



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

July 10, 2002

Joseph P. Amon, D.O.
3733 Indian Run Drive, #1
Canfield, OH 44406

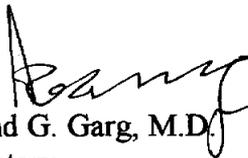
Dear Doctor Amon:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 10, 2002, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO


Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5146 3765
RETURN RECEIPT REQUESTED

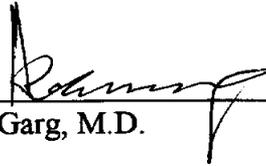
Cc: David J. Betras, Esq.
CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5146 3758
RETURN RECEIPT REQUESTED

Mailed 7-12-02

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 10, 2002, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Joseph P. Amon, 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.



Anand G. Garg, M.D.
Secretary

(SEAL)

July 10, 2002

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

JOSEPH P. AMON, D.O.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on July 10, 2002.

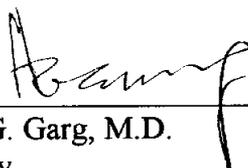
Upon the Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED:

The application of Joseph P. Amon, D.O., for the restoration of his certificate to practice osteopathic medicine and surgery in the State of Ohio is **PERMANENTLY DENIED.**

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

(SEAL)



Anand G. Garg, M.D.
Secretary

July 10, 2002

Date

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**REPORT AND RECOMMENDATION
IN THE MATTER OF JOSEPH P. AMON, D.O.**

The Matter of Joseph P. Amon, D.O., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio, on May 2, 2002.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated February 13, 2001 (actual date February 13, 2002), the State Medical Board of Ohio [Board] notified Joseph P. Amon, D.O., that it had proposed to take disciplinary action against, or to deny his application for restoration of, his certificate to practice osteopathic medicine and surgery in this state. The Board based its proposed action on allegations that: (1) in 1987, Dr. Amon had entered a guilty plea to one felony count of conspiracy to distribute cocaine, a Schedule II controlled substance; (2) in 1987, based on the felony conviction, the Board had issued an Order revoking Dr. Amon's certificate to practice osteopathic medicine and surgery in this State; and (3) in 1990, the Colorado State Board of Medical Examiners [Colorado Board] had issued a Stipulation and Order accepting the surrender and relinquishment of Dr. Amon's license to practice medicine in Colorado.

The Board further alleged that that the conduct of Dr. Amon which formed the basis of the 1987 Board Order constitutes:

- “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony,’ as that clause is used in Section 4731.22(B)(9), Ohio Revised Code, to wit: Title 18, United States Code, Section 371, Conspiracy to distribute cocaine”;
- “[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, as in effect prior to March 9, 1999, to wit: Title 18, United States Code, Section 371, Conspiracy to distribute cocaine”;
- “[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction of, a violation of any federal or state law regulating the

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possession, distribution, or use of any drug,' as those clauses are used in Section 4731.22(B)(3), Ohio Revised Code"; and

- “[s]elling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, or a judicial finding of guilt of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,' as that clause is used in Section 4731.22(B)(3), Ohio Revised Code, as in effect prior to March 9, 1999.”

Furthermore, the Board alleged that the Colorado Board Stipulation and Order constitutes:

- “[a]ny of the following actions taken by the state agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,' as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.”

Accordingly, the Board advised Dr. Amon of his right to request a hearing in this matter. (State's Exhibit 1A).

- B. On March 6, 2002, David J. Betras, Esq., submitted a written hearing request on behalf of Dr. Amon. (State's Exhibit 1B).

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Mark A. Michael, Assistant Attorney General.
- B. On behalf of the Respondent: David J. Betras, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

Presented by the Respondent

1. Joseph P. Amon, D.O.
2. Kerry S. Amon

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II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A-1F: Procedural exhibits.
2. State's Exhibit 2: Certified copies of documents pertaining to Dr. Amon maintained by Board.

B. Presented by the Respondent

1. Respondent's Exhibit A: A March 4, 2002, letter to Mr. Betras from Lloyd Gordon, M.D., Medical Director of COPAC, regarding Dr. Amon's treatment from January 12 through May 27, 1987; and information regarding COPAC.
2. Respondent's Exhibit B: An April 26, 2002, letter to the Board from Anthony M. Cafaro, Sr., regarding Dr. Amon.

PROCEDURAL MATTERS

1. On February 13, 2002, the Board issued a notice of opportunity for hearing in this matter. At hearing, the State noted that the notice of opportunity for hearing is erroneously dated February 13, 2001. Nevertheless, the Respondent stipulated that the mistake in date will not be an issue in this matter. (Hearing Transcript at 5-6; State's Exhibit 1A).
2. The hearing record in this matter was held open until May 10, 2002, to give the parties an opportunity to submit supplemental evidence. These documents were timely submitted and entered into the record. (See Hearing Transcript at 34-40, 66-67).

SUMMARY OF THE EVIDENCE

All exhibits and transcripts of testimony, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

1. Joseph P. Amon, D.O., received his degree in osteopathic medicine in June 1975 from the Chicago College of Osteopathic Medicine and Surgery. In 1976, Dr. Amon completed an internship at Rocky Mountain Hospital and Denver General Hospital in Denver, Colorado. Dr. Amon testified that, after completing his internship, he had remained in Colorado for approximately four years, working first for a program called Flying Doctors, which provided

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physicians to remote areas of Colorado, and then as an emergency room physician. (Hearing Transcript [Tr.] at 14-16; State's Exhibit [St. Ex.] 2 at 32).

Dr. Amon testified that he had relocated to Ohio in 1980. Dr. Amon worked briefly at St. John West Shore Hospital in Aurora, Ohio. For the following five years, he worked in the emergency department at Deaconess Hospital in Cleveland, Ohio. For the last few years at Deaconess Hospital, Dr. Amon also served as the assistant director of the emergency department. (Tr. at 16-18).

While Dr. Amon was employed at Deaconess Hospital, Dr. Amon and two partners established a group of very successful urgent care centers. Dr. Amon testified that that one urgent care center grossed \$1,600,000.00 during the first year. Dr. Amon testified that he had served as the medical director and chief operating officer of the urgent care centers. (Tr. at 18-22).

2. Dr. Amon testified that he had started using marijuana in 1970. He testified that he had smoked marijuana approximately fifteen times between 1970 and 1979. Moreover, Dr. Amon testified that he had used cocaine for the first time in approximately 1978. (Tr. at 42-44).

Dr. Amon testified that, in 1985, working long hours at Deaconess and managing his responsibilities at the urgent care centers had taken a toll on him. Dr. Amon stated that he had started using cocaine to "increase [his] stamina." He had believed it was a temporary measure; nevertheless, he became addicted. (Tr. at 22-23).

In 1985, Dr. Amon sold his interests in the urgent care centers and left Deaconess Hospital. He accepted a position as the medical director at First Med, an urgent care center in Parma, Ohio. Dr. Amon testified that he had left that position voluntarily after one year. (Tr. at 23-24). Dr. Amon testified that he had resigned the position for the following reasons:

Number one is that although I'd exercised very bad judgment, I had realized that up until that point, the cocaine addiction had not impacted my treatment of patients or the way I conducted myself. But as my cocaine use grew, I found that I was unable to function so I just stopped practicing. I turned to selling cocaine to support myself * * *.

(Tr. at 24).

Dr. Amon further testified that he had become highly addicted to crack cocaine. Dr. Amon stated that he had been forced to sell drugs in order to support his addiction to cocaine and crack cocaine. (Tr. at 24-25, 43-48).

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3. On February 23, 1987, an Indictment was filed in the in the United States District Court for the Northern District of Ohio, in *United States of America vs. Joseph P. Amon*. Count I of the Indictment charged that, from at least November 1985 through November 1986, Dr. Amon was involved in a conspiracy wherein co-conspirators transported two to three kilograms of cocaine from Florida to Ohio every fifteen days or so. Thereafter, Dr. Amon and the co-conspirators distributed the cocaine to their customers in Ohio. (St. Ex. 2 at 6-7).

On June 16, 1987, Dr. Amon pleaded guilty to one felony count of conspiracy to distribute cocaine, a Schedule II controlled substance, in violation of Title 18, United States Code, Section 371. The court sentenced Dr. Amon to five years imprisonment, and a fine of fifty dollars. (St. Ex. 2 at 5).

4. Prior to his imprisonment, Dr. Amon was treated for cocaine addiction in a thirty-day inpatient program at South Miami Hospital in Miami, Florida. Thereafter, from January through May 1987, Dr. Amon participated in inpatient treatment at COPAC, an addiction treatment center in Brandon, Mississippi, which is associated with South Miami Hospital. Dr. Amon testified that COPAC is the best cocaine addiction program in the country. (St. Ex. 2 at 26-28, 43; Respondent's Exhibit A).

Upon his release from the COPAC program, Dr. Amon reported to the federal marshals in Cleveland and began his term of incarceration. Dr. Amon testified that that he was incarcerated for approximately thirty-eight months of his sixty month sentence. Dr. Amon remained in prison through February 1990, and in a halfway house through July 1990. (Tr. at 26-28; St. Ex. 2 at 35).

5. On September 9, 1987, the Board issued a notice of opportunity for hearing to Dr. Amon based on Dr. Amon's 1987 conviction. Dr. Amon did not request a hearing. Subsequently, on November 11, 1987, the Board issued a Findings, Order and Journal Entry in which the Board concluded that Dr. Amon's guilty plea and the acts underlying the plea constituted violations of Sections 4731.22(B)(3) and (B)(9), Ohio Revised Code. Consequently, the Board revoked Dr. Amon's certificate to practice osteopathic medicine and surgery in Ohio. (St. Ex. 2 at 14-16).
6. On June 8, 1990, the Colorado State Board of Medical Examiners [Colorado Board] entered a Stipulation and Order in which Dr. Amon offered, and the Colorado Board accepted, the surrender and relinquishment of Dr. Amon's license to practice medicine in Colorado. The Colorado Board Stipulation and Order was based on Dr. Amon's 1987 guilty plea. (St. Ex. 2 at 17-20).
7. Dr. Amon testified that, after his release from prison in 1990, he started a consulting firm entitled Malpractice Review, Inc. Dr. Amon continues to manage the consulting firm. Dr. Amon testified that he reviews medical records for attorneys. (Tr. at 29-30, 48-50).

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8. Dr. Amon testified that he has not used cocaine since 1990, when he tried cocaine on one occasion upon his release from prison. Dr. Amon testified that he has not used cocaine despite the fact that, in 1993, two assailants entered his parents' home and murdered both his parents. Moreover, in 1994, Dr. Amon was diagnosed with adenocarcinoma of the lung and he underwent a right upper lobectomy. Dr. Amon testified that neither of these very traumatic events resulted in his relapse. (Tr. at 30-31).
9. In March 2001, Dr. Amon filed an application for restoration of his certificate to practice osteopathic medicine and surgery in Ohio. (St. Ex. 2 at 26-52).

Dr. Amon testified that, if the Board grants his request for reinstatement, he would likely work part-time in an emergency department. Dr. Amon stated that he hopes to teach in order to pass on the things he has learned during his years of working in inner city emergency departments. He clarified, however, that he thoroughly enjoys his current vocation, and has no plans to return to the full-time practice of medicine. (Tr. at 33-34).

10. Kerry Amon testified at hearing on behalf of Dr. Amon. Ms. Amon testified that she is Dr. Amon's wife, and has known him for twelve years. Ms. Amon testified that she knew Dr. Amon at the time of his parents' murders, and while he underwent treatment for cancer. Ms. Amon stated that Dr. Amon did not resort to the use of drugs at any time during these events. Moreover, Ms. Amon testified that Dr. Amon "very rarely" drinks alcohol. (Tr. at 51-53).
11. By letter dated April 26, 2002, Anthony M. Cafaro, Sr., wrote that he has known Dr. Amon for more than thirty years. Mr. Cafaro wrote, among other things, as follows:

I have known Mr. Amon for well over 30 years, and throughout that time I have found him to be a conscientious, straight-forward, and honorable individual. Of course, I am well aware of the problems encountered by Mr. Amon in 1987; however, my personal exposure to him has led me to conclude that such actions were an anomaly, and were not an accurate depiction of his otherwise impeccable reputation. Each of us has made mistakes throughout the course of our lifetime, but Mr. Amon has certainly paid for his errors of judgment * * *.

(Respondent's Exhibit B).

FINDINGS OF FACT

1. In March 2001, Joseph P. Amon, D.O., filed an application with the Board for restoration of his certificate to practice medicine and surgery.

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- 2 On June 16, 1987, in the United States District Court for the Northern District of Ohio, Dr. Amon pleaded guilty to one felony count of conspiracy to distribute cocaine, a Schedule II controlled substance, in violation of Title 18, United States Code, Section 371.
- 3 On November 11, 1987, the Board entered an Order revoking Dr. Amon's certificate to practice osteopathic medicine and surgery in Ohio. The Board's Order was based upon Dr. Amon's 1987 guilty plea and the Board's conclusion that the guilty plea and the acts underlying the plea constituted violations of Sections 4731.22(B)(3) and (B)(9), Ohio Revised Code.
- 4 On June 8, 1990, the Colorado State Board of Medical Examiners entered a Stipulation and Order in which Dr. Amon offered, and the Colorado Board accepted, the surrender and relinquishment of Dr. Amon's license to practice medicine in Colorado.

CONCLUSIONS OF LAW

1. The conduct of Joseph P. Amon, D.O., which formed the basis of the November 1987 Board Order as described in Findings of Fact 2 and 3, constitutes:
 - “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony,” as that clause is used in Section 4731.22(B)(9), Ohio Revised Code, to wit: Title 18, United States Code, Section 371, Conspiracy to distribute cocaine”;
 - “[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, as in effect prior to March 9, 1999, to wit: Title 18, United States Code, Section 371, Conspiracy to distribute cocaine”;
 - “[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,” as those clauses are used in Section 4731.22(B)(3), Ohio Revised Code”; and
 - “[s]elling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, or a judicial finding of guilt of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,” as that clause is used in Section 4731.22(B)(3), Ohio Revised Code, as in effect prior to March 9, 1999.
2. The Colorado State Board of Medical Examiners' Stipulation and Order regarding Dr. Amon, as described in Findings of Fact 4, constitutes “[a]ny of the following actions

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taken by the state agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

* * * * *

There are mitigating facts to be considered in this case. First, Dr. Amon has been punished for his decision to sell a dangerous and illegal substance to the public. Second, Dr. Amon was severely addicted to cocaine and crack cocaine at the time he choose to procure and sell cocaine to others. Moreover, Dr. Amon has not resorted to the use of cocaine despite very strenuous circumstances in his life. Finally, Dr. Amon has developed a successful career. The fact that Dr. Amon has been able to rehabilitate himself to such an extent is commendable.

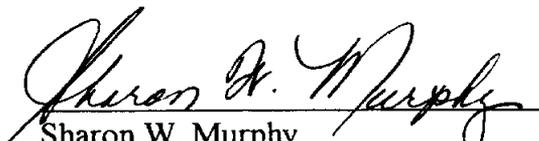
Nevertheless, Dr. Amon engaged in extremely dangerous behavior during the course of his addiction. By selling cocaine, Dr. Amon put the citizens of Ohio at great risk for harm, which demonstrates that Dr. Amon may go to great lengths to satisfy his addiction should he ever relapse. Therefore, the Board has no means by which to assure that the public will be free from harm should Dr. Amon be allowed to continue the practice of osteopathic medicine and surgery in Ohio.

PROPOSED ORDER

It is hereby ORDERED:

The application of Joseph P. Amon, D.O., for the restoration of his certificate to practice osteopathic medicine and surgery in the State of Ohio is **PERMANENTLY DENIED**.

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


Sharon W. Murphy
Attorney Hearing Examiner



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF JULY 10, 2002

REPORTS AND RECOMMENDATIONS

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

Dr. Somani asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Joseph P. Amon, D.O.; and William E. Kay, M.D.; and the Tenth District Court of Appeals, Franklin County April 25, 2002 Decision and Remand Order, and the Board's Order of December 13, 2000 in the matter of Lawrence J. Rossiter, D.O. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Somani	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye

Dr. Somani - aye

Dr. Somani noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

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

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

JOSEPH AMON, D.O.

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MR. BROWNING MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JOSEPH AMON, M.D. DR. AGRESTA SECONDED THE MOTION.

.....

A vote was taken on Mr. Browning's motion to approve and confirm:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Garg	- abstain

The motion carried.



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

February 13, 200~~1~~²

Joseph P. Amon, D.O.
3733 Indian Run Drive, #1
Canfield, Ohio 44406

Dear Doctor Amon:

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, permanently 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 9, 2001, you filed an application for restoration of your certificate to practice medicine and surgery (hereinafter "Restoration Application") with the State Medical Board of Ohio. That Restoration Application is currently pending.
- (2) On or about June 16, 1987, in the United States District Court for the Northern District of Ohio, you pled guilty to one (1) felony count of conspiracy to distribute cocaine, a Schedule II controlled substance, in violation of Title 18, United States Code, Section 371.

On or about November 11, 1987, the State Medical Board of Ohio (hereinafter "Board") entered an Order revoking your certificate to practice osteopathic medicine and surgery in Ohio. The Board's Order was based upon the above plea of guilty. The Board concluded that the plea of guilty and the acts underlying such plea constituted violations of Sections 4731.22(B)(3) and (B)(9), Ohio Revised Code. Copies of the Judgment and Probation/Commitment Order, the Indictment, and the November 11, 1987 Board Findings, Order and Journal Entry are attached hereto and incorporated herein.

- (3) On or about June 8, 1990, the Colorado State Board of Medical Examiners (hereinafter "Colorado Board") entered a Stipulation and Order in which you offered, and the Colorado Board accepted, the surrender and relinquishment of your license to practice medicine in Colorado. The Stipulation and Order was based upon your plea of guilty referred to in paragraph (2) above. A copy of the Colorado Board Stipulation and Order is attached hereto and incorporated herein.

The acts, conduct, and/or omissions underlying the Board Order, as alleged in paragraph (2) above, individually and/or collectively, constitute "[s]elling, giving away, personally furnishing,

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prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,” as those clauses are used in Section 4731.22(B)(3), Ohio Revised Code.

Further, the acts, conduct, and/or omissions underlying the Board Order, as alleged in paragraph (2) above, individually and/or collectively, constitute “[s]elling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, or a judicial finding of guilt of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,” as that clause is used in Section 4731.22(B)(3), Ohio Revised Code, as in effect prior to March 9, 1999.

Further, the acts, conduct, and/or omissions underlying the Board Order, as alleged in paragraph (2) above, individually and/or collectively, constitute “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony,” as that clause is used in Section 4731.22(B)(9), Ohio Revised Code, to wit: Title 18, United States Code, Section 371, Conspiracy to distribute cocaine.

Further, the acts, conduct, and/or omissions underlying the Board Order, 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, as in effect prior to March 9, 1999, to wit: Title 18, United States Code, Section 371, Conspiracy to distribute cocaine.

Further, the Colorado Board Stipulation and Order, as alleged in paragraph (3) above, constitutes “[a]ny of the following actions taken by the state agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that clause is used in Section 4731.22(B)(22), 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, if you timely request a hearing, 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.

Joseph P. Amon, D.O.

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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, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, effective March 9, 1999, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.
Secretary

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Enclosures

CERTIFIED MAIL # 7000 0600 0024 5148 2629
RETURN RECEIPT REQUESTED

DEFENDANT

Joseph P. Amoroso

Northern District of Ohio

DOCKET NO.

CR87-25

JUDGMENT AND PROBATION/COMMITMENT ORDER AD 245 (9/82)

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH DAY YEAR 6/16/87

COUNSEL

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

X WITH COUNSEL

James W. Burke, Jr.

(Name of Counsel)

PLEA

X GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of

NOT GUILTY. Defendant is discharged. GUILTY.

Defendant has been convicted as charged of the offense of conspiracy to distribute cocaine, a Schedule II controlled substance (Count I) in violation of Title 18, Section 371

FILED JUN 16 PM 4:11

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

FIVE(5) years

SPECIAL CONDITIONS OF PROBATION

IT IS FURTHER ORDERED that a special assessment of \$50.00 be imposed pursuant to Title 18, Section 3013 U.S.Code. The assessment payable to the Clerk of Court

IT IS FURTHER ORDERED, under the Supervision of the Probation Department, that the defendant self surrender to the Cleveland U.S. Marshal by 12 o'clock P.M. on June 19, 1987

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

Alice M. Batchelder (Signature)

ALICE M. BATCHELDER US District Judge

SIGNED BY

X U.S. District Judge

U.S. Magistrate

June 16, 1987

Date

INDEX

FEB 23 1987 2:42

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

INDICTMENT

CR 87-025

JOSEPH P. AMON,
PAUL J. AMON,
DANIEL SWAN,
ENEIDA DECKER,

Defendants.

Cr. No. _____
Title 18, §371, U.S.C.
Title 18, §1952, U.S.C.
Title 21, §841(a)(1), U.S.C.

JUDGE BATCHELDER

COUNT I

The Grand Jury charges:

From at least as early as November, 1985, and continuing to on or about November 21, 1986, the exact dates to the Grand Jury unknown, in the Northern District of Ohio, and elsewhere, JOSEPH P. AMON, DANIEL SWAN, ENEIDA DECKER, and PAUL J. AMON, the defendants herein did knowingly, willfully and unlawfully combine, conspire, confederate and agree together and with each other, and with Jorge Diaz and Fred McVetta, named as conspirators but not defendants herein, to distribute cocaine and possess with the intent to distribute cocaine, a Schedule II, narcotic drug controlled substance; in violation of Title 21, Section 841(a)(1), United States Code.

(Note: Some parts redacted)

It was part of the conspiracy that from the month of November, 1985 to November 21, 1986, Jorge Diaz delivered or caused to be delivered from the State of Florida to the Northern District of Ohio, approximately two (2) to three (3) kilograms of cocaine approximately every 15 days to JOSEPH P. AMON and his associates, DANIEL SWAN, PAUL J. AMON and Fred McVetta.

It was further part of the conspiracy that Jorge Diaz would hire individuals to deliver cocaine from the State of Florida to the Northern District of Ohio for delivery to JOSEPH P. AMON, DANIEL SWAN, PAUL J. AMON, and Fred McVetta.

It was further part of the conspiracy that Jorge Diaz and ENEIDA DECKER would travel from the State of Florida to the Northern District of Ohio to obtain payment for deliveries of cocaine from JOSEPH P. AMON, DANIEL SWAN, PAUL J. AMON, and Fred McVetta.

It was further part of the conspiracy that ENEIDA DECKER would travel from the State of Florida to the Northern District of Ohio to obtain payment for the distribution of cocaine by Jorge Diaz from JOSEPH P. AMON, DANIEL SWAN, PAUL J. AMON, and Fred McVetta.

It was further part of the conspiracy that JOSEPH P. AMON, DANIEL SWAN, PAUL J. AMON, Fred McVetta, would then distribute the said cocaine to their customers within the Northern District of Ohio.

OVERT ACTS

In furtherance of the conspiracy and to effect the objectives thereof, the defendants performed the following overt acts:

1. During the months of August, September and October, 1986, DANIEL SWAN distributed cocaine, a narcotic drug controlled substance, to customers at an apartment located on Clifton Blvd., Cleveland, Ohio.
2. In September, 1986, at the apartment located on Clifton Blvd., Cleveland, Ohio, and occupied by DANIEL SWAN, DANIEL SWAN distributed a quantity of cocaine, in small rock form, to JOSEPH P. AMON.
3. During the month of October, 1986, and specifically on October 26, 1986, DANIEL SWAN and Fred McVetta possessed with the intent to distribute and distributed cocaine and other controlled substances from Rooms 228 and 229 of the Skylight Inn, located in Willoughby, Ohio.
4. On or about October 26, 1986, JOSEPH P. AMON came to Rooms 228 and 229 of the Skylight Inn, Willoughby, Ohio, and requested that DANIEL SWAN provide him with \$17,000 worth of cocaine for use on an out-of-town trip JOSEPH P. AMON was to take.
5. On or about October 26, 1986, and immediately after the conversation referred to in paragraph five of the Overt Acts, DANIEL SWAN and JOSEPH P. AMON went into an adjacent room of the motel where cocaine and other narcotic drug controlled substances were stored.
6. On or about November 15, 1986, in Sarasota County, Florida, Jorge Diaz hired Detective Peter Cummings, of the Sarasota County Sheriff's

Department, who was then acting in an undercover capacity, to transport approximately two (2) kilograms of cocaine to his customers in Cleveland, Ohio area.

7. On or about November 17, 1986, at Sarasota County, Florida, Jorge Diaz provided Detective Cummings, then acting in an undercover capacity, with the names, addresses and phone numbers of ENEIDA DECKER, JOSEPH P. AMON, DANIEL SWAN, PAUL J. AMON and Fred McVetta, and instructed Detective Cummings that he was to deliver approximately two kilograms of cocaine to these individuals in Cleveland, Ohio. Jorge Diaz further instructed Detective Cummings on his method of travel to Cleveland and the method of delivery of the cocaine to the above-named individuals.

8. On or about November 17, 1986, at Sarasota County, Florida, Jorge Diaz delivered and distributed approximately two (2) kilograms of cocaine to Detective Peter Cummings for delivery to JOSEPH P. AMON, DANIEL SWAN, PAUL J. AMON and Fred McVetta .

9. On or about November 15, 1986 to November 21, 1986, DANIEL SWAN and JOSEPH P. AMON did use and occupy an apartment located at 115 South Rocky River Drive, Apt. 206, Berea, Ohio and used telephone number 216/234-4365 to negotiate the delivery of cocaine from Jorge Diaz and Charles Sterling acting undercover as Chuck.

10. On or about November 18, 1986, DANIEL SWAN had a telephone conversation with Special Agent Charles Sterling of the Drug Enforcement Administration, who was then acting in an undercover capacity, concerning the delivery of approximately two (2) kilograms of cocaine from Jorge Diaz.

11. On or about November 18, 1986, DANIEL SWAN met with Special Agent Charles Sterling of the Drug Enforcement Administration, who was then acting in an undercover capacity, at the Hollenden House Hotel, Cleveland, Ohio, concerning the delivery of approximately two (2) kilograms of cocaine from Jorge Diaz.

12. On or about November 19, 1986, DANIEL SWAN had a telephone conversation with Special Agent Charles Sterling of the Drug Enforcement Administration, then acting in an undercover capacity, concerning the delivery of approximately two (2) kilograms of cocaine from Jorge Diaz.

13. On or about November 20, 1986, DANIEL SWAN had a telephone conversation with Special Agent Charles Sterling of the Drug Enforcement Administration, who was then acting in an undercover capacity, concerning meetings to deliver and distribute approximately two (2) kilograms of cocaine from Jorge Diaz.

14. On or about November 14, 1986, JOSEPH P. AMON rented an automobile from the Agency Auto Rental of Rocky River, Ohio to be used by DANIEL SWAN to pick up cocaine.

15. On or about November 13, 1986, ENEIDA DECKER traveled from the State of Florida to the Northern District of Ohio, in order to meet JOSEPH P. AMON and DANIEL SWAN and was given \$11,000 by these defendants for prior deliveries of cocaine by Jorge Diaz.

16. On or about November 19, 1986, ENEIDA DECKER traveled from the State of Florida to Cleveland, Ohio, in order to meet DANIEL SWAN and JOSEPH P. AMON concerning their cocaine business.

17. On or about November 19, 1986, JOSEPH P. AMON did give two checks totaling \$7,000 to ENEIDA DECKER as payment for the delivery and distribution of cocaine from Jorge Diaz and ENEIDA DECKER.

18. On or about November 20, 1986, at approximately 1:15 p.m. in Cleveland, Ohio, Special Agent Charles Sterling of the Drug Enforcement Administration, who was then acting in an undercover capacity, met with DANIEL SWAN and ENEIDA DECKER, concerning the delivery and distribution of approximately two (2) kilograms of cocaine from Jorge Diaz. ENEIDA DECKER represented that she was a representative of Jorge Diaz and that "she owns the merchandise".

19. On or about November 20, 1986, at approximately 4:15 p.m. Special Agent Charles Sterling, acting in an undercover capacity, met with DANIEL SWAN and ENEIDA DECKER at Captain Frank's Restaurant, Cleveland, Ohio, where they met and discussed the delivery and distribution of approximately two (2) kilograms of cocaine from Jorge Diaz.

20. On or about November 20, 1986, DANIEL SWAN instructed Special Agent Charles Sterling to call Dr. JOSEPH P. AMON at 886-1800 concerning the distribution of cocaine and payment for the same.

21. On or about November 20, 1986, Special Agent Charles Sterling, acting in an undercover capacity, called the telephone number 886-1800 and had a conversation with JOSEPH P. AMON concerning the delivery and distribution of approximately two (2) kilograms of cocaine from Jorge Diaz. JOSEPH P. AMON instructed Sterling to deliver the cocaine to DANIEL SWAN.

22. On or about November 20, 1986, in the area of the East Ninth

Street Pier and Captain Frank's Restaurant, Cleveland, Ohio, PAUL J. AMON drove a vehicle registered to JOSEPH P. AMON to meet with DANIEL SWAN.

23. On or about November 20, 1986, in the area of the East Ninth Street Pier and Captain Frank's Restaurant, DANIEL SWAN and PAUL J. AMON did speak to each other and did make telephone calls from a pay phone.

24. On or about November 20, 1986, in the area of the East Ninth Street Pier and Captain Frank's Restaurant, DANIEL SWAN and PAUL J. AMON attempted to break and enter the trunk of the automobile of Special Agent Charles Sterling, to obtain cocaine they thought to be from Jorge Diaz.

25. On or about November 21, 1986, Special Agent Charles Sterling, Drug Enforcement Administration, then acting in an undercover capacity, met with JOSEPH P. AMON at the Denny's Restaurant, Middleburgh Heights, Ohio, concerning the delivery and distribution of approximately two (2) kilograms of cocaine from Jorge Diaz.

All in violation of Title 18, Section 371, United States Code.

A TRUE BILL.

Richard L. Willoughby
Foreman

Patrick M. McLaughlin
PATRICK M. McLAUGHLIN
United States Attorney

I hereby certify that this
instrument is a true and
correct copy of the original
on file in my office.
Attest: James S. Coffin, Clerk
U. S. District Court
Northern District of Ohio

James S. Coffin
Deputy Clerk

STATE OF OHIO
THE STATE MEDICAL BOARD
65 South Front Street
Suite 510
Columbus, Ohio 43266-0315

September 9, 1987

Joseph P. Amon, D.O.
Docket No. CR87-25
Federal Correction Institute
Milan, Michigan 48160

Dear Doctor Amon:

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 June 16, 1987, you were convicted in the United States District Court for the Northern District of Ohio, Case Number CR87-25, of one (1) count of conspiracy to distribute cocaine, a Schedule II Controlled Substance, in violation of Title 18, United States Code, Section 371, as set forth in indictment filed on or about February 26, 1987. Said conviction constitutes a Felony.

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

Further, the acts committed by you which formed the basis of the conviction described in the above paragraph (1) constitute "selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes", as that clause is used in Section 4731.22(B)(3), Ohio Revised Code.

STATE OF OHIO
THE STATE MEDICAL BOARD

Page: [REDACTED]
Joseph [REDACTED], D.O.

September 9, 1987

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

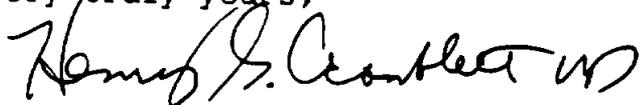
Pursuant to Chapter 119, Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, that request must be made within thirty (30) days of the time of mailing of this notice.

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Henry G. Cramblett, M.D.
Secretary

HGC:caa

enclosures

CERTIFIED MAIL RECEIPT NO. P 158 073 885
RETURN RECEIPT REQUESTED

STATE MEDICAL BOARD
OF OHIO

2002 JAN 11 P 4:07

BEFORE THE STATE BOARD OF MEDICAL EXAMINERS
STATE OF COLORADO

STIPULATION AND ORDER

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS REGARDING THE
LICENSE TO PRACTICE MEDICINE OF JOSEPH P. AMON, D.O.

IT IS HEREBY STIPULATED by and between the Colorado State Board of Medical Examiners ("Board") and Joseph P. Amon, D.O. ("respondent") as follows:

WHEREAS, the respondent was licensed to practice medicine in the State of Colorado on or about July 13, 1976, license No. 20348;

WHEREAS, the Board has received information and documentation that on or about June 16, 1987, in the United States District Court, Northern District of Ohio, respondent pled guilty to a federal felony, to wit: conspiracy to distribute cocaine; and

WHEREAS, the Board has authorized its legal counsel, the Office of the Attorney General, to institute administrative proceedings pursuant to the Medical Practice Act, § 12-36-101 et seq., C.R.S. (1985) and the State Administrative Procedure Act, § 24-4-101 et seq., C.R.S. (1982 and 1985 Supp.); and

WHEREAS, it is the intent and the purpose of the Stipulation and Order to provide for a resolution of all pending issues without the necessity of proceeding to a formal disciplinary hearing wherein the respondent would have the opportunity to present a defense with regard to the violations set forth below; and

WHEREAS, the Board possesses the statutory responsibility and obligation to protect the public health, safety and welfare by regulating and controlling the practice of the Healing Arts as set forth in the Colorado Medical Practice Act, § 12-36-101 et seq., C.R.S. (1985);

NOW THEREFORE, the following Stipulation and Order is entered into by and between the undersigned and is submitted fo

the purpose of allowing its terms to become an order of the Board.

IT IS STIPULATED, AGREED, AND ORDERED THAT:

1. The Board possesses jurisdiction over the person of the respondent and the subject matter contained herein.

2. The respondent was licensed to practice medicine in the State of Colorado on July 13, 1976, license No. 20348.

3. Respondent understands he has the right to consult with an attorney of his own choosing and that he has a right to a formal disciplinary hearing pursuant to § 12-36-11.8, C.R.S. (1985) with regard to the facts admitted in paragraph (5) below. Respondent further understands and agrees that by entering into this Stipulation and Order, he is waiving his right to a hearing and is admitting the facts and conduct contained in paragraph (5) below, and that he is relieving the Board of its burden of proving such facts and conduct and is giving up his right to present a defense by oral and documentary evidence, to submit rebuttal evidence and to conduct such cross-examination of witnesses as he may desire, all on a voluntary and knowing basis.

4. The respondent further understands and agrees that by entering this Stipulation and Order, he is waiving his right to hearing and relieving the Board of its burden of proving the underlying facts and conduct. The respondent voluntarily and knowingly gives up his right to present a defense of oral testimony and documentary evidence, to submit rebuttal evidence, to conduct such cross-examination of witnesses as may be desired, and to waive any and all substantive and procedural motions and defenses that can be raised if the hearing had been held.

5. Respondent admits and agrees that the following facts occurred as follows:

a. On or about June 16, 1987, in United States District Court, Northern District of Ohio, respondent pled guilty to conspiracy to distribute cocaine, Case No. CR 87-025, which was and is a federal felony offense, in violation of Title 18, § 371, United States Code. Respondent was sentenced to five (5) years in prison.

6. By the admitted conduct and events set forth in paragraph (5) above, respondent admits, and the Board hereby finds, that a case of unprofessional conduct exists, which sustains a finding of violations of the Medical Practice Act,

2002 JAN 11 P 15 51

§ 12-36-117(1)(f) and (h), C.R.S. (1985).

7. The respondent voluntarily offers, and the Board hereby accepts, the surrender and relinquishment of his license to practice medicine in Colorado.

8. This stipulation and order is entered into by the respondent voluntarily and without coercion and after an opportunity to consult with his attorney and with full understanding of the legal consequences of the stipulation and order. The order of the Board resulting from this stipulation and order shall possess the same force and effect as an order entered as a result of a formal disciplinary hearing pursuant to § 12-36-18, C.R.S. (1987).

9. This stipulation and order is a public record in the custody of the Board.

10. This stipulation shall become an order of the Board when accepted by the Board and signed by the authorized Board member.

DATED this 17th day of May 1990.

Joseph P. Amon
JOSEPH P. AMON, D.O.

Subscribed and sworn to before me in the County of Marrison, State of Ohio, this 17th day of May 1990.

Michelle DeRose (Gaglione)
NOTARY PUBLIC

My Commission expires:



MICHELLE GAGLIONE, Notary Public
State of Ohio
My Commission Expires Aug. 14, 1991

COLORADO STATE BOARD OF
MEDICAL EXAMINERS

Nancy Gerlock
Date June 8, 1990

APPROVED AS TO FORM:

FOR THE ATTORNEY GENERAL

Robert A. Holden
ROBERT A. HOLDEN, 12821
Assistant Attorney General
Regulatory Law Section

Attorneys for Colorado State Board
of Medical Examiners

1525 Sherman Street, 3d Floor
Denver, Colorado 80203
Telephone: 866-5129
AG Alpha No. RG ME DLFNM
AG File No. CRL9002253.NH

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RECEIVED
ATTORNEY GENERAL'S OFFICE
MAY 17 1990
HEALTH, EDUCATION &
HUMAN SERVICES SECTION

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT
FILED
COURT OF APPEALS
FRANKLIN CO. OHIO

Joseph P. Amon, D.O.,
Appellant-Appellant,
v.
State of Ohio, State Medical Board,
Appellee-Appellee.

1990 APR 10 PM 2:09

THOMAS J. ENRIGHT
CLERK OF COURTS
No. 89AP-1019
(REGULAR CALENDAR)

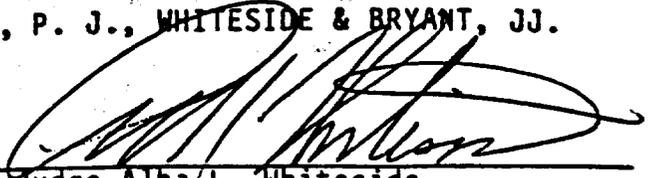
STATE MEDICAL BOARD
90 MAY 22 10:44

87CU-11-7600

JOURNAL ENTRY OF JUDGMENT

For the reasons stated in the opinion of this court rendered herein on April 10, 1990, the second assignment of error is overruled, and the remaining assignments of error are sustained to the extent stated, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is modified so as to affirm the order of the State Medical Board with respect to finding appellant "guilty" of violations of R.C. 4731.22(B)(3) and (9), but to reverse the order with respect to the imposing of the sanction of revocation of his osteopathic medicine and surgery license and to remand the matter to the State Medical Board for further consideration of appellant's request for a hearing and to conduct a mitigation hearing if such be required to be consistent with said opinion and the applicable law, and for such further proceedings as may be appropriate, and this cause is remanded to that court for implementation and execution of this court's modified judgment.

REILLY, P. J., WHITESIDE & BRYANT, JJ.

By 
Judge Alba/L. Whiteside

cc: Kreig J. Brusnahan
Brian L. Jeffries

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

RECEIVED
ATTORNEY GENERAL'S OFFICE
APR 12 1990
HEALTH, EDUCATION &
TRAINING SERVICES SECTION

Joseph P. Amon, D.O., :
Appellant-Appellant, :
v. :
State of Ohio, State Medical Board, :
Appellee-Appellee. :

No. 89AP-1019
(REGULAR CALENDAR)

O P I N I O N

Rendered on April 10, 1990

SMITH & SMITH, and MR. KREIG J. BRUSNAHAN, for appellant.

MR. ANTHONY J. CELEBREZZE, JR., Attorney General, and MR. BRIAN L. JEFFRIES, for appellee.

APPEAL from the Franklin County Common Pleas Court.

STATE MEDICAL BOARD
OF OHIO
90 APR 13 PM 1:54

WHITESIDE, J.

This is an appeal by Joseph P. Amon from a judgment of the Franklin County Court of Common Pleas affirming an order of the State Medical Board revoking his license to practice osteopathic medicine. In support of his appeal, appellant has raised five assignments of error (labeled "statement of the issues") as follows:

"I. The trial court erred when it failed to remand the matter to appellee/state medical board.

"II. The trial court erred when it found that notice was not required to be provided to the attorney of record in the underlying criminal action.

"III. The trial court erred in finding appellant failed to respond within the statutory thirty-day period.

"IV. The trial court erred in failing to find undue prejudice in the receipt of notice on the last day in which a request for a hearing could be made.

"V. The trial court erred in failing to observe appellant's procedural due process rights under Ohio Revised Code Section 119.07."

The basic facts are not in dispute. Appellant was convicted of one count of conspiracy to distribute cocaine in violation of federal law pursuant to his guilty plea in the U.S. District Court for the Northern District of Ohio and sentenced to serve five years in federal prison. He was originally incarcerated on or about June 19, 1987 in the federal correctional institution in Milan, Michigan, and was transferred in July 1987 to the federal correctional camp in Terre Haute, Indiana.

The State Medical Board sent a letter dated September 9, 1987 addressed to appellant at the Milan, Michigan prison indicating the board's intention to determine whether to limit, reverse, suspend, or refuse to register or reinstate appellant's certificate to practice osteopathic medicine. Such letter notified appellant that if he wished to request a hearing he must do so within thirty days of the date of mailing of the notice. The notice was sent certified mail return receipt requested to the federal correctional institution in Milan, Michigan. The return receipt was returned to the board containing some marking which might constitute a signature.

In any event, the letter was forwarded to appellant in Terre Haute, Indiana, being received on or about October 9, 1987 by appellant, following which he immediately drafted a letter, explaining the delay in

receiving the notice and requesting a hearing, which he mailed to the board by regular U.S. mail which letter was received by the board on October 20, 1987. On November 11, 1987, without directly addressing appellant's request, the board summarily revoked appellant's license to practice osteopathic medicine.

Although five assignments of error are set forth, only two issues are raised. One is whether notice was required to be sent to appellant's attorney as well as to him, and the other is whether the trial court erred in finding that the board did not abuse its discretion in failing to grant a hearing to appellant.

As to the first issue, we find no requirement that appellant's attorney be notified under the circumstances herein. Although appellant had been represented by counsel during the criminal proceedings, such counsel had made no representation of appellant with respect to the administrative matter before the State Medical Board. Rather, the initial letter was the commencement of the state board proceedings leading to revocation of appellant's license to practice osteopathic medicine. R.C. 119.07 does provide that prior to issuance of an order, a party shall be notified of his right to a hearing if requested within thirty days and that:

*** [a] copy of such notice shall be mailed to attorneys or other representatives of record representing the party.

"The failure of an agency to give the notices for any hearing required by sections 119.01 to 119.13, inclusive, of the Revised Code, in the manner provided in this section shall invalidate any order entered pursuant to such hearing."

The statement of the facts as set forth above is essentially from appellant's brief and the appellee, State Medical Board, in its brief, states that it "*** agrees with Appellant's Statement of the Case." However, a review of the record indicates no record of any attorney representing appellant, and even in his letter requesting a hearing, he requested "*** 90 days to prepare and secure a representative to appear in my behalf. ***" However, a copy of such letter was indicated as having been sent to James Burke, Attorney. This, however, was after the mailing of the notice contained in the September 9, 1987 letter. There simply is no indication in the record of appellant's being represented by any attorney or other representative as of September 9, 1987 with respect to these proceedings of which the state board would have knowledge. Accordingly, we find no violation of R.C. 119.07 with respect to notification of an attorney, and the second assignment of error is not well-taken.

The record does contain a copy of the board's September 9 letter which contains a certified mail receipt number and a copy of a receipt for certified mail bearing that number which is postmarked on September 10, 1987. There is also a return receipt with some marking which may or may not be a signature and which is postmarked September 14, 1987 in Milan, Michigan.

Although relator's response is stamped received October 20, 1987 by the State Medical Board, there is no indication as to the date it was mailed, the board having failed to retain the envelope which contained the postmark date indicating when the letter was mailed by appellant. With respect to ordinary filings, the date of receipt rather than the date of mailing is deemed the date of filing. However, with respect to inmates of ,

prisons, ordinarily the date of delivery to prison authorities for mailing is deemed the date of filing. See State v. Williamson (1967), 10 Ohio St. 2d 195, 196. Accordingly, the record is uncertain as to when appellant perfected his request for an adjudicatory hearing, there being no indication as to when his letter request was delivered to prison authorities and his letter is undated. We do not at this time determine whether the prison-mail rule affects the beginning of the time for appeal when prison authorities delay receipt by appellant of the notice from the board of proposed action and the necessity of appellant requesting a hearing within thirty days after mailing of the notice.

R.C. 119.07 specifically provides that a person in the situation of appellant is entitled to a hearing if he requests one within thirty days of the time of mailing of the notice by the administrative agency. The record reflects that the notice was mailed September 10, 1987, although the letter was dated the day before, but was not received by appellant until October 9, 1987, although it was delivered to prison authorities at Milan, Michigan on September 14, 1987. Although appellant's request for hearing is not stamped received by the board until October 20, 1987, there is no indication as to when it was delivered by appellant to prison authorities for mailing.

Additionally, there is no indication that the State Medical Board even considered appellant's request for a hearing nor the delayed delivery of the notice to appellant since the order states merely that appellant "*** requested a hearing, but more than thirty (30) days had elapsed since the mailing of the aforesaid notice." The board did not note that at most forty days, rather than thirty, had elapsed despite

appellant's incarceration, the delayed delivery of the notice and the uncertainty as to when appellant delivered his request to prison authorities for mailing.

In addition, the record does not reflect affirmatively that the notice was sent to appellant's last known address. Appellee, in its brief herein, argues that to the best of the board's knowledge, the address used was the last known address of appellant and that it was a duty of appellant to notify the board of his change of address when he was transferred to the federal correctional camp in Terre Haute, Indiana. The record does not support such contention. There is no indication in the record as to how the board obtained the address it utilized, nor is there any indication in the record that appellant failed to notify the board of his transfer. This may well be the fact, but there is no evidence in the record to support this contention of the board apparently raised for the first time on appeal. We note that the board's order in no way makes such a determination and that the certified record contains no evidence supporting the contention.

As we noted above, this is not a case of dilatory conduct on the part of the appellant, as is suggested in the board's brief as being the predicate for the rule, but instead, is prompt action by appellant as soon as he was afforded an opportunity to respond by action of prison authorities delivering his mail to him. In short, there is no explanation for the reason that the notice was delayed from September 14, when it was allegedly received in Milan until October 9, when it was finally delivered by prison authorities to appellant.

Nevertheless, even though there be error in that the action of the board is not supported by the record, this does not necessarily require a reversal of the trial court's judgment. For error to justify reversal, such error must be prejudicial. As the grounds for disciplinary action by the State Medical Board, there simply is no dispute. The grounds for action by the State Medical Board was appellant's conviction of a felony involving conspiracy to distribute cocaine, a Schedule II controlled substance. Appellant concedes that this is true. Even his letter requesting a hearing essentially concedes "guilt" stating "[t]here can be no question to the fact that I have done wrong. ***" However, that letter then states that "*** I would like to request a formal hearing so that mitigating circumstances of my case might be presented to the board. ***" In other words, appellant requested a hearing only for the purpose of presenting evidence in mitigation which would affect only the "punishment" or sanctions to be imposed by the State Medical Board, not appellant's guilt of the charge. Accordingly, there is no reversible error, there being no prejudice, with respect to the guilt determination by the State Medical Board. The prejudice is only with respect to mitigating circumstances and the failure of the board properly to consider appellant's request for a mitigation hearing. To this extent, the first, third, fourth and fifth assignments of error are well-taken.

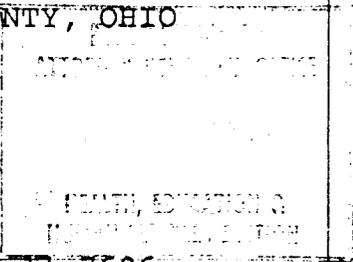
For the foregoing reasons, the second assignment of error is overruled, and the remaining assignments of error are sustained. The judgment of the Franklin County Court of Common Pleas is modified so as to affirm the order of the State Medical Board with respect to finding appellant "guilty" of violations of R.C. 4731.22(B)(3) and (9), but to reverse ,

the order with respect to the imposing of the sanction of revocation of his osteopathic medicine and surgery license and to remand the matter to the State Medical Board for further consideration of appellant's request for a hearing and to conduct a mitigation hearing if such be required to be consistent with this opinion and the applicable law, and for such further proceedings as may be appropriate. This cause is remanded to the Franklin County Court of Common Pleas with instructions to enter an order effectuating such modification of its judgment and remanding this cause to the State Medical Board for appropriate action.

Judgment affirmed in part and reversed in part,
and cause remanded with instructions.

REILLY, P.J., and BRYANT, J., concur.

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO



JOSEPH P. AMON, D.O., :

Appellant, :

vs. :

CASE NO. 87CV II 7606

STATE OF OHIO, STATE MEDICAL BOARD, :

JUDGE STRATTON

Appellee. :

DECISION

Rendered this ____ day of ____ 1989

STRATTON, J.

Appellant has filed this appeal pursuant to O.R.C. Section 119.12 from the November 13, 1987, Decision of the State Medical Board. Appellee has now filed a Motion to Dismiss for lack of subject matter jurisdiction pursuant to Civil Rule 12(B)(1).

Appellee argues that O.R.C. Section 119.07 provides for a 30-day period in which Appellant could have requested a hearing before the Board. The Notice (Appendix A attached to Appellee's Motion) was mailed on September 9, 1987; Appellant's request for a hearing was received by the Board on October 20, 1987. Although the Notice was not mailed to Appellant's current address, Appellant had failed to inform the Board of an address change (he was transferred from one federal prison to another in mid-July, 1987) as required by O.R.C. Section 4731.281.

Appellant contends that a copy of the Notice should

have been sent to his lawyer by the Board. O.R.C. Section 119.07 directs that:

"A copy of such notice shall be mailed to attorneys or other representatives of record representing the party."

Appellant's lawyer in his criminal case had not entered an appearance before the Board (nor had any other counsel). This Court holds that this Section can logically be read to require the Board to send notices to attorneys of record in only its own proceedings; it would be unreasonable to require the Board to seek and discover a party's attorneys of record in other forums.

This Court holds that Appellant was not entitled to a hearing before the Board because he failed to timely request such a hearing in compliance with O.R.C. Section 119.07. Since O.R.C. Section 119.12 provides for an appeal to this Court from an order of an agency pursuant to an adjudication following a hearing, no appeal will lie in this case. This Court concurs with Appellee that Appellant has failed to exhaust his administrative remedies, and holds as a matter of law that it lacks jurisdiction over the subject matter of the within appeal.

Accordingly, Appellee's Motion to Dismiss is hereby SUSTAINED.

Counsel for Appellee shall prepare an appropriate

Entry per Court Rule 39.01.

Defendant's motion to strike is overruled.

EVELYN J. STRATTON, JUDGE

Appearances:

JOHN C. DOWLING, Esq.
Attorney for Appellant

KREIG J. BRUSHNAHAN, Esq.
Attorney for Appellee

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IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

IN THE MATTER OF
JOSEPH P. AMON, D.O.

87CV- 11 - 7606

NOTICE OF APPEAL

Joseph P. Amon, D.O. hereby gives Notice of Appeal from the adjudication revoking and suspending his medical license in a hearing before the State Medical Board to the Franklin County Court of Common Pleas. Said adjudication was rendered on November 11, 1987 and mailed on November 13, 1987. Appellant argues that the Order is not supported by reliable, probitive and substantial evidence and is not in accordance with law.



Craig Brunsahan
Smith & Smith
110 Moore Road, P.O. Box 210
Avon Lake, Ohio 44012

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was served upon the State Medical Board, 65 South Front Street, Suite 510, Columbus, Ohio 43215, and Chris Cully, Assistant Attorney General, 30 East Broad Street, Columbus, Ohio 43215, by ordinary U.S. mail, this 30 day of November, 1987.



Craig Brunsahan
Attorney for Joseph P. Amon, D.O.

87 NOV 30 P 3:55

OFFICE OF
STATE
MEDICAL BOARD

STATE OF OHIO
THE STATE MEDICAL BOARD OF OHIO
65 SOUTH FRONT STREET
SUITE 510
COLUMBUS, OHIO 43266-0315

November 13, 1987

Joseph Amon, D.O.
P. O. Box 33 C-2
Federal Prison Camp
#32355-060
Terre Haute, Indiana 47808

Dear Doctor Amon:

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 November 11, 1987.

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,



Henry G. Cramblett, M.D.
Secretary

HGC:em

Enclosures

CERTIFIED MAIL NO. P-026-072-796
RETURN RECEIPT REQUESTED

Mailed 11/13/87

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *
 *
JOSEPH P. AMON, D.O. *

FINDINGS, ORDER, AND JOURNAL ENTRY

This matter came on for consideration after a citation letter was issued to Joseph P. Amon, D.O., by the State Medical Board of Ohio on September 9, 1987.

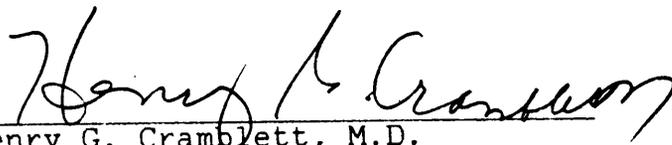
On September 9, 1987, notice was given to Dr. Amon that the State Medical Board intended to consider disciplinary action regarding his license to practice osteopathic medicine and surgery in Ohio, and that he was entitled to a hearing if such hearing was requested within thirty (30) days of the mailing of said notice. Dr. Amon requested a hearing, but more than thirty (30) days had elapsed since the mailing of the aforesaid notice.

WHEREFORE, it is hereby ORDERED that for the reasons outlined in the September 9, 1987 letter of notice which is attached hereto and incorporated herein, accordingly, the license of Joseph P. Amon, D.O., to practice osteopathic medicine and surgery in Ohio be REVOKED.

This ORDER shall become effective immediately.

This Order is hereby entered upon the Journal of the State Medical Board of Ohio for the 11th day of November, 1987 and the original thereof shall be kept with said Journal.

(SEAL)


Henry G. Cramblett, M.D.
Secretary

November 13, 1987
Date

STATE OF OHIO
THE STATE MEDICAL BOARD
65 South Front Street
Suite 510
Columbus, Ohio 43266-0315

September 9, 1987

Joseph P. Amon, D.O.
Docket No. CR87-25
Federal Correction Institute
Milan, Michigan 48160

Dear Doctor Amon:

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 June 16, 1987, you were convicted in the United States District Court for the Northern District of Ohio, Case Number CR87-25, of one (1) count of conspiracy to distribute cocaine, a Schedule II Controlled Substance, in violation of Title 18, United States Code, Section 371, as set forth in indictment filed on or about February 26, 1987. Said conviction constitutes a Felony.

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

Further, the acts committed by you which formed the basis of the conviction described in the above paragraph (1) constitute "selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes", as that clause is used in Section 4731.22(B)(3), Ohio Revised Code.

STATE OF OHIO
THE STATE MEDICAL BOARD

Page 1
Joseph A. Amon, D.O.

September 9, 1987

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

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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Henry G. Cramblett, M.D.
Secretary

HGC:caa

enclosures

CERTIFIED MAIL RECEIPT NO. P 158 073 885
RETURN RECEIPT REQUESTED