertaining to the time between the first order and the remand.

It must first be noted that the Courts are governed by the principle of *stare decisis*. This principle, cited by the parties as the doctrine of law of the case, mandates that a court apply the law set forth in prior decisions unless meritorious reasons exist for a change. The principle is evenly more stringently applied when the reviewing court is subordinate to the court enunciating the prior holding. *Nolan v. Nolan* (1984), 11 Ohio St. 3d 1. Despite herculean efforts, Appellant can not persuade this Court to ignore the clear holding of the Court of Appeals. While Appellant

contends that the Board should have reopened or reconsidered its actions in light of the prior judicial review, this Court doubts that the Board had authority to do so, even if it had chosen that course. A review of the decision entered evidences compliance with the instructions on remand. As pointed out by Appellee, *Bharmota v. State Medical Board* (December 7, 1993) Franklin App. No. 93AP-630, unreported, addressed the issue of post hearing mitigation and held that there was no requirement for the Board to take such evidence.

Appellant asserts that his new constitutional arguments should be considered. The case of *In re: Adkins Children* (July 2, 1990) Butler App. No. CA89-01-004 unreported, is one of many examples applying the principle of *res judicata* to bar subsequent litigation of issues that were raised or that should have been raised. Criminal law applies the same principle in post-conviction appeals. *State v. Lester* (1975), 41 Ohio St. 2d 51.

The Court finds no merit in the issues raised by Appellant. The Board complied with the instructions on remand and therefore their decision of May 4, 1995 is in accordance with law and must be Affirmed. Counsel for Appellee shall prepare a Judgment Entry of Dismissal.



DAVID L. JOHNSON, JUDGE

Appearances:

Clifford R. Cloud, Esq. (0022916)
Attorney for Appellant

Anne Berry Strait (0012256)
Assistant Attorney General
Attorney for Appellee

STATE MEDICAL BOARD OF OHIO

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

April 14, 1995

Clifford R. Cloud, Esq.
CLOUD, KOENIG & OWEN
5354 North High St., Suite 3-D
Columbus, OH 43214

Re: Robert J. Eastway, D.O.

Dear Mr. Cloud:

Please find enclosed a certified copy of the Order and Entry in the above matter approved and confirmed by the State Medical Board of Ohio meeting in regular session on April 12, 1995. This Order and Entry documents the Medical Board's reconsideration of the penalty in Dr. Eastway's case in accordance with the instructions of the Tenth District Court of Appeals and the Franklin County Court of Common Pleas.

Section 119.12, Ohio Revised Code, may, but does not necessarily, authorize an appeal from this Order. Such an appeal may be taken to the Court of Common Pleas in Franklin County 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 appropriate court 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.

Very truly yours,

Thomas E. Gretter, M.D.
Secretary

TEG:em
Enclosures

Certified Mail Receipt No. P 741 124 640
Return Receipt Requested

cc: Robert J. Eastway, D.O.

Certified Mail No. P 741 124 641
Return Receipt Requested

Mailed 5-4-95

STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

CERTIFICATION

I hereby certify that the attached copy of the Order and Entry of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board; March 11, 1992 Entry of Order in the matter of Robert J. Eastway, D.O. ; and attached excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 12, 1995, including a Motion approving and confirming the Findings of Fact, amending the Conclusions of Law, and adopting an amended Order, constitute a true and complete copy of the Order and Entry of the State Medical Board in the matter of Robert J. Eastway, 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)

Thomas E. Gretter, M.D.
Secretary

4/23/95
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

ROBERT J. EASTWAY, JR., D.O. *

ORDER AND ENTRY

On or about March 11, 1992, the State Medical Board of Ohio issued its Findings and Order in the Matter of Robert J. Eastway, Jr., D.O., whereby Dr. Eastway's license to practice osteopathic medicine and surgery in the State of Ohio was revoked; the revocation was stayed, and Dr. Eastway's license was indefinitely suspended for a minimum of one year. A copy of those Findings and Order are attached hereto and incorporated herein.

Pursuant to 119.12, Ohio Revised Code, Dr. Eastway appealed the Medical Board's decision to the Franklin County Court of Common Pleas and was granted a stay by the Court on March 19, 1992 with the prohibition that he not prescribe for himself or for family members. Subsequently, the Court of Common Pleas affirmed the Medical Board's decision, but granted a second stay subject to the same prohibitions pending final adjudication by the Tenth District Court of Appeals. By Opinion and Entry on June 9, 1994, the Court of Appeals reversed the judgment of the Court of Common Pleas insofar as that Court had affirmed certain conditions for reinstatement established by the Medical Board's March 11, 1992 suspension Order. The appellate court then remanded the matter to the Common Pleas Court with instructions to affirm the Medical Board's decision except as to those specified reinstatement conditions, and to remand the matter to the Medical Board for further proceedings. By Entry filed on June 27, 1994, the Common Pleas Court remanded this case to the Medical Board for further proceedings consistent with the Opinion rendered by the Tenth District Court of Appeals. Prior to the Medical Board's consideration of an appropriate Order on Remand, however, the Common Pleas Court vacated its remand Order on August 2, 1994, and granted Dr. Eastway's request for a stay pending further decision by the Ohio Supreme Court. On November 2, 1994, the Ohio Supreme Court issued an Entry declining to accept jurisdiction of the doctor's appeal, and this matter was ultimately remanded to the Medical Board by Agreed Entry rendered on February 8, 1995, and filed on February 22, 1995.

WHEREFORE, pursuant to the instructions of the Tenth District Court of Appeals and the Franklin County Court of Common Pleas, and upon approval and confirmation by vote of the Board on April 12, 1995, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for that date.

It is hereby ORDERED that:

1. The certificate of Robert J. Eastway, Jr., D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be REVOKED. Such revocation is stayed, and Dr. Eastway's certificate is SUSPENDED for an indefinite period of time, but not less than one (1) year.

2. The State Medical Board shall not consider reinstatement of Dr. Eastway's certificate to practice unless and until all of the following minimum requirements are met:

   a. Dr. Eastway shall submit an application for reinstatement, accompanied by appropriate fees.

   b. Dr. Eastway shall provide the Board with written reports of evaluation by two physicians acceptable to the Board stating that Dr. Eastway is no longer drug dependent and is able to practice according to acceptable and prevailing standards of care. Each of these evaluations shall be in writing and shall state with particularity the bases for this determination and shall set forth any recommended limitations upon Dr. Eastway's practice.

   c. Dr. Eastway shall take and pass an examination to be administered by the Board or its designee related to the content of the DEA Physician's Manual, which manual may be obtained from the offices of the State Medical Board. In the event that Dr. Eastway fails this examination, Dr. Eastway must wait one (1) month between reexaminations.

3. Upon reinstatement, Dr. Eastway's certificate shall be subject to the following probationary terms, conditions and limitations for a minimum of two (2) years:

   a. Dr. Eastway shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio.

b. Dr. Eastway shall submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the provisions of probation.

c. Dr. Eastway shall appear in person for interviews before the full Board or its designated representative at three (3) month intervals or as otherwise requested by the Board.

d. Dr. Eastway shall continue counseling with a psychiatrist approved by the Board at such intervals as are deemed appropriate by the counselor or treating psychiatrist, but not less than once per month, until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the counselor or approved treating psychiatrist. Dr. Eastway shall ensure that these reports are forwarded to the Board on a quarterly basis, or as otherwise directed by the Board.

e. Dr. Eastway shall abstain completely from the personal use or possession of drugs, except those prescribed, administered or dispensed to him by another so authorized by law who has full knowledge of Dr. Eastway's history of chemical dependency.

f. Dr. Eastway shall abstain completely from the use of alcohol.

g. Dr. Eastway shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Eastway shall ensure that all screening reports are forwarded directly to the Board on a monthly basis. Within thirty (30) days of the effective date of this Order, Dr. Eastway shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Eastway shall submit the required urine specimens. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the Board of any positive screening results. The supervising physician shall monitor Dr. Eastway and provide the Board with reports on Dr. Eastway's progress and status. Dr. Eastway shall ensure

that said reports are forwarded to the Board on a quarterly basis.

In the event that the designated supervising physician become unable or unwilling to so serve, Dr. Eastway must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable.

h. Dr. Eastway shall submit blood or urine specimens for analysis without prior notice at such times as the Board may request.

i. Dr. Eastway shall maintain participation in an alcohol and drug rehabilitation program acceptable to the Board, such as AA, NA, or Caduceus, no less than four (4) times per week or as otherwise directed by the Board. At Dr. Eastway's appearances before the Board or its designated representative, Dr. Eastway shall submit acceptable documentary evidence of continuing compliance with this program.

j. Dr. Eastway shall not prescribe, administer, dispense or order controlled substances except in a hospital setting, and shall keep a log of all controlled substances so prescribed, administered, dispensed or ordered. Such log shall be submitted in the format approved by the Board thirty (30) days prior to Dr. Eastway's personal appearances before the Board or its designated representative, or as otherwise directly by the Board.

k. In the event that Dr. Eastway should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Eastway must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.

l. Dr. Eastway shall provide a copy of this Order to all employers and the chief of staff at each hospital where he has, applies for, or obtains privileges of any kind.

m. If Dr. Eastway violates probation in any respect, the Board, after giving Dr. Eastway notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of Dr. Eastway's certificate to practice.

4. Upon successful completion of probation, Dr. Eastway's certificate will be fully restored.

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

Thomas E. Gretter, M.D.
Secretary

(SEAL)

4/23/95
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 *

*

ROBERT J. EASTWAY, JR., D.O. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 11th day of March, 1992.

Upon the Report and Recommendation of Wanita J. Sage, 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 modification, approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board for the above date.

It is hereby ORDERED that:

1. The certificate of Robert J Eastway, Jr., D.O., to practice osteopathic medicine and surgery in the State of Ohio, shall be REVOKED. Such revocation is stayed, and Dr. Eastway's certificate is SUSPENDED for an indefinite period of time, but not less than one (1) year.

2. The State Medical Board shall not consider reinstatement of Dr. Eastway's certificate to practice unless and until all of the following minimum requirements are met:

   a. Dr. Eastway shall submit an application for reinstatement, accompanied by appropriate fees.

   b. Dr. Eastway shall provide the Board with written reports of evaluation by two physicians acceptable to the Board stating that Dr. Eastway is no longer drug dependent and is able to practice according to acceptable and prevailing standards of care. Each of these evaluations shall be in writing and shall state with particularity the bases for this determination and shall set forth any recommended limitations upon Dr. Eastway's practice.

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c. Dr. Eastway shall provide the Board with a certification from an approved treatment provider that he has successfully completed any required inpatient treatment and is continuing in full compliance with regard to any outpatient treatment and/or aftercare.

d. Dr. Eastway shall provide satisfactory documentation of continuous participation in a drug and alcohol rehabilitation program acceptable to the Board, such as AA, NA or Caduceus, no less than 4 times per week.

e. Dr. Eastway shall provide documentation acceptable to the Board of continuing psychiatric counseling at intervals as deemed appropriate by a treating psychiatrist approved by the Board.

f. Dr. Eastway shall take and pass an examination to be administered by the Board or its designee related to the content of the DEA Physician's Manual, which manual may be obtained from the offices of the State Medical Board. In the event that Dr. Eastway fails this examination, Dr. Eastway must wait one (1) month between reexaminations.

3. Upon reinstatement, Dr. Eastway's certificate shall be subject to the following probationary terms, conditions and limitations for a minimum of two (2) years:

a. Dr. Eastway shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.

b. Dr. Eastway shall submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the provisions of probation.

c. Dr. Eastway shall appear in person for interviews before the full Board or its designated representative at three (3) month intervals or as otherwise requested by the Board.

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d. Dr. Eastway shall continue counseling with a psychiatrist approved by the Board at such intervals as are deemed appropriate by the counselor or treating psychiatrist, but not less than once per month, until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the counselor or approved treating psychiatrist. Dr. Eastway shall ensure that these reports are forwarded to the Board on a quarterly basis, or as otherwise directed by the Board.

e. Dr. Eastway shall abstain completely from the personal use or possession of drugs, except those prescribed, administered or dispensed to him by another so authorized by law who has full knowledge of Dr. Eastway's history of chemical dependency.

f. Dr. Eastway shall abstain completely from the use of alcohol.

g. Dr. Eastway shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Eastway shall ensure that all screening reports are forwarded directly to the Board on a monthly basis. Within thirty (30) days of the effective date of this Order, Dr. Eastway shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Eastway shall submit the required urine specimens. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the Board of any positive screening results. The supervising physician shall monitor Dr. Eastway and provide the Board with reports on Dr. Eastway's progress and status. Dr. Eastway shall ensure that said reports are forwarded to the Board on a quarterly basis.

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In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Eastway must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable.

h. Dr. Eastway shall submit blood or urine specimens for analysis without prior notice at such times as the Board may request.

i. Dr. Eastway shall maintain participation in an alcohol and drug rehabilitation program acceptable to the Board, such as AA, NA, or Caduceus, no less than four (4) times per week or as otherwise directed by the Board. At Dr. Eastway's appearances before the Board or its designated representative, Dr. Eastway shall submit acceptable documentary evidence of continuing compliance with this program.

j. Dr. Eastway shall not prescribe, administer, dispense or order controlled substances except in a hospital setting, and shall keep a log of all controlled substances so prescribed, administered, dispensed or ordered. Such log shall be submitted in the format approved by the Board thirty (30) days prior to Dr. Eastway's personal appearances before the Board or its designated representative, or as otherwise directed by the Board.

k. In the event that Dr. Eastway should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Eastway must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.

l. Dr. Eastway shall provide a copy of this Order to all employers and the chief of staff at each hospital where he has, applies for, or obtains privileges of any kind.

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Robert J. Eastway, Jr., D.O.

m. If Dr. Eastway violates probation in any respect, the Board, after giving Dr. Eastway notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of Dr. Eastway's certificate to practice.

4. Upon successful completion of probation, Dr. Eastway's certificate will be fully restored.

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

Henry G. Cramblett MD

Henry G. Cramblett, M.D.
Secretary

(SEAL)

3/16/92
Date

REPORT AND RECOMMENDATION
IN THE MATTER OF ROBERT J. EASTWAY, JR., D.O.

The Matter of Robert J. Eastway, Jr., D.O., came on for hearing before me, Wanita J. Sage, Esq., Hearing Examiner for the State Medical Board of Ohio, on October 17, 1991.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

A. By letter of June 12, 1991 (State's Exhibit #1), the State Medical Board notified Robert J. Eastway, Jr., D.O., that it proposed to take disciplinary action against his license to practice osteopathic medicine and surgery in Ohio for one or more of the following reasons:

1. The Board alleged that, on or about March 3, March 13, and March 17, 1989, in the absence of a bona fide doctor-patient relationship, Dr. Eastway presented one J. Fleer with prescriptions for Percodan or Percocet written in her name with directions for her to obtain the medication from a pharmacy and return the drugs to him. Further, on or about June 29, July 10, and September 6, 1989, in the absence of a bona fide doctor-patient relationship, Dr. Eastway presented one R. Duncan with prescriptions for Percodan or Percocet written in her name with directions for her to obtain the medication from a pharmacy and return the drugs to him. The Board alleged that such acts constituted "the obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice", as that clause is used in Section 4731.22(B)(8), Ohio Revised Code, and/or "commission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act is committed", as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal processing of drug documents, and Section 2925.22, Ohio Revised Code, Deception to obtain dangerous drugs.

2. The Board further alleged that Dr. Eastway prescribed certain controlled substances to Patients 1 through 4 (identified on a Patient Key to be withheld from public disclosure), but failed to maintain patient records regarding those individuals. Further, Dr. Eastway prescribed controlled substances to Patient 5 in 1988 and 1989, failing to supplement the patient records he had maintained for this patient during the years 1983, 1984, and 1985. The Board alleged that such conduct

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directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board", as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(D), Ohio Administrative Code. Purusant to Rule 4731-11-02(F), Ohio Administrative Code, violation of Rule 4731-11-02(D), Ohio Administrative Code, also violates Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code.

Dr. Eastway was advised of his right to request a hearing in this Matter.

B. By letter received by the State Medical Board on July 12, 1991 (State's Exhibit #2), David H. Bodiker, Esq., requested a hearing on behalf of Dr. Eastway.

II. Appearance of Counsel

A. On behalf of the State of Ohio: Lee I. Fisher, Attorney General, by Odella Lampkin, Assistant Attorney General

B. On behalf of the Respondent: David H. Bodiker, Esq.

III. Testimony Heard

A. Presented by the State

1. Royletta E. Duncan (by deposition taken on October 16, 1991)

2. Robert J. Eastway, Jr., D.O., as on cross-examination

3. Julie Fleer

B. Presented by the Respondent

1. Ransome R. Williams, M.D.

2. Robert J. Eastway, Jr., D.O.

IV. Exhibits Examined

In addition to State's Exhibits #1 and #2, noted above, the following exhibits were identified and admitted into evidence in this Matter:

A. Presented by the State

1. State's Exhibit #3: July 17, 1991, letter to Attorney Bodiker from the State Medical Board advising that a hearing initially set for July 26, 1991, was postponed

2. State's Exhibit #4: July 23, 1991, letter to Attorney Bodiker from the State Medical Board scheduling the hearing for September 19, 1991.

3. State's Exhibit #5: September 10, 1991, Entry granting the Respondent's motion for continuance and rescheduling the hearing for October 17, 1991.

4. State's Exhibit #6: September 27, 1991, Entry granting the State's motion to take the testimony of Royletta Duncan by deposition.

5. State's Exhibit #7: Entry for treatment in lieu of conviction, filed in the Franklin County Common Pleas Court on December 14, 1990, in Case No. 90CR-05-2734, State v. Eastway.

6. State's Exhibit #8: Nine-count indictment filed in the Franklin County Common Pleas Court on May 25, 1990, in Case No. 90CR-05-2734, State v. Eastway.

7. State's Exhibit #9: Investigative subpoena issued to Dr. Eastway by the State Medical Board on December 20, 1990, requesting certain patient records (ATTACHED PATIENT KEY SEALED TO PROTECT CONFIDENTIALITY).

8. State's Exhibit #10: January 22, 1991, letter to the State Medical Board from Joan Denes, Office Manager, Central Ohio Cardiovascular Consultants, Inc., responding to the Board's subpoena request.

9. State's Exhibit #11: Copy of Sections 2925.22, 2925.23, and 2913.01, Ohio Revised Code.

10. State's Exhibit #12: May 31, 1991, affidavit of Royeltta E. Duncan.

11. State's Exhibit #13: April 5, 1991, affidavit of Julie A. Fleer.

12. State's Exhibit #14: Three prescriptions written by Dr. Eastway in the name of Royletta Duncan, dated June 29, July 10, and September 6, 1989, respectively.

13. State's Exhibit #15: Three prescriptions written by Dr. Eastway in the name of Julie Fleer, dated March 3, March 13, and March 17, 1989, respectively.

14. State's Exhibit #16: Prescriptions written by Dr. Eastway for Patient 1.

* 15. State's Exhibit #17: Prescriptions written by Dr. Eastway for Patient 2.

* 16. State's Exhibit #18: Prescriptions written by Dr. Eastway for Patient 3.

* 17. State's Exhibit #19: Prescription written by Dr. Eastway for Patient 4.

* 18. State's Exhibit #20: Prescriptions written by Dr. Eastway for Patient 5.

* 19. State's Exhibit #21: Computer printout from Drug Emporium, listing certain prescriptions issued by Dr. Eastway for Patients 1 and 5.

* 20. State's Exhibit #22: Computer printout from Drug World, listing prescriptions issued by Dr. Eastway for Patient 1.

* 21. State's Exhibit #23: Computer printout from Drug World, listing prescriptions issued by Dr. Eastway for Patient 5.

* 22. State's Exhibit #24: Dr. Eastway's patient records with regard to his treatment of Patient 5 during 1983, 1984, and 1985.

23. State's Exhibit #25: Transcript of the October 16, 1991, deposition of Royletta E. Duncan.

NOTE: THE EXHIBITS MARKED WITH AN ASTERISK (*) HAVE BEEN SEALED TO PROTECT CONFIDENTIALITY.

B. Presented by the Respondent

1. Respondent's Exhibit A: July 26, 1990, letter to David H. Bodiker, Esq., from Tom Pepper, M.D., Medical Director, Alcoholism and Drug Dependency Treatment Services, Riverside Methodist Hospitals, reporting assessment and treatment recommendations with regard to Dr. Eastway.

2. Respondent's Exhibit B: April 3, 1991, letter to Teri Gardner, Supervisor, Franklin County Adult Probation, from Ransome R. Williams, Chairman, Grant Physicians' Effectiveness Committee, reporting Dr. Eastway's compliance with his treatment aftercare agreement.

3. Respondent's Exhibit C: Ledger page indicating dental services rendered to Dr. Eastway on 7/6/89 and 1/2/90 (see supplemental dental records included in Respondent's Exhibit F).

4. Respondent's Exhibit D: October 14, 1991, letter from Ransome R. Williams, M.D., regarding Dr. Eastway's progress with his recovery program.

5. Respondent's Exhibit E: October 17, 1991, letter from Gary Lehman, President, Madison County Hospital, recommending Dr. Eastway.

6. Respondent's Exhibit F: Documents filed with the State Medical Board on November 12, 1991, pursuant to motion granted at hearing, including: a cover memorandum from Attorney Bodiker; a certified copy of Dr. Eastway's dental records (F-1); and a November 6, 1991, letter from Michael D. McNeer, M.D., regarding Mrs. Eastway's history of opioid dependence, treatment, and progress in recovery (F-2).

V. Post-Hearing Additions to the Record

In addition to Respondent's Exhibit F, above, the following post-hearing documents were admitted to the record, upon the Hearing Examiner's own motion:

A. Board Exhibit 1: State's October 2[illegible], 1991, motion to supplement the hearing record.

B. Board Exhibit 2: State's October 24, 1991, motion to permit written closing arguments.

C. Board Exhibit 3: November 1, 1991, Entry (by Hearing Examiner Fishel, acting in Hearing Examiner Sage's absence) granting the Respondent's request for an extension of the deadline for submission of additional materials, and holding the record open until November 12, 1991.

D. Board Exhibit 4: November 5, 1991, Entry admitting additional documents and holding the record open until November 20, 1991, for submission of written closing arguments.

E. Board Exhibit 5: State's written closing arguments, filed November 20, 1991.

F. Board Exhibit 6: Respondent's written closing arguments, filed November 20, 1991.

VI. Closing of Record

The record in this Matter was closed as of 5:00 P.M., November 20, 1991.

FINDINGS OF FACT

1. On three occasions in 1989, in the absence of a bona fide doctor-patient relationship, Robert J. Eastway, Jr., D.O., presented one Julie Fleer with a prescription for Percodan or Percocet written in her name, directing her to obtain the medication from a pharmacy and return the drugs to him. Dr. Eastway wrote these prescriptions in Ms. Fleer's name, as follows:

   a. On March 3, 1989, for 25 Percodan (a Schedule II controlled substance narcotic analgesic), with directions to take one or two every four hours as needed for chest pain;

   b. On March 13, 1989, for 15 Percocet (also a Schedule II controlled substance narcotic analgesic), with directions to take one every four hours as needed for pain; and

   c. On March 17, 1989, for 10 Percocet, with directions to take one or two every four hours as needed for pain.

   These facts are established by the stipulations of the parties (Tr. at 7-8) and State's Exhibit #15.

2. On three occasions in 1989, in the absence of a bona fide doctor-patient relationship, Dr. Eastway presented one Royletta Duncan with a prescription for Percocet written in her name, directing her to obtain the medication from a pharmacy and return the drugs to him. Dr. Eastway wrote these prescriptions in Ms. Duncan's name, as follows:

   a. On June 29, 1989, for 30 Percocet, with directions to take one or two every four hours as needed for headache;

   b. On July 10, 1989, for 25 Percocet, with directions to take one or two every four to six hours as needed for pain; and

   c. On September 6, 1989, for 25 Percocet, with directions to take one every four to six hours as needed for pain.

   These facts are established by the stipulations of the parties (Tr. at 7-8) and State's Exhibit #14.

3. Both Julie Fleer and Royletta Duncan were employees of Dr. Eastway's corporation at the time he wrote these prescriptions in their names. Dr. Eastway told them that he needed medications because of dental pain, but that it was improper for him to write prescriptions for himself.

   These facts are established by State's Exhibits #12 and #13 the testimony of Ms. Fleer (Tr. at 40-53), and the testimony of Ms. Duncan (Depo. Tr. at 5-43).

4. At hearing, Dr. Eastway asserted that he had needed all of the prescriptions he had written in employees' names for his own use for relief of dental pain. He did not explain why he had noted "for chest pain" on the 3/3/89 prescription he wrote in Ms. Fleer's name and "for headache" on the 6/29/89 prescription he wrote in Ms. Duncan's name.

   These facts are established by State's Exhibits #14 and #15 and the testimony of Dr. Eastway (Tr. at 31-39, 74-84, 100-105).

5. Dr. Eastway's initial visit to the dentist was on March 15, 1989. On that date, according to his dental records, Dr. Eastway told the dentist that he had taken antibiotics as treatment for intermittent pain, but made no mention of self-treatment with narcotic analgesics. The dentist scheduled Dr. Eastway for a root canal, noting that Dr. Eastway would start himself on an antibiotic, Pen VK 500 mg., four times a day for 10 days. Thereafter, Dr. Eastway had a root canal on March 29, 1989; an apicoectomy on July 6, 1989; and other dental procedures in January, 1990. On one occasion, June 15, 1989, the dentist either recommended or prescribed Motrin 60 mg. for Dr. Eastway. The dental records do not indicate that the dentist recommended, prescribed, or offered to prescribe any other pain medication for Dr. Eastway.

   These facts are established by Respondent's Exhibit F-1.

6. From December, 1988, through December, 1989, Dr. Eastway prescribed controlled substances for Patient 1 on the dates and in the amounts indicated on the "Prescription List by Patient Number" submitted as an attachment to State's Exhibit #1, with the following exceptions:

   a. There is no evidence that a prescription was issued on 12/14/88; however, two prescriptions, each for 25 Percocet, were issued on 12/24/88.

   b. The prescription listed as having been issued on 7/8/89 was actually issued on 7/3/89.

c. The prescription listed as having been issued on 10/29/89 was actually issued on 10/28/89.

d. The 12/25/89 prescription was for 40, rather than 25, dosage units of Percocet.

e. The amounts listed for the Tussionex prescriptions are liquid measures, rather than dosage units. The 11/5/89 Tussionex prescription was for 180 ml.; the amounts of the other Tussionex prescriptions are listed in fluid ounces. (A one-teaspoon dosage unit is approximately 5 ml.; each fluid ounce contains 29.57 ml.)

Dr. Eastway failed to maintain patient records with regard to his prescribing of controlled substances for Patient 1. Patient 1 was Dr. Eastway's wife.

Dr. Eastway testified that he had prescribed Percocet as treatment for Mrs. Eastway's chronic headaches, and Tussionex as treatment for cough and congestion related to allergies. He had begun prescribing for her after she had completed a course of physical medicine and rehabilitation under the care of a neurologist. The neurologist had felt her headaches to be muscle contraction in origin.

These facts are established by State's Exhibits #16, #21, and #22; Board Exhibit 1; the stipulations of the parties (Tr. at 7-8); Respondent's Exhibit F-2; and the testimony of Dr. Eastway (Tr. at 124-129).

7. From May, 1988, through November, 1989, Dr. Eastway prescribed controlled substances for Patient 2 on the dates and in the amounts indicated on the "Prescription List by Patient Number" submitted as an attachment to State's Exhibit #1. Dr. Eastway failed to maintain patient records with regard to his prescribing of controlled substances for Patient 2.

According to a notation on the 5/27/88 prescription, Patient 2 was Dr. Eastway's son-in-law. On some of the prescriptions for Patient 2, Dr. Eastway wrote his own home address; on others, he wrote the patient's Portsmouth, Ohio, address. Dr. Eastway apparently phoned the 8/14/89 prescription into Grant Town Pharmacy; on this prescription, Patient 2's address was noted as "340 E. Town St. for Dr. Eastway."

Although Dr. Eastway could not recall for what he had treated Patient 2 in 1988 and 1989, he stated that he knew the patient well enough to know that this patient had legitimately needed pain medications. Dr. Eastway acknowledged that a notation on the 5/27/88 prescription for 40 Percocet appeared to indicate that it was for "chest pain." In fact, "chest pain" is noted on

both the 5/27/88 and the 7/8/88 prescriptions, and "severe headache" is noted on the 12/5/88 prescription; the remaining prescriptions do not note specific indications.

These facts are established by State's Exhibit #17, the stipulations of the parties (Tr. at 7-8), and the testimony of Dr. Eastway (Tr. at 109-110, 112-113).

8. From February, 1989, through May, 1989, Dr. Eastway prescribed controlled substances for Patient 3 on the dates and in the amounts indicated on the "Prescription List by Patient Number." Dr. Eastway failed to maintain patient records with regard to his prescribing of controlled substances for Patient 3.

Patient 3 was an employee of Dr. Eastway's corporation. At hearing, Dr. Eastway initially stated that he did not recall whether Patient 3 had been a patient or an employee he had used to get medications for himself. After Dr. Eastway's counsel pointed out that "headache" was noted on each prescription, Dr. Eastway stated that these medications had been prescribed for Patient 3's own use. He could not recall whether or not Patient 3's headaches had been severe, but stated that he would not routinely prescribe Percocet for headaches.

These facts are established by State's Exhibit #18 and the testimony of Dr. Eastway (Tr. at 105-106, 113, 122-124).

9. On March 31, 1989, Dr. Eastway prescribed four ounces of Tussionex (a Schedule III controlled substance narcotic antitussive and analgesic) for Patient 4. Dr. Eastway failed to maintain patient records with regard to this prescription for Patient 4. Dr. Eastway testified that this prescription had been for Patient 4's own use, presumably for a legitimate need.

These facts are established by State's Exhibit #19, the stipulations of the parties (Tr. at 7-8), and the testimony of Dr. Eastway (Tr. at 113-114).

10. From October, 1988, through November, 1989, Dr. Eastway prescribed controlled substances for Patient 5 on the dates and in the amounts indicated on the "Prescription List by Patient Number." The 11/11/88 prescription was for 180 ml., rather than 180 dosage units, of Tussionex. Dr. Eastway failed to maintain patient records with regard to his prescribing of controlled substances for Patient 5.

At hearing, Dr. Eastway claimed that Patient 5 had legitimately needed pain medications as treatment for chronic chest pain of a remitting and relapsing type. Dr. Eastway stated that he had treated Patient 5 for this condition for years, initially maintaining patient records in connection with Patient 5's formal visits. Later, however, Patient 5 would just stop into

Dr. Eastway's office from time to time to request a prescription for pain. Because Patient 5 had been a long-established patient, Dr. Eastway had not deemed it necessary to perform diagnostic testing or extensive evaluation each time before prescribing pain medications.

Dr. Eastway's representations regarding his prior treatment of Patient 5 are not well-supported by the medical records he maintained for this patient from November, 1983, through February, 1985. Those records do not indicate that Dr. Eastway had ever previously treated Patient 5 for chest pain by prescribing controlled substances. In fact, Dr. Eastway's role with regard to Patient 5 had apparently been limited to performing a cardiovascular evaluation with diagnostic testing in November, 1983, and performing and interpreting follow-up tests in March, August, and October, 1984, and February, 1985. Although Dr. Eastway had diagnosed Patient 5 as having a complete left bundle branch block with cardiomyopathy, there is no indication that he had treated Patient 5 for that or any condition.

These facts are established by State's Exhibits #20, #21, #23, and #24 and the testimony of Dr. Eastway (Tr. at 114-115, 117-119).

11. Dr. Eastway maintained at hearing that he had prescribed these controlled substances for Patients 1 through 5 for their own use and for valid medical purposes. Dr. Eastway admitted, however, that he had used some of the Percocet that he had prescribed for his wife (Patient 1), after September 6, 1989, when he had quit using employees to obtain medications for him. Dr. Eastway stated that, although he had started out legitimately needing Percocet for relief of dental pain, in the summer or fall of 1989 he had begun using it to help him relax in the evenings. In late 1989, Dr. Eastway had realized that both he and his wife might be abusing Percocet and were "on the wrong track." He had stopped prescribing for his wife and they had both quit using Percocet.

These facts are established by the testimony of Dr. Eastway (Tr. at 88-93, 103-119, 122-131).

12. On or about May 25, 1990, Dr. Eastway was indicted on nine felony counts of illegal processing of drug documents in violation of Section 2925.23, Ohio Revised Code, in connection with issuing false prescriptions for Percocet. On or about December 14, 1990, the Franklin County Common Pleas Court granted Dr. Eastway's request for treatment in lieu of conviction, finding that Dr. Eastway's drug dependence was a factor leading to the criminal activity with which he had been charged.

Nevertheless, at the present hearing, Dr. Eastway clearly asserted that he was not drug dependent when he began writing false prescriptions in the names of employees for his own use. In fact, he stated that he had never used Percodan or Percocet before that time. He also consistently maintained that the controlled substances he prescribed without keeping patient records for Patients 1 through 5 were for their own use, not his.

These facts are established by State's Exhibits #7, #8, and #11 and the testimony of Dr. Eastway (Tr. at 75-76 and throughout).

13. In July, 1990, Dr. Eastway underwent a three-day assessment at the Alcoholism and Drug Dependency Treatment Unit of Riverside Methodist Hospitals. Dr. Eastway was diagnosed as drug dependent, currently in remission. According to Ransome R. Williams, M.D., Dr. Eastway's monitoring physician under the auspices of the Physician Effectiveness Committee at Grant Hospital, Dr. Eastway has complied with all treatment and aftercare recommendations.

These facts are established by Respondent's Exhibits A, B, and D and the testimony of Dr. Williams (Tr. at 55-67).

14. Mrs. Eastway has also undergone treatment for chemical dependency. She was evaluated in December, 1990, for the possibility of treatment in lieu of conviction on a drug related charge.

These facts are established by Respondent's Exhibit F-2.

15. Since 1983, Dr. Eastway has practiced primarily invasive cardiology in Columbus and London, Ohio, hospitals. In late 1989, Dr. Eastway left the cardiology group with which he was associated and now practices primarily at Grant Hospital in Columbus and Madison County Hospital in London.

These facts are established by the testimony of Dr. Eastway (Tr. at 70-74, 88-90).

CONCLUSIONS

1. As set forth in Findings of Fact #1 through #5, above, on at least six occasions from March 3 through September 6, 1989, Dr. Eastway obtained Schedule II narcotic medications by falsely writing prescriptions for his own use in the names of employees. Such acts, conduct, and/or omissions constitute:

a. "The obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice", as that clause is used in Section 4731.22(B)(8), Ohio Revised Code; and/or

b. "Commission of an act that constitutes felony in this state regardless of the jurisdiction in which the act was committed", as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, "Illegal processing of drug documents", and Section 2925.22, Ohio Revised Code, "Deception to obtain dangerous drugs."

2. Rule 4731-11-02(D), Ohio Administrative Code, states: "A physician shall complete and maintain accurate medical records reflecting his examination, evaluation, and treatment of all his patients. Patient medical records shall accurately reflect the utilization of any controlled substances in the treatment of a patient and shall indicate the diagnosis and purpose for which the controlled substance is utilized, and any additional information upon which the diagnosis is based." As set forth in Findings of Fact #6 through #10, above, Dr. Eastway failed to maintain any patient records whatsoever regarding his prescribing of controlled substances for Patients 1 through 5 during the period from May, 1988, through December, 1989. Such acts, conduct, and/or omissions constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board", as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(D), Ohio Administrative Code. Further, pursuant to paragraph (F) of Rule 4731-11-02, Ohio Administrative Code, violation of Rule 4731-11-02(D) also constitutes "failure to use reasonable care discrimination in the administration of drugs", as that clause is used in Section 4731.22(B)(2), Ohio Revised Code, and "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.

* * * * *

Dr. Eastway presented testimony and evidence with regard to his drug dependence and subsequent treatment. Nevertheless, though he apparently represented otherwise to the Franklin County Common Pleas Court, Dr. Eastway testified before this Board that he was not drug dependent at the time he began issuing false prescriptions in the names of employees to obtain controlled substances for his own

use. Such acts constitute felonies in this State. It defies common sense to believe that a physician would be unaware of the impropriety of writing a prescription in the name of a person other than the one for whom the medication is intended. Dr. Eastway's subsequent dependence on the drugs he obtained by deception aggravates, rather than mitigates, his illegal acts.

Likewise, no mitigation can be found in Dr. Eastway's unsupported assertion that he prescribed controlled substances for Patients 1 through 5 for valid therapeutic purposes. Medical documentation is an integral part of any physician's training and practice. When a physician undertakes the prescribing of Schedule II controlled substances over a substantial period of time without the documentation necessary for careful evaluation of risks and benefits to the patient, he must be prepared to take the consequences of his failure in professional responsibility. In Dr. Eastway's case, such failure was not an isolated incident. He admittedly prescribed controlled substances for five individuals over a period of approximately 20 months without maintaining patient records regarding them. In light of Dr. Eastway's illegal issuance of false prescriptions in the names of employees during this same time period, as well as his misleading testimony regarding his prior treatment of Patient 5, Dr. Eastway's claim of valid medical purpose in prescribing without medical documentation for these five individuals cannot be given credence.

PROPOSED ORDER

It is hereby ORDERED that the certificate of Robert J. Eastway, Jr., D.O., to practice osteopathic medicine and surgery in the State of Ohio, shall be and is hereby 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, except that Dr. Eastway shall immediately surrender his United States Drug Enforcement Administration certificate and shall not order, purchase, prescribe, dispense, administer, or possess any controlled substances, except for those prescribed for his personal use by another so authorized by law. Further, in the interim, Dr. Eastway shall not undertake treatment of any individual not already under his care.

Wanita J. Sage
Wanita J. Sage
Attorney Hearing Examiner

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REPORTS AND RECOMMENDATIONS

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

Dr. Gretter asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and order, and any objections filed in the matters of Robert J. Eastway, Jr., D.O.; James G. Gianakopoulos, M.D.; William J. Strandwitz, III, M.T.; Chester J. Janecki, Jr., M.D.; Marian Korosec, M.D., N.E. Ohio Emergency Affiliates; Laurel Matthews-Price, M.D.; and Avelino S. B. Rosales, M.D. A roll call was taken:

ROLL CALL:	Dr. Cramblett	- abstain
	Mr. Albert	- aye
	Dr. Stephens	- aye
	Mr. Jost	- abstain
	Dr. Garg	- aye
	Dr. Kaplansky	- aye
	Dr. Heidt	- aye
	Dr. Hom	- aye
	Dr. Agresta	- aye
	Dr. Gretter	- aye

Dr. Hom indicated that she did not review the record in the matter of William J. Strandwitz, III, M.T., and would therefore abstain from voting in that case.

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

REPORT AND RECOMMENDATION IN THE MATTER OF ROBERT J. EASTWAY, JR., D.O.

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

Dr. Eastway's attorney, David H. Bodiker, Esq., had filed a request to address the Board.

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

reporter.

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

Mr. Bodiker expressed his appreciation to the Board for hearing him. He stated that he will try to be concise and nonrepetitive with respect to what he has said in his written objections.

Mr. Bodiker stated that Dr. Eastway has admitted to the six separate occasions when he wrote prescriptions for himself in the name of an employee and obtained controlled substances from them. He also admitted his failure to maintain records for five patients for whom he prescribed controlled substances. Those were theoretically anonymous, but in the course of the hearing were identified as his wife, his mother-in-law, two employees and a patient for whom he had previously maintained records but had ceased doing so.

Mr. Bodiker argued that these admissions and acknowledgements do not lead inexorably to the Hearing Officer's conclusions. Dr. Eastway objects both to the Findings of Fact and to the Conclusions, as well as to what he believes to be the manner in which they were presented. Mr. Bodiker continued that he and Dr. Eastway also object to some things not being included in the findings, which were basically substantial evidence in mitigation that was presented at the hearing.

Mr. Bodiker stated that they believe that paragraph 3 of the Findings is inaccurate. They have set forth in their objections the language that was actually used by the witnesses as to what their states of mind were.

They believe that paragraph 4 was inaccurate and also included comments which were basically not facts but the impressions or arguments of the hearing examiner.

They believe that the hearing examiner gratuitously inserted comments into paragraph 5 about the absence of explanation when none was really offered or presented or even of particular issue.

They believe that paragraphs 6 through 11, which deal with the matters of the failure to maintain records, are superfluous. Mr. Bodiker stated that it is his understanding of that charge that it involves the failure to do so. Even if the prescriptions made were justified, that would not be a defense to the fact that the records weren't maintained. They had acknowledged that the records had not been

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maintained, and then they were confronted at the hearing with arguments about the content of the absent records and the specifics of the particular treatment of the patients. They feel that there was an attempt to inject some sort of meaning when none was intended. Certainly they did not come prepared to explain specifically, nor do they believe that to be appropriate.

They object to paragraph 12, the hearing examiner's use of the court proceedings. They feel that that is simply inaccurate. The doctor had been charged with eight counts. They entered pleas as part of a plea agreement, which would provide for treatment in lieu of conviction, which has now been accomplished and the case dismissed. The hearing examiner attempted to extract some sort of admission or importance from those proceedings, and not only improperly used it but drew the wrong conclusions.

They object to the conclusions, particularly the fact that because the prescriptions were written there was an attempt to make a fraudulent misrepresentation. The evidence was that he had written the prescriptions and he had used employees' names. It seems evident that what he was doing was having someone run an errand for him. He did not deny it was for him. The employee did not question that it was for the doctor. There was not a specific knowing, purposeful intention to defraud. When Dr. Eastway was contacted by the police, he fully explained what he had done. There was never at any point any effort to cover this up or to make it into a subterfuge. They believe that in order to be in violation of subsection (B)(8) or (B)(10), there must be some sort of culpable mental state, which was simply not present here. Mr. Bodiker stated that if the Board looked at definitions of fraudulent misrepresentation, they all require some specific state of mind. The evidence was that Dr. Eastway had done it, had done it unwittingly, and perhaps without some sort of calculated purpose, but that he had a realistic need at the time. It is their contention that because of the success of his use of this medication for relief of his dental pain and pain associated with the surgical procedures, he became more and more involved with it and kind of drifted into an abuse of that medication.

Mr. Bodiker stated that it is important that Dr. Eastway, without any prodding from the outside, recognized that he had begun to abuse the medication. He then immediately ceased using it voluntarily. He recognized also what he believed to be the cause of his problem, which was that he had found himself in an extremely stressful, extremely busy practice. He has scaled back his practice voluntarily. He has scaled back his activities. He changed his lifestyle. All this was done before there was any effort by any public authority or policing agency to do that. When that did come about in the summer of 1990, he called the Medical Board and informed them of what was happening. He has entered into programs and has done outstandingly well in those programs. He has completed everything that has been required.

Mr. Bodiker stated that there have been over two years where Dr. Eastway has not done anything. He's not been abusing drugs, he's been monitored, he has complied with all obligations of the hospital staffs, all obligations of the court, and the criminal charges have been dismissed and expunged. He is practicing full-time with recognition and the respect of all of the people with whom he associates. He's a man who has not had any prior disciplinary problems. He has dealt with what has happened. He has shown an ability to constructively rearrange his life and has done so and demonstrated that ability for several years. Mr. Bodiker stated that they believe the Board should take some action which would permit Dr. Eastway to continue to practice. Mr. Bodiker stated that Dr. Eastway has cured the problem. Instead of being punished, he should be recognized and allowed to continue his good works.

Dr. Gretter asked whether the Assistant Attorney General wished to respond.

Ms. Lampkin stated that the gravamen of the charges against Dr. Eastway was the deception he used to obtain medication. Mr. Bodiker explains that it was just an attempt on Dr. Eastway's part to have an employee run an errand for him and obtain the drugs, when in fact he used that employee's name on the prescription. The Hearing Examiner noted in her Report and Recommendation that it is inconceivable that a physician would put another person's name on a prescription to get controlled substances for him. If it was as innocent as running an errand, the physician would have had his own name on the prescription and the employee would have gone and gotten the controlled substances and brought them back. There is case law about the definition of fraudulent misrepresentation or what could be included in misrepresentation. The courts have said that the culpable state does not have to be intentional. If there is negligence or recklessness, there is culpability.

Ms. Lampkin also reminded the Board of the second rules violation, adding that Dr. Eastway does not deny not keeping patient records.

DR. O'DAY MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF ROBERT J. EASTWAY, JR., D.O. DR. STEPHENS SECONDED THE MOTION.

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

Dr. Hom stated that she realizes that Dr. Eastway was nearly convicted of a felony, but added that she believes his actions were part of the disease process. She disagreed with Mr. Bodiker's statements about Dr. Eastway's being cured. Dr. Hom stated that Dr. Eastway's activities were part of his evolution into prescription abuse. Dr. Hom acknowledged Dr. Eastway's attempts at making changes. She stated that because of these changes she believes Dr. Eastway is salvageable, and spoke against the Hearing Officer's proposed order of revocation. Dr. Eastway has

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recognized his problem. There have been other situations where such physicians have recovered after a long monitoring process and have been able to function and provide adequate health care.

Dr. Gretter asked whether Dr. Hom wished to propose an amendment.

Dr. Hom stated that she has not yet prepared an amendment, but only wanted to get other members' opinions.

Dr. Agresta agreed with Dr. Hom, but added that he feels that what Dr. Eastway did was fraudulent, whether it was part of the disease process or not. But he believes that the Board would accomplish more by rehabilitating Dr. Eastway than by revoking his license. The Board should not ignore what Dr. Eastway did. It should impose some type of monitoring. Dr. Agresta stated that he hadn't prepared an amendment, but he also feels revocation is too strong a penalty in this case.

Mr. Albert also agreed that revocation is too severe a penalty. He echoed Dr. Hom's belief that Dr. Eastway is salvageable. Mr. Albert stated that he cannot accept Dr. Eastway's claim that his impairment was due to his being overworked, but noted that there were no complaints of patient harm in this case. Dr. Eastway was very deceptive in his procurement of prescription medication. Mr. Albert added that he has some doubt that the prescriptions Dr. Eastway obtained were appropriate medications for root canals. Mr. Albert stated that Dr. Eastway has a serious addiction problem which is treatable. Mr. Albert indicated that he would support an alternative order that would restrict Dr. Eastway's license and require monitoring of Dr. Eastway's practice.

DR. HEIDT MOVED TO TABLE THE REPORT AND RECOMMENDATION IN THE MATTER OF ROBERT J. EASTWAY, JR., D.O. DR. STEPHENS SECONDED THE MOTION. A roll call vote was taken:

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

The motion failed.

Dr. Hom indicated that she voted "nay" on the motion because discussion had not

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concluded.

Dr. O'Day stated that she felt very strongly that Dr. Eastway was deceptive in writing prescriptions in employee names for medications to be used by himself. She disagreed that this was a symptom of the disease, since Dr. Eastway testified at the present hearing that he was not yet addicted at the time he wrote those prescriptions. At his criminal hearing, he said it was a symptom of his addiction, and received a judgment of treatment in lieu of conviction. Dr. O'Day stated that she has a real problem with physicians writing prescriptions in employees' names for treatment of their own dental pain. She saw nothing from Dr. Eastway to indicate that he was being forthright with the Board. She believes this case is worthy of revocation.

Dr. Agresta stated that addictive personalities will do anything to get drugs.

Dr. O'Day agreed, but added that Dr. Eastway testified that he was not yet addicted at the time he wrote the prescriptions.

Dr. Agresta stated that he believes Dr. Eastway was addicted at that time, whether he believes he was or not.

Dr. O'Day stated that part of the treatment process for drug addiction is to be straightforward about problems.

Dr. Garg stated that he agrees that a modified order would be appropriate in this case. He added that Percodan is an appropriate medication for pain from a root canal.

DR. GARG MOVED TO TABLE THE REPORT AND RECOMMENDATION IN THE MATTER OF ROBERT J. EASTWAY, JR., D.O. DR. KAPLANSKY SECONDED THE MOTION. A roll call vote was taken:

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

The motion carried.

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DR. HOM MOVED TO REMOVE THE MATTER OF ROBERT J. EASTWAY, JR., D.O., FROM THE TABLE. DR. GARG SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- aye
	Dr. O'Day	- aye
	Mr. Albert	- aye
	Dr. Stephens	- aye
	Mr. Jost	- aye
	Dr. Garg	- aye
	Dr. Kaplansky	- aye
	Dr. Heidt	- aye
	Dr. Hom	- aye
	Dr. Agresta	- aye

The motion carried.

DR. HOM MOVED THAT THE PROPOSED ORDER IN THE MATTER OF ROBERT J. EASTWAY, JR., D.O., BE AMENDED TO READ AS FOLLOWS:

It is hereby ORDERED that:

1. The certificate of Robert J. Eastway, Jr., D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be REVOKED. Such revocation is stayed, and Dr. Eastway's certificate is suspended for an indefinite period of time, but not less than one (1) year.

2. The State Medical Board shall not consider reinstatement of Dr. Eastway's certificate to practice unless and until all of the following minimum requirements are met:

   a. Dr. Eastway shall submit an application for reinstatement, accompanied by appropriate fees.

   b. Dr. Eastway shall provide the Board with written reports of evaluation by two physicians acceptable to the Board stating that Dr. Eastway is no longer drug dependent and is able to practice according to acceptable and prevailing standards of care. Each of these evaluations shall be in writing and shall state with particularity the bases for this determination and shall set forth any recommended limitations upon Dr. Eastway's practice.

   c. Dr. Eastway shall provide the Board with a certification from an

approved treatment provider that he has successfully completed any required inpatient treatment and is in continuing full compliance with regard to any outpatient treatment and/or aftercare.

d. Dr. Eastway shall provide satisfactory documentation of continuous participation in a drug and alcohol rehabilitation program acceptable to the Board, such as AA, NA or Caduceus, no less than four (4) times per week.

e. Dr. Eastway shall provide documentation acceptable to the Board of continuing psychiatric counseling at intervals as deemed appropriate by a treating psychiatrist approved by the Board.

f. Dr. Eastway shall take and pass an examination to be administered by the Board or its designee related to the content of the DEA Physician's Manual, which manual may be obtained from the offices of the State Medical Board. In the event that Dr. Eastway fails this examination, Dr. Eastway must wait one (1) month between reexaminations.

3. Upon reinstatement, Dr. Eastway's certificate shall be subject to the following probationary terms, conditions and limitations for a minimum of two (2) years:

a. Dr. Eastway shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.

b. Dr. Eastway shall submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the provisions of probation.

c. Dr. Eastway shall appear in person for interviews before the full Board or its designated representative at three (3) month intervals or as otherwise requested by the Board.

d. Dr. Eastway shall continue counseling with a psychiatrist approved by the Board at such intervals as are deemed appropriate by the counselor or treating psychiatrist, but not less than once per month, until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the counselor or approved treating psychiatrist. Dr. Eastway shall ensure that these reports are forwarded to the Board on a quarterly basis, or as otherwise directed by the Board.

e. Dr. Eastway shall abstain completely from the personal use or

possession of drugs, except those prescribed, administered or dispensed to him by another so authorized by law who has full knowledge of Dr. Eastway's history of chemical dependency.

f. Dr. Eastway shall abstain completely from the use of alcohol.

g. Dr. Eastway shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Eastway shall ensure that all screening reports are forwarded directly to the Board on a monthly basis. Within thirty (30) days of the effective date of this Order, Dr. Eastway shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Eastway shall submit the required urine specimens. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the Board of any positive screening results. The supervising physician shall monitor Dr. Eastway and provide the Board with reports on Dr. Eastway's progress and status. Dr. Eastway shall ensure that said reports are forwarded to the Board on a quarterly basis.

In the event that the designated superivising physician becomes unable or unwilling to so serve, Dr. Eastway must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable.

h. Dr. Eastway shall submit blood or urine specimens for analysis without prior notice at such times as the Board may request.

i. Dr. Eastway shall maintain participation in an alcohol and drug rehabilitation program acceptable to the Board, such as AA, NA or Caduceus, no less than four (4) times per week or as otherwise directed by the Board. At Dr. Eastway's appearances before the Board or its designated representative, Dr. Eastway shall submit acceptable documentary evidence of continuing compliance with this program.

j. Dr. Eastway shall not prescribe, administer, dispense or order controlled substances except in a hospital setting, and shall keep a log of all controlled substances so prescribed, administered, dispensed or ordered. Such log shall be submitted in the format approved by the Board thirty (30) days prior to Dr. Eastway's personal apperances before the Board or its designated representative, or as otherwise directed by the Board.

k. In the event that Dr. Eastway should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Eastway must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.

l. Dr. Eastway shall provide a copy of this Order to all employers and the chief of staff at each hosptial where he has, applies for, or obtains privileges of any kind.

m. If Dr. Eastway violates probation in any respect, the Board, after giving Dr. Eastway notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of Dr. Eastway's certificate to practice.

4. Upon successful completion of probation, Dr. Eastway's certificate will be fully restored.

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

Dr. Hom stated that she is including psychiatric evaluation because this may be a case where Dr. Eastway may not understand his problem. Therefore psychiatric evaluation and psychotherapy may be an appropriate way for the physician to deal with the stresses of being a cardiologist, and the psychiatrist may direct more appropriate therapy.

DR. HEIDT SECONDED THE MOTION.

Dr. O'Day asked whether Dr. Hom would consider adding a provision that Dr. Eastway not be permitted to hold a DEA.

Dr. Hom stated that Dr. Eastway is a cardiologist. She tried to find a way he can continue practice in that field by finding a way of monitoring his use of drugs. Dr. Eastway may need to prescribe drugs such as morphine in the hosptial.

Dr. O'Day stated that she would feel more comfortable with this Order if there were restrictions on the DEA.

Dr. Heidt suggested that the DEA use be restricted to hospital use.

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

EXCERPT FROM THE MINUTES OF MARCH 11, 1992
IN THE MATTER OF ROBERT J. EASTWAY, JR., D.O.

Ms. Lubow noted that that restriction is contained in paragraph 3j of the proposed amendment.

DR. STEPHENS MOVED THAT THE FOLLOWING PARAGRAPH BE ADDED TO THE MINIMUM REQUIREMENTS TO BE MET FOR REINSTATEMENT:

g. In the event that Dr. Eastway has not been engaged in the active practice of medicine and surgery for a period in excess of two (2) years prior to his application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Eastway's fitness to resume practice.

DR. O'DAY SECONDED THE MOTION.

DR. HOM ACCEPTED DR. STEPHENS' SUGGESTION AS A FRIENDLY AMENDMENT. DR. HEIDT, AS SECOND, AGREED.

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

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

The motion carried.

DR. GARG MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF ROBERT J. EASTWAY, JR., D.O. DR. AGRESTA SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. O'Day	- aye
	Mr. Albert	- aye
	Dr. Stephens	- aye
	Mr. Jost	- abstain
	Dr. Garg	- aye
	Dr. Kaplansky	- aye

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Dr. Heidt	- aye
Dr. Hom	- aye
Dr. Agresta	- aye

The motion carried.

STATE MEDICAL BOARD OF OHIO
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EXCERPT FROM THE DRAFT MINUTES OF APRIL 12, 1995

REMAND IN THE MATTER OF ROBERT J. EASTWAY, JR., D.O.

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

Dr. Garg advised that a request to address the Board has been timely filed on behalf of Dr. Eastway.

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

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

Mr. Cloud stated that he has filed a Motion on Remand in the Court of Common Pleas. He assumed that he would be permitted to speak on that.

Dr. Stienecker stated that, having read through this case, it seems that the Court's remand is very specific. He doesn't know that opening the record to more would the benefit Board.

Dr. Garg stated that there has been no motion by the Board to allow Mr. Cloud to speak to his remand motion. He may address the Board as previously directed.

Mr. Cloud stated that he began to represent Dr. Eastway in December 1994, after the doctor's attorney became a State Public Defender. He noted two categories of violations in the record in a six-month period: prescriptions for painkillers in the names of employees for his own use in treatment of denture pain; and in 1988 and 1989 he didn't keep adequate records for five patients. Dr. Eastway is aware that what he did was

wrong. He realizes that he should be punished for it and that the Board has the right to penalize him. The issue before the Board at this time is that its original Order indicated that Dr. Eastway had an ongoing drug problem. The Judge felt that the evidence suggests that the drug problem has been alleviated and no further treatment or aftercare are required. Dr. Eastway has completed the Board's requirements. Judge David L. Johnson noted that Dr. Eastway voluntarily and commendably took action before the Board took action. Judge Johnson declined to take action because he didn't feel he had the authority to do so.

Mr. Cloud stated that the Board does have the authority. The penalty imposed is based in part upon the mistaken assumption that Dr. Eastway had an ongoing drug problem, when that is not true. Mr. Cloud stated that this is important because Constitutional due process requires that no part of an action be based upon an assumed drug problem that is non-existent. Mr. Cloud asked that the Board take time and give thoughtful consideration to this matter and consider whether the penalty should be modified. Dr. Eastway is an outstanding doctor in his community. He is an invasive cardiologist trained at the Cleveland Clinic. Grant Hospital has invested a lot of money in Dr. Eastway. There has never been a hint of malpractice or mistreatment of patients in Dr. Eastway's 20 years of practice.

Mr. Cloud continued that, if the Board does impose a suspension, Dr. Eastway requests that he be permitted to work in a trainee status to maintain his skill so that when he resumes his practice he can practice at a level equal to or above his current level.

Dr. Garg asked Ms. Strait to respond.

Ms. Strait stated that it is important to remember why this matter is before the Board. As Dr. Stienecker noted, the matter has been remanded by the Courts to delete several reinstatement conditions having to do with drug treatment and aftercare. The Court affirmed the Board's Order in all other respects. She sees no reason now to change the terms of the Board's Order. What Dr. Eastway has lost sight of is that the one-year suspension was not because of the drug problem, but because he committed a serious felony, i.e., the illegal processing of drug documents. Dr. East wrote prescriptions in his employees' names. The employees filled the prescription and then gave the drug to Dr. Eastway for his own use. This is shocking behavior, and behavior which this Board has never tolerated. That is the basis for the proposed one-year suspension.

Ms. Strait continued that the Court was specific in what it wanted the Board to do. Dr. Eastway did undergo treatment and is purportedly no longer drug dependent. However, the Board should not confuse aftercare with AA or Caduceus. Drug problems are never cured. She stated that she is confused as to why Dr. Eastway would object to the AA attendance requirement if he is no longer drug dependent. She would think that he would be willing to do it for the rest of his life which, from the Board's experience, would be appropriate.

Ms. Strait urged the Board to take only the action required by the Remand Order.

DR. AGRESTA MOVED TO ADOPT THE FOLLOWING REMAND ORDER IN THE MATTER OF ROBERT J. EASTWAY, JR., D.O.:

It is hereby ORDERED that:

1. The certificate of Robert J. Eastway, Jr., D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be REVOKED. Such revocation is stayed, and Dr. Eastway's certificate is SUSPENDED for an indefinite period of time, but not less than one (1) year.

2. The State Medical Board shall not consider reinstatement of Dr. Eastway's certificate to practice unless and until all of the following minimum requirements are met:

   a. Dr. Eastway shall submit an application for reinstatement, accompanied by appropriate fees.

   b. Dr. Eastway shall provide the Board with written reports of evaluation by two physicians acceptable to the Board stating that Dr. Eastway is no longer drug dependent and is able to practice according to acceptable and prevailing standards of care. Each of these evaluations shall be in writing and shall state with particularity the bases for this determination and shall set forth any recommended limitations upon Dr. Eastway's practice.

   c. Dr. Eastway shall take and pass an examination to be administered by the Board or its designee related to the content of the DEA Physician's Manual, which manual may be obtained from the offices of the State Medical Board. In the event that Dr. Eastway fails this examination, Dr. Eastway must wait one (1) month between reexaminations.

3. Upon reinstatement, Dr. Eastway's certificate shall be subject to the following probationary terms, conditions and limitations for a minimum of two (2) years:

   a. Dr. Eastway shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio.

   b. Dr. Eastway shall submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the provisions of probation.

   c. Dr. Eastway shall appear in person for interviews before the full Board or its designated representative at three (3) month intervals or as otherwise requested by the Board.

d. Dr. Eastway shall continue counseling with a psychiatrist approved by the Board at such intervals as are deemed appropriate by the counselor or treating psychiatrist, but not less than once per month, until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the counselor or approved treating psychiatrist. Dr. Eastway shall ensure that these reports are forwarded to the Board on a quarterly basis, or as otherwise directed by the Board.

e. Dr. Eastway shall abstain completely from the personal use or possession of drugs, except those prescribed, administered or dispensed to him by another so authorized by law who has full knowledge of Dr. Eastway's history of chemical dependency.

f. Dr. Eastway shall abstain completely from the use of alcohol.

g. Dr. Eastway shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Eastway shall ensure that all screening reports are forwarded directly to the Board on a monthly basis. Within thirty (30) days of the effective date of this Order, Dr. Eastway shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Eastway shall submit the required urine specimens. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the Board of any positive screening results. The supervising physician shall monitor Dr. Eastway and provide the Board with reports on Dr. Eastway's progress and status. Dr. Eastway shall ensure that said reports are forwarded to the Board on a quarterly basis.

In the event that the designated supervising physician become unable or unwilling to so serve, Dr. Eastway must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable.

h. Dr. Eastway shall submit blood or urine specimens for analysis without prior notice at such times as the Board may request.

i. Dr. Eastway shall maintain participation in an alcohol and drug rehabilitation program acceptable to the Board, such as AA, NA, or Caduceus, no less than four (4) times per week or as otherwise directed by the Board. At Dr. Eastway's appearances before the Board or its designated representative, Dr. Eastway shall submit acceptable documentary evidence of continuing compliance with this program.

j. Dr. Eastway shall not prescribe, administer, dispense or order controlled substances except in a hospital setting, and shall keep a log of all controlled substances so prescribed, administered, dispensed or ordered. Such log shall be submitted in the format approved by the Board thirty (30) days prior to Dr. Eastway's personal appearances before the Board or its designated representative, or as otherwise directed by the Board.

k. In the event that Dr. Eastway should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Eastway must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.

l. Dr. Eastway shall provide a copy of this Order to all employers and the chief of staff at each hospital where he has, applies for, or obtains privileges of any kind.

m. If Dr. Eastway violates probation in any respect, the Board, after giving Dr. Eastway notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of Dr. Eastway's certificate to practice.

4. Upon successful completion of probation, Dr. Eastway's certificate will be fully restored.

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

DR. GRETTER SECONDED THE MOTION.

Dr. Garg asked whether there were any questions concerning the proposed findings of fact, conclusions and order in the above matter.

Dr. Steinbergh asked how the Draft Order contained in the Agenda materials differs from the original Order.

Mr. Bumgarner explained that this matter was remanded to the Board with specific instructions from the Court. The Draft Remand Order in the agenda materials was developed in accordance with the Court's instructions.

Dr. Stienecker stated that the Draft Order does not address the training issue. He believes that that is something that should be looked at. Dr. Stienecker stated that he is not sure about what Dr. Eastway's

position would be regarding training certificates if the Board suspends his license. He added that the Board doesn't require a training certificate for a physician to take part in a training program.

Dr. Steinbergh spoke in support of maintaining the original order and suspension. Regarding trainee status, when physicians are under suspension, if they want to continue with education, it would be appropriate. Is it appropriate to say that Dr. Eastway should be in a training situation where he would be practicing medicine on patients?

Dr. Gretter stated that the Board suspends licenses. If the physicians want to be reinstated, they have to do C.M.E.

Dr. Steinbergh stated that she understands the request to allow Dr. Eastway to be involved physically in doing procedures on patients.

Dr. Stienecker added that he wants to maintain a level of ability.

A vote was taken on Dr. Agresta's motion to adopt the Remand Order:

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Stienecker	- ave
	Dr. Gretter	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Ms. Noble	- aye
	Mr. Sinnott	- aye
	Dr. Heidt	- aye
	Dr. Steinbergh	- aye

The motion carried.

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

IN THE MATTER OF: ROBERT J. EASTWAY, JR., D.O.,	:	
(Appellant),	:	CASE NO. 92CVF-03-2263
vs.	:	JUDGE DAVID L. JOHNSON
STATE MEDICAL BOARD OF OHIO,	:	
(Appellee).	:	

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AGREED REMAND ENTRY
IN ACCORDANCE WITH THE JUNE 9, 1994 OPINION AND ENTRY
OF THE TENTH DISTRICT COURT OF APPEALS

Rendered this 8th day of February, 1995.

Johnson, D., J.

This matter is before this Court upon remand from the Tenth District Court of Appeals pursuant to that Court's Opinion and Journal Entry of Judgment, filed on June 9, 1994, concerning Appellant's appeal pursuant to R.C. 119.12 of the March 11, 1992 order of the State Medical Board of Ohio.

Appellant filed a notice of appeal of the Court of Appeals decision to the Ohio Supreme Court; by entry filed November 2, 1994, that court declined jurisdiction and dismissed the appeal. A stay of proceedings was entered by this court pending Appellant's determination as to whether to seek further appeal to the U.S. Supreme Court. That stay expired February 2, 1995, and Appellant has determined not to file a petition for writ of certiorari with that court.

Therefore, by agreement of the parties, this Court hereby AFFIRMS the March 11, 1992 order of the State Medical Board of Ohio except as to the conditions of reinstatement. This case is hereby REMANDED to the State Medical Board for further proceedings consistent with law and the Opinion rendered by the Court of Appeals in this matter.

DAVID L. JOHNSON, JUDGE

Approved:

Clifford R Cloud, by A Strait per telephone authority 2/2/95

CLIFFORD R. CLOUD (0022916)
Cloud, Koenig & Owen
5354 North High Street, Suite 3-D
Columbus, Ohio 43214
(614) 221-3621
Counsel for Appellant

ANNE BERRY STRAIT (0012256)
Assistant Attorney General
Health & Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3428
(614) 466-8600
Counsel for Appellee

eastway.ent

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

IN THE MATTER OF	:	CASE NO. 92-CVF-03-2263
ROBERT J. EASTWAY, JR., D.O.	:	JUDGE DAVID L. JOHNSON
(Appellant)	:	
STATE MEDICAL BOARD OF OHIO	:	
(Appellee)	:	

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ENTRY STAYING PROCEEDINGS
UNTIL FEBRUARY 2, 1995

Upon motion of appellant for a ninety-day stay from November 3, 1994, and pursuant to this court's January 27, 1995 decision granting such motion, a copy of which decision is attached hereto, it is hereby **ORDERED** that this matter is hereby **STAYED** until February 2, 1995.

DAVID L. JOHNSON, JUDGE

Approved:
Cloud Koenig & Owen
Attorneys for Appellant

By Clifford R. Cloud
Clifford R. Cloud (0022916)
5354 North High Street, 3-D
Columbus, Ohio 43214
Phone: (614) 221-3621

Anne Berry Strait by Clifford R. Cloud for 2/1/95 telephone authorization.
Anne Berry Strait, Esq. (0012256)
Assistant Attorney General
Counsel for the State Medical Board of Ohio
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3428
Phone: (614) 466-8600

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

IN THE MATTER OF:	:	
ROBERT J. EASTWAY, JR., D.O.,	:	
Appellant,	:	
v.	:	Case No. 92CVF03-2263
STATE MEDICAL BOARD OF OHIO,	:	Judge Johnson
Appellee.	:	

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CLERK OF COURTS

DECISION GRANTING APPELLANT'S MOTION FOR STAY FILED ON DECEMBER 16, 1994

Rendered this 27th day of January, 1995.

Johnson, D., J.

Before the Court is the Motion for Stay filed by Dr. Eastway in this matter by new counsel, Clifford R. Cloud, who seeks a ninety-day stay from November 3, 1994, to determine whether it would be appropriate to file a writ of certiorari with the U. S. Supreme Court. The Court finds the Motion well taken and hereby GRANTS it. This matter is hereby STAYED until February 2, 1995.

Counsel for Appellant shall prepare an appropriate Entry and submit it to the adverse party for approval pursuant to Local Rule 25. A copy of this Decision shall accompany the Entry when it is presented to the Court for signature.

DAVID L. JOHNSON, JUDGE

Copies to:

Clifford R. Cloud, Esq.
Attorney for Appellant

Anne Berry Strait, Esq.
Assistant Attorney General

EXHIBIT D

The Supreme Court of Ohio

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Attorney General's Office
NOV 3 1994
Health & Human Services Section

1994 TERM

To wit: November 2, 1994

In the Matter of: Robert J. Eastway, Jr., D.O., Appellant.	:	Case No. 94-1584
	:	E N T R Y
(State Medical Board of Ohio, Appellee.)	:	

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

COSTS:

Docket Fee, $40.00, paid by David H. Bodiker.

(Franklin County Court of Appeals; No. 93AP487)

THOMAS J. MOYER
Chief Justice

EXHIBIT C

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

IN THE MATTER OF	:	CASE NO. 92-CVF-03-2263
ROBERT J. EASTWAY, JR. D.O.	:	JUDGE DAVID L. JOHNSON
(Appellant)	:	
(STATE MEDICAL BOARD OF OHIO	:	
(Appellee)	:	

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FRANKLIN COUNTY, OHIO
THOMAS J. ENRIGHT
CLERK OF COURTS

ENTRY

The appellant, Robert J. Eastway, Jr. D.O., having now perfected an appeal to the Supreme Court of Ohio in the time provided by law (See Case No. 94-1584, Supreme Court of Ohio), the Order of this Court, dated June 22, 1994, which, inter alia, remanded this case to the State Medical Board for further proceedings, is hereby vacated and set aside, and this matter is stayed pending further decision in this case by the Supreme Court of Ohio.

DAVID L. JOHNSON, JUDGE

COPIES TO:

DAVID H. BODIKER (#0016590
COUNSEL FOR APPELLANT

ANNE C. BERRY (#0012256)
ASSISTANT ATTORNEY GENERAL
COUNSEL FOR APPELLEE

IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO

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JUN 30 1994
Health & Human
Services Section

IN THE MATTER OF: ROBERT J. EASTWAY, JR., D.O.,	:	
(APPELLANT),	:	
vs.	:	CASE NO. 92CVF-03-2263
STATE MEDICAL BOARD OF OHIO,	:	JUDGE DAVID L. JOHNSON
APPELLEE).	:	

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RB

ENTRY

Rendered this 22d day of June, 1994.

Johnson, D., J.

This matter is before this Court upon remand from the Tenth District Court of Appeals pursuant to that Court's Opinion and Journal Entry of Judgment, filed on June 9, 1994.

This Court hereby AFFIRMS the decision in this case by the State Medical Board of Ohio except as to conditions of reinstatement. This case is hereby REMANDED to the State Medical Board for further proceedings consistent with law and the Opinion rendered by the Court of Appeals in this matter.

DAVID L. JOHNSON, JUDGE

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CLERK OF COURTS

Copies to:

David H. Bodiker, Esq.
Counsel for Appellant

Anne C. Berry
Assistant Attorney General
Counsel for Appellee

EXHIBIT A

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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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THOMAS J. ENRIGHT
CLERK OF COURTS

In the Matter of:
Robert J. Eastway, Jr., D.O.,

(Appellant),

(State Medical Board of Ohio,

Appellee).

No. 93AP-487

(REGULAR CALENDAR)

JOURNAL ENTRY OF JUDGMENT

For the reasons stated in the opinion of this court rendered herein on June 9, 1994, appellant's first and third assignments of error are sustained as they relate to the conditions for reinstatement (c), (d), and (e) imposed by the board, which are not supported by the factual findings, otherwise they are overruled; appellant's second, fourth and fifth assignments of error are overruled; and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is reversed; and this cause is remanded to that court with instructions to affirm the State Medical Board of Ohio's decision except as to conditions of reinstatement and to remand the matter to the State Medical Board for further proceedings, consistent with this opinion and in accordance with law.

WHITESIDE, P.J., BRYANT and BOWMAN, JJ.

By _____
Judge Alba L. Whiteside, P.J.

cc: David H. Bodiker
Anne C. Berry, AAG

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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In the Matter of: Robert J. Eastway, Jr., D.O.,	:	
(Appellant),	:	No. 93AP-487
(State Medical Board of Ohio,	:	(REGULAR CALENDAR)
Appellee).	:	

O P I N I O N

Rendered on June 9, 1994

Bodiker & Holland, and *David H. Bodiker*, for appellant.

Lee Fisher, Attorney General, and *Anne C. Berry*, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

WHITESIDE, P.J.

Appellant, Robert J. Eastway, Jr., D.O., appeals from a judgment of the Franklin County Court of Common Pleas affirming a decision of the State Medical Board of Ohio suspending appellant's certificate to practice medicine. Appellant presents the following five assignments of error:

> 1. "The sanctions imposed by the State Medical Board against the appellant, Dr. Robert Eastway simply ignored the only evidence in the case, were not based upon any of the charges brought against the respondent and transcended the authority of the board to act in the specific instance."
>
> 2. "The hearing officer, and later the medical board, derived great significance from the circumstances

> surrounding Dr. Eastway's participation in the program for treatment in lieu of conviction under R.C. 2951.041, both as substantive evidence of a drug dependency and as evidence impeaching and contradicting his testimony at trial, which conclusions were not only factually inaccurate, but legally improper, and the use of such inferences, particularly as justification for the imposition of maximum punishment, totally invalidates the determination of that board and requires the reversal of their order."
>
> 3. "The authority provided by R.C. 119.12 to determine whether an order of the Medical Board of Ohio is supported by reliable, probative, and substantial evidence, includes the authority to determine if the penalty imposed as a result of such order is also so supported, and when there exist legally significant reasons for discrediting evidence relied upon by the administrative body and necessary to its determination, or when such determination rests upon inferences improperly drawn from the evidence, a court may reverse, vacate, or modify the administrative order in whole or in part."
>
> 4. "There is no evidence of actual fraud committed by appellant and the Medical Board in its order, now affirmed by the Court of Common Pleas, has committed prejudicial error in such determination."
>
> 5. "Where an administrative determination rests upon inferences improperly drawn from evidence adduced at hearing, or from improper evidence or from the absence of evidence where no such evidence was required, the resulting order is invalid and must be reversed."

The State Medical Board notified appellant by letter dated June 12, 1991, that it intended to determine whether or not to limit, revoke, suspend, refuse to register or reinstate his certificate to practice osteopathic medicine and surgery due to allegations that his conduct violated the following provisions of R.C. 4731.22(B):

> "(2) Failure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease;

"***

"(6) 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;

"***

"(8) The obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice;

"***

"(10) Commission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed;

"***

"(20) *** [V]iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board[.]"

As to the violation of R.C. 4731.22(B)(20), the board specified the following Ohio Administrative Code provisions: Ohio Adm.Code 4731-11-02(D) and 4731-11-02(F). The board's letter notified appellant of his right to have a hearing on the charges and his right to representation by counsel.

On June 12, 1991, appellant requested a hearing on the charges pursuant to R.C. Chapter 119. A hearing was held before a board-appointed hearing examiner on March 11, 1992. Appellant stipulated to the facts giving rise to the board's charges. He stipulated that he did, in fact, prescribe controlled substances on three separate occasions in the names of employees who were not bona fide patients for his personal use. Furthermore, appellant stipulated that he prescribed controlled substances for five patients and failed to maintain records regarding those prescriptions. Appellant also stipulated to

the state's exhibits, which revealed he had been indicted by the Franklin County Grand Jury on nine counts of illegal processing of drug documents. The state's exhibits indicate the criminal proceedings were stayed as appellant was found eligible for treatment in lieu of conviction pursuant to R.C. 2951.041.

Appellant presented evidence in mitigation of his behavior. His own testimony and that of Dr. Ransom Williams indicated that, prior to hearing, he had a drug problem but he independently recognized the problem and took steps to correct it. Testimony indicated that he successfully completed a drug recovery program, that he was drug free, that he was not a danger to his patients and that he regularly participated in a recovery group based on Alcoholics Anonymous, the Oak Leaf Cluster. Appellant also testified that he had alleviated the personal and professional problems which gave rise to his previous substance abuse.

On December 19, 1991, appellant was notified by the board of the hearing examiner's report and recommendation. The hearing examiner, after expressly finding appellant's drug dependence and subsequent treatment did not mitigate his illegal acts, recommended the board revoke appellant's certificate to practice osteopathic medicine and surgery in the state of Ohio. Appellant filed objections to the report and recommendation of the hearing examiner, and the matter was heard by the board on March 11, 1992.

The board reviewed the objections and the record but did not impose the penalty recommended by the referee. Instead, the board revoked appellant's certificate but "stayed" such revocation and suspended appellant's certificate for an indefinite period of time, but not less than one year. The board also imposed conditions for reinstatement of appellant's certificate, which include submission of a new application, payment of appropriate fees, demonstration that

appellant can resume his practice in compliance with acceptable and prevailing standards, examination on the content of the DEA Physician's Manual participation in psychiatric counseling sessions, and documentation of and participation in drug and alcohol rehabilitation programs. Following completion of the above-stated conditions, appellant's certificate will be conditionally reinstated subject to a two-year period of probation with practice limitations and other terms, which include participation in psychiatric counseling, drug and alcohol rehabilitation programs and drug testing. Once the probationary period is completed, appellant's certificate is to be fully restored.

Appellant appealed the board's decision to the Franklin County Court of Common Pleas. The common pleas court affirmed the order of the board, stating, in part:

> "The key issue in this case appears to be the propriety of the punishment imposed by the Board. Appellant argues that many of the probation conditions imposed are unnecessary as the doctor had voluntarily (and commendably) sought care and changed his lifestyle prior to the initiation of proceedings against him. The Court sees little social utility in an administratively imposed solution to a problem that may already be moot. However, this Court has no legal authority to act as a 'Parole Board' which acts to modify a properly imposed penalty through the exercise of leniency. ***" (Decision, Feb. 8, 1993.)

Appellant filed a timely appeal from the common pleas court's decision.

Appellant's first and third assignments of error allege that the sanctions imposed by the board are not supported by reliable, probative and substantial evidence, and that the common pleas court was in error when it held it lacked authority to review the sanctions involved.

The State Medical Board is authorized to discipline medical professionals pursuant to R.C. 4731.22(B), which reads in pertinent part:

> "The board, pursuant to an adjudicatory hearing under Chapter 119. of the Revised Code *** shall, to the *extent permitted by law*, limit, revoke, or suspend a certificate, refuse to register or refuse to reinstate an applicant, or reprimand or place on probation the holder of a certificate for one or more of the following reasons: ***" (Emphasis added.)

In the present matter, the penalty imposed by the board was that of "suspension for an indefinite period of time, but not less than one (1) year" followed by probation. R.C. 4731.22 authorizes such a penalty, and the common pleas court has no authority to modify a penalty that the agency was authorized to and did impose on the ground that the agency abused its discretion. *Henry's Cafe, Inc. v. Bd. of Liquor Control* (1959), 170 Ohio St. 233, at paragraph three of the syllabus. In addition to suspending appellant's license, the board imposed conditions for reinstatement, pursuant to R.C. 4731.22(G), which reads in pertinent part:

> "Any action taken by the board under division (B) of this section resulting in a suspension from practice shall be accompanied by a written statement of the conditions under which the certificate holder may be reinstated to practice. *The board shall adopt rules governing conditions to be imposed* for reinstatement. ***" (Emphasis added.)

Conditions ordered pursuant to R.C. 4731.22(G) must be in accordance with adopted rules and supported by reliable, probative, and substantial evidence so as not to be arbitrary or capricious and, therefore, contrary to law. The common pleas court must review the findings of the board to determine if the conditions for reinstatement imposed are supported by reliable, probative and substantial evidence, and are in accordance with law. If not, the common pleas court has the power to reverse or modify the board's order. See paragraph two of the syllabus of *Henry's Cafe*, which states:

> "On appeal from an order of an agency *** to the Court of Common Pleas, the power of the court to modify such order is limited to the ground set forth in Section 119.12 Revised Code, *i.e.*, the absence of a finding that the order is supported by reliable, probative and substantial evidence."

A review of the record reveals that most, but not all, of the conditions for reinstatement, including terms of probation imposed by the board, are supported by reliable, probative, and substantial evidence and are otherwise in accordance with law. At issue are the following conditions for reinstatement:

> "c. Dr. Eastway shall provide the Board with a certification from an approved treatment provider that he has successfully completed any required inpatient treatment and is in continuing in full compliance with regard to any outpatient treatment and/or aftercare.
>
> "d. Dr. Eastway shall provide satisfactory documentation of continuous participation in a drug and alcohol rehabilitation program acceptable to the Board, such as AA, NA or Caduceus, no less than four (4) times per week.
>
> "e. Dr. Eastway shall provide documentation acceptable to the Board of continuing psychiatric counseling at intervals as deemed appropriate by a treating psychiatrist approved by the Board."

Also at issue are the following terms of probation:

> "d. Dr. Eastway shall continue counseling with a psychiatrist approved by the Board at such intervals as are deemed appropriate ***.
>
> "***
>
> "i. Dr. Eastway shall maintain participation in an alcohol and drug rehabilitation program acceptable to the Board, such as AA, NA or Caduceus, no less than four (4) times per week or as otherwise directed by the Board. ***" (State Medical Board order Mar. 11, 1992.)

The above conditions for reinstatement are not supported by the hearing examiner's findings nor the evidence contained in the record. The hearing examiner made the following finding, which was adopted by the board:

> "13. In July, 1990, Dr. Eastway underwent a three-day assessment at the Alcoholism and Drug Dependency Treatment Unit of Riverside Methodist Hospitals. Dr. Eastway was diagnosed as drug dependent, *currently in remission*. According to Ransome R. Williams, M.D., Dr. Eastway's monitoring physician under the auspices of the Physician Effectiveness Committee at Grant Hospital. *Dr. Eastway has complied with all treatment and aftercare recommendations.*" (Emphasis added.)

The evidence suggests appellant's former drug problem has been alleviated and that no further treatment and aftercare are required. The findings and evidence suggest appellant has *successfully completed* and aftercare the very programs and aftercare the board ordered him to participate in, apparently for a second time. Absent evidence in the record and a finding by the board that appellant is in need of additional repetitive counseling, imposition of the drug and alcohol and psychiatric "treatment" is without factual foundation and, therefore, not supported by reliable, probative, and substantial evidence and not in accordance with law. Further, even if those conditions be supported by the evidence, the board in partially rejecting the hearing officer's recommendation failed to make factual findings indicating a need for repetitive counseling but, instead, imposed the same without reasoning or explanation.

Appellant also argues the sanctions imposed by the board were not in accordance with law, as the board is mandated to impose similar conditions for reinstatement upon physicians who have violated R.C. 4731.22(B)(26) (impairment of ability to practice due to excessive or habitual substance abuse), but

appellant was not charged, nor proven to be in violation of R.C. 4731.22(B)(26). Appellant's argument is without merit.

R.C. 4731.22(G) requires the board to accompany any order suspending a certificate with a statement of written conditions under which the certificate may be reinstated. The rules governing conditions for reinstatement are found at Ohio Adm.Code 4731-13-16, which reads, as follows:

> "Any disciplinary action taken by the board pursuant to division (B) of Section 4731.22 of the Revised Code which results in a suspension from practice shall either lapse by its own terms or contain a written statement of the conditions under which the certificate may be reinstated.
>
> "Such conditions may include but are not limited to:
>
> "(A) Submission of a written application for reinstatement;
>
> "(B) Payment of all appropriate fees as provided in Chapter 4731. of the Revised Code.
>
> "(C) Mental or physical examination;
>
> "(D) Additional education or training;
>
> "(E) Reexamination;
>
> "(F) Practice limitations;
>
> "(G) Participation in counseling programs;
>
> "(H) Demonstration that he can resume his practice in compliance with acceptable and prevailing standards."

Ohio Adm.Code 4731-13-16 does not preclude the board from imposing the conditions for reinstatement found in R.C. 4731.22(B)(26), as the conditions found in the statute are all within the scope of the conditions set forth in the rule. For example, the board ordered appellant to participate in drug and alcohol programs which are counseling programs authorized by Ohio Adm.Code 4731-

13-16(G). Furthermore, Ohio Adm.Code 4731-13-16(C), authorizes the board to order physical exams which would include testing for illegal substances. The conditions for reinstatement which the board may impose are governed by the language of Ohio Adm.Code 4731-13-16 in accordance with R.C. 4731.22(G), which reads in pertinent part: "The board shall adopt rules governing conditions to be imposed for reinstatement." Ohio Adm.Code 4731-13-16 merely provides condition guidelines, and it is the board's responsibility to tailor the specific condition for reinstatement within the confines of the administrative rule, to the individual circumstances of each case. As the purpose of conditions for reinstatement are to facilitate rehabilitation, the board's requirements must be based on factual findings supported by reliable, probative, and substantial evidence, and the conditions imposed must be within the confines of the law.

If a reasonable interpretation of Ohio Adm.Code 4731-13-16 includes the conditions imposed by the board, the conditions are within the board's discretion to impose provided they are based on factual findings supported by the evidence. In this matter, the conditions of reinstatement at issue were within the board's authority to impose, provided the evidence and findings by the board support their imposition. The board, however, failed to make any such finding, and the finding of the hearing examiner does not support such a condition.

Based on the foregoing, appellant's first and third assignments of error are well-taken to the extent they contend the board exceeded its authority in imposing conditions for reinstatement which are not supported by findings based upon reliable, probative, and substantial evidence.[1] To the extent

[1]However, the board may reexamine the terms for probation after reinstatement at the time reinstatement is granted and make such modifications as are supported by the evidence at that time.

appellant contends his suspension or other conditions for reinstatement imposed by the board are not supported by evidence or not in accordance with law, his first and third assignments of error are not well-taken.

Appellant's second assignment of error alleges the board incorrectly considered appellant's participation in the program for treatment in lieu of conviction pursuant to R.C. 2951.041. Successful participation in treatment in lieu of conviction results in a dismissal of the pending criminal charges and there is no criminal conviction. R.C. 2951.041(H). Furthermore, the court may order an expungement of a defendant's record pursuant to R.C. 2953.31 to 2953.36. The question of whether the board ordinarily should consider participation in treatment in lieu of conviction as evidence of misconduct is not properly before the court. Appellant stipulated to the state's exhibits concerning this issue and, in effect, consented to it being evidence of his conduct. The trier of fact is permitted to draw reasonable inferences from properly submitted evidence, including stipulated evidence. A review of the record reveals the board's consideration of appellant's participation in the treatment-in-lieu-of-conviction program was proper. The second assignment of error is not well-taken.

Appellant argues in his fourth assignment of error that there is no evidence of actual fraud committed by appellant, and the State Medical Board erred in its determination that fraud existed. Appellant was charged with violating R.C. 4731.22(B)(8), which states that "[t]he obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice." Such conduct is behavior subject to disciplinary action by the board. Appellant stipulated he presented prescribed controlled substances for his personal use on three separate occasions in the names of

employees who were not bona fide patients. While appellant testified he was unaware that writing prescriptions in this manner was illegal, the hearing examiner did not believe appellant's testimony, stating in her report: "It defies common sense to believe that a physician would be unaware of the impropriety of writing a prescription in the name of a person other than the one for whom the medication is intended." The hearing examiner found appellant's actions violated R.C. 4731.22(B)(8), the board adopted her findings, and said findings are supported by the record. Appellant's fourth assignment of error is not well-taken.

Appellant's fifth assignment of error presents the argument that the findings of fact as issued by the hearing examiner, and adopted by the board, were not supported by the record. The court has reviewed the record, and the hearing examiner's findings are all adequately supported by the evidence presented. Furthermore, the conclusions drawn by the hearing officer are also supported by the record. Appellant's actions constituted "[t]he obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentation in the course of practice," as noted above. Furthermore, appellant's acts would constitute a felony in Ohio, thus violating R.C. 4731.22(B)(10). The fact appellant was not convicted of a felony is irrelevant. If the hearing examiner drew any improper inference from the evidence submitted on these issues, it was not prejudicial as the evidence as stipulated by the parties clearly establishes that appellant performed acts which constitute violations of R.C. 4713.22(B)(8) and 4731.22(B)(10).

Furthermore, appellant stipulated to the fact that he failed to maintain patient records, which constitutes a violation of Ohio Adm.Code 4731-11-

02(D). The stipulated evidence clearly supports the hearing examiner's findings on these charges.

Following the hearing examiner's findings on appellant's violations of the Revised Code, the hearing examiner considered the evidence presented for purposes of mitigation. While the conclusions reached in the hearing examiner's evaluation of the evidence for purposes of mitigation may be based on improper inferences, no prejudice occurred to appellant as a result. This is especially apparent in view of the board's modification of the penalty recommended by the hearing examiner. The hearing examiner's findings of fact and conclusions of law are all supported by reliable, probative, and substantial evidence. While the hearing examiner's conclusions as to the consideration of the evidence for purposes of mitigation may be improper, appellant was not in any way prejudiced. Based on the foregoing, appellant's fifth assignment of error is not well-taken.

For the foregoing reasons, appellant's first and third assignments of error are sustained as they relate to the conditions for reinstatement (c), (d), and (e) imposed by the board, which are not supported by the factual findings; otherwise they are overruled; appellant's second, fourth and fifth assignments of error are overruled; the judgment of the Franklin County Court of Common Pleas is reversed; and this cause is remanded to that court with instructions to affirm the State Medical Board of Ohio's decision except as to conditions of reinstatement and to remand the matter to the State Medical Board for further proceedings, consistent with this opinion and in accordance with law.

Judgment reversed, and cause remanded with instructions.

BRYANT and BOWMAN, JJ., concur.

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

FILED
COURT OF APPEALS
FRANKLIN COUNTY, OHIO
1993 APR -8 PM 4:46
THOMAS J. ENRIGHT
CLERK OF COURTS

ROBERT J. EASTWAY, JR. D.O.	:	
Appellant,	:	93 AP 487
vs.	:	CASE NO. 92CVF-03-2263
STATE MEDICAL BOARD OF OHIO	:	JUDGE DAVID L. JOHNSON
Appellee.	:	

NOTICE OF APPEAL

Notice is hereby given that the appellant, Robert J. Eastway, Jr., D.O., hereby appeals to the Court of Appeals of Franklin County, Ohio, Tenth Appellate District, from the final judgment of this Court entered in this action on the 10th day of March, 1993, in favor of the appellee, State Medical Board of Ohio, and affirming the March 16, 1992 Order of the State Medical Board in regard to the appellant.

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO
93 APR -8 PM 4:43
THOMAS J. ENRIGHT
CLERK OF COURTS

David H. Bodiker
DAVID H. BODIKER (#0016590)
65 S. FIFTH STREET
COLUMBUS, OHIO 43215
(614) 224-0343
COUNSEL FOR APPELLANT
ROBERT J. EASTWAY, JR. D.O.

TO THE CLERK:

The appellee, State Medical Board of Ohio, was, and is, represented by Anne C. Berry, Supreme Court #0012286, Assistant Attorney General, 30 East Broad Street, 15th Floor, Columbus, Ohio 43266-0410.

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

COMMON PLEAS COURT FRANKLIN CO OHIO
93 MAR 10 PM 2:41
THE CLERK OF COURTS

ROBERT J. EASTWAY, JR., D.O.,	:	
Appellant,	:	CASE NO. 92CVF03-2263
vs.	:	JUDGE JOHNSON
STATE MEDICAL BOARD OF OHIO,	:	
Appellee.	:	

TERMINATION NO. 8
BY

JUDGMENT ENTRY

This cause is before the Court upon the appeal, pursuant to R.C. 119.12, of the March 16, 1992 Order of the State Medical Board of Ohio. For the reasons stated in the decision of this Court rendered February 8, 1993, which decision is incorporated by reference as if fully rewritten herein it is hereby

ORDERED, ADJUDGED AND DECREED that judgment is hereby entered in favor of Defendant, State Medical Board of Ohio, and the March 16, 1992 Order of the State Medical Board of Ohio is hereby affirmed. Costs to Appellant.

FILED
'S OFFICE
MAR 16 1993
HEALTH & HUMAN
SERVICES SECTION

3 Mar 93
DATE

DAVID L. JOHNSON, JUDGE

APPROVED:

David H. Bodiker
DAVID H. BODIKER (0016590)
65 South Fifth Street
Columbus, Ohio 43215

Attorney for Appellant
Robert J. Eastway, Jr., D.O.

Anne C. Berry
ANNE C. BERRY (0012256)
Assistant Attorney General
30 East Broad Street, 15th Floor
Columbus, Ohio 43266-0410

Attorney for Appellee State
Medical Board of Ohio

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

CIVIL DIVISION

ROBERT J. EASTWAY, JR. D.O.	:	CASE NO. 92CVF-03-2263
Appellant	:	
VS.	:	JUDGE DAVID L. JOHNSON
STATE MEDICAL BOARD OF OHIO	:	
Appellee.	:	

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
93 MAR 10 PM 2:41
THOMAS J. EGAN
CLERK OF COURTS

STAY OF ORDER OF STATE MEDICAL BOARD
PENDING FINAL ADJUDICATION BY
COURT OF APPEALS

This Court, having now affirmed the previous decision of the State Medial Board finding in favor of the appellee, State Medical Board, and against the appellant, Robert J. Eastway, Jr., D.O., and further finding that the appellant intends to appeal this decision to the Franklin County Court of Appeals, and that the execution of the Order of the State Medical Board will result in unusual hardship to the appellant, and that the health, safety, and welfare of the public will not be threatened by the stay and suspension of that Order, hereby further stays and suspends the order of the State Medical Board, on all of the same

terms and conditions previously imposed, pending final adjudication of the appeal by the Court of Appeals.

DATE: 8 Mar 93 JUDGE

APPROVED:

DAVID H. BODIKER (#0016590)
ATTORNEY FOR APPELLANT
ROBERT J. EASTWAY, JR. D.O.

ANNE C. BERRY (#0012256)
ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR APPELLEE
STATE MEDICAL BOARD OF OHIO

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

STATE MEDICAL BOARD OF OHIO
94 FEB 2 PM 2:25

ROBERT J. EASTWAY, JR., D.O.,	]	CASE NO. 92CVF03 2263
Appellant,	]	JUDGE JOHNSON
vs.	]	
STATE MEDICAL BOARD OF OHIO,	]	
Appellee.	]	

RECEIVED
ATTORNEY GENERAL'S OFFICE
FEB 11 1993
HEALTH & HUMAN SERVICES SECTION

DECISION

Rendered this 8th day of February 1993

JOHNSON, J.

This case comes before the Court on an R.C. 119.12 appeal from a decision of the State Medical Board suspending Appellant Robert Eastway's license to practice medicine for one year and imposing various conditions of probation.

The doctor's transgressions involved controlled substances and the means by which he obtained the two painkillers. While these offenses are not as morally reprehensible as for instance, selling drugs, the State Medical Board was well within its power to prosecute this matter and impose stiff sanctions. The Board and its Hearing Examiner seemed to have some difficulty with the concept of treatment in lieu of conviction under R.C. 2951.041, but there is no dispute that the doctor violated the laws regarding prescriptions in order to obtain the painkillers. The Court concludes that the Board's decision on the merits of the charges against Appellant was supported by reliable, probative, and substantial evidence.

The key issue in this case appears to be the propriety of

the punishment imposed by the Board. Appellant argues that many of the probation conditions imposed are unnecessary as the doctor had voluntarily (and commendably) sought care and changed his lifestyle prior to the initiation of proceedings against him. The Court sees little social utility in an administratively imposed solution to a problem that may already be moot. However, this Court has no legal authority to act as a "Parole Board" which acts to modify a properly imposed penalty through the exercise of leniency. See Henry's Cafe, Inc. vs Board of Liquor Control 170 O.St. 233 (1959). Henry's Cafe has never been overruled and has been consistently followed by the Common Pleas Court. The Board, in the exercise of its regulatory power, may wish to consider the most up to date information on Appellant's recovery and waive certain conditions of probation that have been or are being satisfied.

The Court concludes that the decision below was proper in all regards and AFFIRMS the Board's actions. Counsel for Appellee shall prepare an appropriate judgment entry.

DAVID L. JOHNSON, JUDGE

Appearances:

DAVID H. BODIKER, Esq.
Counsel for Appellant

ANNE C. BERRY, AAG
Counsel for Appellee

COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

THOMAS J. ENRIGHT
CLERK OF COURTS
92 MAR 19 PM 2:28
FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO

IN THE MATTER OF : CASE NO.

ROBERT J. EASTWAY, JR. D.O. : JUDGE 92 CVF03-2263

SUSPENSION OF THE ORDER
OF THE STATE MEDICAL BOARD OF OHIO

Upon application of the appellant, Robert J. Eastway, Jr. D.O., and pursuant to the authority of Section 119.12, Revised Code of Ohio, this Court finding that the execution of the Order of the State Medical Board of Ohio will result in unusual hardship to the appellant, and that the health, safety, and welfare of the public will not be threatened by suspension of that Order, the Order of the State Medical Board of Ohio entered in this matter and mailed to the appellant on March 18, 1992, is hereby stayed and suspended pending the determination of this appeal and the further Order of this Court. Conditions upon a prohibition against self and family prescribing of medication

DATE: 19 March 1992

JUDGE

THE STATE OF OHIO
Franklin County, ss
I THOMAS J. ENRIGHT, Clerk OF THE COURT OF COMMON PLEAS, WITHIN AND FOR SAID COUNTY
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL DOCUMENT HAVING BEEN FILED IN MY OFFICE ON Suspension Order
WITNESS MY HAND AND SEAL OF SAID COURT THIS 19
DAY OF 19 A.D.
THOMAS J. ENRIGHT
BY Deputy Clerk

COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
92 MAR 19 PM 2:28
THOMAS J. ENRIGHT
CLERK OF COURTS

IN THE MATTER OF : CASE NO.

ROBERT J. EASTWAY, JR. D.O. : JUDGE 92 CVF 03-2263

SUSPENSION OF THE ORDER OF THE STATE MEDICAL BOARD OF OHIO

Upon application of the appellant, Robert J. Eastway, Jr. D.O., and pursuant to the authority of Section 119.12, Revised Code of Ohio, this Court finding that the execution of the Order of the State Medical Board of Ohio will result in unusual hardship to the appellant, and that the health, safety, and welfare of the public will not be threatened by suspension of that Order, the Order of the State Medical Board of Ohio entered in this matter and mailed to the appellant on March 18, 1992, is hereby stayed and suspended pending the determination of this appeal and the further Order of this Court. Conditioned upon a prohibition against self and family prescribing of medication

DATE: 19 March 1992

JUDGE

THE STATE OF OHIO
Franklin County, ss
I THOMAS J. ENRIGHT Clerk OF THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY.
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL Suspn. of order NOW ON FILE IN MY OFFICE
WITNESS MY HAND AND SEAL OF SAID COURT THIS 26 DAY OF Mar A.D. 19 92
THOMAS J. ENRIGHT, Clerk
By J. Beard Civil Deputy

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

ROBERT J. EASTWAY, D.O.

92CVF03-2263

92 MAR 18 PM 4:51

NOTICE OF APPEAL TO THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

Notice is hereby given that Robert J. Eastway, Jr., D.O., the Respondent herein, hereby appeals to the Court of Common Pleas, Franklin County, Ohio from the adjudication and order of the State Medical Board of Ohio, entered in this action and mailed to the Respondent on the 18th day of March 1992, which Order provided that the certificate of Respondent to practice osteopathic medicine and surgery in the State of Ohio be revoked, but that such revocation be stayed conditioned upon, among other matters, a suspension of said certificate for an indefinite period of time, but not less than one year, and the fulfillment of certain itemized requirements during the period of time of the suspension. A copy of the Order appealed from is attached hereto and incorporated herein as if fully rewritten.

The grounds for the appeal are that the Order of the State Medical Board of Ohio is not supported by reliable, probative, and substantial evidence and is not in accordance with law.

DATE: March 18, 1992

David H. Bodiker

DAVID H. BODIKER
65 SOUTH FIFTH STREET
COLUMBUS, OHIO 43215
(614) 224-0343
ATTORNEY FOR RESPONDENT
ROBERT J. EASTWAY, JR. D.O.

STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th Floor • Columbus, . hio 43266-0315 • (614) 466-3934

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

ROBERT J. EASTWAY, JR., D.O. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 11th day of March, 1992.

Upon the Report and Recommendation of Wanita J. Sage, 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 modification, approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board for the above date.

It is hereby ORDERED that:

1. The certificate of Robert J Eastway, Jr., D.O., to practice osteopathic medicine and surgery in the State of Ohio, shall be REVOKED. Such revocation is stayed, and Dr. Eastway's certificate is SUSPENDED for an indefinite period of time, but not less than one (1) year.

2. The State Medical Board shall not consider reinstatement of Dr. Eastway's certificate to practice unless and until all of the following minimum requirements are met:

   a. Dr. Eastway shall submit an application for reinstatement, accompanied by appropriate fees.

   b. Dr. Eastway shall provide the Board with written reports of evaluation by two physicians acceptable to the Board stating that Dr. Eastway is no longer drug dependent and is able to practice according to acceptable and prevailing standards of care. Each of these evaluations shall be in writing and shall state with particularity the bases for this determination and shall set forth any recommended limitations upon Dr. Eastway's practice.

STATE MEDICAL BOARD OF OHIO
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c. Dr. Eastway shall provide the Board with a certification from an approved treatment provider that he has successfully completed any required inpatient treatment and is continuing in full compliance with regard to any outpatient treatment and/or aftercare.

d. Dr. Eastway shall provide satisfactory documentation of continuous participation in a drug and alcohol rehabilitation program acceptable to the Board, such as AA, NA or Caduceus, no less than 4 times per week.

e. Dr. Eastway shall provide documentation acceptable to the Board of continuing psychiatric counseling at intervals as deemed appropriate by a treating psychiatrist approved by the Board.

f. Dr. Eastway shall take and pass an examination to be administered by the Board or its designee related to the content of the DEA Physician's Manual, which manual may be obtained from the offices of the State Medical Board. In the event that Dr. Eastway fails this examination, Dr. Eastway must wait one (1) month between reexaminations.

3. Upon reinstatement, Dr. Eastway's certificate shall be subject to the following probationary terms, conditions and limitations for a minimum of two (2) years:

a. Dr. Eastway shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.

b. Dr. Eastway shall submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the provisions of probation.

c. Dr. Eastway shall appear in person for interviews before the full Board or its designated representative at three (3) month intervals or as otherwise requested by the Board.

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d. Dr. Eastway shall continue counseling with a psychiatrist approved by the Board at such intervals as are deemed appropriate by the counselor or treating psychiatrist, but not less than once per month, until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the counselor or approved treating psychiatrist. Dr. Eastway shall ensure that these reports are forwarded to the Board on a quarterly basis, or as otherwise directed by the Board.

e. Dr. Eastway shall abstain completely from the personal use or possession of drugs, except those prescribed, administered or dispensed to him by another so authorized by law who has full knowledge of Dr. Eastway's history of chemical dependency.

f. Dr. Eastway shall abstain completely from the use of alcohol.

g. Dr. Eastway shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Eastway shall ensure that all screening reports are forwarded directly to the Board on a monthly basis. Within thirty (30) days of the effective date of this Order, Dr. Eastway shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Eastway shall submit the required urine specimens. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the Board of any positive screening results. The supervising physician shall monitor Dr. Eastway and provide the Board with reports on Dr. Eastway's progress and status. Dr. Eastway shall ensure that said reports are forwarded to the Board on a quarterly basis.

STATE MEDICAL BOARD OF OHIO
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In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Eastway must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable.

h. Dr. Eastway shall submit blood or urine specimens for analysis without prior notice at such times as the Board may request.

i. Dr. Eastway shall maintain participation in an alcohol and drug rehabilitation program acceptable to the Board, such as AA, NA, or Caduceus, no less than four (4) times per week or as otherwise directed by the Board. At Dr. Eastway's appearances before the Board or its designated representative, Dr. Eastway shall submit acceptable documentary evidence of continuing compliance with this program.

j. Dr. Eastway shall not prescribe, administer, dispense or order controlled substances except in a hospital setting, and shall keep a log of all controlled substances so prescribed, administered, dispensed or ordered. Such log shall be submitted in the format approved by the Board thirty (30) days prior to Dr. Eastway's personal appearances before the Board or its designated representative, or as otherwise directed by the Board.

k. In the event that Dr. Eastway should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Eastway must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.

l. Dr. Eastway shall provide a copy of this Order to all employers and the chief of staff at each hospital where he has, applies for, or obtains privileges of any kind.

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Robert J. Eastway, Jr., D.O.

m. If Dr. Eastway violates probation in any respect, the Board, after giving Dr. Eastway notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of Dr. Eastway's certificate to practice.

4. Upon successful completion of probation, Dr. Eastway's certificate will be fully restored.

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

Henry G. Cramblett MD

Henry G. Cramblett, M.D.
Secretary

(SEAL)

3/16/92

Date

REPORT AND RECOMMENDATION
IN THE MATTER OF ROBERT J. EASTWAY, JR., D.O.

The Matter of Robert J. Eastway, Jr., D.O., came on for hearing before me, Wanita J. Sage, Esq., Hearing Examiner for the State Medical Board of Ohio, on October 17, 1991.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

A. By letter of June 12, 1991 (State's Exhibit #1), the State Medical Board notified Robert J. Eastway, Jr., D.O., that it proposed to take disciplinary action against his license to practice osteopathic medicine and surgery in Ohio for one or more of the following reasons:

1. The Board alleged that, on or about March 3, March 13, and March 17, 1989, in the absence of a bona fide doctor-patient relationship, Dr. Eastway presented one J. Fleer with prescriptions for Percodan or Percocet written in her name with directions for her to obtain the medication from a pharmacy and return the drugs to him. Further, on or about June 29, July 10, and September 6, 1989, in the absence of a bona fide doctor-patient relationship, Dr. Eastway presented one R. Duncan with prescriptions for Percodan or Percocet written in her name with directions for her to obtain the medication from a pharmacy and return the drugs to him. The Board alleged that such acts constituted "the obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice", as that clause is used in Section 4731.22(B)(8), Ohio Revised Code, and/or "commission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act is committed", as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal processing of drug documents, and Section 2925.22, Ohio Revised Code, Deception to obtain dangerous drugs.

2. The Board further alleged that Dr. Eastway prescribed certain controlled substances to Patients 1 through 4 (identified on a Patient Key to be withheld from public disclosure), but failed to maintain patient records regarding those individuals. Further, Dr. Eastway prescribed controlled substances to Patient 5 in 1988 and 1989, failing to supplement the patient records he had maintained for this patient during the years 1983, 1984, and 1985. The Board alleged that such conduct

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directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board", as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(D), Ohio Administrative Code. Purusant to Rule 4731-11-02(F), Ohio Administrative Code, violation of Rule 4731-11-02(D), Ohio Administrative Code, also violates Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code.

Dr. Eastway was advised of his right to request a hearing in this Matter.

B. By letter received by the State Medical Board on July 12, 1991 (State's Exhibit #2), David H. Bodiker, Esq., requested a hearing on behalf of Dr. Eastway.

II. Appearance of Counsel

A. On behalf of the State of Ohio: Lee I. Fisher, Attorney General, by Odella Lampkin, Assistant Attorney General

B. On behalf of the Respondent: David H. Bodiker, Esq.

III. Testimony Heard

A. Presented by the State

1. Royletta E. Duncan (by deposition taken on October 16, 1991)

2. Robert J. Eastway, Jr., D.O., as on cross-examination

3. Julie Fleer

B. Presented by the Respondent

1. Ransome R. Williams, M.D.

2. Robert J. Eastway, Jr., D.O.

IV. Exhibits Examined

In addition to State's Exhibits #1 and #2, noted above, the following exhibits were identified and admitted into evidence in this Matter:

A. Presented by the State

1. State's Exhibit #3: July 17, 1991, letter to Attorney Bodiker from the State Medical Board advising that a hearing initially set for July 26, 1991, was postponed

2. State's Exhibit #4: July 23, 1991, letter to Attorney Bodiker from the State Medical Board scheduling the hearing for September 19, 1991.

3. State's Exhibit #5: September 10, 1991, Entry granting the Respondent's motion for continuance and rescheduling the hearing for October 17, 1991.

4. State's Exhibit #6: September 27, 1991, Entry granting the State's motion to take the testimony of Royletta Duncan by deposition.

5. State's Exhibit #7: Entry for treatment in lieu of conviction, filed in the Franklin County Common Pleas Court on December 14, 1990, in Case No. 90CR-05-2734, State v. Eastway.

6. State's Exhibit #8: Nine-count indictment filed in the Franklin County Common Pleas Court on May 25, 1990, in Case No. 90CR-05-2734, State v. Eastway.

7. State's Exhibit #9: Investigative subpoena issued to Dr. Eastway by the State Medical Board on December 20, 1990, requesting certain patient records (ATTACHED PATIENT KEY SEALED TO PROTECT CONFIDENTIALITY).

* 8. State's Exhibit #10: January 22, 1991, letter to the State Medical Board from Joan Denes, Office Manager, Central Ohio Cardiovascular Consultants, Inc., responding to the Board's subpoena request.

9. State's Exhibit #11: Copy of Sections 2925.22, 2925.23, and 2913.01, Ohio Revised Code.

10. State's Exhibit #12: May 31, 1991, affidavit of Royeltta E. Duncan.

11. State's Exhibit #13: April 5, 1991, affidavit of Julie A. Fleer.

12. State's Exhibit #14: Three prescriptions written by Dr. Eastway in the name of Royletta Duncan, dated June 29, July 10, and September 6, 1989, respectively.

13. State's Exhibit #15: Three prescriptions written by Dr. Eastway in the name of Julie Fleer, dated March 3, March 13, and March 17, 1989, respectively.

* 14. State's Exhibit #16: Prescriptions written by Dr. Eastway for Patient 1.

* 15. State's Exhibit #17: Prescriptions written by Dr. Eastway for Patient 2.

* 16. State's Exhibit #18: Prescriptions written by Dr. Eastway for Patient 3.

* 17. State's Exhibit #19: Prescription written by Dr. Eastway for Patient 4.

* 18. State's Exhibit #20: Prescriptions written by Dr. Eastway for Patient 5.

* 19. State's Exhibit #21: Computer printout from Drug Emporium, listing certain prescriptions issued by Dr. Eastway for Patients 1 and 5.

* 20. State's Exhibit #22: Computer printout from Drug World, listing prescriptions issued by Dr. Eastway for Patient 1.

* 21. State's Exhibit #23: Computer printout from Drug World, listing prescriptions issued by Dr. Eastway for Patient 5.

* 22. State's Exhibit #24: Dr. Eastway's patient records with regard to his treatment of Patient 5 during 1983, 1984, and 1985.

23. State's Exhibit #25: Transcript of the October 16, 1991, deposition of Royletta E. Duncan.

NOTE: THE EXHIBITS MARKED WITH AN ASTERISK (*) HAVE BEEN SEALED TO PROTECT CONFIDENTIALITY.

B. Presented by the Respondent

1. Respondent's Exhibit A: July 26, 1990, letter to David H. Bodiker, Esq., from Tom Pepper, M.D., Medical Director, Alcoholism and Drug Dependency Treatment Services, Riverside Methodist Hospitals, reporting assessment and treatment recommendations with regard to Dr. Eastway.

2. Respondent's Exhibit B: April 3, 1991, letter to Teri Gardner, Supervisor, Franklin County Adult Probation, from Ransome R. Williams, Chairman, Grant Physicians' Effectiveness Committee, reporting Dr. Eastway's compliance with his treatment aftercare agreement.

3. Respondent's Exhibit C: Ledger page indicating dental services rendered to Dr. Eastway on 7/6/89 and 1/2/90 (see supplemental dental records included in Respondent's Exhibit F).

4. Respondent's Exhibit D: October 14, 1991, letter from Ransome R. Williams, M.D., regarding Dr. Eastway's progress with his recovery program.

5. Respondent's Exhibit E: October 17, 1991, letter from Gary Lehman, President, Madison County Hospital, recommending Dr. Eastway.

6. Respondent's Exhibit F: Documents filed with the State Medical Board on November 12, 1991, pursuant to motion granted at hearing, including: a cover memorandum from Attorney Bodiker; a certified copy of Dr. Eastway's dental records (F-1); and a November 6, 1991, letter from Michael D. McNeer, M.D., regarding Mrs. Eastway's history of opioid dependence, treatment, and progress in recovery (F-2).

V. Post-Hearing Additions to the Record

In addition to Respondent's Exhibit F, above, the following post-hearing documents were admitted to the record, upon the Hearing Examiner's own motion:

A. Board Exhibit 1: State's October 2[illegible], 1991, motion to supplement the hearing record.

B. Board Exhibit 2: State's October 24, 1991, motion to permit written closing arguments.

C. Board Exhibit 3: November 1, 1991, Entry (by Hearing Examiner Fisher, acting in Hearing Examiner Sage's absence) granting the Respondent's request for an extension of the deadline for submission of additional materials, and holding the record open until November 12, 1991.

D. Board Exhibit 4: November 5, 1991, Entry admitting additional documents and holding the record open until November 20, 1991, for submission of written closing arguments.

E. Board Exhibit 5: State's written closing arguments, filed November 20, 1991.

F. Board Exhibit 6: Respondent's written closing arguments, filed November 20, 1991.

VI. Closing of Record

The record in this Matter was closed as of 5:00 P.M., November 20, 1991.

FINDINGS OF FACT

1. On three occasions in 1989, in the absence of a bona fide doctor-patient relationship, Robert J. Eastway, Jr., D.O., presented one Julie Fleer with a prescription for Percodan or Percocet written in her name, directing her to obtain the medication from a pharmacy and return the drugs to him. Dr. Eastway wrote these prescriptions in Ms. Fleer's name, as follows:

   a. On March 3, 1989, for 25 Percodan (a Schedule II controlled substance narcotic analgesic), with directions to take one or two every four hours as needed for chest pain;

   b. On March 13, 1989, for 15 Percocet (also a Schedule II controlled substance narcotic analgesic), with directions to take one every four hours as needed for pain; and

   c. On March 17, 1989, for 10 Percocet, with directions to take one or two every four hours as needed for pain.

   These facts are established by the stipulations of the parties (Tr. at 7-8) and State's Exhibit #15.

2. On three occasions in 1989, in the absence of a bona fide doctor-patient relationship, Dr. Eastway presented one Royletta Duncan with a prescription for Percocet written in her name, directing her to obtain the medication from a pharmacy and return the drugs to him. Dr. Eastway wrote these prescriptions in Ms. Duncan's name, as follows:

   a. On June 29, 1989, for 30 Percocet, with directions to take one or two every four hours as needed for headache;

   b. On July 10, 1989, for 25 Percocet, with directions to take one or two every four to six hours as needed for pain; and

   c. On September 6, 1989, for 25 Percocet, with directions to take one every four to six hours as needed for pain.

   These facts are established by the stipulations of the parties (Tr. at 7-8) and State's Exhibit #14.

3. Both Julie Fleer and Royletta Duncan were employees of Dr. Eastway's corporation at the time he wrote these prescriptions in their names. Dr. Eastway told them that he needed medications because of dental pain, but that it was improper for him to write prescriptions for himself.

   These facts are established by State's Exhibits #12 and #13 the testimony of Ms. Fleer (Tr. at 40-53), and the testimony of Ms. Duncan (Depo. Tr. at 5-43).

4. At hearing, Dr. Eastway asserted that he had needed all of the prescriptions he had written in employees' names for his own use for relief of dental pain. He did not explain why he had noted "for chest pain" on the 3/3/89 prescription he wrote in Ms. Fleer's name and "for headache" on the 6/29/89 prescription he wrote in Ms. Duncan's name.

   These facts are established by State's Exhibits #14 and #15 and the testimony of Dr. Eastway (Tr. at 31-39, 74-84, 100-105).

5. Dr. Eastway's initial visit to the dentist was on March 15, 1989. On that date, according to his dental records, Dr. Eastway told the dentist that he had taken antibiotics as treatment for intermittent pain, but made no mention of self-treatment with narcotic analgesics. The dentist scheduled Dr. Eastway for a root canal, noting that Dr. Eastway would start himself on an antibiotic, Pen VK 500 mg., four times a day for 10 days. Thereafter, Dr. Eastway had a root canal on March 29, 1989; an apicoectomy on July 6, 1989; and other dental procedures in January, 1990. On one occasion, June 15, 1989, the dentist either recommended or prescribed Motrin 60 mg. for Dr. Eastway. The dental records do not indicate that the dentist recommended, prescribed, or offered to prescribe any other pain medication for Dr. Eastway.

   These facts are established by Respondent's Exhibit F-1.

6. From December, 1988, through December, 1989, Dr. Eastway prescribed controlled substances for Patient 1 on the dates and in the amounts indicated on the "Prescription List by Patient Number" submitted as an attachment to State's Exhibit #1, with the following exceptions:

   a. There is no evidence that a prescription was issued on 12/14/88; however, two prescriptions, each for 25 Percocet, were issued on 12/24/88.

   b. The prescription listed as having been issued on 7/8/89 was actually issued on 7/3/89.

c. The prescription listed as having been issued on 10/29/89 was actually issued on 10/28/89.

d. The 12/25/89 prescription was for 40, rather than 25, dosage units of Percocet.

e. The amounts listed for the Tussionex prescriptions are liquid measures, rather than dosage units. The 11/5/89 Tussionex prescription was for 180 ml.; the amounts of the other Tussionex prescriptions are listed in fluid ounces. (A one-teaspoon dosage unit is approximately 5 ml.; each fluid ounce contains 29.57 ml.)

Dr. Eastway failed to maintain patient records with regard to his prescribing of controlled substances for Patient 1. Patient 1 was Dr. Eastway's wife.

Dr. Eastway testified that he had prescribed Percocet as treatment for Mrs. Eastway's chronic headaches, and Tussionex as treatment for cough and congestion related to allergies. He had begun prescribing for her after she had completed a course of physical medicine and rehabilitation under the care of a neurologist. The neurologist had felt her headaches to be muscle contraction in origin.

These facts are established by State's Exhibits #16, #21, and #22; Board Exhibit 1; the stipulations of the parties (Tr. at 7-8); Respondent's Exhibit F-2; and the testimony of Dr. Eastway (Tr. at 124-129).

7. From May, 1988, through November, 1989, Dr. Eastway prescribed controlled substances for Patient 2 on the dates and in the amounts indicated on the "Prescription List by Patient Number" submitted as an attachment to State's Exhibit #1. Dr. Eastway failed to maintain patient records with regard to his prescribing of controlled substances for Patient 2.

According to a notation on the 5/27/88 prescription, Patient 2 was Dr. Eastway's son-in-law. On some of the prescriptions for Patient 2, Dr. Eastway wrote his own home address; on others, he wrote the patient's Portsmouth, Ohio, address. Dr. Eastway apparently phoned the 8/14/89 prescription into Grant Town Pharmacy; on this prescription, Patient 2's address was noted as "340 E. Town St. for Dr. Eastway."

Although Dr. Eastway could not recall for what he had treated Patient 2 in 1988 and 1989, he stated that he knew the patient well enough to know that this patient had legitimately needed pain medications. Dr. Eastway acknowledged that a notation on the 5/27/88 prescription for 40 Percocet appeared to indicate that it was for "chest pain." In fact, "chest pain" is noted on

both the 5/27/88 and the 7/8/88 prescriptions, and "severe headache" is noted on the 12/5/88 prescription; the remaining prescriptions do not note specific indications.

These facts are established by State's Exhibit #17, the stipulations of the parties (Tr. at 7-8), and the testimony of Dr. Eastway (Tr. at 109-110, 112-113).

8. From February, 1989, through May, 1989, Dr. Eastway prescribed controlled substances for Patient 3 on the dates and in the amounts indicated on the "Prescription List by Patient Number." Dr. Eastway failed to maintain patient records with regard to his prescribing of controlled substances for Patient 3.

Patient 3 was an employee of Dr. Eastway's corporation. At hearing, Dr. Eastway initially stated that he did not recall whether Patient 3 had been a patient or an employee he had used to get medications for himself. After Dr. Eastway's counsel pointed out that "headache" was noted on each prescription, Dr. Eastway stated that these medications had been prescribed for Patient 3's own use. He could not recall whether or not Patient 3's headaches had been severe, but stated that he would not routinely prescribe Percocet for headaches.

These facts are established by State's Exhibit #18 and the testimony of Dr. Eastway (Tr. at 105-106, 113, 122-124).

9. On March 31, 1989, Dr. Eastway prescribed four ounces of Tussionex (a Schedule III controlled substance narcotic antitussive and analgesic) for Patient 4. Dr. Eastway failed to maintain patient records with regard to this prescription for Patient 4. Dr. Eastway testified that this prescription had been for Patient 4's own use, presumably for a legitimate need.

These facts are established by State's Exhibit #19, the stipulations of the parties (Tr. at 7-8), and the testimony of Dr. Eastway (Tr. at 113-114).

10. From October, 1988, through November, 1989, Dr. Eastway prescribed controlled substances for Patient 5 on the dates and in the amounts indicated on the "Prescription List by Patient Number." The 11/11/88 prescription was for 180 ml., rather than 180 dosage units, of Tussionex. Dr. Eastway failed to maintain patient records with regard to his prescribing of controlled substances for Patient 5.

At hearing, Dr. Eastway claimed that Patient 5 had legitimately needed pain medications as treatment for chronic chest pain of a remitting and relapsing type. Dr. Eastway stated that he had treated Patient 5 for this condition for years, initially maintaining patient records in connection with Patient 5's formal visits. Later, however, Patient 5 would just stop into

Dr. Eastway's office from time to time to request a prescription for pain. Because Patient 5 had been a long-established patient, Dr. Eastway had not deemed it necessary to perform diagnostic testing or extensive evaluation each time before prescribing pain medications.

Dr. Eastway's representations regarding his prior treatment of Patient 5 are not well-supported by the medical records he maintained for this patient from November, 1983, through February, 1985. Those records do not indicate that Dr. Eastway had ever previously treated Patient 5 for chest pain by prescribing controlled substances. In fact, Dr. Eastway's role with regard to Patient 5 had apparently been limited to performing a cardiovascular evaluation with diagnostic testing in November, 1983, and performing and interpreting follow-up tests in March, August, and October, 1984, and February, 1985. Although Dr. Eastway had diagnosed Patient 5 as having a complete left bundle branch block with cardiomyopathy, there is no indication that he had treated Patient 5 for that or any condition.

These facts are established by State's Exhibits #20, #21, #23, and #24 and the testimony of Dr. Eastway (Tr. at 114-115, 117-119).

11. Dr. Eastway maintained at hearing that he had prescribed these controlled substances for Patients 1 through 5 for their own use and for valid medical purposes. Dr. Eastway admitted, however, that he had used some of the Percocet that he had prescribed for his wife (Patient 1), after September 6, 1989, when he had quit using employees to obtain medications for him. Dr. Eastway stated that, although he had started out legitimately needing Percocet for relief of dental pain, in the summer or fall of 1989 he had begun using it to help him relax in the evenings. In late 1989, Dr. Eastway had realized that both he and his wife might be abusing Percocet and were "on the wrong track." He had stopped prescribing for his wife and they had both quit using Percocet.

These facts are established by the testimony of Dr. Eastway (Tr. at 88-93, 103-119, 122-131).

12. On or about May 25, 1990, Dr. Eastway was indicted on nine felony counts of illegal processing of drug documents in violation of Section 2925.23, Ohio Revised Code, in connection with issuing false prescriptions for Percocet. On or about December 14, 1990, the Franklin County Common Pleas Court granted Dr. Eastway's request for treatment in lieu of conviction, finding that Dr. Eastway's drug dependence was a factor leading to the criminal activity with which he had been charged.

Nevertheless, at the present hearing, Dr. Eastway clearly asserted that he was not drug dependent when he began writing false prescriptions in the names of employees for his own use. In fact, he stated that he had never used Percodan or Percocet before that time. He also consistently maintained that the controlled substances he prescribed without keeping patient records for Patients 1 through 5 were for their own use, not his.

These facts are established by State's Exhibits #7, #8, and #11 and the testimony of Dr. Eastway (Tr. at 75-76 and throughout).

13. In July, 1990, Dr. Eastway underwent a three-day assessment at the Alcoholism and Drug Dependency Treatment Unit of Riverside Methodist Hospitals. Dr. Eastway was diagnosed as drug dependent, currently in remission. According to Ransome R. Williams, M.D., Dr. Eastway's monitoring physician under the auspices of the Physician Effectiveness Committee at Grant Hospital, Dr. Eastway has complied with all treatment and aftercare recommendations.

These facts are established by Respondent's Exhibits A, B, and D and the testimony of Dr. Williams (Tr. at 55-67).

14. Mrs. Eastway has also undergone treatment for chemical dependency. She was evaluated in December, 1990, for the possibility of treatment in lieu of conviction on a drug related charge.

These facts are established by Respondent's Exhibit F-2.

15. Since 1983, Dr. Eastway has practiced primarily invasive cardiology in Columbus and London, Ohio, hospitals. In late 1989, Dr. Eastway left the cardiology group with which he was associated and now practices primarily at Grant Hospital in Columbus and Madison County Hospital in London.

These facts are established by the testimony of Dr. Eastway (Tr. at 70-74, 88-90).

CONCLUSIONS

1. As set forth in Findings of Fact #1 through #5, above, on at least six occasions from March 3 through September 6, 1989, Dr. Eastway obtained Schedule II narcotic medications by falsely writing prescriptions for his own use in the names of employees. Such acts, conduct, and/or omissions constitute:

a. "The obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice", as that clause is used in Section 4731.22(B)(8), Ohio Revised Code; and/or

b. "Commission of an act that constitutes felony in this state regardless of the jurisdiction in which the act was committed", as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, "Illegal processing of drug documents", and Section 2925.22, Ohio Revised Code, "Deception to obtain dangerous drugs."

2. Rule 4731-11-02(D), Ohio Administrative Code, states: "A physician shall complete and maintain accurate medical records reflecting his examination, evaluation, and treatment of all his patients. Patient medical records shall accurately reflect the utilization of any controlled substances in the treatment of a patient and shall indicate the diagnosis and purpose for which the controlled substance is utilized, and any additional information upon which the diagnosis is based." As set forth in Findings of Fact #6 through #10, above, Dr. Eastway failed to maintain any patient records whatsoever regarding his prescribing of controlled substances for Patients 1 through 5 during the period from May, 1988, through December, 1989. Such acts, conduct, and/or omissions constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board", as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(D), Ohio Administrative Code. Further, pursuant to paragraph (F) of Rule 4731-11-02, Ohio Administrative Code, violation of Rule 4731-11-02(D) also constitutes "failure to use reasonable care discrimination in the administration of drugs", as that clause is used in Section 4731.22(B)(2), Ohio Revised Code, and "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.

* * * * *

Dr. Eastway presented testimony and evidence with regard to his drug dependence and subsequent treatment. Nevertheless, though he apparently represented otherwise to the Franklin County Common Pleas Court, Dr. Eastway testified before this Board that he was not drug dependent at the time he began issuing false prescriptions in the names of employees to obtain controlled substances for his own

use. Such acts constitute felonies in this State. It defies common sense to believe that a physician would be unaware of the impropriety of writing a prescription in the name of a person other than the one for whom the medication is intended. Dr. Eastway's subsequent dependence on the drugs he obtained by deception aggravates, rather than mitigates, his illegal acts.

Likewise, no mitigation can be found in Dr. Eastway's unsupported assertion that he prescribed controlled substances for Patients 1 through 5 for valid therapeutic purposes. Medical documentation is an integral part of any physician's training and practice. When a physician undertakes the prescribing of Schedule II controlled substances over a substantial period of time without the documentation necessary for careful evaluation of risks and benefits to the patient, he must be prepared to take the consequences of his failure in professional responsibility. In Dr. Eastway's case, such failure was not an isolated incident. He admittedly prescribed controlled substances for five individuals over a period of approximately 20 months without maintaining patient records regarding them. In light of Dr. Eastway's illegal issuance of false prescriptions in the names of employees during this same time period, as well as his misleading testimony regarding his prior treatment of Patient 5, Dr. Eastway's claim of valid medical purpose in prescribing without medical documentation for these five individuals cannot be given credence.

PROPOSED ORDER

It is hereby ORDERED that the certificate of Robert J. Eastway, Jr., D.O., to practice osteopathic medicine and surgery in the State of Ohio, shall be and is hereby 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, except that Dr. Eastway shall immediately surrender his United States Drug Enforcement Administration certificate and shall not order, purchase, prescribe, dispense, administer, or possess any controlled substances, except for those prescribed for his personal use by another so authorized by law. Further, in the interim, Dr. Eastway shall not undertake treatment of any individual not already under his care.

Wanita J. Sage
Wanita J. Sage
Attorney Hearing Examiner

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EXCERPT FROM THE MINUTES OF MARCH 11, 1992

REPORTS AND RECOMMENDATIONS

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

Dr. Gretter asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and order, and any objections filed in the matters of Robert J. Eastway, Jr., D.O.; James G. Gianakopoulos, M.D.; William J. Strandwitz, III, M.T.; Chester J. Janecki, Jr., M.D.; Marian Korosec, M.D., N.E. Ohio Emergency Affiliates; Laurel Matthews-Price, M.D.; and Avelino S. B. Rosales, M.D. A roll call was taken:

ROLL CALL:	Dr. Cramblett	- abstain
	Mr. Albert	- aye
	Dr. Stephens	- aye
	Mr. Jost	- abstain
	Dr. Garg	- aye
	Dr. Kaplansky	- aye
	Dr. Heidt	- aye
	Dr. Hom	- aye
	Dr. Agresta	- aye
	Dr. Gretter	- aye

Dr. Hom indicated that she did not review the record in the matter of William J. Strandwitz, III, M.T., and would therefore abstain from voting in that case.

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

REPORT AND RECOMMENDATION IN THE MATTER OF ROBERT J. EASTWAY, JR., D.O.

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

Dr. Eastway's attorney, David H. Bodiker, Esq., had filed a request to address the Board.

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

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reporter.

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

Mr. Bodiker expressed his appreciation to the Board for hearing him. He stated that he will try to be concise and nonrepetitive with respect to what he has said in his written objections.

Mr. Bodiker stated that Dr. Eastway has admitted to the six separate occasions when he wrote prescriptions for himself in the name of an employee and obtained controlled substances from them. He also admitted his failure to maintain records for five patients for whom he prescribed controlled substances. Those were theoretically anonymous, but in the course of the hearing were identified as his wife, his mother-in-law, two employees and a patient for whom he had previously maintained records but had ceased doing so.

Mr. Bodiker argued that these admissions and acknowledgements do not lead inexorably ^ the Hearing Officer's conclusions. Dr. Eastway objects both to the Findings of Fact and to the Conclusions, as well as to what he believes to be the manner in which they were presented. Mr. Bodiker continued that he and Dr. Eastway also object to some things not being included in the findings, which were basically substantial evidence in mitigation that was presented at the hearing.

Mr. Bodiker stated that they believe that paragraph 3 of the Findings is inaccurate. They have set forth in their objections the language that was actually used by the witnesses as to what their states of mind were.

They believe that paragraph 4 was inaccurate and also included comments which were basically not facts but the impressions or arguments of the hearing examiner.

They believe that the hearing examiner gratuitously inserted comments into paragraph 5 about the absence of explanation when none was really offered or presented or even of particular issue.

They believe that paragraphs 6 through 11, which deal with the matters of the failure to maintain records, are superfluous. Mr. Bodiker stated that it is his understanding of that charge that it involves the failure to do so. Even if the prescriptions made were justified, that would not be a defense to the fact that the records weren't maintained. They had acknowledged that the records had not been

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maintained, and then they were confronted at the hearing with arguments about the content of the absent records and the specifics of the particular treatment of the patients. They feel that there was an attempt to inject some sort of meaning when none was intended. Certainly they did not come prepared to explain specifically, nor do they believe that to be appropriate.

They object to paragraph 12, the hearing examiner's use of the court proceedings. They feel that that is simply inaccurate. The doctor had been charged with eight counts. They entered pleas as part of a plea agreement, which would provide for treatment in lieu of conviction, which has now been accomplished and the case dismissed. The hearing examiner attempted to extract some sort of admission or importance from those proceedings, and not only improperly used it but drew the wrong conclusions.

They object to the conclusions, particularly the fact that because the prescriptions were written there was an attempt to make a fraudulent misrepresentation. The evidence was that he had written the prescriptions and he had used employees' names. It seems evident that what he was doing was having someone run an errand for him. He did not deny it was for him. The employee did not question that it was for the doctor. There was not a specific knowing, purposeful intention to defraud. When Dr. Eastway was contacted by the police, he fully explained what he had done. There was never at any point any effort to cover this up or to make it into a subterfuge. They believe that in order to be in violation of subsection (B)(8) or (B)(10), there must be some sort of culpable mental state, which was simply not present here. Mr. Bodiker stated that if the Board looked at definitions of fraudulent misrepresentation, they all require some specific state of mind. The evidence was that Dr. Eastway had done it, had done it unwittingly, and perhaps without some sort of calculated purpose, but that he had a realistic need at the time. It is their contention that because of the success of his use of this medication for relief of his dental pain and pain associated with the surgical procedures, he became more and more involved with it and kind of drifted into an abuse of that medication.

Mr. Bodiker stated that it is important that Dr. Eastway, without any prodding from the outside, recognized that he had begun to abuse the medication. He then immediately ceased using it voluntarily. He recognized also what he believed to be the cause of his problem, which was that he had found himself in an extremely stressful, extremely busy practice. He has scaled back his practice voluntarily. He has scaled back his activities. He changed his lifestyle. All this was done before there was any effort by any public authority or policing agency to do that. When that did come about in the summer of 1990, he called the Medical Board and informed them of what was happening. He has entered into programs and has done outstandingly well in those programs. He has completed everything that has been required.

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Mr. Bodiker stated that there have been over two years where Dr. Eastway has not done anything. He's not been abusing drugs, he's been monitored, he has complied with all obligations of the hospital staffs, all obligations of the court, and the criminal charges have been dismissed and expunged. He is practicing full-time with recognition and the respect of all of the people with whom he associates. He's a man who has not had any prior disciplinary problems. He has dealt with what has happened. He has shown an ability to constructively rearrange his life and has done so and demonstrated that ability for several years. Mr. Bodiker stated that they believe the Board should take some action which would permit Dr. Eastway to continue to practice. Mr. Bodiker stated that Dr. Eastway has cured the problem. Instead of being punished, he should be recognized and allowed to continue his good works.

Dr. Gretter asked whether the Assistant Attorney General wished to respond.

Ms. Lampkin stated that the gravamen of the charges against Dr. Eastway was the deception he used to obtain medication. Mr. Bodiker explains that it was just an attempt on Dr. Eastway's part to have an employee run an errand for him and obtain the drugs, when in fact he used that employee's name on the prescription. The Hearing Examiner noted in her Report and Recommendation that it is inconceivable that a physician would put another person's name on a prescription to get controlled substances for him. If it was as innocent as running an errand, the physician would have had his own name on the prescription and the employee would have gone and gotten the controlled substances and brought them back. There is case law about the definition of fraudulent misrepresentation or what could be included in misrepresentation. The courts have said that the culpable state does not have to be intentional. If there is negligence or recklessness, there is culpability.

Ms. Lampkin also reminded the Board of the second rules violation, adding that Dr. Eastway does not deny not keeping patient records.

DR. O'DAY MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF ROBERT J. EASTWAY, JR., D.O. DR. STEPHENS SECONDED THE MOTION.

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

Dr. Hom stated that she realizes that Dr. Eastway was nearly convicted of a felony, but added that she believes his actions were part of the disease process. She disagreed with Mr. Bodiker's statements about Dr. Eastway's being cured. Dr. Hom stated that Dr. Eastway's activities were part of his evolution into prescription abuse. Dr. Hom acknowledged Dr. Eastway's attempts at making changes. She stated that because of these changes she believes Dr. Eastway is salvageable, and spoke against the Hearing Officer's proposed order of revocation. Dr. Eastway has

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recognized his problem. There have been other situations where such physicians have recovered after a long monitoring process and have been able to function and provide adequate health care.

Dr. Gretter asked whether Dr. Hom wished to propose an amendment.

Dr. Hom stated that she has not yet prepared an amendment, but only wanted to get other members' opinions.

Dr. Agresta agreed with Dr. Hom, but added that he feels that what Dr. Eastway did was fraudulent, whether it was part of the disease process or not. But he believes that the Board would accomplish more by rehabilitating Dr. Eastway than by revoking his license. The Board should not ignore what Dr. Eastway did. It should impose some type of monitoring. Dr. Agresta stated that he hadn't prepared an amendment, but he also feels revocation is too strong a penalty in this case.

Mr. Albert also agreed that revocation is too severe a penalty. He echoed Dr. Hom's belief that Dr. Eastway is salvageable. Mr. Albert stated that he cannot accept Dr. Eastway's claim that his impairment was due to his being overworked, but noted that there were no complaints of patient harm in this case. Dr. Eastway was very deceptive in his procurement of prescription medication. Mr. Albert added that he has some doubt that the prescriptions Dr. Eastway obtained were appropriate medications for root canals. Mr. Albert stated that Dr. Eastway has a serious addiction problem which is treatable. Mr. Albert indicated that he would support an alternative order that would restrict Dr. Eastway's license and require monitoring of Dr. Eastway's practice.

DR. HEIDT MOVED TO TABLE THE REPORT AND RECOMMENDATION IN THE MATTER OF ROBERT J. EASTWAY, JR., D.O. DR. STEPHENS SECONDED THE MOTION. A roll call vote was taken:

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

The motion failed.

Dr. Hom indicated that she voted "nay" on the motion because discussion had not

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concluded.

Dr. O'Day stated that she felt very strongly that Dr. Eastway was deceptive in writing prescriptions in employee names for medications to be used by himself. She disagreed that this was a symptom of the disease, since Dr. Eastway testified at the present hearing that he was not yet addicted at the time he wrote those prescriptions. At his criminal hearing, he said it was a symptom of his addiction, and received a judgment of treatment in lieu of conviction. Dr. O'Day stated that she has a real problem with physicians writing prescriptions in employees' names for treatment of their own dental pain. She saw nothing from Dr. Eastway to indicate that he was being forthright with the Board. She believes this case is worthy of revocation.

Dr. Agresta stated that addictive personalities will do anything to get drugs.

Dr. O'Day agreed, but added that Dr. Eastway testified that he was not yet addicted at the time he wrote the prescriptions.

Dr. Agresta stated that he believes Dr. Eastway was addicted at that time, whether he believes he was or not.

Dr. O'Day stated that part of the treatment process for drug addiction is to be straightforward about problems.

Dr. Garg stated that he agrees that a modified order would be appropriate in this case. He added that Percodan is an appropriate medication for pain from a root canal.

DR. GARG MOVED TO TABLE THE REPORT AND RECOMMENDATION IN THE MATTER OF ROBERT J. EASTWAY, JR., D.O. DR. KAPLANSKY SECONDED THE MOTION. A roll call vote was taken:

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

The motion carried.

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DR. HOM MOVED TO REMOVE THE MATTER OF ROBERT J. EASTWAY, JR., D.O., FROM THE TABLE. DR. GARG SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- aye
	Dr. O'Day	- aye
	Mr. Albert	- aye
	Dr. Stephens	- aye
	Mr. Jost	- aye
	Dr. Garg	- aye
	Dr. Kaplansky	- aye
	Dr. Heidt	- aye
	Dr. Hom	- aye
	Dr. Agresta	- aye

The motion carried.

DR. HOM MOVED THAT THE PROPOSED ORDER IN THE MATTER OF ROBERT J. EASTWAY, JR., D.O., BE AMENDED TO READ AS FOLLOWS:

It is hereby ORDERED that:

1. The certificate of Robert J. Eastway, Jr., D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be REVOKED. Such revocation is stayed, and Dr. Eastway's certificate is suspended for an indefinite period of time, but not less than one (1) year.

2. The State Medical Board shall not consider reinstatement of Dr. Eastway's certificate to practice unless and until all of the following minimum requirements are met:

   a. Dr. Eastway shall submit an application for reinstatement, accompanied by appropriate fees.

   b. Dr. Eastway shall provide the Board with written reports of evaluation by two physicians acceptable to the Board stating that Dr. Eastway is no longer drug dependent and is able to practice according to acceptable and prevailing standards of care. Each of these evaluations shall be in writing and shall state with particularity the bases for this determination and shall set forth any recommended limitations upon Dr. Eastway's practice.

   c. Dr. Eastway shall provide the Board with a certification from an

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approved treatment provider that he has successfully completed any required inpatient treatment and is in continuing full compliance with regard to any outpatient treatment and/or aftercare.

d. Dr. Eastway shall provide satisfactory documentation of continuous participation in a drug and alcohol rehabilitation program acceptable to the Board, such as AA, NA or Caduceus, no less than four (4) times per week.

e. Dr. Eastway shall provide documentation acceptable to the Board of continuing psychiatric counseling at intervals as deemed appropriate by a treating psychiatrist approved by the Board.

f. Dr. Eastway shall take and pass an examination to be administered by the Board or its designee related to the content of the DEA Physician's Manual, which manual may be obtained from the offices of the State Medical Board. In the event that Dr. Eastway fails this examination, Dr. Eastway must wait one (1) month between reexaminations.

3. Upon reinstatement, Dr. Eastway's certificate shall be subject to the following probationary terms, conditions and limitations for a minimum of two (2) years:

a. Dr. Eastway shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.

b. Dr. Eastway shall submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the provisions of probation.

c. Dr. Eastway shall appear in person for interviews before the full Board or its designated representative at three (3) month intervals or as otherwise requested by the Board.

d. Dr. Eastway shall continue counseling with a psychiatrist approved by the Board at such intervals as are deemed appropriate by the counselor or treating psychiatrist, but not less than once per month, until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the counselor or approved treating psychiatrist. Dr. Eastway shall ensure that these reports are forwarded to the Board on a quarterly basis, or as otherwise directed by the Board.

e. Dr. Eastway shall abstain completely from the personal use or

possession of drugs, except those prescribed, administered or dispensed to him by another so authorized by law who has full knowledge of Dr. Eastway's history of chemical dependency.

f. Dr. Eastway shall abstain completely from the use of alcohol.

g. Dr. Eastway shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Eastway shall ensure that all screening reports are forwarded directly to the Board on a monthly basis. Within thirty (30) days of the effective date of this Order, Dr. Eastway shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Eastway shall submit the required urine specimens. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the Board of any positive screening results. The supervising physician shall monitor Dr. Eastway and provide the Board with reports on Dr. Eastway's progress and status. Dr. Eastway shall ensure that said reports are forwarded to the Board on a quarterly basis.

In the event that the designated superivising physician becomes unable or unwilling to so serve, Dr. Eastway must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable.

h. Dr. Eastway shall submit blood or urine specimens for analysis without prior notice at such times as the Board may request.

i. Dr. Eastway shall maintain participation in an alcohol and drug rehabilitation program acceptable to the Board, such as AA, NA or Caduceus, no less than four (4) times per week or as otherwise directed by the Board. At Dr. Eastway's appearances before the Board or its designated representative, Dr. Eastway shall submit acceptable documentary evidence of continuing compliance with this program.

j. Dr. Eastway shall not prescribe, administer, dispense or order controlled substances except in a hospital setting, and shall keep a log of all controlled substances so prescribed, administered, dispensed or ordered. Such log shall be submitted in the format approved by the Board thirty (30) days prior to Dr. Eastway's personal apperances before the Board or its designated representative, or as otherwise directed by the Board.

k. In the event that Dr. Eastway should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Eastway must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.

l. Dr. Eastway shall provide a copy of this Order to all employers and the chief of staff at each hosptial where he has, applies for, or obtains privileges of any kind.

m. If Dr. Eastway violates probation in any respect, the Board, after giving Dr. Eastway notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of Dr. Eastway's certificate to practice.

4. Upon successful completion of probation, Dr. Eastway's certificate will be fully restored.

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

Dr. Hom stated that she is including psychiatric evaluation because this may be a case where Dr. Eastway may not understand his problem. Therefore psychiatric evaluation and psychotherapy may be an appropriate way for the physician to deal with the stresses of being a cardiologist, and the psychiatrist may direct more appropriate therapy.

DR. HEIDT SECONDED THE MOTION.

Dr. O'Day asked whether Dr. Hom would consider adding a provision that Dr. Eastway not be permitted to hold a DEA.

Dr. Hom stated that Dr. Eastway is a cardiologist. She tried to find a way he can continue practice in that field by finding a way of monitoring his use of drugs. Dr. Eastway may need to prescribe drugs such as morphine in the hosptial.

Dr. O'Day stated that she would feel more comfortable with this Order if there were restrictions on the DEA.

Dr. Heidt suggested that the DEA use be restricted to hospital use.

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Ms. Lubow noted that that restriction is contained in paragraph 3j of the proposed amendment.

DR. STEPHENS MOVED THAT THE FOLLOWING PARAGRAPH BE ADDED TO THE MINIMUM REQUIREMENTS TO BE MET FOR REINSTATEMENT:

g. In the event that Dr. Eastway has not been engaged in the active practice of medicine and surgery for a period in excess of two (2) years prior to his application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Eastway's fitness to resume practice.

DR. O'DAY SECONDED THE MOTION.

DR. HOM ACCEPTED DR. STEPHENS' SUGGESTION AS A FRIENDLY AMENDMENT. DR. HEIDT, AS SECOND, AGREED.

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

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

The motion carried.

DR. GARG MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF ROBERT J. EASTWAY, JR., D.O. DR. AGRESTA SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. O'Day	- aye
	Mr. Albert	- aye
	Dr. Stephens	- aye
	Mr. Jost	- abstain
	Dr. Garg	- aye
	Dr. Kaplansky	- aye

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Dr. Heidt	- aye
Dr. Hom	- aye
Dr. Agresta	- aye

The motion carried.

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June 12, 1991

Robert J. Eastway Jr., D.O.
487 West Main Suite E
West Jefferson, OH 43162

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 March 3, 1989, in the absence of a bona fide doctor/patient relationship, you presented J. Fleer with a prescription for Percodan written in her name with directions for her to obtain the medication from a pharmacy and return the drugs to you.

2) On or about March 13, 1989, in the absence of a bona fide doctor/patient relationship, you presented J. Fleer with a prescription for Percocet written in her name with directions for her to obtain the medication from a pharmacy and return the drugs to you.

3) On or about March 17, 1989, in the absence of a bona fide doctor/patient relationship, you presented J. Fleer with a prescription for Percocet written in her name with directions for her to obtain the medication from a pharmacy and return the drugs to you.

4) On or about June 29, 1989, in the absence of a bona fide doctor/patient relationship, you presented R. Duncan with a prescription for Percodan written in her name with directions for her to obtain the medication from a pharmacy and return the drugs to you.

5) On or about July 10, 1989, in the absence of a bona fide doctor/patient relationship, you presented R. Duncan with a prescription for Percocet written in her name with directions for her to obtain the medication from a pharmacy and return the drugs to you.

STATE'S EXHIBIT 1

Mailed 6/17/91

6) On or about September 6, 1989, in the absence of a bona fide doctor/patient relationship, you presented R. Duncan with a prescription for Percocet written in her name with directions for her to obtain the medication from a pharmacy and return the drugs to you.

Such acts, conduct, and/or omissions as alleged in paragraphs (1) through (6) above, individually and/or collectively, constitute "the obtaining of, or attempting to obtain money or anything of value by fraudulent misrepresentations in the course of practice," as that clause is used in Section 4731.22(B)(8), Ohio Revised Code.

Further, such acts, conduct, and/or omissions as alleged in paragraphs (1) through (6) above, individually and/or collectively constitute "commission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal processing of drug documents and Section 2925.22, Ohio Revised Code, Deception to obtain dangerous drugs.

7) You prescribed the controlled substances (Listed on the attached Prescription List by patient number) to Patients 1 through 4, identified on the attached Patient Key (Key Confidential -- to be withheld from public disclosure). However, you failed to maintain patient records regarding these individuals.

(8) Patient 5, identified on the attached Patient Key (Key Confidiential -- to be withheld from public disclosure), was a patient of yours from at least 1983 until at least 1989. You did maintain patient records for the years 1983, 1984, 1985; however, you prescribed controlled substances (Listed on the attached Prescription List by patient number) to Patient 5 in 1988 and 1989 but failed to supplement said patient records.

Further, such acts, conduct, and/or omissions as alleged in paragraphs (7) and (8) above, individually and/or collectively constitute "(v)iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(D), Ohio Administrative Code. Pursuant to Rule 4731-11-02(F), Ohio Administrative Code, a violation of Rule 4731-11-02(D), Ohio Administrative Code, also violates Sections 4731.22(B)(2) and (6), Ohio Revised Code.

June 12, 1991

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 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,

Henry G. Cramblett, MD

Henry G. Cramblett, M.D.
Secretary

HGC:jmb
Enclosures:

CERTIFIED MAIL #P 055 328 914
RETURN RECEIPT REQUESTED

ROBERT J. EASTWAY JR., D.O.
PRESCRIPTION LIST BY PATIENT NUMBER

Patient Number	Date	Drug	DU
1	12/14/88	Percocet	25
	12/24/88	Percocet	25
	01/21/89	Percocet	40
	02/28/89	Tussionex	6
	03/17/89	Tussionex	6
	03/19/89	Oxycodone	30
	04/01/89	Percocet	25
	04/30/89	Percocet	30
	06/05/89	Percocet	40
	07/08/89	Percocet	40
	07/11/89	Tussionex	6
	08/14/89	Tussionex	8
	10/19/89	Tussionex	6
	10/29/89	Percocet	40
	11/04/89	Oxycodone	40
	11/05/89	Tussionex	180
	11/27/89	Percocet	40
	11/30/89	Percocet	40
	12/25/89	Percocet	25
2	05/27/88	Percocet	40
	07/08/88	Percocet	36
	12/05/88	Percocet	100
	12/27/88	Percocet	50
	02/28/89	Darvocet	100
	05/22/89	Valium	30
	05/22/89	Darvocet	50
	08/14/89	Darvocet	100
	09/13/89	Darvocet	100
	10/05/89	Percocet	25
	11/02/89	Percocet	30

3	02/02/89	Percocet	25
	03/31/89	Percocet	15
	05/18/89	Percocet	25
4	03/31/89	Tussionex	4
5	10/07/88	Percocet	36
	11/11/88	Tussionex	180
	07/14/89	Percocet	40
	09/11/89	Percocet	40
	11/13/89	Percocet	40
	11/27/89	Percocet	40