STATE MEDICAL BOARD OF OHIO

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

December 9, 1994

James Eugene Cunningham, D.O.
1513 Inez Avenue
East Bank, WV 25067

Dear Doctor Cunningham:

Please find enclosed a certified copy of the Findings, Order and Journal Entry approved and confirmed by the State Medical Board meeting in regular session on December 7, 1994.

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

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

Very truly yours,

Carla S. O'Day MD

Carla S. O'Day, M.D.
Secretary

CSO:cm
Enclosures

CERTIFIED MAIL RECEIPT NO. P 348 888 127
RETURN RECEIPT REQUESTED

Mailed 12-9-94

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 Findings, Order and Journal Entry, approved by the State Medical Board, meeting in regular session on December 7, 1994, constitute a true and complete copy of the Findings, Order and Journal Entry in the matter of James Eugene Cunningham, 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)

Carla S. O'Day, M.D.

Carla S. O'Day, M.D.
Secretary

12/7/94

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

JAMES EUGENE CUNNINGHAM, D.O. *

FINDINGS, ORDER AND JOURNAL ENTRY

By letter dated July 13, 1994, notice was given to James Eugene Cunningham, D.O., that the State Medical Board proposed to deny his application for restoration of his license to practice osteopathic medicine and surgery in Ohio, and that he was entitled to a hearing if such hearing was requested within thirty (30) days of the mailing of said notice. In accordance with Section 119.09, Ohio Revised Code, said notice was sent on July 14, 1994, via certified mail, return receipt requested, to the last known address of James Eugene Cunningham, D.O., that being 1513 Inez Avenue, East Bank, WV, 25067. Because the certified mail receipt was returned unsigned, the notice was remailed to Dr. Cunningham on October 4, 1994.

Dr. Cunningham responded to the Board's notice, but did not request a hearing. More than thirty (30) days have now elapsed since the second mailing of the aforesaid notice.

WHEREFORE, for the reasons outlined in the July 13, 1994 letter of notice, which is attached hereto and incorporated herein, it is hereby ORDERED that the application of James Eugene Cunningham, D.O., for restoration of his license to practice osteopathic medicine and surgery in the State of Ohio be DENIED.

This Order shall become effective December 7, 1994.

This Order is hereby entered upon the Journal of the State Medical Board of Ohio for the 7th day of December, 1994, and the original thereof shall be kept with said Journal.

Carla S. O'Day

Carla S. O'Day, M.D.
Secretary

(SEAL)

12/7/94

Date

STATE MEDICAL BOARD OF OHIO

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

July 13, 1994

2nd mailing - 10/4/94

James Eugene (Gene) Cunningham, D.O.
1513 Inez Avenue
East Bank, WV 25067

Dear Doctor Cunningham:

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 April 19, 1994, you applied for restoration of your license to practice osteopathic medicine and surgery in Ohio.

(2) On or about March 9, 1988, you pleaded guilty to and were found guilty of one felony count of violating Title 18, U.S.C. Section 1341, Mail Fraud. The acts which underlie this conviction were committed in the course of practice.

Your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute "(a) plea of guilty to, or a judicial finding of guilt of, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (2) above, individually and/or collectively, constitute "(t)he 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.

(3) On or about March 10, 1989, the Office of Inspector General, U.S. Department of Health and Human Services notified you that they were excluding you from participation in the Medicare program for a period of five years. This exclusion was based upon your conviction for mail fraud.

2nd mailing - 10/4/94

CERTIFIED MAIL NO. P 348 885 180
RETURN RECEIPT REQUESTED

Mailed 7/14/94

Your acts, conduct, and/or omissions as alleged in paragraph (3) above, individually and/or collectively, constitute "(t)ermination or suspension from medicare or medicaid programs by the department of health and human services or other responsible agency for any act or acts that would also constitute a violation of division (B)(2), (3), (6), (8), or (19) of this section," as that clause is used in Section 4731.22(B)(25), Ohio Revised Code, to wit: Section 4731.22(B)(8), Ohio Revised Code.

(4) In the Additional Information section of your restoration application, the instructions state that if you answer "Yes" to any question, "you are required to furnish complete details, including date, place, reason and disposition of the matter."

(a) In response to Question 17, which asks "Have you ever been convicted or found guilty of a violation of federal law, state law, or municipal ordinance other than a minor traffic violation?" you stated "Yes." Your explanation was "Mail Fraud served two years sentence at FCI, Loretto, PA."

In fact, you were also ordered to make restitution to the Worker's Compensation Fund of the State of West Virginia in the total amount of $165,000.00. To date, you have failed to make this restitution.

(b) In response to Question 21, which asks "Have you ever been denied or relinquished participation in any third party reimbursement program, whether governmental or private, including Medicaid and Medicare; or had such participation limited, restricted, suspended, or revoked; or been warned, reprimanded, requested to appear before, or fined by the responsible body?" you stated "Yes." Your explanation was "Drew an arbitrary Federal Sanction for 5 years. Sanction ended 1 March 1994."

In fact, by letter dated March 10, 1989, you were notified of a five year exclusion from Medicare and any State health care program as defined in 42 U.S.C. 1320a-7(h) which was effective twenty days from the date of the letter. Further, this letter notified you that, at the conclusion of the five-year period, you could apply for reinstatement.

By letter dated March 31, 1994, the Office of the Inspector General, Department of Health and Human Services,

> notified you that they were denying your reinstatement based on the fact that "you have failed to comply with the obligations imposed upon you to repay the Court ordered restitution . . .."

Your acts, conduct, and/or omissions as alleged in paragraph (4) above, individually and/or collectively, constitute "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (4) above, individually and/or collectively, constitute "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

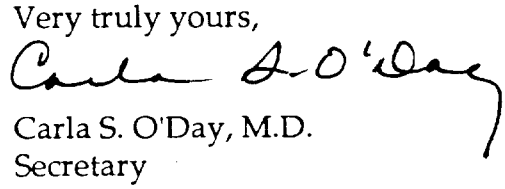
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing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

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

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to 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,



Carla S. O'Day, M.D.
Secretary

CSO:jmb
Enclosures:

CERTIFIED MAIL #P 348 885 079
RETURN RECEIPT REQUESTED

AFFIDAVIT

I, Debra Jones, being duly cautioned and sworn, do hereby depose and say:

1) That I am employed by the State Medical Board of Ohio (hereinafter, "The Board")

2) That I serve the Board in the position of Chief, Continuing Medical Education, Records, and Renewal;

3) That in such position I am the responsible custodian of all public licensee records maintained by the Board pertaining to individuals who have received certificates issued pursuant to Chapter 4731., Ohio Revised Code;

4) That I have this day carefully examined the records of the Board pertaining to James Eugene Cunningham, D.O.;

5) That based on such examination, I have found the last known address of record of James Eugene Cunningham, D.O., to be:

1513 Inez Avenue
East Bank, WV 25067

6) Further, Affiant Sayeth Naught.

Debra L. Jones, Chief
Continuing Medical Education,
Records and Renewal

Sworn to and signed before me, Lauren Lubow, Notary Public, this 22nd day of November, 1994.

Notary Public

LAUREN LUBOW, Attorney At Law
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date
Section 147.03 R.C.