



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.mc.ohio.gov

October 13, 2004

Sam Hill, D.O.
4660 St. Hwy. 199, #2
Carey, OH 43316

Dear Doctor Hill:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Siobhan R. Clovis, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on October 13, 2004, 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

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 7000 0600 0024 5149 9726
RETURN RECEIPT REQUESTED

Mailed 10-19-04

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Siobhan R. Clovis, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on October 13, 2004, 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 Sam Hill, 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.



Lance A. Talmage, M.D.
Secretary

(SEAL)

October 13, 2004
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

SAM HILL, D.O.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on October 13, 2004.

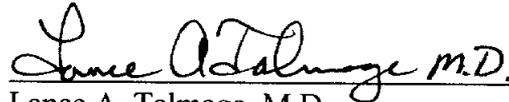
Upon the Report and Recommendation of Siobhan R. Clovis, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the 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 that:

The certificate of Sam Hill, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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

(SEAL)



Lance A. Talmage, M.D.
Secretary

October 13, 2004

Date

**REPORT AND RECOMMENDATION
IN THE MATTER OF SAM HILL, D.O.**

The Matter of Sam Hill, D.O., was heard by Siobhan R. Clovis, Esq., Hearing Examiner for the State Medical Board of Ohio, on July 12, 2004.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated February 11, 2004, the State Medical Board of Ohio [Board] notified Sam Hill, D.O., that it had proposed to take disciplinary action against his certificate to practice osteopathic medicine and surgery in Ohio. The Board based its proposed action on the allegation that, despite a Board Order requiring Dr. Hill to remain drug-free, Dr. Hill had tested positive for the use of benzodiazepines.

The Board alleged that Dr. Hill's acts, conduct, and/or omissions, individually and/or collectively, constitute "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code."

The Board further alleged that Dr. Hill's acts, conduct, and/or omissions, individually and/or collectively, constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code."

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

- B. The Board received a written hearing request from Dr. Hill on March 8, 2004. (State's Exhibit 1B).

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Gregory A. Perry, Assistant Attorney General.

- B. On behalf of the Respondent: Dr. Hill, having been apprised of his right to be represented by counsel, appeared at the hearing on his own behalf.

EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State

1. Danielle Bickers
2. David P. Katko, Esq.
3. Sam Hill, D.O., as upon cross-examination

B. Presented by the Respondent

Sam Hill, D.O.

II. Exhibits Examined

A. Presented by the State

- * 1. State's Exhibits 1A through 1I: Procedural exhibits.
- * 2. State's Exhibit 2: Certified copies of records maintained by the Board concerning Sam Hill, D.O.
- * 3. State's Exhibit 3: Copy of a laboratory report of Dr. Hill's December 24, 2003, urine screen.

B. Presented by the Respondent

Respondent's Exhibit A: Copies of federal statutes.

Note: All exhibits marked with an asterisk [*] have been sealed, without objection from the State, in response to objections made by Dr. Hill. (See Legal Issues, *infra*.)

LEGAL ISSUES

At the July 12, 2004, hearing held in this matter, Respondent Sam Hill, D.O., argued that “any public hearing in any way relating to federally protected alcohol and treatment centers must be sealed from the public. All records must be sealed from the public.” Dr. Hill requested that the hearing be continued until the federal authorities could “check this out.” The Hearing Examiner denied Dr. Hill’s request to continue the hearing. (Hearing Transcript [Tr.] at 5, 7, 9).

The State did not object to the sealing of all of its exhibits in this case, or to the sealing of the transcript. State’s Exhibits 1 and 2 were sealed pursuant to Dr. Hill’s request, although they are comprised entirely of public records. State’s Exhibit 3, a toxicology report, and the hearing transcript have also been sealed. It should also be noted that no members of the public attended the hearing. (Tr. at 7, 42-44, 49-50).

Dr. Hill argued that any disclosure of his impairment violates federal law prohibitions against the disclosure of information about an individual’s treatment for drug and alcohol abuse. (Tr. at 5-6, 46-49). 42 Code of Federal Regulations § 2.1(a) provides:

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

However, that regulation further provides that the content of any drug-treatment record may be disclosed in accordance with the prior written consent of the patient. 42 C.F.R. § 2.1(b)(1). Dr. Hill has consented to the disclosure of any confidential records. Paragraph F of Dr. Hill’s May 14, 2003, Board Order provides:

Dr. Hill shall provide continuing authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Hill’s chemical dependency, psychiatric conditions, and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluations occurred before or after the effective date of this Order. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.

Dr. Hill shall also provide the Board written consent permitting any treatment provider from whom Dr. Hill obtains treatment to notify the Board in the event he fails to agree or comply with any recommended treatment or with any treatment or

aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.

(State's Exhibit 2 at 13-14). Dr. Hill provided no evidence that he had objected to this requirement, or that he had failed to sign the appropriate releases.

Dr. Hill also argued that federal law prohibits the Board from disclosing any information about his treatment for chemical dependency to the Office of the Ohio Attorney General [Attorney General]. (Tr. at 6, 47). In response, the State cited Section 4731.22(F)(5), Ohio Revised Code, which states, in pertinent part:

The board may share any information it receives pursuant to an investigation, including patient records and patient record information, with law enforcement agencies, other licensing boards, and other governmental agencies that are prosecuting, adjudicating, or investigating alleged violations of statutes or administrative rules. An agency or board that receives the information shall comply with the same requirements regarding confidentiality as those with which the state medical board must comply

(Tr. at 47-48). *See also* R.C. 119.10 (the Attorney General represents agencies in administrative hearings). Dr. Hill's release of confidential information to the Board also effectively operates as a release to the Attorney General, as the Attorney General represents the Board in prosecuting any alleged violations of the Medical Practices Act, such as those alleged in this case.

SUMMARY OF THE EVIDENCE

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

1. Sam Hill, D.O., graduated from Temple University in 1978. Dr. Hill attained his medical degree from the Kirksville College of Osteopathic Medicine in 1982. He then completed a one-year rotating internship and one year of residency in pathology at Doctor's Hospital in Columbus, Ohio. Dr. Hill became a Diplomate of the National Board of Osteopathic Examiners in 1983, and was board-certified in family practice in 1994. (Hearing Transcript [Tr.] at 34; State's Exhibit [St. Ex.] 2 at 18).

From 1984 through 1992, Dr. Hill was in family practice at various locations in Columbus, Ohio. From 1993 through 2001, he engaged in the private practice of medicine in Lynchburg, Ohio. In October 2001, Dr. Hill joined the Community Health Clinic in Hillsboro, Ohio. (Tr. at 34; St. Ex. 2 at 18).

On February 12, 2003, the Board summarily suspended Dr. Hill's license to practice osteopathic medicine and surgery in Ohio. His license has not been reinstated to date. Dr. Hill testified that he is currently unemployed. (Tr. at 33; St. Ex. 2 at 7, 43).

2. The instant case is Dr. Hill's fifth disciplinary action before the Board. A summary of the previous proceedings is as follows:

- On June 14, 1989, the Board issued an Order determining that Dr. Hill had unlawfully employed and utilized a physician's assistant who was not properly registered. Accordingly, the Board suspended Dr. Hill's certificate for one year, with all but 30 days of the suspension stayed. The Board further ordered three years of probation, with certain terms, conditions, and limitations. (St. Ex. 2 at 118-119, 122-124).
- On July 13, 1994, the Board issued to Dr. Hill a Notice of Opportunity for Hearing, which was amended on September 14, 1994. In the Notice, the Board alleged that Dr. Hill had violated the terms of his probation as well as Sections 4731.22(B)(5), (10), (19), and (26), Ohio Revised Code. The Board alleged that Dr. Hill had: prescribed opiates to a patient which he had intended to use himself; prescribed opiates to himself; submitted to the Board, on March 21, 1994, a false declaration of compliance with the 1989 Board Order; admitted to having been treated or hospitalized for depression in the late 1970s, the early 1980s, and 1994; and admitted to a Board investigator that he was addicted to opiates. (St. Ex. 2 at 105-115).

On April 12, 1995, the Board issued an Order in which the Board determined that Dr. Hill had indeed violated his probation as well as Sections 4731.22(B)(5), (10), (19), and (26), Ohio Revised Code. Accordingly, the Board suspended Dr. Hill's certificate for an indefinite period of time, but not less than six months. The Board further ordered that, upon reinstatement, Dr. Hill's certificate would be subject to certain probationary terms, conditions, and limitations for five years. (St. Ex. 2 at 66-69, 92-96).

- On November 12, 1997, the Board issued to Dr. Hill a Notice of Opportunity for Hearing, in which the Board alleged that Dr. Hill had violated the 1995 Board Order by practicing osteopathic medicine during his suspension, in violation of Sections 4731.22(B)(15) and (B)(20), Ohio Revised Code. (St. Ex. 2 at 62).

On April 8, 1998, the Board determined that, although Dr. Hill had unlawfully practiced while under suspension, he had done so because he had relied upon the erroneous advice of his attorney that his suspension had not yet become effective. Accordingly, the Board issued an Order reprimanding Dr. Hill. (St. Ex. 2 at 50, 59).

- On February 12, 2003, the Board issued to Dr. Hill a Notice of Summary Suspension and Opportunity for Hearing, in which the Board alleged that Dr. Hill had violated Sections 4731.22(B)(19) and (B)(26), Ohio Revised Code. (St. Ex. 2 at 41-47).

On May 14, 2003, the Board issued an Order including the following Findings of Fact:

- On December 30, 2002, Dr. Hill had been confronted by fellow staff members at Highland District Hospital in Hillsboro, Ohio, because of reports that Dr. Hill had “alcohol on his breath.” Dr. Hill had confessed that he had consumed alcohol that day. He had subsequently been admitted to Highland District Hospital for alcohol detoxification.
- On the night of December 30-31, 2002, Dr. Hill had been transferred to the Ohio State University Medical Center because of “suicidal ideation.”
- On January 7, 2003, Dr. Hill had transferred from University Hospitals to Parkside Behavioral Healthcare, Inc., [Parkside] a Board-approved treatment provider. At Parkside, Dr. Hill had been diagnosed with alcohol dependence, opiate dependency in remission, major depression, anxiety disorder and avoidant personality.
- While at Parkside, Dr. Hill had admitted consuming a pint of vodka a day for approximately one month and consuming some of his son’s Ritalin.

(St. Ex. 2 at 7, 27).

Accordingly, the Board permanently revoked Dr. Hill’s certificate to practice osteopathic medicine and surgery in Ohio, but stayed the permanent revocation. The Board suspended Dr. Hill’s certificate indefinitely, but not less than 18 months. The Board further imposed interim monitoring conditions, established conditions for reinstatement of Dr. Hill’s certificate, and provided that, upon reinstatement, Dr. Hill’s certificate would be subject to certain probationary terms, conditions, and limitations for at least five years. (St. Ex. 2 at 7-13).

3. Pursuant to the May 14, 2003, Order, Dr. Hill’s certificate remains suspended, and he is currently subject to interim monitoring conditions. One such condition, as set forth in Paragraph B.4 of the Order, is that Dr. Hill must abstain completely from the personal use of drugs, except for those properly prescribed by a physician with full knowledge of Dr. Hill’s history of chemical dependency. Dr. Hill is also required to submit to weekly random drug testing. (Tr. at 13, 19; St. Ex. 2 at 7-8).

4. On December 24, 2003, Dr. Hill submitted a urine specimen which tested positive for benzodiazepines. The specimen was subsequently GC/MS confirmed for the presence of nordiazepam, oxazepam and temazepam. On January 7, 2004, a toxicology report was generated demonstrating these results. (Tr. at 15-16, 25; St. Ex. 3).
5. David P. Katko, Esq., an Enforcement Attorney for the Board, testified for the State. Mr. Katko advised that he has worked for the Board since May 1997 and that, over the last seven years, he has worked as an Enforcement Attorney on a “couple of hundred” cases, including cases involving impaired physicians. He testified that, through this experience, he has become familiar with drugs and with laboratory reports. Mr. Katko further testified that he has worked on the Board’s last three disciplinary actions against Dr. Hill, including the instant case. (Tr. at 21-24).

Mr. Katko stated that the January 7, 2004, toxicology report had been issued by Bendiner & Schlesinger, a medical laboratory from which the Board receives a large number of reports. (Tr. at 24-25; St. Ex. 3). Mr. Katko described the findings in the toxicology report:

Well, there are two general kinds of results. The first in the left-hand column as it indicates “Benzo EMIT positive.” That would mean that on the rough screen, which is an EMIT, E-M-I-T, screen that it tested positive for [b]enzodiazepines as a general rule with a cut-off level being able to detect 300 nanograms per milliliter of fluid.

And then in the lower right-hand portion is GC/MS, which * * * is gas chromatography/mass spectrometry, which confirmed the [b]enzodiazepine hit from the original sample with positives for [o]xazepam, [t]emazepam, and [n]ordiazepam at levels respectively at 878 nanograms per milliliter, 605 nanograms per milliliter and 864 nanograms per milliliter.

(Tr. at 25; St. Ex. 3).

Mr. Katko stated that he had called William Closson, Ph.D., the laboratory director of Bendiner & Schlesinger, to discuss this report. Mr. Katko testified that Dr. Closson had stated that oxazepam, temazepam, and nordiazepam are metabolites of diazepam, a benzodiazepine. Dr. Closson further advised Mr. Katko that, with levels as high as those indicated in the report, “Dr. Hill would have either had to have consumed [d]iazepam on the day that the urine screen was submitted or had been using [d]iazepam long-term up to the point that the screen was done.” (Tr. at 26-27, 32; St. Ex. 3).

Mr. Katko further testified that Dr. Closson had advised that the chain of custody for the urine specimen was intact. (Tr. at 27-28).

6. Danielle Bickers, the Compliance Officer for the Board, also testified for the State. She testified that she monitors licensees who are subject to Board Orders, including Dr. Hill. (Tr. at 12).

Ms. Bickers explained that Dr. Hill had had a monitor who was required to contact Dr. Hill on a random weekly basis to provide a urine specimen for drug screening. The monitor was then responsible for sending the specimen to Bendiner & Schlesinger for testing. The results were reported to the Ohio Physicians Effectiveness Program [OPEP]. OPEP would then forward the reports to the Board. Ms. Bickers testified that she reviews laboratory reports, such as the January 7, 2004, toxicology report, on a daily or weekly basis, and that the Board relies on the accuracy of such reports. (Tr. at 14-16).

Ms. Bickers testified that there were three weeks in November during which the Board did not receive laboratory reports from Dr. Hill's drug screens. She stated that the Board is not sure why those reports are missing, but that OPEP had advised that there was no record of specimens being collected from Dr. Hill for those three weeks. Ms. Bickers also advised that Dr. Hill had never reported that he had been properly prescribed benzodiazepines. (Tr. at 18-19).

7. Dr. Hill testified that he had not used any drugs, but he could not explain the positive result. He claimed that a second bottle of his urine had been routinely collected so that he could check any positive result at a laboratory of his choice. Dr. Hill stated that the second bottle from December 24, 2003, had been missing, so he could not check the positive result. He also claimed to have had a previous problem with Bendiner & Schlesinger, but he did not elaborate on that point. Dr. Hill testified that, after his positive screen, his subsequent drug tests had been negative. Dr. Hill also explained that he had missed three drug screens because he had moved and he had had to change monitors. (Tr. at 11, 35, 37-38, 39, 44-45, 51-52).

Dr. Hill maintained that he had initiated the drug screening of December 24, 2003, because his monitor had not yet called him that week and "a long weekend was coming up." Dr. Hill argued that he would not have volunteered himself for a drug screening if he had been using drugs. (Tr. at 36, 38,-39, 45-52).

Dr. Hill admitted that he had been under stress in December 2003. He also admitted that he had been impaired in the past, with his previous drugs of choice being alcohol and opiates. Dr. Hill stated that, although he had tried benzodiazepines in his "using days" before he received treatment, he had never really liked them. (Tr. at 39-41).

Dr. Hill emphasized that he is appealing the May 14, 2003, Board Order, although he acknowledged that he knew that he was required to abide by the Order. Dr. Hill also

admitted that he is aware that the Board had indicated during his last disciplinary action that Dr. Hill had only one more chance to remain sober. (Tr. at 20, 35, 39, 45).

FINDINGS OF FACT

1. On June 14, 1989, the Board entered an Order suspending Sam Hill, D.O., from practicing osteopathic medicine and surgery in the State of Ohio for a period of one year. The 1989 Board Order stayed all but thirty days of that suspension and placed Dr. Hill's certificate on probation for a period of three years subject to certain terms, conditions and limitations.
2. On July 13, 1994, the Board issued to Dr. Hill a Notice of Opportunity for Hearing, which was amended on September 14, 1994, alleging that Dr. Hill had violated the 1989 Board Order by violating the terms of his probation, and also alleging that Dr. Hill had violated Sections 4731.22(B)(5), (10), (19) and (26), Ohio Revised Code. The conduct underlying these allegations included: that Dr. Hill had prescribed opiates in the name of a patient that he had intended for his own use; that he had prescribed opiates to himself; that he had submitted to the Board a quarterly declaration of compliance dated March 21, 1994, falsely indicating compliance with the 1989 Board Order; that he had admitted receiving treatment and/or hospitalizations for depression in the late 1970s, the early 1980s and in 1994; and that he had admitted to a Board Investigator that he was addicted to opiates.

Thereafter, on April 12, 1995, the Board entered an Order suspending Dr. Hill's certificate to practice osteopathic medicine and surgery for an indefinite period, but not less than six months. The Order further provided that, upon reinstatement, Dr. Hill's certificate would be subject to certain probationary terms, conditions, and limitations for a period of five years.

3. On November 12, 1997, the Board issued to Dr. Hill a Notice of Opportunity for Hearing alleging that he had violated the 1995 Board Order by practicing osteopathic medicine during his suspension in violation of Section 4731.22(B)(15) and (B)(20), Ohio Revised Code.

Thereafter, on April 8, 1998, the Board entered an Order reprimanding Dr. Hill.

4. On February 12, 2003, the Board issued to Dr. Hill a Notice of Summary Suspension and Opportunity for Hearing alleging that Dr. Hill had violated Sections 4731.22(B)(19) and (26), Ohio Revised Code.

Thereafter, on May 14, 2003, the Board entered an Order permanently revoking Dr. Hill's certificate to practice osteopathic medicine and surgery and staying that revocation; suspending his certificate for an indefinite period, but not less than 18 months; imposing

interim monitoring conditions; establishing conditions for reinstatement; and providing that upon reinstatement, Dr. Hill's certificate would be subject to certain probationary terms, conditions, and limitations for a period of at least five years.

The Board's Findings of Fact included that, on December 30, 2002, Dr. Hill appeared for work at Highland District Hospital in Hillsboro, Ohio, and, after reports of alcohol on his breath, hospital staff confronted Dr. Hill and he admitted to having consumed alcohol that day. Dr. Hill was admitted to Highland District Hospital for alcohol detoxification. On the night of December 30-31, 2002, Dr. Hill was transferred to University Hospitals at the Ohio State University due to suicidal ideation. On January 7, 2003, Dr. Hill was transferred from University Hospitals and admitted to Parkside Behavioral Healthcare, Inc., a Board-approved treatment provider, and diagnosed with alcohol dependence, opiate dependency in remission, major depression, anxiety disorder and avoidant personality. Dr. Hill admitted to consuming a pint of vodka a day for approximately one month and consuming some of his son's Ritalin. To date, Dr. Hill's license remains suspended subject to interim monitoring terms and conditions.

5. Paragraph B.4 of the May 2003 Order requires Dr. Hill to abstain completely from the personal use of drugs except for drugs prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. Hill's history of chemical dependency. Despite the provisions of Paragraph B.4, the urine specimen Dr. Hill submitted on December 24, 2003, was reported as positive for benzodiazepines and was GC/MS confirmed for the presence of the drugs nordiazepam, oxazepam, and temazepam.

CONCLUSIONS OF LAW

1. The acts, conduct, and/or omissions of Sam Hill, D.O., as set forth in Findings of Fact 2, 4, and 5, individually and/or collectively constitute "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.
2. The acts, conduct, and/or omissions of Dr. Hill, as set forth in Findings of Fact 5, individually and/or collectively constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15).

* * * * *

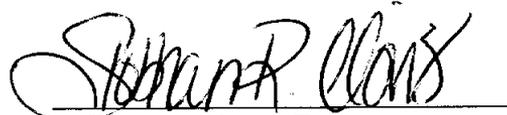
Dr. Hill's protestation of innocence is not sufficient to rebut the State's evidence, especially considering Dr. Hill's history of disciplinary problems and chemical dependency. This is Dr. Hill's fifth disciplinary action, the third based upon an impairment issue. After his last relapse, it was made clear to Dr. Hill that he only had one more chance. Accordingly, permanent revocation is warranted.

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Sam Hill, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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


Stobhan R. Clovis, Esq.
Hearing Examiner



State Medical Board of Ohio

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

EXCERPT FROM THE DRAFT MINUTES OF OCTOBER 13, 2004

REPORTS AND RECOMMENDATIONS

Ms. Sloan announced that the Board would now consider the findings and orders appearing on the Board's agenda. She asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Ghassan Haj-Hamed, M.D.; Sam Hill, D.O.; Barry Alan Fultz, M.T.; Sandra Kay Harewood, M.D.; Jeanne M. Kirkland, M.D.; Michael Paul Parker, M.D.; Jinka R. Sathya, M.D.; Animesh Chandulal Shah, M.D.; Hisham H. Soliman, M.D.; and Mary Mei-Ling Yun, M.D. A roll call was taken:

ROLL CALL:	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Ms. Sloan	- aye

The motion carried.

Ms. Sloan 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:	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Ms. Sloan	- aye

Ms. Sloan 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.

Ms. Sloan 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.

Dr. Davidson returned to the meeting at this time and advised that she received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the Reports and Recommendations appearing on today's agenda. She further advised that she does understand 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

.....

SAM HILL, D.O.

.....

DR. BUCHAN MOVED TO APPROVE AND CONFIRM MS. CLOVIS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF SAM HILL, D.O. DR. BHATI SECONDED THE MOTION.

.....

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

Vote:	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain

The motion carried.

TERMINATION NO. _____
01 _____

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

SAM HILL, D.O. :
Appellant, : Case No. 03CVF-06-6806
v. : JUDGE BENDER
STATE MEDICAL BOARD OF OHIO :
Appellee. :

**JUDGMENT ENTRY AFFIRMING THE STATE MEDICAL BOARD'S
JUNE 5, 2003 ORDER PERMANENTLY REVOKING
APPELLANT'S LICENSE TO PRACTICE OSTEOPATHIC MEDICINE AND
SURGERY, STAYING PERMANENT REVOCATION AND SUSPENDING
CERTIFICATE FOR A MINIMUM OF EIGHTEEN MONTHS WITH CONDITONS
FOR REINSTATEMENT OR RESTORATION**

This case is before the Court upon the appeal, pursuant to R.C. 119.12, of the June 5, 2003 Order of the State Medical Board of Ohio which permanently revoked Appellant, Sam Hill, D.O.'s license to practice osteopathic medicine and surgery in Ohio, stayed the permanent revocation and suspended his certificate for a minimum of eighteen months with conditions for reinstatement or restoration. For the reasons stated in the decision of this Court rendered on September 20, 2004, which decision is incorporated by reference as if fully rewritten herein, it is hereby.

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
OCT 1 3:37
CLERK OF COURTS

ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of Appellee, State Medical Board of Ohio, and the June 5, 2003 Order of the State Medical Board in the matter of Sam Hill, D.O., is hereby AFFIRMED. Costs to Appellant.

IT IS SO ORDERED.

Date 9/30/04

JUDGE BENDER

Eric Plinke *Rebecca Albers*

Eric J. Plinke (0059463)
John P. Carney (0074436)
Porter, Wright, Morris & Arthur, LLP
41 South High Street
Columbus, Ohio 43215-6194
(614) 227-2023

Counsel for Appellant

JIM PETRO (0022096)

Attorney General

Rebecca J. Albers
REBECCA J. ALBERS (0059203)
Senior Assistant Attorney General
Health and Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3400
(614) 466-8600

Counsel for Appellee

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

SAM HILL, D.O.,

Appellant,

vs.

STATE MEDICAL BOARD OF
OHIO,

Appellee.

CASE NO. 03CVF06-6806

JUDGE BENDER

CLERK OF COURTS
2004 SEP 20 PM 4:02
FRANKLIN CO. OHIO

**DECISION ON MERITS OF REVISED CODE 119.12 ADMINISTRATIVE
APPEAL, AFFIRMING ORDER ISSUED BY STATE MEDICAL BOARD OF
OHIO ON JUNE 5, 2003, PERMANENTLY REVOKING APPELLANT'S
CERTIFICATE TO PRACTICE OSTEOPATHIC MEDICINE AND SURGERY,
STAYING PERMANENT REVOCATION, AND SUSPENDING CERTIFICATE
FOR MINIMUM OF EIGHTEEN MONTHS, WITH CONDITIONS FOR
REINSTATEMENT OR RESTORATION**

Rendered this 20 day of September 2004.

BENDER, J.

This case is a Revised Code 119.12 administrative appeal, by Sam Hill, D.O. ("Appellant"), from an Order that the State Medical Board of Ohio ("Medical Board" or "Board") issued on June 5, 2003, permanently revoking Appellant's certificate to practice osteopathic medicine and surgery, staying the permanent revocation, and suspending the certificate for a minimum of eighteen months, with conditions for reinstatement or restoration. The record that the Board has certified to the Court reflects the following facts.

By letter dated February 12, 2003, the Board notified Appellant that it had summarily suspended his certificate to practice osteopathic medicine and surgery pursuant to R.C. 4731.22(G), and that the Board proposed to take further

disciplinary action against the certificate pursuant to R.C. 4731.22(B)(19) and (26). The Board alleged that Appellant had engaged in conduct that constituted an “[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,” as that clause is used in R.C. 4731.22(B)(26), and that constituted an “[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills,” as that clause is used in R.C. 4731.22(B)(19).

Appellant requested and was granted an evidentiary hearing on the Board’s charges. A Hearing Examiner conducted the hearing on March 7, 2003.

In a Report and Recommendation filed with the Board on March 28, 2003, and mailed to Appellant on March 31, 2003, the Hearing Examiner recommended that the Board suspend Appellant’s certificate for a minimum of one year, with conditions for reinstatement or restoration. The Hearing Examiner rendered the following findings of fact, which Appellant has not disputed on appeal:

- On June 14, 1989, the Medical Board entered an Order suspending Appellant’s certificate for one year. The 1989 Board Order stayed all but thirty days of the suspension and placed Appellant’s certificate on probation for three years, subject to certain terms, conditions, and limitations.
- On July 13, 1994, the Board issued to Appellant a Notice of Opportunity for Hearing, which was amended on September 14, 1994, alleging that Appellant had violated the 1989 Board Order by violating the terms of his probation, and also alleging that Appellant had violated R.C. 4731.22(B)(5), (10), (19), and (26).
- Appellant’s conduct underlying these allegations included: that he prescribed opiates in the name of a patient that he intended

for his own use; that he prescribed opiates to himself in his own name; that he submitted to the Board a quarterly declaration of compliance dated March 21, 1994, falsely indicating his compliance with the 1989 Board Order; that he admitted to receiving treatment and/or hospitalizations for depression in the late 1970s, the early 1980s, and in 1994; and that he admitted an addiction to opiates to a Board Investigator.

- On April 12, 1995, the Board entered an Order suspending Appellant's certificate for an indefinite period, but not less than six months, providing that, upon reinstatement, his certificate would be subject to certain probationary terms, conditions, and limitations for a period of five years.
- On December 30, 2002, Appellant appeared for work at Highland District Hospital in Hillsboro, Ohio. After reports of alcohol on Appellant's breath, hospital staff confronted him and he admitted to having consumed alcohol that day. Appellant was admitted to Highland District Hospital for alcohol detoxification. On the night of December 30-31, 2002, Appellant was transferred to the Ohio State University Medical Center due to suicidal ideation. On January 7, 2003, Appellant was transferred to Parkside Behavioral Healthcare, Inc., a Board-approved treatment provider, and was diagnosed with alcohol dependence, opiate dependency in remission, major depression, and anxiety disorder and avoidant personality.
- During treatment, Appellant admitted to consuming a pint of vodka a day for approximately one month and consuming some of his son's Ritalin. Appellant also admitted to Board staff on or about January 9, 2003, that he had consumed about one fifth of vodka per day.

The Hearing Examiner concluded that Appellant's conduct, as described above, constituted an "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in R.C. 4731.22(B)(26), and an "[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills," as that clause is used in R.C. 4731.22(B)(19).

The Medical Board considered this matter at its May 14, 2003 meeting. Following discussion, the Board voted to modify the Hearing Examiner's Report and Recommendation by permanently revoking Appellant's certificate, staying the permanent revocation, and suspending the certificate for a minimum of eighteen months, with conditions for reinstatement or restoration. On June 5, 2003, the Board mailed a copy of its Order to Appellant.

This appeal followed.

At the outset, the Court notes that Appellant does not assign error to the Hearing Examiner's findings of fact, which the Medical Board ultimately adopted as its own. Nor does Appellant assign error to the Hearing Examiner's conclusions of law, thereafter adopted by the Board, that Appellant's conduct violated R.C. 4731.22(B)(19) and (26). Instead, Appellant assigns error to the eighteen-month suspension that the Board imposed on Appellant's certificate.

Appellant argues that, although the Board imposed an eighteen-month suspension on his certificate, the certificate will actually be suspended for at least twenty-one months, because of the additional suspension time imposed by the Board's February 12, 2003 summary-suspension order. Appellant argues that a suspension of twenty-one months exceeds the penalties "contemplated" in Ohio Adm. Code 4731-16-02(D), which provides:

4731-16-02 General procedures in impairment cases.

(D) Except as provided in this paragraph, a practitioner who has relapsed during or following treatment shall be ineligible to apply for reinstatement for at least ninety days following the date of license suspension for a first relapse ***.

Appellant asserts that a suspension period of twenty-one months exceeds what Appellant characterizes as the ninety-day maximum ineligibility period mandated by Ohio Adm. Code 4731-16-02(D) in the case of a first relapse. The flaw in Appellant's argument, however, is that the rule does not impose a *maximum* of ninety days in the case of a first relapse. To the contrary, the rule states that a practitioner shall be ineligible for reinstatement for a *minimum* of ninety days in the case of a first relapse. Furthermore, Appellant's argument ignores the fact that the Board disciplined him, not only pursuant to R.C. 4731.22(B)(26) for his relapse into substance abuse, but also pursuant to R.C. 4731.22(B)(19) for his inability to practice due to mental illness. Appellant's first argument in support of his appeal is not well taken.

Appellant also argues that the Medical Board erred in imposing the eighteen-month suspension because the Board purportedly based that suspension on the erroneous perception that Appellant had suffered three relapses into substance abuse, instead of only one relapse. Appellant bases this argument on the following comments made by Board member Lance A. Talmage, M.D., during the May 14, 2003 Board meeting:

Dr. Talmage suggested that, to be consistent, the Board suspend Dr. Hill for 18 months, as it did Dr. Callion who suffered three relapses.

According to Appellant, Dr. Talmage mistakenly believed that Appellant, like Dr. Callion (whose case and records are not before the Court), suffered three relapses into substance abuse, and that Dr. Talmage's mistake led the Medical Board to impose a longer suspension on Appellant's certificate than was warranted. However, when Dr. Talmage's comments are read in context, along with the

comments of his fellow Board members, they do not support Appellant's contention.

The Board's minutes, in their entirety, state:

DR. BHATI MOVED TO APPROVE AND CONFIRM MR. ROBERTS' [THE HEARING EXAMINER'S] PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF SAM HILL, D.O. DR. STEINBERGH SECONDED THE MOTION.

Dr. Steinbergh stated that this is another very serious case of impairment. She added that she basically agrees with the Proposed Order, but she feels that Dr. Hill needs a longer suspension period. Dr. Steinbergh suggested a two-year suspension period, after which he will need to demonstrate the appropriateness of his return to practice by taking and passing the SPEX.

Dr. Egner stated that she agrees with Dr. Talmage's earlier statements about the question of suspension time of over a year. She stated that Dr. Hill will either make it or he won't, no matter how long the suspension period.

Dr. Egner noted that Dr. Hill has indicated that he appreciates the Board's confidence in him. She stated that she has no confidence in Dr. Hill, and added that she doesn't believe that he will make it. She added that she is willing to not amend the Order to permanent revocation this time, but she believes that a stayed permanent revocation is in order so that Dr. Hill knows that this is his last chance. Concerning whether Dr. Hill harmed patients when he drank a pint of vodka a day, Dr. Egner stated that he did, and added that she doesn't think that the Board can afford to take an additional chance. She added that she could vote for permanent revocation today. However, as far as a suspension goes, she doesn't have strong feelings one way or the other about the amount of time he is out of practice.

Dr. Talmage suggested that, to be consistent, the Board suspend Dr. Hill for 18 months, as it did Dr. Callion who suffered three relapses. He noted that Dr. Hill has eight years of sobriety, and therefore a one-year suspension is enough. Dr. Talmage also agreed that a stayed revocation is appropriate. However, he spoke against a two-year suspension.

DR. BHATI MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF SAM HILL, D.O., BY SUBSTITUTING THE FOLLOWING FOR PARAGRAPH A.

- A. PERMANENT REVOCATION, STAYED; SUSPENSION:
The certificate of Sam Hill, D.O., to practice osteopathic medicine and surgery in the State of

Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Hill's certificate shall be SUSPENDED for an indefinite period of time, but not less than eighteen (18) months.

DR. BUCHAN SECONDED THE MOTION.

Dr. Buchan stated that he thinks Dr. Hill understands that he has a little hope for him, and if he didn't he would vote to revoke Dr. Hill's license today.

A vote was taken on Dr. Bhati's motion to amend:

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

The motion carried.

DR. TALMAGE MOVED TO APPROVE AND CONFIRM MR. ROBERTS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF SAM HILL, D.O. DR. EGNER SECONDED THE MOTION. A vote was taken:

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

The motion carried.

Having reviewed the Board's discussion in its entirety, the Court does not conclude that the Board's decision to impose an eighteen-month suspension on Appellant's certificate was the product of a mistake. Before Dr. Talmage even mentioned Dr. Callion and his three relapses, Dr. Steinbergh stated that Appellant's

certificate should be suspended for two years. Before any mention of Dr. Callion and his three relapses, Dr. Egner stated that immediate and permanent revocation of Appellant's certificate, without a stay or a suspension, was an appropriate sanction. Even Dr. Talmage, after mentioning Dr. Callion and his three relapses, went on to state that, in Dr. Talmage's opinion, a one-year suspension was sufficient.

Moreover, the eighteen-month suspension is in accordance with R.C. 4731.22(B)(19) and (26), which provides:

§ 4731.22. Grounds for discipline; investigations; reinstatement; withdrawal of application; quality intervention program

(B) The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

(19) Inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills.

(26) Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice.

On December 30, 2002, Appellant appeared for work at a hospital with alcohol on his breath and admitted to having consumed alcohol that day. He was admitted to the hospital the same day for alcohol detoxification. That night, he was transferred

to another hospital due to suicidal ideation. One week later, Appellant was transferred to a Board-approved treatment provider, where he was diagnosed with alcohol dependence, opiate dependency in remission, major depression, and anxiety disorder and avoidant personality. While in treatment, Appellant admitted to consuming a pint of vodka a day for approximately one month and consuming some of his son's Ritalin. In early January 2003, Appellant admitted to Board staff that he had consumed approximately one fifth of vodka per day. Appellant's conduct violated R.C. 4731.22(B)(19) and (26), and the Board was therefore authorized to take action against Appellant's certificate, up to and including the ultimate sanction of permanent revocation. Appellant's second argument in support of his appeal is not well taken.

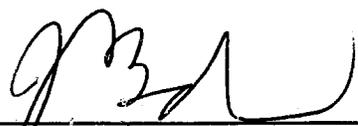
When considering an appeal from an order of the Medical Board, this Court must uphold the order if it is supported by reliable, probative, and substantial evidence, and is in accordance with law. R.C. 119.12; *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St. 3d 619, 621; *Landefeld v. State Med. Bd. of Ohio* (June 15, 2000), Franklin App. No. 99AP-612, unreported. The Ohio Supreme Court has recognized that the General Assembly granted the Medical Board a broad measure of discretion. See *Arlen v. State* (1980), 61 Ohio St. 2d 168, 174. In *Farrand v. State Med. Bd. of Ohio* (1949), 151 Ohio St. 222, 224, the Ohio Supreme Court stated:

*** The purpose of the General Assembly in providing for administrative hearings in particular fields was to facilitate such matters by placing the decision on facts with boards or commissions composed of men equipped with the necessary knowledge and experience pertaining to a particular field. ***

"Accordingly, when courts review a medical board order, they are obligated to accord due deference to the board's interpretation of the technical and ethical requirements of the medical profession." *Landefeld, supra*. The Court "will not substitute its judgment for the board's where there is some evidence supporting the board's order." *Harris v. Lewis* (1982), 69 Ohio St. 2d 577, 578.

Having considered the entire record that the Medical Board has certified to the Court, as well as the parties' arguments as set forth in their briefs, the Court finds that the Board's June 5, 2003 Order, permanently revoking Appellant's certificate to practice osteopathic medicine and surgery, staying the permanent revocation, and suspending the certificate for a minimum of eighteen months, with conditions for reinstatement or restoration, is supported by reliable, probative, and substantial evidence, and is in accordance with law. The Order is therefore **AFFIRMED**.

Counsel for Appellee shall prepare, circulate, and submit an appropriate journal entry, in accordance with Local Rule 25.



JUDGE JOHN F. BENDER

Copies mailed to:

ERIC J. PLINKE, ESQ. (0059463), JOHN P. CARNEY, ESQ. (0074436), Counsel for Appellant
REBECCA J. ALBERS, AAG (0059203), Counsel for Appellee



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 11, 2004

Sam Hill, D.O.
11332 Chestnut Road
Hillsboro, OH 45133

Dear Doctor Hill:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio [Board] 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 you or place you on probation for one or more of the following reasons:

- (1) On or about June 14, 1989, the Board entered an Order [June 1989 Order] suspending your certificate to practice osteopathic medicine and surgery in the State of Ohio for a period of one year. The 1989 Board Order stayed all but thirty days of that suspension and placed your certificate on probation for a period of three years subject to certain terms, conditions and limitations. A copy of the June 1989 Order is attached hereto and incorporated herein.
- (2) On or about July 13, 1994, the Board issued to you a Notice of Opportunity for Hearing [1994 Notice of Opportunity for Hearing], which was amended on or about September 14, 1994, alleging that you had violated the 1989 Board Order by violating the terms of your probation, and also alleging that you had violated Sections 4731.22(B)(5), (10), (19) and (26), Ohio Revised Code. Your conduct underlying these allegations included that you prescribed in the name of a patient opiates that you intended for your own use; that you prescribed opiates to yourself in your own name; that you submitted to the Board a quarterly declaration of compliance dated March 21, 1994, falsely indicating your compliance with the 1989 Board Order; that you admitted to receiving treatment and/or hospitalizations for depression in the late 1970s, the early 1980s and in 1994; and that you admitted an addiction to opiates to a Board Investigator. A copy of the 1994 Notice of Opportunity for Hearing is attached hereto and incorporated herein.

Thereafter, on or about April 12, 1995, the Board entered an Order [April 1995 Order] suspending your certificate to practice osteopathic medicine and surgery

Mailed 2-12-04

for an indefinite period, but not less than six months; providing that upon reinstatement, your certificate would be subject to certain probationary terms, conditions, and limitations for a period of five years. A copy of the April 1995 Order is attached hereto and incorporated herein.

- (3) On or about November 12, 1997, the Board issued to you a Notice of Opportunity for Hearing [1997 Notice of Opportunity for Hearing], alleging that you had violated the 1995 Board Order by practicing osteopathic medicine during your suspension in violation of Section 4731.22(B)(15) and (B)(20), Ohio Revised Code. A copy of the 1997 Notice of Opportunity for Hearing is attached hereto and incorporated herein.

Thereafter, on or about April 8, 1998, the Board entered an Order [April 1998 Order] reprimanding you. A copy of the April 1998 Order is attached hereto and incorporated herein.

- (4) On or about February 12, 2003, the Board issued to you a Notice of Summary Suspension and Opportunity for Hearing alleging that you had violated Sections 4731.22(B)(19) and (26), Ohio Revised Code. A copy of the Notice of Summary Suspension and Opportunity for Hearing is attached hereto and incorporated herein.

Thereafter, on or about May 14, 2003, the Board entered an Order [May 2003 Order] permanently revoking your certificate to practice osteopathic medicine and surgery and staying that revocation; suspending your certificate for an indefinite period, but not less than eighteen months; imposing interim monitoring conditions; establishing conditions for reinstatement; and providing that upon reinstatement, your certificate would be subject to certain probationary terms, conditions, and limitations for a period of at least five years. The Board's findings of fact included that, on or about December 30, 2002, you appeared for work at Highland District Hospital in Hillsboro, Ohio, and, after reports of alcohol on your breath, hospital staff confronted you and you admitted to having consumed alcohol that day. You were admitted to Highland District Hospital for alcohol detoxification. On or about December 30, 2002, you were transferred to University Hospitals at the Ohio State University due to suicidal ideation. On or about January 7, 2003, you were transferred from University Hospitals and admitted to Parkside Behavioral Healthcare, Inc., a Board-approved treatment provider, and were diagnosed with alcohol dependence, opiate dependency in remission, major depression, anxiety disorder and avoidant personality. You admitted to consuming a pint of vodka a day for approximately one month and consuming some of your son's Ritalin. A copy of the May 2003 Order is attached hereto and incorporated herein. To date, your license remains suspended subject to interim monitoring terms and conditions.

- (5) Paragraph (B)4 of the May 2003 Order requires that you shall abstain completely from the personal use of drugs except for drugs prescribed, dispensed or administered to you by another so authorized by law who has full knowledge of your history of chemical dependency. Despite the provisions of paragraph (B)4, the urine specimen you submitted on or about December 24, 2003, was reported as positive for benzodiazepines and was GC/MS confirmed for the presence of the drugs nordiazepam, oxazepam and temazepam.

Your acts, conduct, and/or omissions as alleged in paragraphs (2), (4) and (5) above, individually and/or collectively, constitute “[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,” as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (5) above, individually and/or collectively, constitute a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as that clause is used in Section 4731.22(B)(15), 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 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.

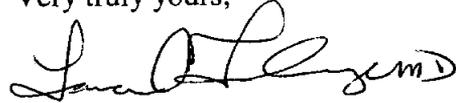
In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate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

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, 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,



Lance A. Talmage, M.D.
Secretary

LAT/blt
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5150 7421
RETURN RECEIPT REQUESTED

cc: Eric Plinke, Esq.
Porter, Wright, Morris & Arthur
41 S. High St.
Columbus, OH 43215-6194

CERTIFIED MAIL # 7000 0600 0024 5146 5905
RETURN RECEIPT REQUESTED

BEFORE THE STATE MEDICAL BOARD OF OHIO

Sam Hill D.O.
11332 Chestnut Road
Hillsboro, OH 45133

Case No. 03 CV F 06

Appellant,

Judge _____

vs.

State Medical Board of Ohio
77 South High Street, 17th Floor
Columbus, OH 43215-3413,

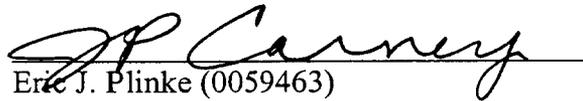
**Appeal from the Entry of Order
of May 14, 2003 and
Mailed June 5, 2003**

Appellee.

APPELLANT'S NOTICE OF APPEAL

Pursuant to Ohio Revised Code § 119.12, notice is hereby given that Appellant, Sam Hill, D.O., appeals the State Medical Board of Ohio's Entry of Order May 14, 2003, and mailed June 5, 2003 (copy attached as Exhibit A). The State Medical Board of Ohio Entry Order is not supported by the requisite quantum of reliable, probative, and substantial evidence nor is it in accordance with law.

Respectfully submitted,



Eric J. Plinke (0059463)
John P. Carney (0074436)
PORTER, WRIGHT, MORRIS & ARTHUR, LLP
41 South High Street
Columbus, Ohio 43215-6194
(614) 227-2000 Fax (614) 227-2100
Attorneys for Appellant
Sam Hill, D.O.

FILED
OHIO PLEAS COURT
FRANKLIN CO., OHIO
2003 JUN 19 PM 3:20
CLERK OF COURTS-CV

STATE MEDICAL BOARD
JUN 19 2003 6:35 PM

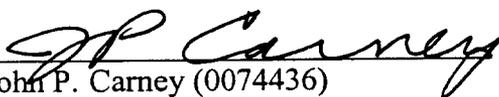
2003 JUN 19 A 11:10

STATE MEDICAL BOARD
OF OHIO

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of June, 2003 the foregoing Notice of Appeal was filed via hand delivery with the State Medical Board of Ohio, via hand delivery with the Court of Common Pleas, Franklin County, Ohio, and that a copy was served via ordinary U.S. Mail, postage prepaid, upon:

Rebecca Albers, Esq.
Assistant Attorney General
Health & Human Services Section
Ohio Attorney General
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3428


John P. Carney (0074436)

0074436
JUN 19 2003
COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO



State Medical Board of Ohio

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

May 14, 2003

Sam Hill, D.O.
11332 Chestnut Road
Hillsboro, OH 45133

Dear Doctor Hill:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Daniel Roberts, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on May 14, 2003, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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, MD/MS

Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL NO. 7000 0600 0024 5151 1596
RETURN RECEIPT REQUESTED

Cc: Eric J. Plinke and John P. Carney, Esqs.
CERTIFIED MAIL NO. 7000 0600 0024 5151 1589
RETURN RECEIPT REQUESTED

Mailed 6/5/03

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Daniel Roberts, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on May 14, 2003, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and correct copy of the same, 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)

Anand G. Garg, MD/MS
Anand G. Garg, M.D.
Secretary

May 14, 2003
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

SAM HILL, D.O.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on May 14, 2003.

Upon the Report and Recommendation of Daniel Roberts, 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 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 of Ohio for the above date.

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Sam Hill, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Hill's certificate shall be SUSPENDED for an indefinite period of time, but not less than eighteen months.
- B. **INTERIM MONITORING:** During the period that Dr. Hill's certificate to practice osteopathic medicine and surgery in Ohio is suspended, Dr. Hill shall comply with the following terms, conditions, and limitations:
 - 1. **Obey the Law:** Dr. Hill shall obey all federal, state and local laws and all rules governing the practice of osteopathic medicine and surgery in Ohio.
 - 2. **Personal Appearances:** Dr. Hill shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Order. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing

appearances shall be scheduled based on the appearance date as originally scheduled.

3. **Quarterly Declarations:** Dr. Hill shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
4. **Abstention from Drugs:** Dr. Hill 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. Hill's history of chemical dependency.
5. **Abstention from Alcohol:** Dr. Hill shall abstain completely from the use of alcohol.
6. **Comply with the Terms of the Aftercare Contract:** Dr. Hill shall maintain continued compliance with the terms of the aftercare contract entered into with his treatment provider, provided that, where terms of the aftercare contract conflict with terms of this Order, the terms of this Order shall control.
7. **Drug & Alcohol Screens; Supervising Physician:** Dr. Hill shall submit to random urine screenings for drugs and/or alcohol on a weekly basis or as otherwise directed by the Board. Dr. Hill shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug-testing panel utilized must be acceptable to the Secretary of the Board.

Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Hill shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Hill shall submit the required specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Hill. Dr. Hill and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Dr. Hill shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Order, whether all

urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or his responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Hill must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Hill shall further ensure that the previously designated supervising physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

All screening reports and supervising physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Hill's quarterly declaration. It is Dr. Hill's responsibility to ensure that reports are timely submitted.

8. **Submission of Blood or Urine Specimens upon Request:** Dr. Hill shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Hill's expense.
9. **Rehabilitation Program:** Dr. Hill shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Dr. Hill shall submit acceptable documentary evidence of continuing compliance with this program, which must be received in the Board's offices no later than the due date for Dr. Hill's quarterly declarations.
10. **Contact Impaired Physicians Committee:** Dr. Hill shall comply with his contract with the Ohio Physicians Effectiveness Program or with another impaired physicians committee approved by the Board.
11. **Psychiatric Assessment/Treatment:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Hill shall submit to the Board for its prior approval the name and curriculum vitae of a psychiatrist of Dr. Hill's choice. The Board may consider Linda Cole, M.D., as an approved provider.

Upon approval by the Board, Dr. Hill shall obtain from the approved psychiatrist an assessment of Dr. Hill's current psychiatric status. Prior to the initial assessment, Dr. Hill shall furnish the approved psychiatrist copies of the Board's Order, including the Summary of the Evidence, Findings of Fact, and Conclusions, and any other documentation from the hearing record which the Board may deem appropriate or helpful to that psychiatrist.

Upon completion of the initial assessment, Dr. Hill shall cause a written report to be submitted to the Board from the approved psychiatrist. The written report shall include:

- a. A detailed report of the evaluation of Dr. Hill's current psychiatric status and condition;
- b. A detailed plan of recommended psychiatric treatment, if any, based upon the psychiatrist's informed assessment of Dr. Hill's current needs; and
- c. Any reports upon which the treatment recommendation is based, including reports of physical examination and psychological or other testing.

Should the Board approved psychiatrist recommend psychiatric treatment, and upon approval by the Board, Dr. Hill shall undergo and continue psychiatric treatment weekly or as otherwise directed by the Board. The sessions shall be in person and may not be conducted by telephone or other electronic means. Dr. Hill shall comply with his psychiatric treatment plan, including taking medications as prescribed for his psychiatric disorder.

Dr. Hill shall continue in psychiatric treatment until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require reports from the approved treating psychiatrist. The psychiatric reports shall contain information describing Dr. Hill's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Hill's compliance with the treatment plan; Dr. Hill's psychiatric status; Dr. Hill's progress in treatment; and results of any laboratory or other studies that have been conducted since the prior report. Dr. Hill shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Hill's quarterly declaration.

In addition, Dr. Hill shall ensure that his treating psychiatrist immediately notifies the Board of Dr. Hill's failure to comply with his psychiatric treatment plan and/or any determination that Dr. Hill is unable to practice due to his psychiatric disorder.

In the event that the designated psychiatrist becomes unable or unwilling to serve in this capacity, Dr. Hill must immediately so notify the Board in writing and make arrangements acceptable to the Board for another psychiatrist as soon as practicable. Dr. Hill shall further ensure that the previously designated psychiatrist also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

- C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Hill's certificate to practice osteopathic medicine and surgery until all of the following conditions have been met:
1. **Application for Reinstatement or Restoration:** Dr. Hill shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
 2. **Compliance with Interim Conditions:** Dr. Hill shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order.
 3. **Demonstration of Ability to Resume Practice:** Dr. Hill shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Hill has successfully completed any required inpatient treatment.
 - b. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
 - c. Evidence of continuing full compliance with this Order.
 - d. Two written reports indicating that Dr. Hill's ability to practice has been evaluated for chemical dependency and/or impairment and that he has been found capable of practicing according to acceptable and prevailing standards of care. The evaluations shall have been performed by individuals or providers approved by the Board for making such evaluations. Moreover, the evaluations shall have been performed within sixty days prior to Dr. Hill's application for reinstatement or restoration. The reports of evaluation shall describe with particularity the bases for the determination that Dr. Hill has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his practice.
 4. **Psychiatric Reports Evidencing Fitness to Practice; Recommended Limitations:** At the time Dr. Hill submits his application for reinstatement or restoration, Dr. Hill shall provide the Board with a written report of

evaluation by a psychiatrist acceptable to the Board indicating that Dr. Hill's ability to practice has been assessed and that he has been found capable of practicing in accordance with acceptable and prevailing standards of care. Such evaluation shall have been performed within sixty days prior to Dr. Hill's application for reinstatement or restoration. The report of evaluation shall describe with particularity the bases for the determination that Dr. Hill has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his practice.

5. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Hill has not been engaged in the active practice of osteopathic medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.
- D. **PROBATION:** Upon reinstatement or restoration, Dr. Hill's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Hill shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
 2. **Modification of Terms:** Dr. Hill shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.
 3. **Practice Plan:** Prior to Dr. Hill's commencement of practice in Ohio, or as otherwise determined by the Board, Dr. Hill shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Hill's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Hill shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Dr. Hill submits his practice plan, he shall also submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary or Supervising Member will give preference to a physician who practices in the same locale as Dr. Hill and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Hill and his practice, and shall review Dr. Hill's patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Hill and his practice, and on the review of Dr. Hill's patient charts. Dr. Hill shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Hill's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Hill must immediately so notify the Board in writing. In addition, Dr. Hill shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Hill shall ensure that the previously designated monitoring physician also notifies the Board directly of his or his inability to continue to serve and the reasons therefore.

4. **Tolling of Probationary Period While Out of State:** In the event that Dr. Hill should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Hill must notify the Board in writing of the dates of departure and return. Periods of time spent outside 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 the purposes of the probationary monitoring are being fulfilled.
 5. **Violation of Terms of Probation:** If Dr. Hill violates probation in any respect, the Board, after giving his notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Hill's certificate will be fully restored.
- F. **RELEASES:** Dr. Hill shall provide continuing authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Hill's chemical dependency, psychiatric conditions, and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluations occurred before or after the effective date of this Order. The above-mentioned evaluative reports, summaries, and records are considered medical records for

purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.

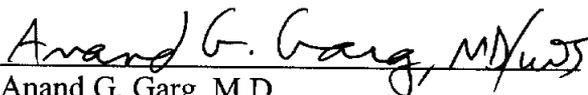
Dr. Hill shall also provide the Board written consent permitting any treatment provider from whom Dr. Hill obtains treatment to notify the Board in the event he fails to agree to or comply with any recommended treatment or with any treatment or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.

G. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Dr. Hill shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Hill shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

H. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, Dr. Hill shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Hill shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Hill shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of notification of approval by the Board.

(SEAL)


Anand G. Garg, M.D.
Secretary

May 14, 2003
Date

2003 MAR 28 P 3: 06

**REPORT AND RECOMMENDATION
IN THE MATTER OF SAM HILL, D.O.**

The Matter of Sam Hill, D.O., was heard by Daniel Roberts, Attorney Hearing Examiner for the State Medical Board of Ohio, on March 7, 2003.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated February 12, 2003, the State Medical Board of Ohio [Board] notified Sam Hill, D.O., that it had summarily suspended his certificate to practice osteopathic medicine and surgery in Ohio. The Board further notified Dr. Hill that it had proposed to take disciplinary action against his certificate based on one or more of the following reasons:
1. On or about June 14, 1989, the Board entered an Order suspending Dr. Hill's certificate to practice osteopathic medicine and surgery in the State of Ohio for a period of one year. All but thirty days of that suspension were stayed and Dr. Hill's certificate was placed on probation for three years subject to certain terms, conditions and limitations.
 2. On or about April 12, 1995, the Board entered an Order suspending Dr. Hill's certificate for an indefinite period, but not less than six months; providing that upon reinstatement, his certificate would be subject to certain probationary terms, conditions, and limitations for five years.
 3. On or about December 30, 2002, Dr. Hill appeared for work at Highland District Hospital [Highland] in Hillsboro, Ohio. After reports of alcohol on his breath, hospital staff confronted Dr. Hill and he admitted to having consumed alcohol that day. Dr. Hill was admitted to Highland for alcohol detoxification. On or about December 30, 2002, Dr. Hill was transferred to the Ohio State University Medical Center due to suicidal ideation. On or about January 7, 2003, Dr. Hill was transferred to Parkside Behavioral Healthcare, Inc., a Board-approved treatment provider, and was diagnosed with alcohol dependence, opiate dependency in remission, major depression, anxiety disorder and avoidant personality. Dr. Hill admitted to consuming a pint of vodka a day for approximately one month and

consuming some of his son's Ritalin. Dr. Hill also subsequently admitted to Board staff that he had consumed about one fifth of vodka per day.

The Board alleged that the acts, conduct, and/or omissions of Sam Hill, D.O., constitute "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,' as that clause is used in Section 4731.22(B)(26), Ohio Revised Code."

The Board further alleged that Dr. Hill's acts, conduct, and/or omissions constitute "[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills,' as that clause is used in Section 4731.22(B)(19), Ohio Revised Code."

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

- B. On February 25, 2003, Eric J. Plinke, Esq., submitted a written hearing request on behalf of Dr. Hill. (State's Exhibit 1B)

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Rebecca J. Albers and Mark A. Michael, Assistant Attorneys General.
- B. On behalf of the Respondent: John P. Carney, Esq., and Eric J. Plinke, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

- A. Presented by the State
 - 1. Larry Walker Simpson, M.D.
 - 2. Sam Hill, D.O., as on cross-examination.
- B. Presented by the Respondent
 - Sam Hill, D.O.

II. Exhibits Examined

A. Presented by the State:

1. State's Exhibits 1A-1N: Procedural exhibits.
2. State's Exhibit 2: Certified copies of Board records concerning the disciplinary history of Sam Hill, D.O.
- * 3. State's Exhibits 3-6: Certified copies of medical records for Dr. Hill.
4. State's Exhibit 7: State's Objections to Respondent's Exhibit E.

B. Presented by the Respondent:

- * 1. Respondent's Exhibit A: March 4, 2003, letter to the Board from Linda Cole, M.D.
- * 2. Respondent's Exhibit B: Copies of Ohio Physicians Effectiveness Program [OPEP] Status Reports for Dr. Hill dated between July 29, 1998, and January 30, 2003.
- * 3. Respondent's Exhibit C: Copy of OPEP Contract with Dr. Hill.
4. Respondent's Exhibit D: Dr. Hill's Curriculum Vitae.
- * 5. Respondent's Substitute Exhibit E: February 24, 2003, letter to the Board from Barron Farrier, CCDC III, and a copy of Dr. Hill's OPEP Contract.

C. Presented by the State and the Respondent:

Joint Exhibit 1: Stipulation.

- * Exhibits marked "*" are under seal to protect patient privacy.

PROCEDURAL MATTERS

The record was held open to allow the Respondent to submit two additional documents which were submitted in a timely manner. Respondent's Substitute Exhibit D is admitted to the record without objection. Respondent's Exhibit E is admitted over the objection of the State. The State's objection is admitted as State's Exhibit 7. Accordingly, the record closed on March 21, 2003.

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.

Background Information

1. Sam Hill, D.O., completed his undergraduate education at Temple University before attending the Kirksville College of Osteopathic Medicine where he graduated in 1982. Dr. Hill completed a one-year rotating internship and one year of residency in pathology at Doctor's Hospital in Columbus. Dr. Hill testified that he has been in family practice since 1984. Dr. Hill practiced at various offices in Columbus from 1984 until 1992. (Hearing Transcript [Tr.] at 27-29, 35-36 and 48-49; Respondent's Exhibit [Resp. Ex.] D)
2. Dr. Hill became a Diplomate of the National Board of Osteopathic Examiners in 1983. He became Board Certified by the American Osteopathic Board of Family Physicians in 1994. (St. Ex. 6 at 23; Resp. Ex. D)
3. Dr. Hill was engaged in the private practice of medicine in Lynchburg, Ohio, from 1993 until 2001. Dr. Hill joined the Community Health Clinic, which is associated with the Highland District Hospital [Highland] in Hillsboro, Ohio, in October 2001. (Tr. 35; State's Exhibit [St. Ex.] 6 at 23; Resp. Ex. D)
4. Dr. Hill testified that the work environment of his practice in Lynchburg had been very low key and very low stress. He noted that this contrasted sharply with the high stress corporate medicine environment at the hospital's clinic. Dr. Hill commented that he had never felt that he could keep caught up at Highland. He added that the patients at the clinic had been largely a Medicaid population with many social problems. (Tr. 35-36)

Dr. Hill's 1989 Board Order

5. By letter dated December 8, 1988, the Board notified Dr. Hill that it had proposed to take disciplinary action against him based on allegations that he had employed a physician assistant without complying with the registration requirements of Ohio law. A hearing was conducted on March 30, 1989. (Tr. 29; St. Ex. 2 at 77-92; Joint Exhibit [Jt. Ex.] 1)
6. Subsequent to hearing, the Board concluded that Dr. Hill had violated Section 4731.22(B)(20), Ohio Revised Code by assisting in or abetting the violation of Section 4731.41, Ohio Revised Code, by "John E. Patton, P.A.C." The Board found that Dr. Hill had employed Mr. Patton as a physician's assistant from July 1, 1988, until at least September 6, 1988, knowing that Mr. Patton was not properly registered with the Board. (Tr. 29; St. Ex. 2 at 77-92; Jt. Ex. 1)

7. On June 14, 1989, the Board entered an Order suspending Dr. Hill's certificate to practice osteopathic medicine and surgery in Ohio for a period of one year. The 1989 Board Order stayed all but thirty days of that suspension and placed Dr. Hill's certificate on probation for a period of three years subject to certain terms, conditions and limitations. Due to legal appeals, Dr. Hill's suspension did not begin until April 1991. His three-year period of probation began on May 21, 1991. (Tr. 29; St. Ex. 2 at 25-92; Jt. Ex. 1)

Dr. Hill's 1994 Notice of Opportunity for Hearing

8. On July 13, 1994, the Board issued a Notice of Opportunity for Hearing, which was amended on September 14, 1994, alleging that Dr. Hill had violated the terms of his probation under the 1989 Board Order. The Board also alleged that Dr. Hill had violated Sections 4731.22(B)(5), (10), (19) and (26), Ohio Revised Code. A Board hearing was conducted on December 1, 1994. (St. Ex. 2 at 25-76; Jt. Ex. 1)
9. During an April 21, 1994, interview of Dr. Hill by Board Investigator Hunter, Dr. Hill had related treatment of his depression at Harding Hospital in the late 1970s and early 1980s. At his hearing concerning the present matter, Dr. Hill denied having received treatment for depression in the 1970s. Dr. Hill admitted to receiving treatment and/or hospitalizations for depression in the early 1980s and in 1994. (St. Ex. 2 at 45-46; Jt. Ex. 1)

Dr. Hill's Addiction to Hydrocodone

10. During the December 1, 1994, Board hearing, Dr. Hill testified that he had begun using opiates in 1989 when he had self treated a painful muscle spasm condition. He further testified that he had been aware that his use had been increasing. Dr. Hill stated that he had twice attempted to withdraw from the opiates by using Catapres. However, he opined that his attempts had been unsuccessful because he had denied at the time that he was addicted. He became dependent on hydrocodone and had been ingesting an average of ten 7.5 mg hydrocodone tablets a day when he entered treatment at Shepherd Hill in April 1994. (St. Ex. 2 at 27-76; Jt. Ex. 1)

Dr. Hill participated in at least twenty-eight days of inpatient treatment at Shepherd Hill. His discharge diagnosis was hydrocodone dependence, nicotine dependence, and major depressive episode, recurrent, severe; personality disorder, not otherwise specified with avoiding traits; neurofibromatosis, gastroesophageal reflux and proctalgia. (St. Ex. 2; Jt. Ex. 1)

Dr. Hill's 1995 Board Order

11. Subsequent to hearing, the Board found that, between October 1993 and March 1994, Dr. Hill had written at least thirty-one controlled substance prescriptions in his own name or in the name of a patient, intending the drugs for Dr. Hill's use. The majority of the

prescriptions were for drugs containing hydrocodone. The Board also found that Dr. Hill had admitted obtaining drugs from samples and by writing prescriptions in the name of at least one other individual. The Board also found that Dr. Hill had submitted quarterly declarations on December 6, 1993, and March 21, 1994, pursuant to the 1989 Board Order, falsely asserting that he was in compliance with the regulations governing the practice of medicine in Ohio. (Tr. 29-30; St. Ex. 2 at 25-76; Jt. Ex. 1)

12. On April 12, 1995, the Board entered an Order suspending Dr. Hill's certificate for an indefinite period, but not less than six months; providing that upon reinstatement, his certificate to practice osteopathic medicine and surgery would be subject to certain probationary terms, conditions, and limitations for a period of five years. Dr. Hill appealed the 1995 Board Order to the Franklin County Court of Common Pleas. The court granted a stay. The stay terminated upon the issuance of the court's decision affirming the 1995 Board Order on May 7, 1996. (St. Ex. 2 at 9-76)

On June 18, 1996, the Board advised Dr. Hill that the suspension of his certificate had become effective on June 7, 1996. Dr. Hill continued to practice until September 25, 1996. Dr. Hill's certificate was reinstated on May 14, 1997. (St. Ex. 2 at 9-24)

Dr. Hill's 1998 Board Order

13. Subsequent to a hearing on February 4, 1998, the Board found that Dr. Hill had continued to practice until September 25, 1996, in spite of the June 7, 1996, effective date of his suspension under the 1995 Board Order. The Board further found that Dr. Hill's continued practice after the effective date of the suspension under the 1995 Board Order constituted a "(v)iolation of the conditions of limitation placed by the board upon a certificate to practice or violation of the conditions of limitation upon which a limited or temporary registration or certificate to practice is issued," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code, and practicing osteopathic medicine without a certificate, in violation of Sections 4731.43 and 4731.22(B)(20), Ohio Revised Code. (St. Ex. 2 at 9-24)

However, the Board noted that:

Generally, acting on the advice of an attorney is not a defense to any civil or criminal action, and the same should hold true for administrative actions. Nevertheless, the evidence suggests that Dr. Hill may have been led to believe that he had a legal right to continue his practice of osteopathic medicine and surgery based on somewhat ambiguous statutory language and on the opinion of the Franklin County Court of Common Pleas in another matter.

(St. Ex. 2 at 9-24)

Accordingly, the Board ordered that Dr. Hill be reprimanded for his continued practice subsequent to the effective date of his suspension under the 1995 Board Order. The Board further ordered that the 1998 Board Order would “have no effect” on the 1995 Board Order. (St. Ex. 2 at 9-24)

Dr. Hill’s Treatment Subsequent to the 1995 Board Order

14. Dr. Hill testified that he had maintained sobriety for eight and a half years. The evidence in the record indicates that, except as already noted, Dr. Hill had been compliant with the requirements of his 1995 Board Order and with treatment between entering Shepherd Hill and the end of his probation under the 1995 Board Order. Ohio Physicians Effectiveness Program [OPEP] quarterly Status Reports addressed to the Board and signed by Barron Farrier, CCDC III, from July 29, 1998, through October 25, 2002, state that all information available to OPEP indicated that Dr. Hill was in stable recovery and that his compliance with OPEP requirements had been satisfactory. (Tr. 42; St. Ex. 2; Resp. Ex. B)

Dr. Hill’s December 21-22, 2002, Hospitalization

15. On the evening of December 21, 2002, Dr. Hill’s wife arrived home to find Dr. Hill intoxicated. She took him to Highland. Dr. Hill was admitted to the hospital and treated for dehydration and elevated blood alcohol. The treating physician noted concern over Dr. Hill’s report of worsening depression. Dr. Hill was discharged to home the following afternoon. (Tr. 31-32; St. Ex. 3)

The December 30, 2002 Incident

16. Dr. Hill testified that on the morning of December 30, 2002, he had arrived at work at Highland and had been confronted by staff before he had seen any patients because of reports of alcohol on his breath. He explained that on being confronted he had admitted that he had been drinking. He further explained that he had known that he needed help and that he had admitted himself to Highland. Dr. Hill underwent alcohol detoxification and was treated for dehydration at Highland. (Tr. 31-32 and 47; St. Ex. 4; Jt. Ex. 1)

When asked at hearing if he had been drinking while working, Dr. Hill replied that he had been drinking “early in the morning the night before.” Dr. Hill testified that his last drink had been on December 30, 2002. (Tr. 31-32 and 47; St. Ex. 4; Jt. Ex. 1)

Initial Information Provided by Linda Cole, M.D.

17. By letter dated March 4, 2003, Linda Cole, M.D., informed the Board that she is Dr. Hill's attending psychiatrist and that he had asked her to outline for the Board his relapse as well as his prognosis for recovery. (Tr. 43-44; Resp. Ex. A)

Dr. Cole stated that Dr. Hill had continued to work his recovery program subsequent to his release from probation by the Board in the spring of 2002. However, Dr. Hill suffered a relapse of his depression, which led to his relapse with alcohol. Dr. Cole opined that there had been a number of contributing factors that led to the worsening of Dr. Hill's depression. Dr. Cole elaborated that:

[Dr. Hill] had been doing reasonably well until February [2002] when he was hospitalized with severe mastoiditis from which he was slowly recovering when he was informed of his only remaining brother's suicide. Upon his return he was hit with the fact that his long time [AA] sponsor had died unexpectedly.

(Tr. 39; St Ex. 5; St. Ex. 6 at 7, 24-25; Resp. Ex. A)

Dr. Cole commented that Dr. Hill's situation had been made more difficult by financial concerns, reduced follow-up visits with her resulting in less aggressive medication management of his depression, an extreme work overload over which he had little control, concerns over malpractice insurance, and a difficult family situation. Dr. Cole opined that Dr. Hill's "avoidant personality configuration" exacerbated the other difficulties in his life. Dr. Cole observed that depressive symptoms which had begun as "a complicated grief reaction" progressed into a slow spiral of anxiety and depression. (Tr. 39; Resp. Ex. A)

Additional Information Concerning Dr. Hill's 2002 Relapse

18. Dr. Hill testified that he had relapsed because his depression had gotten out of control over a period of several months. He added that he had suffered from a lot of anxiety and had had difficulty managing stress and pressure from work. Dr. Hill commented that he is not very good at saying "no" and has trouble setting limits. He noted that he had had trouble sleeping and attempts by Dr. Cole to adjust his medications had not been helpful. (Tr. 30-31 and 38-39; St. Ex. 4; Jt. Ex. 1)
19. Dr. Hill subsequently reported to his treating physician at Highland that he had relapsed by drinking alcohol after eight years of sobriety. He further reported that he had been drinking a fifth to a fifth and a half of vodka every day and had been drinking everyday for the previous month. During the course of subsequent treatment, Dr. Hill admitted to consuming a pint of vodka a day for approximately one month and consuming some of his son's Ritalin. Dr. Hill also admitted to Board staff on or about January 9, 2003, that he

had been consuming about one fifth of vodka per day. (Tr. 39-41; St. Ex. 4; St. Ex. 6 at 7; St. Ex. 7 at 7, 24-25 and 31; Resp. Ex. B; Jt. Ex. 1)

20. Dr. Hill testified at his March 7, 2003, hearing that he is familiar with the allegations the Board had made in the February 12, 2003, Notice of Opportunity for Hearing. Dr. Hill testified that he had entered into a stipulation in the present matter admitting the majority of the allegations made by the Board. However, Dr. Hill denied the allegations that he had been treated for depression in the 1970s and that his alcohol consumption had reached a pint of vodka per day prior to the last week of December 2002. (Tr. 24-27 and 36-37; St. Ex. 1A; Jt. Ex. 1)
21. Dr. Hill testified that he had continued to go to AA meeting even after his relapse had started. He related that he had hoped that something would click from going to AA meetings and that he would be able to stop drinking on his own. (Tr. 38)

Treatment subsequent to December 30, 2002

22. Early in the morning of December 31, 2002, Dr. Hill was admitted to the Behavioral Healthcare and Medicine facility at the Ohio State University Medical Center [OSU] due to suicidal ideation. Medical records from OSU reflect that upon admission, Dr. Hill had stated that “[t]he easiest thing to do would be to end it all.” Medical records for Dr. Hill indicate that Dr. Hill’s father, brother, and cousin had all suffered from depression and alcoholism and that all three had committed suicide. The records further indicate that Dr. Hill had attempted suicide during the 1980s. (Tr. 47; St. Ex. 5)

Dr. Hill reported to the staff at OSU that he had remained compliant with his prescribed outpatient medications. Those medications were Effexor, 150 mg daily; Celexa, 40 mg daily; and Prevacid, 30 mg daily. (Tr. 47; St. Ex. 5)

23. Dr. Hill’s discharge diagnoses at OSU included the following: major depressive disorder, recurrent, severe without psychosis; alcohol dependence; anxiety disorder-not otherwise specified; neurofibromatosis; and gastroesophageal reflux disease. At the time of his discharge from OSU, Dr. Hill was prescribed the following daily medications: Celexa 40 mg, Folvite 1 mg, Protonix 40 mg, Betalin-S 100 mg, and Effexor XR 225 mg. (St. Ex. 5 at 57-60)

On January 7, 2003, Dr. Hill was transferred from OSU to Parkside Behavioral Healthcare, Inc. [Parkside], a Board-approved treatment provider. (Tr. 41; St. Exs. 5 and 6)

Reporting the Relapse

24. Dr. Hill testified that he had self-reported his relapse. He elaborated that, while at OSU, he had telephoned Mr. Farrier at OPEP to seek his advice on a Board approved Treatment

Provider. He spoke with Danielle Bickers of the Board's staff after he had been admitted to Parkside. Dr. Hill explained that he had self reported his relapse because he believed that he had an ethical obligation to report. He added that he had also been obligated to report under his OPEP agreement. (Tr. 31-32, 37-38 and 41)

Testimony of Larry Walker Simpson, M.D.

25. Larry Walker Simpson, M.D., testified at hearing on behalf of the State. Dr. Simpson testified that he had graduated from medical school and completed his residency training at the Ohio State University in psychiatry and child psychiatry. Dr. Walker stated that his current practice involves primarily seeing juvenile patients at various clinics. He added that he also does addiction evaluations for Parkside and for the Substance Abuse and Mental Illness program in Delaware. (Tr. 14-16)

26. Dr. Simpson testified that he had met Dr. Hill on January 13, 2003, at Parkside. He observed that Dr. Hill had been extremely anxious and depressed in spite of being on what appeared to Dr. Simpson to be therapeutic doses of anti-depressant medication. Dr. Simpson added that Dr. Hill had been having suicidal thoughts and had been overwhelmed, worried about his future and unable to sleep. (Tr. 16-17)

Dr. Simpson explained that his primary role at Parkside is to evaluate for mental illness. However, he explained that often it is difficult to separate the mental illness from the substance abuse problem in a patient. Dr. Simpson testified that, in Dr. Hill's case, he is "pretty confident" that there is a serious mental health problem separate from the addiction problem. He explained that the mental illness and the addiction problems each caused sufficient impairment so that Dr. Hill was unable to practice medicine. (Tr. 17-19)

27. Dr. Hill was an inpatient at Parkside for two and a half weeks followed by an intensive outpatient program that he completed on February 21, 2003. At Parkside, Dr. Simpson had evaluated Dr. Hill and adjusted his medications. Dr. Simpson had prescribed Effexor 225 mg. qam, Celexa 40 mg qam, Seroquel 150 mg qhs, and Trazodone 150 mg qhs. Dr. Hill testified that he has been diagnosed with alcohol dependency, opiate dependency in remission, major depression and avoidance personality disorder. Dr. Hill was also diagnosed with anxiety disorder. (Tr. 41; St Ex. 7 at 7, 24-25 and 31; Resp. Exs. A and B; Jt. Ex. 1)

28. Dr. Simpson testified that he had last seen Dr. Hill on March 3, 2003. Dr. Simpson opined that Dr. Hill "seems very interested in getting some help." Dr. Simpson testified that, while Dr. Hill is getting better, both he and Dr. Hill had agreed that he is not yet ready to resume the practice of medicine. Dr. Simpson explained that Dr. Hill is still feeling too overwhelmed and would probably have difficulty making necessary decisions in the course of practice. (Tr. 19-21)

29. Dr. Simpson testified that it is important for Dr. Hill to continue to work with Dr. Cole to make a determination as to when it would be appropriate to return to practice. Dr. Simpson added that it will be important for Dr. Hill to continue treatment and be compliant with prescribed medications even after he has reached the point where he can return to practice. He explained that he would be concerned about the cyclical nature of depression and that continued monitoring of Dr. Hill by a psychiatrist to identify potential problems would also be important. (Tr. 18-23)

Additional Information Provided by Dr. Cole

30. In her March 4, 2003, letter to the Board, Dr. Cole stated that she had re-evaluated Dr. Hill on February 24, 2003, after having not seen him for a period of five months. Dr. Cole opined that Dr. Hill's commitment to treatment and willingness to cooperate with whatever is required of him is evident. She noted that Dr. Hill had expressed concerns that might have interfered with his following up with her. However, she believes that these concerns have been addressed. (Tr. 47-48; Resp. Ex. A)
31. Dr. Cole advised the Board that active treatment and a strong commitment from both Dr. Hill and his wife will be required to address important issues facing Dr. Hill if he is to succeed in working his recovery. Dr. Cole outlined the important issues as follows:
1. Avoidant personality characteristics.
 2. His problems addressing concerns in his marriage.
 3. An extreme workload.
 4. Close psychopharmacological management of his clinical depression.
- (Resp. Ex. A)
32. Dr. Cole stated that Dr. Hill's current medication regime is Effexor XR 225 mg per day, Lexapro 30 mg per day, Seroquel 150 mg qhs, and Trazodone 150 mg qhs. She noted that Dr. Hill is to see her once a month and can reach her by telephone if he needs to speak to her between scheduled office visits. (Resp. Ex. A)

Additional Information

33. At hearing, Dr. Hill commented that his present situation presents him with the opportunity to set appropriate guidelines to lead a healthy life. Dr. Hill testified that he has spent most of his time since December 30, 2002, in treatment. Dr. Hill further testified that every week he attends three or four AA meetings, a Caduceus meeting and aftercare at Parkside. He added that in addition to seeing Dr. Cole every three to four weeks he is also seeing Barbara Bringham, a therapist recommended by Parkside, to work on issues including setting limits, dealing with authority figures, and communicating with his wife. He noted that he intends to continue seeing Dr. Cole and Ms. Bringham.

Dr. Hill testified that his wife is amenable to couples therapy recommended by Dr. Cole. Dr. Hill noted that the plan for managing his anxiety and depression involves primarily medication. (Tr. 39-48; Resp. Ex. A)

34. Dr. Hill testified that he is currently under an OPEP contract, which requires him to abstain from mood altering substances including alcohol. He is further required to report any failure to remain abstinent. Dr. Hill is also required to maintain a treating physician to manage his medications. Additionally he is required to attend three AA meetings and undergo urine screening every week. He noted that he is compliant with the terms of his OPEP contract except for the urine screens, which are in the process of being set up. (Tr. 41-42; Resp. Exs. C and E)
35. Dr. Hill testified that he has learned that he is “very definitely an alcoholic.” He noted that, for him, alcohol gets out of control very quickly. Dr. Hill commented that he is “convinced if [he] picks up a drink today, [he’d] be dead in a matter of weeks.” Dr. Hill testified that he has also learned that a good recovery program can fail quickly if anxiety and depression problems are not managed. Dr. Hill stated that his eight and a half years of sobriety fell apart in about a month and a half primarily because of his depression and a much higher level of anxiety than he had ever experienced. He explained that he had felt a lot of pressure trying to control his feelings and that his medications did not seem to be helping. He added that this relapse is probably just about the worst thing that has ever happened to him. He commented that he feels a lot of guilt and shame at letting everybody down including himself. (Tr. 44-47)
36. Dr. Hill testified that he is not currently able to practice medicine. He elaborated that he feels he has “a little ways to go yet.” Dr. Hill further testified that he wants to return to the practice of medicine and believes that the Board should permit it. He explained that the basis for this view is that he believes that he can maintain sobriety as he had done previous to his relapse. He added that he can control his depression. He commented that he has the ability to do what he is told and listen to the experts concerning his treatment needs. He believes that he can again be competent to practice. (Tr. 45)

FINDINGS OF FACT

1. On June 14, 1989, the Board entered an Order suspending Dr. Hill’s certificate to practice osteopathic medicine and surgery in the State of Ohio for a period of one year. The 1989 Board Order stayed all but thirty days of that suspension and placed Dr. Hill’s certificate on probation for a period of three years subject to certain terms, conditions and limitations.
2. On July 13, 1994, the Board issued to Dr. Hill a Notice of Opportunity for Hearing, which was amended on September 14, 1994, alleging that Dr. Hill had violated the 1989 Board

Order by violating the terms of his probation, and also alleging that Dr. Hill had violated Sections 4731.22(B)(5), (10), (19) and (26), Ohio Revised Code.

Dr. Hill's conduct underlying these allegations included that he prescribed opiates in the name of a patient that he intended for his own use; that he prescribed opiates to himself in his own name; that he submitted to the Board a quarterly declaration of compliance dated March 21, 1994, falsely indicating his compliance with the 1989 Board Order; that he admitted to receiving treatment and/or hospitalizations for depression in the late 1970s, the early 1980s and in 1994; and that he had admitted an addiction to opiates to a Board Investigator.

On April 12, 1995, the Board entered an Order suspending Dr. Hill's certificate for an indefinite period, but not less than six months; providing that upon reinstatement, his certificate to practice osteopathic medicine and surgery would be subject to certain probationary terms, conditions, and limitations for a period of five years.

3. On December 30, 2002, Dr. Hill appeared for work at Highland District Hospital [Highland] in Hillsboro, Ohio. After reports of alcohol on his breath, hospital staff confronted Dr. Hill and he admitted to having consumed alcohol that day. Dr. Hill was admitted to Highland for alcohol detoxification. On the night of December 30-31, 2002, Dr. Hill was transferred to the Ohio State University Medical Center due to suicidal ideation. On January 7, 2003, Dr. Hill was transferred to Parkside Behavioral Healthcare, Inc., a Board-approved treatment provider, and was diagnosed with alcohol dependence, opiate dependency in remission, major depression, and anxiety disorder and avoidant personality.

During treatment, Dr. Hill admitted to consuming a pint of vodka a day for approximately one month and consuming some of his son's Ritalin. Dr. Hill also admitted to Board staff on or about January 9, 2003, that he had consumed about one fifth of vodka per day.

CONCLUSIONS OF LAW

1. The acts, conduct, and/or omissions of Sam Hill, D.O., as described in Findings of Fact 2 and 3, individually and/or collectively, constitute "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.
2. Dr. Hill's acts, conduct, and/or omissions as described in Findings of Fact 3, individually and/or collectively, constitute "[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but

not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills,” as that clause is used in Section 4731.22(B)(19), Ohio Revised Code.

* * * * *

At hearing, Sam Hill, D.O., admitted substantially all of the accusations brought by the Board. The two sub points he declined to admit concern his previous admissions of the level of alcohol consumption prior to the last week of December 2002, and treatment for depression in the 1970s.

The evidence in the records supports the conclusion that Dr. Hill had indeed made the admissions alleged by the State but denied by Dr. Hill at hearing. Dr. Hill’s ability at the time of hearing to accurately recall and report the details of his consumption of alcohol in late 2002 and his treatment decades ago with precision is doubtful at best. There is no evidence in the record to suggest that Dr. Hill is being intentionally dishonest. The admissions contained in the record are inconsistent and at times ambiguous. The primary sources of this information in all cases appears to be various statements by Dr. Hill at different points in his recovery and treatment. Even if the evidence on these two sub points is construed in the light most favorable to Dr. Hill, it does not affect the Conclusions of Law or the Proposed Order.

Dr. Hill has a long disciplinary record with the Board and suffers from serious mental health and addiction problems. He suffered a relapse and reported for work while still under the influence of alcohol.

However, Dr. Hill demonstrated eight and a half years of sobriety before his relapse. He appears to understand the difficult challenges he faces and has demonstrated a willingness to comply with needed treatment. His disciplinary history also provides the Board with evidence of his ability to comply with a treatment plan and the terms of Board probation. Dr. Hill’s return to practice will require a great deal of hard work on his part and close and careful monitoring by the Board.

PROPOSED ORDER

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Sam Hill, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than one year.
- B. **INTERIM MONITORING:** During the period that Dr. Hill’s certificate to practice osteopathic medicine and surgery in Ohio is suspended, Dr. Hill shall comply with the following terms, conditions, and limitations:
 1. **Obey the Law:** Dr. Hill shall obey all federal, state and local laws and all rules governing the practice of osteopathic medicine and surgery in Ohio.

2. **Personal Appearances**: Dr. Hill shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Order. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
3. **Quarterly Declarations**: Dr. Hill shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
4. **Abstention from Drugs**: Dr. Hill 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. Hill's history of chemical dependency.
5. **Abstention from Alcohol**: Dr. Hill shall abstain completely from the use of alcohol.
6. **Comply with the Terms of the Aftercare Contract**: Dr. Hill shall maintain continued compliance with the terms of the aftercare contract entered into with his treatment provider, provided that, where terms of the aftercare contract conflict with terms of this Order, the terms of this Order shall control.
7. **Drug & Alcohol Screens; Supervising Physician**: Dr. Hill shall submit to random urine screenings for drugs and/or alcohol on a weekly basis or as otherwise directed by the Board. Dr. Hill shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug-testing panel utilized must be acceptable to the Secretary of the Board.

Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Hill shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Hill shall submit the required specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Hill. Dr. Hill and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Dr. Hill shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Order, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or his responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Hill must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Hill shall further ensure that the previously designated supervising physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

All screening reports and supervising physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. Hill's quarterly declaration. It is Dr. Hill's responsibility to ensure that reports are timely submitted.

8. **Submission of Blood or Urine Specimens upon Request**: Dr. Hill shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Hill's expense.
9. **Rehabilitation Program**: Dr. Hill shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Dr. Hill shall submit acceptable documentary evidence of continuing compliance with this program, which must be received in the Board's offices no later than the due date for Dr. Hill's quarterly declarations.
10. **Contact Impaired Physicians Committee**: Dr. Hill shall comply with his contract with the Ohio Physicians Effectiveness Program or with another impaired physicians committee approved by the Board.
11. **Psychiatric Assessment/Treatment**: Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Hill shall submit to the Board for its prior approval the name and curriculum vitae of a psychiatrist of Dr. Hill's choice. The Board may consider Linda Cole, M.D., as an approved provider.

Upon approval by the Board, Dr. Hill shall obtain from the approved psychiatrist an assessment of Dr. Hill's current psychiatric status. Prior to the initial assessment,

Dr. Hill shall furnish the approved psychiatrist copies of the Board's Order, including the Summary of the Evidence, Findings of Fact, and Conclusions, and any other documentation from the hearing record which the Board may deem appropriate or helpful to that psychiatrist.

Upon completion of the initial assessment, Dr. Hill shall cause a written report to be submitted to the Board from the approved psychiatrist. The written report shall include:

- a. A detailed report of the evaluation of Dr. Hill's current psychiatric status and condition;
- b. A detailed plan of recommended psychiatric treatment, if any, based upon the psychiatrist's informed assessment of Dr. Hill's current needs; and
- c. Any reports upon which the treatment recommendation is based, including reports of physical examination and psychological or other testing.

Should the Board approved psychiatrist recommend psychiatric treatment, and upon approval by the Board, Dr. Hill shall undergo and continue psychiatric treatment weekly or as otherwise directed by the Board. The sessions shall be in person and may not be conducted by telephone or other electronic means. Dr. Hill shall comply with his psychiatric treatment plan, including taking medications as prescribed for his psychiatric disorder.

Dr. Hill shall continue in psychiatric treatment until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require reports from the approved treating psychiatrist. The psychiatric reports shall contain information describing Dr. Hill's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Hill's compliance with the treatment plan; Dr. Hill's psychiatric status; Dr. Hill's progress in treatment; and results of any laboratory or other studies that have been conducted since the prior report. Dr. Hill shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Hill's quarterly declaration.

In addition, Dr. Hill shall ensure that his treating psychiatrist immediately notifies the Board of Dr. Hill's failure to comply with his psychiatric treatment plan and/or any determination that Dr. Hill is unable to practice due to his psychiatric disorder.

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

Dr. Hill shall further ensure that the previously designated psychiatrist also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Hill's certificate to practice osteopathic medicine and surgery until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration**: Dr. Hill shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Compliance with Interim Conditions**: Dr. Hill shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order.
3. **Demonstration of Ability to Resume Practice**: Dr. Hill shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Hill has successfully completed any required inpatient treatment.
 - b. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.
 - c. Evidence of continuing full compliance with this Order.
 - d. Two written reports indicating that Dr. Hill's ability to practice has been evaluated for chemical dependency and/or impairment and that he has been found capable of practicing according to acceptable and prevailing standards of care. The evaluations shall have been performed by individuals or providers approved by the Board for making such evaluations. Moreover, the evaluations shall have been performed within sixty days prior to Dr. Hill's application for reinstatement or restoration. The reports of evaluation shall describe with particularity the bases for the determination that Dr. Hill has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his practice.
4. **Psychiatric Reports Evidencing Fitness to Practice; Recommended Limitations**: At the time Dr. Hill submits his application for reinstatement or restoration, Dr. Hill

shall provide the Board with a written report of evaluation by a psychiatrist acceptable to the Board indicating that Dr. Hill's ability to practice has been assessed and that he has been found capable of practicing in accordance with acceptable and prevailing standards of care. Such evaluation shall have been performed within sixty days prior to Dr. Hill's application for reinstatement or restoration. The report of evaluation shall describe with particularity the bases for the determination that Dr. Hill has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his practice.

5. **Additional Evidence of Fitness To Resume Practice**: In the event that Dr. Hill has not been engaged in the active practice of osteopathic medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.
- D. **PROBATION**: Upon reinstatement or restoration, Dr. Hill's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
1. **Terms, Conditions, and Limitations Continued from Suspension Period**: Dr. Hill shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
 2. **Modification of Terms**: Dr. Hill shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.
 3. **Practice Plan**: Prior to Dr. Hill's commencement of practice in Ohio, or as otherwise determined by the Board, Dr. Hill shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Hill's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Hill shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Dr. Hill submits his practice plan, he shall also submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary or Supervising Member will give preference to a physician who practices in the same locale as Dr. Hill and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Hill and his practice, and shall review Dr. Hill's patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Hill and his practice, and on the review of Dr. Hill's patient charts. Dr. Hill shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Hill's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Hill must immediately so notify the Board in writing. In addition, Dr. Hill shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Hill shall ensure that the previously designated monitoring physician also notifies the Board directly of his or his inability to continue to serve and the reasons therefore.

4. **Tolling of Probationary Period While Out of State:** In the event that Dr. Hill should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Hill must notify the Board in writing of the dates of departure and return. Periods of time spent outside 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 the purposes of the probationary monitoring are being fulfilled.
 5. **Violation of Terms of Probation:** If Dr. Hill violates probation in any respect, the Board, after giving his notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Hill's certificate will be fully restored.
- F. **RELEASES:** Dr. Hill shall provide continuing authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Hill's chemical dependency, psychiatric conditions, and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluations occurred before or after the effective date of this Order. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.

Dr. Hill shall also provide the Board written consent permitting any treatment provider from whom Dr. Hill obtains treatment to notify the Board in the event he fails to agree to or comply with any recommended treatment or with any treatment or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.

- G. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Dr. Hill shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Hill shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
- H. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, Dr. Hill shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Hill shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Hill shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of notification of approval by the Board.



Daniel Roberts
Attorney Hearing Examiner



State Medical Board of Ohio

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

EXCERPT FROM THE DRAFT MINUTES OF MAY 14, 2003

REPORTS AND RECOMMENDATIONS

Mr. Browning announced that the Board would now consider the findings and orders appearing on the Board's agenda. He noted that the matters of Ashfaq Taj Ahmed, M.D., and Ryan Hanson, M.D., have been postponed and will be considered at the Board's June 11, 2003 meeting. Also, the Board has been unable to obtain verification of service of the Report and Recommendation in the Matter of Rezso Spruch, M.D., so that matter is also postponed this month. He asked that Board members retain their hearing materials until such time as these matters are considered by the Board.

Mr. Browning 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: Raleigh Shipp Callion, M.D.; Claude B. Guidi, M.D.; Sam Hill, D.O.; Venu G. Menon, M.D.; John P. Moore, III, M.D.; and Ned E. Weiner, M.D. A roll call was taken:

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

Mr. Browning 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

Ms. Sloan - aye
Dr. Garg - aye
Dr. Steinbergh - aye
Mr. Browning - aye

Mr. Browning 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.

Mr. Browning 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.

.....

SAM HILL, D.O.

Mr. Browning directed the Board's attention to the matter of Sam Hill, D.O. He advised that objections were filed to Hearing Examiner Roberts' Report and Recommendation and were previously distributed to Board members.

Mr. Browning continued that a request to address the Board has been timely filed on behalf of Dr. Hill. Five minutes would be allowed for that address.

Dr. Hill was accompanied by his attorney, John P. Carney.

Dr. Hill stated that this relapse is about the worst thing that has ever happened to him. It was a terrible experience. This came about because he refused to take action, or ignored warning signs that he was getting into trouble. He's let a lot of people down, including his patients, his colleagues, the Board and himself. He feels miserable about that. It's difficult to live with.

Dr. Hill stated that he did go through some stressful episodes throughout the past year, but he doesn't want to bring them into the picture again. He doesn't want to give the impression that he's looking for justifications or excuses or anything, but those things should have been a warning sign that he should have done something. Things are now going much better than they did two or three months ago. His depression and anxiety are improving. He's on a good medication regime right now, and is coping with stress better. He's also relating to people better. He realizes that he still has a way to go on that, but he's a lot further than he thought he'd be.

Dr. Hill stated that he's very grateful to be sober again. It's a difficult experience to explain to someone who is not an alcoholic, but that's life. His involvement in A.A. continues to be vital, and that continues to help. He's aggressively going about the steps and pursuing the program. He's starting to feel more confident that he can return to practice than he did a few months ago. He's feeling more sure of himself, and he's concentrating better. Dr. Hill stated that he realizes that he needs to find an appropriate environment, not one like he was in before where he was responsible for everything without control over anything. Dr. Hill stated that he needs to be in a situation where he can set some guidelines and set some boundaries. That's going to take some work. Hopefully, he can make those kinds of arrangements. He thinks he's learned a lot from this. He's learned how quickly he can get into trouble if he's not careful. When that happens, one needs to get help; he can't ignore it. His last episode of drinking was a miserable experience, and he doesn't ever want to go there again.

Mr. Browning asked Dr. Hill to conclude his statement.

Dr. Hill stated that he appreciates any confidence the Board may have in his ability to return to the privilege of practicing medicine.

Mr. Browning asked whether the Assistant Attorney General wished to respond.

Ms. Albers stated that it's important that the Board consider that Dr. Hill was not only charged with impairment pursuant to RC 4731.22(B)(26), but also pursuant to (B)(19). In the objections that were filed, the Board was directed to the impairment rules, which would allow much less suspension than was recommended by the Hearing Examiner in this case. The Report and Recommendation does a great job in outlining the evidence that was educed at this hearing, and also points out that Dr. Hill does have a long history before this Board.

Ms. Albers stated that she does agree with the Proposed Order and Recommendation.

DR. BHATI MOVED TO APPROVE AND CONFIRM MR. ROBERTS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF SAM HILL, D.O. DR. STEINBERGH SECONDED THE MOTION.

Dr. Steinbergh stated that this is another very serious case of impairment. She added that she basically agrees with the Proposed Order, but she feels that Dr. Hill needs a longer suspension period. Dr. Steinbergh suggested a two-year suspension period, after which he will need to demonstrate the appropriateness of his return to practice by taking and passing the SPEX.

Dr. Egner stated that she agrees with Dr. Talmage's earlier statements about the question of suspension time of over a year. She stated that Dr. Hill will either make it or he won't, no matter how long the suspension period.

Dr. Egner noted that Dr. Hill has indicated that he appreciates the Board's confidence in him. She stated

that she has no confidence in Dr. Hill, and added that she doesn't believe that he will make it. She added that she is willing to not amend the Order to permanent revocation this time, but she believes that a stayed permanent revocation is in order so that Dr. Hill knows that this is his last chance. Concerning whether Dr. Hill harmed patients when he drank a pint of vodka a day, Dr. Egner stated that he did, and added that she doesn't think that the Board can afford to take an additional chance. She added that she could vote for permanent revocation today. However, as far as a suspension goes, she doesn't have strong feelings one way or the other about the amount of time he is out of practice.

Dr. Talmage suggested that, to be consistent, the Board suspend Dr. Hill for 18 months, as it did Dr. Callion who suffered three relapses. He noted that Dr. Hill has eight years of sobriety, and therefore a one-year suspension is enough. Dr. Talmage also agreed that a stayed revocation is appropriate. However, he spoke against a two-year suspension.

DR. BHATI MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF SAM HILL, D.O., BY SUBSTITUTING THE FOLLOWING FOR PARAGRAPH A.

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of Sam Hill, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Hill's certificate shall be SUSPENDED for an indefinite period of time, but not less than eighteen (18) months.

DR. BUCHAN SECONDED THE MOTION.

Dr. Buchan stated that he thinks Dr. Hill understands that he has a little hope for him, and if he didn't he would vote to revoke Dr. Hill's license today.

A vote was taken on Dr. Bhati's motion to amend:

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

The motion carried.

DR. TALMAGE MOVED TO APPROVE AND CONFIRM MR. ROBERTS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF

SAM HILL, D.O. DR. EGNER SECONDED THE MOTION. A vote was taken:

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

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/

NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING

February 12, 2003

Sam Hill, D.O.
11332 Chestnut Rd.
Hillsboro, OH 45133

Dear Doctor Hill:

Enclosed please find certified copies of the Entry of Order, the Notice of Opportunity for Hearing, and an excerpt of the Minutes of the State Medical Board, meeting in regular session on February 12, 2003, including a Motion adopting the Order of Summary Suspension and issuing the Notice of Opportunity for Hearing pursuant to Section 4731.22(G), Ohio Revised Code.

You are advised that continued practice after receipt of this Order shall be considered practicing without a certificate, in violation of Section 4731.43, Ohio Revised Code.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order of Summary Suspension. 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 appeal, must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Court within fifteen days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

Additionally, pursuant to Chapter 119, Ohio Revised Code, you are hereby advised that you are entitled to a hearing on the allegations set forth in the Notice of Opportunity for Hearing. If you wish to request such hearing, that request must be made in writing and be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice. Further information concerning such hearing is contained within the Notice of Opportunity for Hearing.

THE STATE MEDICAL BOARD OF OHIO



Anand G. Garg, M.D., Secretary

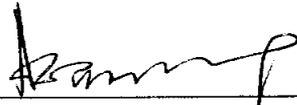
AGG:bjjs
Enclosures

Mailed 2-13-03

CERTIFICATION

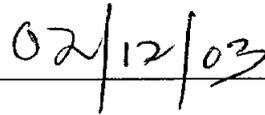
I hereby certify that the attached copies of the Entry of Order of the State Medical Board of Ohio and the Motion by the State Medical Board, meeting in regular session on February 12, 2003, to Adopt the Order of Summary Suspension and to Issue the Notice of Opportunity for Hearing, constitute true and complete copies of the Motion and Order as they appear in the Journal of the State Medical Board of Ohio.

This certification is made under the authority of the State Medical Board of Ohio and in its behalf.



Anand G. Garg, M.D., Secretary

(SEAL)



Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :

SAM HILL, D.O. :

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 12th day of February, 2003.

Pursuant to Section 4731.22(G), Ohio Revised Code, and upon recommendation of Anand G. Garg, M.D., Secretary, and Raymond J. Albert, Supervising Member; and

Pursuant to their determination that there is clear and convincing evidence that Sam Hill, D.O., has violated Section 4731.22(B)(26), Ohio Revised Code, as alleged in the Notice of Summary Suspension and Opportunity for Hearing which is enclosed herewith and fully incorporated herein, which determination is based upon review of information received pursuant to an investigation; and

Pursuant to their further determination that Dr. Hill's continued practice presents a danger of immediate and serious harm to the public;

The following Order is hereby entered on the Journal of the State Medical Board of Ohio for the 12th day of February, 2003;

It is hereby ORDERED that the certificate of Sam Hill, D.O., to practice osteopathic medicine or surgery in the State of Ohio be summarily suspended.

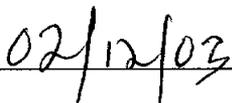
It is hereby ORDERED that Sam Hill, D.O., shall immediately close all his medical offices and immediately refer all active patients to other appropriate physicians.

This Order shall become effective immediately.

(SEAL)



Anand G. Garg, M.D., Secretary



Date



State Medical Board of Ohio

77 S. High St., 13th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

EXCERPT FROM THE DRAFT MINUTES OF FEBRUARY 12, 2003

SAM HILL, D.O. - ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

At this time the Board read and considered the proposed Order of Summary Suspension and Notice of Opportunity For Hearing in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

DR. STEINBERGH MOVED TO APPROVE THE ORDER OF SUMMARY SUSPENSION AND TO SEND THE NOTICE OF OPPORTUNITY FOR HEARING TO DR. HILL. DR. TALMAGE SECONDED THE MOTION. A vote was taken:

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

The motion carried.



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-5127 • (614) 466-3934 • Website: www.state.oh.us/med/

February 12, 2003

Sam Hill, D.O.
11332 Chestnut Rd.
Hillsboro, OH 45133

Dear Doctor Hill:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio [Board] 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 June 14, 1989, the Board entered an Order [1989 Board Order] suspending your certificate to practice osteopathic medicine and surgery in the State of Ohio for a period of one year. The 1989 Board Order stayed all but thirty days of that suspension and placed your certificate on probation for a period of three years subject to certain terms, conditions and limitations. A copy of the 1989 Board Order is attached hereto and incorporated herein.
- (2) On or about July 13, 1994, the Board issued to you a Notice of Opportunity for Hearing, which was amended on or about September 14, 1994, alleging that you had violated the 1989 Board Order by violating the terms of your probation, and also alleging that you had violated Sections 4731.22(B)(5), (10), (19) and (26), Ohio Revised Code. Your conduct underlying these allegations included that you prescribed opiates in the name of a patient that you intended for your own use; that you prescribed opiates to yourself in your own name; that you submitted to the Board a quarterly declaration of compliance dated March 21, 1994, falsely indicating your compliance with the 1989 Board Order; that you admitted to receiving treatment and/or hospitalizations for depression in the late 1970s, the early 1980s and in 1994; and that you admitted an addiction to opiates to a Board Investigator. A copy of the Notice of Opportunity for Hearing is attached hereto and incorporated herein.

Thereafter, on or about April 12, 1995, the Board entered an Order [1995 Board Order] suspending your certificate for an indefinite period, but not less than six months; providing that upon reinstatement, your certificate to practice osteopathic medicine and surgery would be subject to certain probationary terms, conditions, and limitations for a period of five years. A copy of the 1995 Board Order is attached hereto and incorporated herein.

- (3) On or about December 30, 2002, you appeared for work at Highland District Hospital in Hillsboro, Ohio, and, after reports of alcohol on your breath, hospital staff confronted you and you admitted to having consumed alcohol that day. You were admitted to Highland District Hospital for alcohol detoxification. On or about December 30, 2002, you were transferred to University Hospitals at the Ohio State University due to suicidal ideation. On or about January 7, 2003, you were transferred from University Hospitals to and admitted to Parkside Behavioral Healthcare, Inc., a Board-approved treatment provider, and were diagnosed with alcohol dependence, opiate dependency in remission, major depression, anxiety disorder and avoidant personality. You admitted to consuming a pint of vodka a day for approximately one month and consuming some of your son's Ritalin. You also admitted to Board staff on or about January 9, 2003, that you consumed about one fifth of vodka per day.

Your acts, conduct, and/or omissions as alleged in paragraphs (2) and (3) above, individually and/or collectively, constitute "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (3) above, individually and/or collectively, constitute "[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills," as that clause is used in Section 4731.22(B)(19), 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 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.

In the event that there is no request for such hearing received within thirty 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, provides that "[w]hen the board refuses to grant a certificate to an applicant,

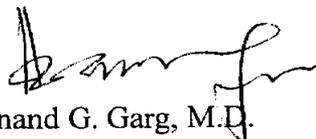
Sam Hill, D.O.

Page 3

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,

A handwritten signature in black ink, appearing to read 'Anand G. Garg', written in a cursive style.

Anand G. Garg, M.D.
Secretary

AGG/blt
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5148 0434
RETURN RECEIPT REQUESTED



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43266-0315 • (614) 466-3934 • Website: www.state.oh.us/med/

April 8, 1998

Sam Hill, D.O.
203 N. Main Street
Lynchburg, OH 45142

Dear Doctor Hill:

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 April 8, 1998, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and 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, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. Z 233 839 003
RETURN RECEIPT REQUESTED

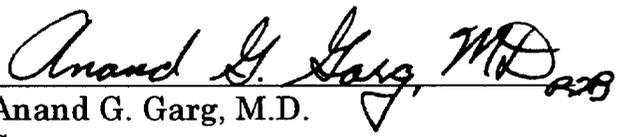
cc: Kevin P. Byers, Esq.
CERTIFIED MAIL RECEIPT NO. Z 233 839 004
RETURN RECEIPT REQUESTED

Mailed 4/13/98

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 April 8, 1998, 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 Sam Hill, 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)

April 8, 1998
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

SAM HILL, D.O.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on April 8, 1998.

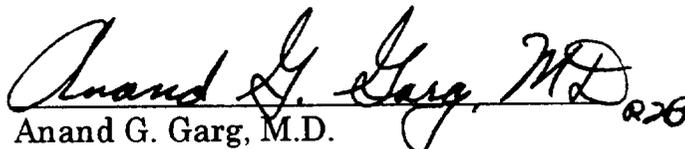
Upon the Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board 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 ORDERED that:

Sam Hill, D.O. is hereby REPRIMANDED.

This Order shall have no effect on the Order of the Board issued April 12, 1995.

(SEAL)


Anand G. Garg, M.D.
Secretary

April 8, 1998
Date

98 FEB 25 PM 1:08

**REPORT AND RECOMMENDATION
IN THE MATTER OF SAM HILL, D.O.**

The Matter of Sam Hill, D.O., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio, on February 4, 1998.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated November 12, 1997, the State Medical Board of Ohio [Board] notified Sam Hill, D.O., that the Board had proposed to take disciplinary action against his certificate to practice osteopathic medicine and surgery in Ohio. The Board's action was based on the following allegations:

On April 12, 1995, the Board adopted an Amended Order suspending Dr. Hill's license for a minimum of six (6) months. Dr. Hill filed a timely appeal to the Court of Common Pleas for Franklin County and the Court granted a stay of the Board's Order. On May 7, 1996, the Court affirmed the Board's Order with the six (6) month suspension of his license becoming effective on June 7, 1996. Despite the suspension effective date of June 7, 1996, Dr. Hill continued to practice osteopathic medicine until September 25, 1996.

The Board further alleged that Dr. Hill's conduct constitutes a "(v)iolation of the conditions of limitation placed by the board upon a certificate to practice or violation of the conditions of limitation upon which a limited or temporary registration or certificate to practice is issued,' as that clause is used in Section 4731.22(B)(15), Ohio Revised Code."

Moreover, the Board alleged that Dr. Hill's conduct constitutes "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: Section 4731.43, Ohio Revised Code."

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

- B. On December 10, 1997, Kevin P. Byers, Esq., submitted a written hearing request on behalf of Dr. Hill. (State's Exhibit 2)

98 FEB 25 PM 1:08

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Christopher E. Wasson, Assistant Attorney General.
- B. On behalf of the Respondent: Kevin P. Byers, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

- A. Presented by the State
 - James McGovern, Esq.
- B. Presented by the Respondent
 - 1. Charles H. Bair
 - 2. David Gunderman, M.D.
 - 3. Sam Hill, D.O.

II. Exhibits Examined

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

- A. Presented by the State
 - 1. State's Exhibit 3: Copy of December 11, 1997, letter to Mr. Byers from the Board advising that a hearing had been set for December 22, 1997, but further advising that the hearing had been postponed pursuant to Section 119.09, Ohio Revised Code. (2 pp.)
 - 2. State's Exhibit 4: Copy of December 12, 1997, letter to Mr. Byers from the Board scheduling the hearing for January 21, 1998.
 - 3. State's Exhibit 5: Copy of Respondent's Motion for Hearing Continuance, filed December 23, 1997. (2 pp.)

95 FEB 25 PM 1:08

4. State's Exhibit 6: Copy of a December 31, 1997, Entry granting Respondent's motion for continuance and rescheduling the hearing for February 4, 1998.
5. State's Exhibit 7: Respondent's Request for List of Witnesses and Documents, mailed December 10, 1997.
6. State's Exhibit 8: Copy of the State's Response to Request for List of Witnesses and Documents, filed December 31, 1997. (4 pp.)
7. State's Exhibit 9: Copy of the State's Request for List of Witnesses and Documents, filed December 31, 1997. (2 pp.)
8. State's Exhibit 10: Respondent's Notice of Witnesses and Documents, mailed January 29, 1998. (2 pp.)
9. State's Exhibit 11: Copy of an April 14, 1995, letter to Dr. Hill from the Board with certified copies of an Entry of Order, a Report and Recommendation, and an excerpt of draft minutes of the April 12, 1995, Board meeting. (26 pp.)
10. State's Exhibit 12: Copy of Appellant's Notice of Appeal filed on May 18, 1995, in the Franklin County Court of Common Pleas, in *Sam Hill, DO, v. The State Medical Board of Ohio*, Case No. 95CVF-05-3379 [*Hill v. State Medical Board*].
11. State's Exhibit 13: Copy of Decision on Motion To Suspend Agency Order Pending Appeal and Order Conditionally Suspending The Order of The State Medical Board of Ohio Pending Appeal, filed in *Hill v. State Medical Board*.
12. State's Exhibit 14: Copies of the Judgment Entry Affirming the April 19, 1996, Decision and Order of The State Medical Board of Ohio, and the Decision on Administrative Appeal, filed in *Hill v. State Medical Board*. (9 pp.)
13. State's Exhibit 15: Copy of the Notice of Appeal to the Franklin County Court of Appeals, filed May 20, 1996, in *Hill v. State Medical Board*. (2 pp.)
14. State's Exhibit 16: Copy of a June 20, 1996, letter to the Board from Mr. Byers regarding *Hill v State Medical Board*. (2 pp.)
15. State's Exhibit 17: Copy of a June 27, 1996, letter to Mr. Byers from the State regarding *Hill v. State Medical Board*. (2 pp.)
16. State's Exhibit 18: Copies of the Journal Entry of Judgment and the Opinion, filed December 5, 1996, in *Hill v. State Medical Board*. (8 pp.)

98 FEB 25 PM 1:08

17. State's Exhibit 19: Copy of an Affidavit of Sam Hill, D.O.
18. State's Exhibit 20: Section 119.12, Ohio Revised Code. (3 pp.)
19. State's Exhibit 21: Copy of the Decision and Entry Sustaining Motion of Mahendra K. Tandon, M.D., filed in the Franklin County Court of Common Pleas, *Mahendra K. Tandon, MD., v. State Medical Board of Ohio*, Case No. 95CVF-06-4509. (2 pp.)
20. State's Exhibit 22: Copy of a July 1, 1996, letter to the State from Mr. Byers.

B. Presented by the Respondent

1. Respondent's Exhibit A: Copy of Complaint, with attachments, filed in the Franklin County Court of Common Pleas, *Hill v. State Medical Board of Ohio*, Case No. 97CVH04-4656. (59 pp.)
2. Respondent's Exhibit B: Copy of Plaintiff's Notice of Voluntary Dismissal, filed May 22, 1997.
3. Respondent's Exhibit C: Not submitted for admission.
4. Respondent's Exhibit D: Copies of documents filed with the Board in the Matter of Mazen B. Hamadeh, M.D. (12 pp.)
5. Respondent's Exhibit E: Copy of a Consent Agreement between Napoleon V. Carandang, M.D., and the Board. (7 pp.)
6. Respondent's Exhibit F: Curriculum vitae of David J. Gunderman, M.D. (2 pp.)
7. Respondent's Exhibit G: Copy of a May 29, 1997, letter to Dr. Hill from the Board.
8. Respondent's Exhibit H: Copy of the Opinion rendered on September 30, 1996, in the Franklin County Court of Appeals in *Mehendra K. Tandon, M.D. v. Ohio State Medical Board*, Case No. 96APE04-436, unreported. (10 pp.)
9. Respondent's Exhibit I: Copy of a February 2, 1998, letter to the Board from Eloise Y. Moran, Assistant/CEO, Highland District Hospital, Hillsboro, Ohio.
10. Respondent's Exhibit J: Copy of a document entitled "Sam Hill, DO, Timeline." (2 pp.)

98 FEB 26 PM 11:03

SUMMARY OF EVIDENCE

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

1. In September 1994, the Board issued a notice of opportunity for hearing to Sam Hill, D.O., alleging numerous violations of Sections 4731.22, Ohio Revised Code, and Board rules. Subsequent to a hearing, the Board found that Dr. Hill had violated Sections 4731.22(B)(2), (B)(5), (B)(6), (B)(10), (B)(12), (B)(15), and (B)(20), Ohio Revised Code, and Rule 4731-11-02, Ohio Administrative Code. (State's Exhibit [St. Ex.] 11 at 7-22). On April 12, 1995, the Board adopted an Amended Order suspending Dr. Hill's certificate to practice osteopathic medicine and surgery for a minimum of six months, and imposing probationary terms and conditions upon its reinstatement. (St. Ex. 11 at 4-6).

On May 12, 1995, Dr. Hill appealed the Board's Order to the Franklin County Court of Common Pleas. (St. Ex. 12). On June 9, 1995, the Court granted a stay of the Board's Order. (St. Ex. 13).

On May 7, 1996, the common pleas court affirmed the Board's Order. (St. Ex. 14). Dr. Hill appealed the decision to the Franklin County Court of Appeals. (St. Ex. 15).

2. On June 18, 1996, the Board advised Dr. Hill that, on May 7, 1996, the court of common pleas had entered a final order affirming the Board's Order. The Board further advised Dr. Hill that, in light of the "thirty days wind down period included in the Board's Order, the suspension of Dr. Hill's medical license [had become] effective on June 7, 1996." Finally, the Board advised that a Board investigator would contact Dr. Hill to make arrangements for obtaining Dr. Hill's registration card and wall certificate. (Respondent's Exhibit [Resp. Ex.] A at 7).
3. On June 20, 1996, Kevin P. Byers, Esq., counsel for Dr. Hill, wrote the Board that Mr. Byers had advised Dr. Hill that Dr. Hill could continue practicing medicine. Mr. Byers based this recommendation on his belief that the stay order entered by the common pleas court remained in full force and effect pursuant to Paragraph 5, Section 119.12, Ohio Revised Code. (St. Ex. 16; Resp. Ex. A at 8).

Section 119.12, paragraph 5, provides, in pertinent part:

If an appeal is taken from the judgment of the [common pleas] court and the [common pleas] court has previously granted a suspension of the agency's order as provided in this section, such suspension of the agency's order shall not be vacated and shall be given full force and effect until the matter is finally adjudicated.

90 FEB 25 PM 1:09

R.C. 119.12, ¶5. Mr. Byers further cited the decision of the Franklin County Court of Common Pleas in *Mahendra K. Tandon, MD. v. State Medical Board of Ohio*, Case No. 95CVF-06-4509, unreported. In *Tandon*, the Franklin County Court of Common Pleas continued its stay after issuing a final order, reasoning that “the stay of the agency’s order continues automatically upon the filing of the notice of appeal.” (St. Ex. 21 at 2; Resp. Ex. A at 10-11). (See also St. Ex. 22).

4. On June 27, 1998, James M. McGovern, Esq., the State’s representative, advised Mr. Byers that the stay had been terminated upon the issuance of a final order by the common pleas court. Mr. McGovern further advised that Section 119.12, paragraph 8, rather than paragraph 5, is the controlling provision of that statute in this matter. (St. Ex. 17; Resp. Ex. A at 12-13).

Section 119.12, paragraph 8, provides, in pertinent part:

Notwithstanding any other provision of this section, an order issued by a court of common pleas suspending the effect of an order of the state medical board or chiropractic examining board that limits, revokes, suspends, places on probation, or refused to register or reinstate a certificate issued by the board or reprimands the holder of such a certificate shall terminate not more than fifteen months after the date of the filing of a notice of appeal in the court of common pleas, or upon the rendering of a final decision or order in the appeal by the court of common pleas, whichever occurs first.

R.C. 119.12, ¶8. In addition, Mr. McGovern cautioned that the Board would continue to request that Dr. Hill relinquish his certificate to practice osteopathic medicine and surgery until either the common pleas court continued its stay or the court of appeals granted a new stay. (St. Ex. 17; Resp. Ex. A at 12-13).

5. On July 1, 1996, Dr. Hill filed a Motion for Continued Stay of Agency Order Pending Final Disposition on Appeal in the Franklin County Court of Common Pleas. (Resp. Ex. A at 14-15). Nevertheless, the court refused to rule on the motion, because the matter was pending in the Franklin County Court of Appeals; thus, the record was unavailable to the common pleas court. (Resp. Ex. A at 17).

Thereafter, Dr. Hill filed asked the Franklin County Court of Appeals to continue the stay issued by the common pleas court or, in the alternative, issue a new stay. (See Resp. Ex. A at 18-24 for Dr. Hill’s analysis of Section 119.12, ¶¶ 5, 8). The Court of Appeals denied Dr. Hill’s request on August 28, 1996. (Resp. Ex. A at 27).

6. On September 17, 1996, Mr. Byers wrote to the Board acknowledging that the court of appeals had denied his request for a continued stay. He further advised that:

98 FEB 25 PM 1:09

[T]he original Board Order provided Dr. Hill with a “wind-down” period of thirty days. Since the stay motion in the Tenth District Court of Appeals was denied on August 28, 1996, I calculate the last full day of Dr. Hill’s practice to be September 27, 1996.”

(Resp. Ex. A at 27).

Dr. Hill testified that, relying on the advice of counsel, he continued to practice osteopathic medicine and surgery until September 25, 1996. He continued practicing based on his understanding of the *Tandon* court’s interpretation of Section 119, Ohio Revised Code. Moreover, Dr. Hill believed he had an obligation to his patients, and did not want to risk liability for abandoning them. Finally, Dr. Hill stated that he never intended to challenge the Board or the Board’s authority. (Transcript [Tr.] at 74-75, 78-79; St. Ex. 19). On September 30, 1996, Dr. Hill returned his wall certificate and registration card to the Board. (Resp. Ex. A at 28).

7. On December 5, 1996, the Franklin County Court of Appeals affirmed the decision of the Franklin County Court of Common Pleas which had affirmed the April 12, 1995, Board Order. (St. Ex. 18).
8. On May 14, 1997, the Board voted to reinstate Dr. Hill’s certificate to practice osteopathic medicine and surgery pursuant to the April 12, 1995, Board Order, thereby imposing probationary terms and conditions. Those probationary terms and conditions are currently in effect. (Resp. Ex. G).

At hearing, Dr. Hill testified that he has been in full compliance with the terms of probation imposed by the April 12, 1995, Board Order. (Tr. at 80-81).

9. Dr. Hill presented the testimony of Charles H. Bair, CEO, Hillsboro District Hospital, and of David Gunderman, M.D., in support of Dr. Hill. (Tr. at 52-74, 64-71). Dr. Hill also presented a letter from Eloise Y. Moran, Assistant/CEO, Highland District Hospital, in support of Dr. Hill. (Resp. Ex. I).

LEGAL ANALYSIS

At issue in this matter is the construction and application of two provisions of Section 119.12, Ohio Revised Code. Regarding the construction of conflicting statutory provisions, Section 001.51, Ohio Revised Code, provides as follows:

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an

98 FEB 25 PM 1:09

exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision shall prevail.

R.C. 001.51.

Paragraph 5, Section 119.12, Ohio Revised Code, is a general provision. By that provision, the legislature intended that, as a general rule, in an appeal from the decision of a state agency, a suspension granted by the court of common pleas will continue if the decision of the common pleas court is appealed to a higher court.

Nevertheless, the legislature also enacted paragraph 8, a special provision, to specifically address the stay of an Order of the State Medical Board or the Chiropractic Examining Board limiting a practitioner's certificate. Such a provision is reasonable in light of the great potential for public harm presented when a physician or chiropractor continues to practice despite a Board's decision to limit that practitioner's certificate.

Pursuant to Section 001.51, Ohio Revised Code, the special provision prevails as an exception to the general provision. Accordingly, Respondent's argument is without merit. The State is correct in its assertion that Section 119.12, paragraph 8, rather than paragraph 5, is the controlling provision of that statute in this matter.

FINDINGS OF FACT

1. On April 12, 1995, the Board adopted an Order against Sam Hill, D.O.'s certificate to practice osteopathic medicine and surgery in this State. The Board's Order suspended Dr. Hill's license for a minimum of six (6) months, and imposed probationary terms and conditions upon reinstatement.
2. Dr. Hill appealed the Board's Order to the Franklin County Court of Common Pleas. The common pleas court granted a stay of the Board's Order.
3. On May 7, 1996, the Franklin County Court of Common Pleas issued a final decision affirming the Board's Order. The stay of the Board's Order granted by the court of common pleas terminated upon the issuance of the final decision by that court.
4. On June 18, 1996, the Board advised Dr. Hill that the suspension of his certificate had become effective on June 7, 1996. Nevertheless, Dr. Hill continued to practice osteopathic and surgery until September 25, 1996.

98 FEB 25 PM 1:09

CONCLUSIONS OF LAW

1. The conduct of Sam Hill, D.O., as set forth in Findings of Fact 4, constitutes a “(v)iolation of the conditions of limitation placed by the board upon a certificate to practice or violation of the conditions of limitation upon which a limited or temporary registration or certificate to practice is issued,” as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.
2. The conduct of Sam Hill, D.O., as set forth in Findings of Fact 4, constitutes practicing medicine without a certificate, in violation of Sections 4731.43 and 4731.22(B)(20), Ohio Revised Code.

* * * * *

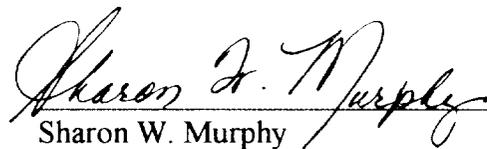
Generally, acting on the advice of an attorney is not a defense to any civil or criminal action, and the same should hold true for administrative actions. Nevertheless, the evidence suggests that Dr. Hill may have been led to believe that he had a legal right to continue his practice of osteopathic medicine and surgery based on somewhat ambiguous statutory language and on the opinion of the Franklin County Court of Common Pleas in another matter.

PROPOSED ORDER

It is ORDERED that:

Sam Hill, D.O. is hereby REPRIMANDED.

This Order shall have no effect on the Order of the Board issued April 12, 1995.


Sharon W. Murphy
Attorney Hearing Examiner



State Medical Board of Ohio

150 S. HILL STREET, COLUMBUS, OHIO 43260-3021 • TEL: 614/464-7211 • Website: www.dhs.gov/ohio

EXCERPT FROM THE DRAFT MINUTES OF APRIL 8, 1998

REPORTS AND RECOMMENDATIONS

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

Dr. Buchan 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: Tonya N. Croak; Hans Zwart, M.D. & Associates, Inc.; Carl Elgin Grinstead, II, M.D.; Sam Hill, D.O.; James L. Kegler, M.D.; Jeffrey E. Burwell, P.A.; and James C. Dickens, P.A. A roll call was taken:

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

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

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

In accordance with the provision in Section 4731.22(C)(1), Revised Code, specifying that no member of

the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

Dr. Buchan 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.

.....

SAM HILL, D.O.

.....

**DR. HEIDT MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF SAM HILL, D.O.
DR. STEINBERGH SECONDED THE MOTION.**

.....

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

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

The motion carried.



STATE MEDICAL BOARD OF OHIO

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

November 12, 1997

Sam Hill, D.O.
203 N. Main Street
Lynchburg, OH 45142

Dear Doctor Hill:

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 April 12, 1995, the State Medical Board of Ohio (hereinafter "Board") adopted an Amended Order suspending your license for a minimum of six (6) months. On May 12, 1995, you filed a timely appeal to the Court of Common Pleas for Franklin County from the Board's April 12, 1995 Order of Suspension, and the Court subsequently granted a stay of the Board Order. On May 7, 1996, the Court affirmed the Board's Order with the six (6) month suspension of your license becoming effective on June 7, 1996. Despite the suspension effective date of June 7, 1996, you admitted that you continued to practice osteopathic medicine until September 25, 1996.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute a "(v)iolation of the conditions of limitation placed by the board upon a certificate to practice or violation of the conditions of limitation upon which a limited or temporary registration or certificate to practice is issued," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, 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: Section 4731.43, Ohio Revised Code.

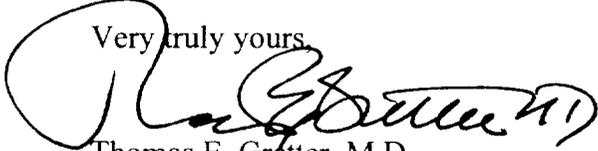
Mailed 11/13/97

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,

Thomas E. Gretter, M.D.
Secretary

TEG/par

Enclosures

CERTIFIED MAIL #P 152 984 781
RETURN RECEIPT REQUESTED

(2)

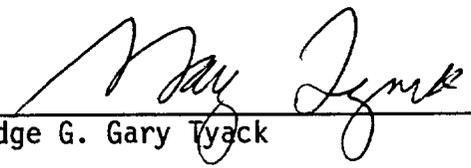
STATE MEDICAL BOARD
OF OHIO
IN THE COURT OF APPEALS OF OHIO
95 DEC 11 AM 9:19
TENTH APPELLATE DISTRICT

Sam Hill, DO, :
Appellant-Appellant, :
v. : No. 96APE05-656
The State Medical Board of Ohio, : (ACCELERATED CALENDAR)
Appellee-Appellee. :

JOURNAL ENTRY OF JUDGMENT

For the reasons stated in the opinion of this court rendered herein on December 5, 1996, appellant's 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 affirmed.

TYACK, LAZARUS & STRAUSBAUGH, JJ.

By 
Judge G. Gary Tyack

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

cc: Kevin P. Byers
Betty D. Montgomery, AG
James M. McGovern, AAG

FILED
COURT OF APPEALS
FRANKLIN CO. OHIO
1996 DEC -5 PM 3:15
JESSE D. ODDI
CLERK OF COURTS

STATE MEDICAL BOARD
OHIO
IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT
96 DEC 11 AM 9:19

Sam Hill, DO, :
Appellant-Appellant, :
v. : No. 96APE05-656
The State Medical Board of Ohio, : (ACCELERATED CALENDAR)
Appellee-Appellee. :

O P I N I O N

Rendered on December 5, 1996

Kevin P. Byers Co., L.P.A., and Kevin P. Byers, for appellant.

Betty D. Montgomery, Attorney General, and James M. McGovern, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

TYACK, J.

On July 14, 1994, the State Medical Board of Ohio ("board") mailed a letter to Sam Hill, D.O., notifying Dr. Hill that the board intended to determine whether or not to limit, revoke or suspend his license to practice osteopathic medicine and surgery, or to reprimand or place him on probation.¹ The board based the proposed action on allegations that, among other things, Dr.

¹ An amended notice letter was mailed on September 15, 1994.

Hill wrote prescriptions in a patient's name that were intended for his own use, self-prescribed controlled substances and, through samples, obtained prescription drugs and controlled substances for self use.

Dr. Hill requested a hearing and on December 1, 1994, a hearing was held before an attorney hearing examiner. On February 13, 1995, the hearing examiner filed a report and recommendation, which included findings that Dr. Hill wrote prescriptions for controlled substances in the name of a patient for his own use, self-prescribed, used samples, was addicted to Hydrocodone and was chemically dependent. The hearing examiner also found that while Dr. Hill was on probation for an unrelated matter, he submitted quarterly declarations to the board stating, knowing such statements to be false, that he was in compliance with the regulations governing the practice of medicine in Ohio.

Based on these findings, the hearing examiner concluded Dr. Hill violated various provisions of R.C. 4731.22(B) and the Ohio Administrative Code governing the discipline of physicians. The hearing examiner recommended, in part, that the board revoke Dr. Hill's certificate to practice osteopathic medicine and surgery, stay such revocation, and suspend his certificate for thirty days. The hearing examiner also proposed a five-year probationary period upon Dr. Hill's reinstatement, with various conditions.

Dr. Hill filed objections to the hearing examiner's report and recommendation. On April 12, 1995, the board held a hearing. The board adopted the hearing examiner's report and recommendation; however, it modified the length

of the suspension, changing it from thirty days to six months. The board's order was mailed on May 5, 1995.

On May 12, 1995, Dr. Hill appealed the board's order to the Franklin County Court of Common Pleas. On April 19, 1996, the trial court rendered its decision, finding the board's order was supported by reliable, substantial and probative evidence and was in accordance with law. A judgment entry was filed on May 7, 1996. Dr. Hill (hereinafter "appellant") has appealed to this court, assigning two errors for our consideration:

"FIRST ASSIGNMENT OF ERROR: THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO THE APPELLANT'S PREJUDICE WHEN IT FOUND THE ORDER OF THE STATE MEDICAL BOARD OF OHIO IS SUPPORTED BY RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE.

"SECOND ASSIGNMENT OF ERROR: THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO APPELLANT'S PREJUDICE WHEN IT FOUND THE ORDER OF THE STATE MEDICAL BOARD OF OHIO IS IN ACCORDANCE WITH LAW."

Appellant's assignments of error are interrelated and, therefore, will be addressed together. For various reasons, appellant contends the trial court erred in finding the board's order is supported by reliable, substantial and probative evidence and is in accordance with law. Under R.C. 119.12, the trial court may affirm an agency's order if it finds the order is supported by reliable, probative and substantial evidence and is in accordance with law. In making such a decision, it is incumbent on the trial court to examine the evidence. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621. Our standard of review is far more limited. We determine only if the trial court has

abused its discretion. *Id.* An abuse of discretion connotes not merely an error of judgment, but implies perversity of will, passion, prejudice, partiality or moral delinquency. *Id.* Absent such an abuse of discretion, the appellate court may not substitute its judgment for that of the board or the trial court. *Id.*

Appellant does not dispute the facts in this case. In December 1988, the board issued appellant a notice letter based on an allegation that appellant employed an unregistered physician's assistant. The board ultimately found this allegation to be true and, on June 14, 1989, suspended appellant's certificate to practice osteopathic medicine and surgery for thirty days and placed his certificate on probation for three years. This order was stayed pending appellant's appeal. After the appeals were unsuccessful, the order became effective on March 21, 1991. In May 1991, appellant's license was reinstated, and the three-year probation period began. Such probation included conditions that appellant obey all federal, state and local laws, obey all rules governing the practice of medicine in Ohio, and submit quarterly declarations stating whether or not he was in compliance with the terms of his probation.

Appellant testified he began using opiates in 1989 around the time he was involved in the above disciplinary matters. In April 1994, the board received a complaint regarding appellant's prescribing practices. A board investigator interviewed appellant, and appellant admitted he had written prescriptions for a patient which were intended for appellant's own use and also obtained drugs through samples. Appellant admitted he was addicted to drugs.

It was later revealed that appellant also self-prescribed controlled substances. Appellant told the investigator that he had been hospitalized for depression at Harding Hospital in the late 1970s and early 1980s.

Following this interview, appellant contacted a fellow physician regarding his chemical dependency. This physician arranged for appellant to be admitted to the University of Cincinnati Hospitals ("UCH") psychiatric unit for treatment of depression. From UCH, appellant was referred to Shepard Hill Hospital for the treatment and management of chemical dependency. At the time of appellant's hospitalization at Shepard Hill on April 29, 1994, he was averaging ten 7.5 mg. Hydrocodone tablets per day. Appellant last used drugs on April 29, 1994 when he took two Hydrocodone tablets immediately prior to entering Shepard Hill.

As of the time of the board hearing, appellant had been released from Shepard Hill, was attending three A.A./N.A. meetings per week and weekly Caduceus meetings, and was providing random urine screens that had been negative.

As indicated above, appellant does not dispute any of the factual findings. Rather, for various reasons, appellant finds fault with the board's sanction of a six-month suspension of his certificate to practice. First, appellant contends that the six-month suspension is not supported by the facts. Appellant states that he was cooperative with the board and that the facts show he was "coming around" in regard to his addiction and recovery. Given this,

argues appellant, the board must have been punishing appellant for his appeal of the 1989 board action or for his prior addiction.

Our review of discipline imposed by the board is limited. In *In re Eastway* (1994), 95 Ohio App.3d 516, 521, this court stated that the board is authorized to discipline medical professionals pursuant to R.C. 4731.22(B), and the trial court has no authority to modify a penalty that the board is authorized to impose. In *State Med. Bd. of Ohio v. Murray* (1993), 66 Ohio St.3d 527, 528, the Supreme Court of Ohio found the penalty imposed was in accordance with law and, therefore, would not reverse or modify such penalty.

Here, the board revoked appellant's certificate to practice osteopathic medicine and surgery, stayed such revocation and suspended his certificate for no less than six months. R.C. 4731.22(B) states:

"The board, pursuant to an adjudicatory hearing under Chapter 119. of the Revised Code and by a vote of not fewer than six members, *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.)

Following this is a lengthy list of reasons under which the board *must* impose discipline of the type listed above. Here, the board adopted the hearing examiner's report and recommendation which found, in part, that appellant violated R.C. 4731.22(B)(5), (10), (12), (15) and (20), including: the commission of acts that constitute felonies and misdemeanors (appellant's writing of prescriptions in a patient's name for appellant's use and self-prescribing),

violation of the conditions of his probation, and acts constituting publishing false, fraudulent, deceptive or misleading statements (appellant's submission of two quarterly declarations to the board, pursuant to his probation, that falsely stated he was in compliance with the conditions of his probation).

Based on the above violations, the board was authorized to suspend appellant's certificate. As discussed above, if the penalty is within the board's statutory authority, this court has no authority to modify it. *Eastway; Murray*. See, also, *Roy v. Ohio State Med. Bd.* (1992), 80 Ohio App.3d 675, 683; *Kuzas v. Ohio State Medical Bd.* (1990), 67 Ohio App.3d 147, 150. In addition, there is no evidence the board based its decision regarding the penalty on anything other than appellant's violations of R.C. 4731.22(B).

Appellant also contends that the trial court erred in not finding the board violated R.C. 119.09 and due process. R.C. 119.09 states, in pertinent part:

"*** [I]f the agency modifies or disapproves the recommendations of the referee or examiner it shall include in the record of its proceedings the reasons for such modification or disapproval."

As indicated above, the board modified the hearing examiner's proposed order by lengthening the suspension from thirty days to six months. Appellant argues that in so modifying, the board did not sufficiently state the reasons for such modification.

The minutes from the board's April 12, 1995 hearing include the following discussion:

"Dr. Heidt expressed concern that the Board has tried hard with Dr. Hill but doesn't seem to be succeeding. He questioned whether a 30-day suspension would be enough of a shock for Dr. Hill to come around.

"DR. HEIDT MOVED TO AMEND THE PROPOSED ORDER TO REQUIRE A SUSPENSION PERIOD OF NOT LESS THAN SIX (6) MONTHS. MR. SINNOTT SECONDED THE MOTION.

"Dr. Stienecker asked for Dr. Heidt's reasoning behind the amendment.

"Dr. Heidt stated that Dr. Hill has been on probation with the Board since 1989 and continues to have problems. He is not sure that 30 days will be enough to stimulate his mind. He believes six months will do a better job.

"Mr. Sinnott stated that he believes that the Board could very well have stopped with the first sentence of the Proposed Order and revoked Dr. Hill's license. A thirty-day suspension is too lenient in this case, and is less than the citizens of Ohio would want or deserve. The Board needs to drive home the point with a longer suspension.

"Dr. Buchan agreed, stating that after reviewing the record in this case he felt the Proposed Order was soft.

"A vote was taken on Dr. Heidt's motion to amend:

"***

"The motion carried."

The discussion contained in the minutes was sufficient under R.C. 119.09. Contrary to appellant's assertion at page ten of his brief that the record offers no insight into a proper reason for the modification of the hearing examiner's proposed thirty-day suspension, it is clear that the board felt 30 days was too lenient given appellant's probation and current problems. Indeed,

it was even suggested that the board could have simply revoked appellant's license. While appellant may not agree with the reasoning, the reasoning was nonetheless contained in the record.

Given the above, the board complied with R.C. 119.09 by sufficiently stating the reasons for modifying the hearing examiner's proposed suspension and, as such, there was no violation of due process. Hence, the trial court did not err in upholding the board's imposition of a six-month suspension of appellant's certificate to practice.

Appellant next contends that the board violated R.C. 4731.23(A) and Ohio Adm.Code 4731-13-15(A) in not timely releasing the hearing examiner's report and recommendation. R.C. 4731.23(A) states, in pertinent part:

"Such hearing examiner shall hear and consider the oral and documented evidence introduced by the parties and issue in writing proposed findings of fact and conclusions of law to the board for their consideration within thirty days following the close of the hearing."

Ohio Adm.Code 4731-13-15(A) states:

"Within thirty days following the close of an adjudication hearing conducted pursuant to Chapter 119. of the Revised Code, the attorney hearing examiner shall submit a written report setting forth proposed findings of fact and conclusions of law and a recommendation of the action to be taken by the board. The hearing shall not be considered closed until such time as the record is complete, as determined by the attorney hearing examiner."

Here, it is undisputed that the hearing closed on December 5, 1994. However, the report and recommendation was not issued until February 16, 1995.

Appellant contends that because the report and recommendation was not issued within in 30 days of the closing of the hearing, the board lacked jurisdiction to render an order.

The issue involved in this argument has been previously decided by this court. This court has held that the time period for issuing reports and recommendations contained in R.C. 4731.23(A) is directory and not mandatory and therefore, failure to comply with the statute is not grounds for reversal. *Sicking v. Ohio State Medical Bd.* (1991), 62 Ohio App.3d 387, 392, citing *In re Raymundo* (1991), 67 Ohio App.3d 262, 268. Hence, the hearing examiner's failure to issue her report and recommendation within thirty days did not deprive the board of jurisdiction to make its order. We note also that appellant was not prejudiced from the slight delay. As to this issue, therefore, the board's order was also in accordance with law.

Appellant's next argument addresses the board's demand that appellant surrender his United States Drug Enforcement Administration ("DEA") registration. In its order, the board mandated, as conditions to his five-year probation, that appellant immediately surrender his DEA registration and further indicated that appellant would be ineligible to reapply for or hold a DEA registration without prior board approval. The board further ordered that appellant shall not purchase, prescribe, order, dispense, administer or possess any controlled substances.

Appellant argues that this action exceeded the board's authority. Appellant contends the board could not demand he surrender a federally-issued DEA registration and that the federal government has its own regulations concerning review of such registrations. While we may agree with the contention that the board does not have the authority to suspend or revoke a DEA registration, we need not address this specific issue because the board here did not so act. At oral argument in this case, counsel for the board indicated that the board merely requested appellant surrender his DEA registration.

Section 824(a), Title 21, U.S. Code, addresses the revocation or suspension of a DEA registration and states:

"A registration pursuant to section 823 of this title to manufacture, distribute, or dispense a controlled substance or a list I chemical may be suspended or revoked *by the Attorney General* upon a finding that the registrant—

"***

"(3) has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the manufacturing, distribution, or dispensing of controlled substances or list I chemicals or has had the suspension, revocation, or denial of his registration recommended by competent State authority[.]"

Hence, only the Attorney General of the United States may revoke or suspend a DEA registration. As indicated above, however, the board was not attempting to revoke or suspend appellant's DEA registration, rather it was requesting that appellant surrender such registration. Appellee cites to Section 1306.03, Title

21, C.F.R., in support of its argument that the board's action was lawful.

Section 1306.03, Title 21, C.F.R., states, in pertinent part:

"(a) A prescription for a controlled substance may be issued only by an individual practitioner who is:

"(1) authorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession and

"(2) either registered or exempted from registration pursuant to §§1301.24(c) and 1301.25 of this chapter."

Therefore, a practitioner may prescribe controlled substances only if (1) he or she is so authorized by the state in which he or she practices and (2) he or she has or is exempted from having a DEA registration.

Here, the board suspended appellant's license to practice osteopathic medicine in Ohio and ordered that appellant not prescribe controlled substances. Therefore, under Section 1306.03, Title 21, C.F.R., appellant could not prescribe controlled substances. Hence, any error which the board may have made in the wording in its order regarding appellant's DEA registration was harmless at best. It is clear that the board is authorized under both state and federal law to prohibit appellant from prescribing controlled substances. In addition, nowhere is it indicated in the record that the board attempted to or did in fact revoke or suspend appellant's DEA registration. Therefore, the board's order in this regard is in accordance with law.

Lastly, appellant asserts the board violated the Americans with Disabilities Act ("ADA"). Appellant contends the board violated the ADA by

discriminating against him because he is a recovering addict. Appellant cites to Section 35.131(a)(2), Title 28, C.F.R., which states:

"(2) A public entity shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who—

"(i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully[.]"

Appellant also argues that he is not currently engaged in the illegal use of drugs. Appellee argues, in part, that the ADA does not apply to disciplinary action by a state professional licensure board. However, we need not address the issue of whether or not the ADA applies to this situation and/or whether or not appellant may be deemed to have been currently engaged in the illegal use of drugs.

There is simply no evidence that the board *discriminated* against appellant because of appellant's prior illegal use of drugs as such term is utilized in the ADA. Rather, the board proceeded with appellant's case as it would with any other disciplinary action against a physician who violated the rules governing the practice of medicine in Ohio. As discussed previously, the sanctions imposed by the board were fully authorized by law. Indeed, the board was not punishing appellant because he is an addict, rather, the board disciplined appellant because he violated specific provisions of R.C. 4731.22(B). Without any evidence to the contrary, it is unnecessary to address the issue as

to whether or not the ADA can be applied in this type of case and, if so, whether or not its provisions were violated.

There is no evidence that the board discriminated against appellant based on his illegal use of drugs or because he is a recovering addict. Therefore, appellant's arguments with regard to the board's alleged violation of the ADA are not well-taken.

In summary, and for the reasons stated above, the trial court did not err or abuse its discretion in finding the board's order is supported by reliable, probative and substantial evidence and is in accordance with law. Accordingly, appellant's first and second assignments of error are overruled.

Having overruled each of appellant's assignments of error, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

LAZARUS and STRAUSBAUGH, JJ., concur.

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

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

Sam Hill, DO,
203 North Main Street
Lynchburg, Ohio 45142
Appellant,

v.

The State Medical Board of Ohio
77 South High Street, 17th Floor
Columbus, Ohio 43266-0315
Appellee.

96 APE 05 065 6

CASE NO. 95CVF-05-3379

JUDGE WILLIAM MILLARD

STATE MEDICAL BOARD
OF OHIO
CLERK OF COURTS
96 SEP 3 PM 3:30
MAY 20 PM 2:44

NOTICE OF APPEAL

Notice is hereby given that Sam Hill, DO, Appellant, hereby appeals to the Court of Appeals, Franklin County, Ohio, Tenth District, from the Judgment Entry (Exhibit A) filed in this action on the 7th day of May, 1996.

Respectfully submitted,

KEVIN P. BYERS CO., L.P.A.

KPB/RS

RECEIVED
Attorney General's Office
MAY 23 1996
Health & Human
Services Section

Kevin P. Byers 0040253
The LeVeque Tower
50 West Broad Street, Suite 4300
Columbus, Ohio 43215-3310
614.228.6283 Fax 228.6425

Attorney for Appellant, Sam Hill, DO

CLERK OF COURTS
MAY 20 PM 2:44

KEVIN P. BYERS CO., L.P.A. 50 West Broad Street, Suite 4300
Columbus, Ohio 43215-3310 (614) 228-6283

Certificate of Service

I certify that a true copy of Appellant's Notice of Appeal was placed in first class U.S. Mail this 20th day of May, 1996, directed to Assistant Attorney General Lili C. Kaczmarek, Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43266-3428.

KPBYERS

Kevin P. Byers

KEVIN P. BYERS CO., L.P.A. . . . 50 West Broad Street, Suite 4300
Columbus, Ohio 43215-3310 . . . (614) 228-6283

96 MAY 20 PM 2:44
CLERK OF COURTS
D. ODDI

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

Sam Hill, D.O.,

96 APR 24 PM 2:58

Appellant,

v.

Case No. 95CVF-05-3379 (Millard, J.)

State Medical Board of Ohio,

Appellee.

DECISION ON ADMINISTRATIVE APPEAL

This case is before the Court on administrative appeal from the Decision and Order of the State Medical Board dated April 14, 1995 by which it imposed a stayed revocation on the Appellant's license to practice medicine with a six month suspension and detailed conditions for reinstatement, including psychiatric counseling and participation in a drug and alcohol rehabilitation program. A five year probationary period following reinstatement was further imposed with thirteen conditions and limitations, including surrender of his registration with the United States Drug Enforcement Administration until the Board approves reapplication of it.

The facts leading to the Board's Decision and Order are not at issue. They are as stated in Appellee's brief, fully reproduced in the appendix to this Decision.

Appellant first argues that the Board's Order is not in accordance with law, because the Hearing Examiner's Report was not filed within thirty days of the close of the hearing record, as required by O.R.C. 4731.23(A) and O.A.C. 4731-13-15(A). In this case, the hearing record was closed on December 5, 1994; the detailed 31 page Report was issued February 16, 1995. Ohio case law interpreting the intent of O.R.C. 4731.23(A) is clear that the thirty day requirement is directory only, rather than mandatory, and thus, failure to timely file the report does not deprive the Board of jurisdiction. See In re Raymundo (1990), 67 Ohio App.3d 262; In re Heath (1992), 80 Ohio App.3d 605; Sicking v. State Medical Board (1991), 62 Ohio App.3d 387.

COPIES OF THIS COURT
FILED IN COURT
APR 13 PM 11:23

Appellant next argues that the Board's Order is not in accordance with law because it discriminates against a person with a disability, which is prohibited by the Americans with Disabilities Act (ADA). Under that Act, public entities, including state governments, may not discriminate against a qualified individual with a disability. 42 USC Sections 12131, 12132. 28 CFR Section 35.131 indicates a public entity should not discriminate on the basis of illegal drug use against someone not currently engaging in such use who has successfully completed a supervised drug rehabilitation program. Appendix A to 28 CFR Part 35 indicates that Congress intended to deny protection to people engaged in the illegal use of drugs, whether or not addicted, but to protect addicts so long as they are not currently using drugs, recently enough to justify a reasonable belief that continuing use was an ongoing problem. Upon the record here, the provisions of the ADA should not protect defendant. See Colorado State Board of Medical Examiners v. Davis, (1995), 893 P.2d 1365, in which case drug use three years prior to a medical board's revoking a physician license was sufficiently recent to warrant reasonable belief that the use was "a real and ongoing problem." While Appellant's prior history here differs from the record involved in the Davis Case, deference should be given the Ohio Board's judgment that Dr. Hill's illegal use was sufficiently recent to support a reasonable conclusion that it is likely he would illegally use drugs again.

Finally, Appellant argues that the Board's revised sanction, being too harsh, is not supported by reliable, probative and substantial evidence. The thirty days suspension recommended by the Hearing Examiner was revised at an April 12, 1994 meeting of the Board to a six month suspension. Misuse of drugs, and the threat it presents to society, is a matter of public concern and a subject properly addressed by the Board. Lay persons were added to the State Medical Board, in part, so that its decisions would be more representative of general public policy, rather than policy limited to the medical profession. This Court, after considering the entire record, believes that deference should be given to the vote tally following comments of record about public policy, in which seven out of nine Board members approved the Order appealed from here. On the record, both the Board's

Order and the lesser sanction imposed by the Hearing Examiner are supported by reliable, probative and substantial evidence. The reason the Examiner's recommendation is reviewed by the full Board is so the Board's decision would be final and binding. The Court has been cited no authority making such a procedure improper, nor contrary to law. The Board's Decision and Order of April 14, 1995 is affirmed. Counsel for Appellee shall prepare and submit an appropriate Judgement Order pursuant to Local Rule 25.01.

 4-18-96

W. Millard, Judge

Copies to:

Kevin P. Byers
Attorney for Appellant

Lilliam Kaczmarek
Assistant Attorney General
Counsel for Appellee

N 0514

APPENDIX:

By letter dated September 14, 1994, The State Medical Board of Ohio (hereinafter notified Appellant Sam Hill, D.O., that it was proposing to take disciplinary action against his license to practice medicine and surgery in this state. (State's Exhibit 5). This action was proposed by the Board based on allegations including, but not limited to, the fact that Dr. Hill wrote prescriptions in a patient's name for drugs intended to be used by himself, an admitted drug addict, that he self prescribed, and that he also obtained drugs for personal use by samples, conduct which constitutes the commission of a crime in this State. The Board further alleged that Dr. Hill provided false information to the Board under the terms of his current probation.

The Board charged that Dr. Hill's conduct was conduct which would constitute a felony in this state; specifically a violation of R.C. 2925.22(A), Deception to obtain a dangerous drug, and 2925.23(A), Illegal processing of a drug document. The Board further charged that this conduct is conduct which would constitute a misdemeanor in this state; specifically a violation of R.C. 2925.11, Drug Abuse. This conduct was also alleged to have violated the terms of probation the Dr. Hill's license was currently subject to since May of 1991. Specifically the probationary term required that Dr. Hill obey all federal, state and local laws and rules governing the practice of medicine in this state, and Dr. Hill's conduct violated numerous state laws and administrative rules governing the practice of medicine, including, but not limited to, the rules for prescribing of controlled substances found in Ohio Adm. Code 4731-11-02.

Dr. Hill requested an administrative hearing in this matter (State Exhibit 2), and the hearing took place on December 1, 1994 before an Attorney Hearing Examiner. Dr. Hill was represented by counsel and was given the opportunity to present documents, examine witnesses appearing for or against him, and testify on his own behalf.

At the administrative hearing, the State provided evidence which established the following:

1. In June of 1989, after a one year suspension

(of which only thirty days was active), the Board placed Dr. Hill on a three year probation which became effective in May of 1991. (State's Exhibit 12.) Dr. Hill's probation was subject to several probationary term and conditions, including the requirement that Dr. Hill obey all federal and state laws and rules governing the practice of medicine in Ohio. Dr. Hill was required to submit quarterly declarations to the Board stating that he was in compliance with the terms of his probation. Dr. Hill submitted these declarations in December of 1993 and March of 1994, stating that he was in compliance with his probationary terms. (State's Exhibit 14).

2. Dr. Hill was interviewed by a Board investigator, Investigator Hunter, in April of 1994, regarding his prescribing of controlled substances to Patient 1. At that time Dr. Hill admitted to the Board investigator that the prescriptions, although written in the name of Patient 1, were really for his own personal use. (Testimony of Investigator Hunter, Tr. at 22-25.) Dr. Hill further admitted to writing prescriptions for controlled substances for himself and obtaining drugs through samples. Dr. Hill further admitted that he was addicted to drugs. (Testimony of Investigator Hunter, TR. at 22-25, and testimony of Dr. Hill, Tr. at 35-60).

3. Dr. Hill admitted to Investigator Hunter that he was also suffering from depression. Additionally, he advised Investigator Hunter that he had been treated for depression at Harding Hospital on two separate occasions. Further, in April of 1994, Dr. Hill notified the Board that he was entering treatment at the University of Cincinnati Hospitals for the treatment of depression, and that he believed that his depression may have led to his drug addiction. Therefore, Dr. Hill was referred to Shepherd Hill Hospital as a dual diagnosis of major depression and chemical dependency. (Testimony of Dr. Hill, Tr. at 47-60, 81-83).

The Hearing Examiner's Report and Recommendation was filed on February 13, 1995. In that report and Recommendation, the Hearing Examiner recommended that based upon the findings of fact and conclusions of law, the medical license of Sam Hill, D.O. should be revoked, that revocation stayed, and that Dr.

Hill's license be suspended for a period of thirty days. She outlined reinstatement conditions, and recommended that once reinstated, Dr. Hill be subject to a five year probationary period.

Objections to the Report and Recommendation were filed by Dr. Hill, and the Board considered this matter at their April 12, 1995 Board meeting. Counsel for Dr. Hill was present and did address the Board. During deliberations, the Board determined, as is within their discretion, that the thirty day suspension was too lenient. Thereafter, the Board voted to modify the Report and Recommendation to reflect a six month suspension rather than a thirty days after the mailing of the Board's order on May 5, 1995.

Dr. Hill timely filed a notice of appeal and a motion to suspend the Board's order pending outcome of the appeal. The State filed a memorandum in opposition to the motion to suspend. However, this Court granted Dr. Hill's Motion for a stay.

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

Sam Hill, D.O.,

Appellant

- vs -

Case No. 95CVF-05-3379 (Millard, J.)

State Medical
Board of Ohio,

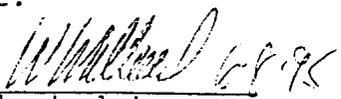
Appellee

DECISION ON MOTION TO SUSPEND AGENCY ORDER PENDING
APPEAL AND ORDER CONDITIONALLY SUSPENDING THE ORDER
OF THE STATE MEDICAL BOARD OF OHIO PENDING APPEAL

FILED
STATE MEDICAL BOARD OF OHIO
CLERK OF COURTS
9:00 AM
JULY 13 1995

Upon consideration of the record and following hearing on Tuesday 6-6-1995, and consideration of the arguments of counsel and the authorities submitted in support and opposition, Appellant's 5-12-1995 Motion to suspend the 4-12-1995 Order of the State Medical Board of Ohio pending this appeal is, conditionally as noted hereafter, SUSTAINED. On this record, the court finds Appellant has established he would suffer unusual hardship, and that public safety, health, and welfare will not be threatened by suspension of the Board's Order pending this appeal. O.R.C. § 119.12 specifies that the provisions requiring these elements to be proved shall not limit the factors considered in reaching this decision. The terms of this Suspension Order specifically include Dr. Hill's full and continuing compliance with all four sub-paragraphs (i, ii, iii, and iv) of paragraph c of the Board's Order; if such compliance is not proper, then upon notification and after expedited hearing, this Suspension Order may be vacated. It is SO ORDERED.

It is also Ordered that the briefing schedule is modified so that the record shall be promptly filed. Appellant's brief shall be filed by 7-14-1995; Appellee's brief, by 7-28-1995; Appellant's reply brief, by 8-4-1995, which date is also set as the non-oral hearing date. The Board's Order is, with these conditions, STAYED pending decision on the merits of the appeal here.


W. Millard, Judge

Copies to:
Kevin P. Byers, counsel for Appellant
Lili C. Kaczmarek, AAG, for Appellee

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

9505-05-3379

Sam Hill, DO,
Appellant

v.

The State Medical Board of Ohio
Appellee.

*
*
*
*

CASE NO. _____

JUDGE

MILLARD

Appeal from the State Medical Board of Ohio

APPELLANT'S NOTICE OF APPEAL

Pursuant to RC 119.12, notice is hereby given that Appellant, Sam Hill, DO, appeals the decision and order of the State Medical Board dated April 14, 1995, certified on April 23, 1995, mailed May 5, 1995, and received by Appellant's counsel on May 8, 1995, (copy attached as Exhibit A.) The Medical Board order is not supported by the necessary quantum of reliable, probative and substantial evidence nor is it in accordance with law.

Respectfully submitted,

KEVIN P. BYERS CO., L.P.A.

KPBYERS

Kevin P. Byers 0040253
The LeVeque Tower
50 West Broad Street, 28th Floor
Columbus, Ohio 43215-3300
(614) 228-6283 Fax 228-0921

Attorney for Sam Hill, DO

95 MAY 19 PM 12:29

STATE MEDICAL BOARD
OF OHIO

KEVIN P. BYERS CO., L.P.A. 50 West Broad Street, 28th Floor
Columbus, Ohio 43215-3300 (614) 228-6283



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43260-0011 • (614) 464-3937

April 14, 1995

Sam Hill, D.O.
203 North Main Street
Lynchburg, OH 45142

Dear Doctor Hill:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Melinda R. Early, Attorney Hearing Examiner, State Medical Board of Ohio; and an 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 and Conclusions of Law of the Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO

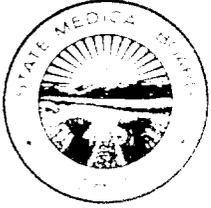
Thomas E. Gretter, M.D.
Secretary

TEG:em
Enclosures

Certified Mail Receipt No. P 741 124 629
Return Receipt Requested

cc: Kevin P. Byers, Esq.

Certified Mail Receipt No. P 741 124 630
Return Receipt Requested



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, OH 43260-1172 • 614-464-5143

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Melinda R. Early, Attorney Hearing Examiner, State Medical Board; and an 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 and Conclusions of Law of the Hearing Examiner, and adopting an amended Order, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Sam Hill, 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)

A handwritten signature in cursive script, reading "T. E. Gretter, M.D.", is written over a horizontal line.

Thomas E. Gretter, M.D.
Secretary

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

*

*

SAM HILL, D.O.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 12th day of April, 1995.

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

It is hereby ORDERED that:

The certificate of Sam Hill, D.O., to practice osteopathic medicine and surgery in the State of Ohio, is REVOKED. Such revocation is stayed, and Dr. Hill's certificate is SUSPENDED for a period of not less than six (6) months. The State Medical Board shall not consider reinstatement of Dr. Hill's certificate to practice unless and until all of the following minimum requirements are met:

- a. Dr. Hill shall submit an application for reinstatement, accompanied by appropriate fees.
- b. In the event Dr. Hill has not been engaged in the active practice of osteopathic medicine and surgery for a period in excess of two (2) years prior to application for reinstatement, the Board may exercise its discretion under Section 4732.111, Ohio Revised Code, to require additional evidence of Dr. Hill's fitness to resume practice.
- c. Dr. Hill shall provide the Board with acceptable documentation evidencing continuing compliance with a recommended treatment plan consisting of at least the following elements:
 - i. Continuous participation in a drug and alcohol rehabilitation program, such as AA, NA, or Caduceus, approved in advance by the Board specifically for Dr. Hill. Dr. Hill shall participate, at least three times per week, or as otherwise directed by the Board;

- ii. Continuous psychiatric counseling at intervals as deemed appropriate by the treating psychiatrist approved by the Board, with acceptable documentation provided to the Board at regular intervals;
 - iii. Weekly random drug screens; and
 - iv. Weekly meetings with a monitoring physician with whom Dr. Hill has established a relationship. The monitoring physician shall provide acceptable documentation to the Board at regular intervals.
2. Upon reinstatement and commencement of practice in Ohio, Dr. Hill's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of five (5) years:
 1. Dr. Hill shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
 2. Dr. Hill shall submit quarterly declarations under penalty of falsification pursuant to Section 2921.13, Ohio Revised Code, stating whether or not there has been compliance with all provisions of probation.
 3. Dr. Hill 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.
 4. In the event that Dr. Hill should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Hill 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 the probationary monitoring is otherwise being performed.
 5. Dr. Hill shall immediately surrender his registration with the United States Drug Enforcement Administration. Further, Dr. Hill shall not purchase, prescribe, order, dispense, administer, or possess (except as provided in paragraph 6 below) any controlled substances, and shall be ineligible to reapply for or to hold registration with the United States Drug Enforcement Administration, without prior Board approval.
 6. Dr. Hill shall abstain completely from the personal use or possession of drugs, except as prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Dr. Hill's history of chemical dependency.
 7. Dr. Hill shall abstain completely from the use of alcohol.

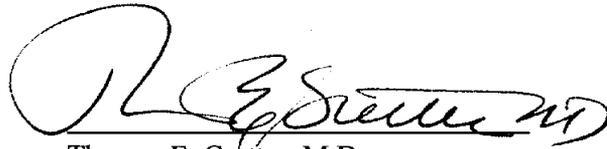
8. Dr. Hill shall submit to random urine screenings for drugs and alcohol on a weekly basis, or as otherwise directed by the Board. Dr. Hill shall ensure that all screening reports are forwarded directly to the Board on a monthly basis. Dr. Hill shall submit the required urine specimens to a supervising physician to be approved by the Board. 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. In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Hill must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable.
9. Dr. Hill shall submit blood or urine specimens for analysis without prior notice at such times as the Board may request.
10. Dr. Hill shall maintain participation in an alcohol and drug rehabilitation program, such as AA, NA, or Caduceus, approved in advance by the Board specifically for Dr. Hill, no less than three (3) times per week, or as otherwise directed by the Board. At his appearances before the Board or its designed representative, Dr. Hill shall submit acceptable documentary evidence of continuing compliance with this program.
11. Dr. Hill shall have a monitoring physician approved by the Board, who shall monitor him and provide the Board with reports on Dr. Hill's progress and status. Dr. Hill shall ensure that said reports are forwarded to the Board on a quarterly basis. In addition, the monitoring physician shall promptly report to the Board any problems related to Dr. Hill's practice that suggest that Dr. Hill has relapsed or may be about to relapse. In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Hill must immediately so notify the Board in writing and make arrangements acceptable to the Board for another physician to monitor his progress and status as soon as practicable.
12. Dr. Hill shall continue psychiatric therapy with a psychiatrist approved by the Board, at such intervals as are deemed appropriate by the treating psychiatrist, and shall comply with all treatment and/or medication regimens recommended by the approved treating psychiatrist, until such times as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the approved treating psychiatrist. Said reports shall indicate Dr. Hill's progress and status, including his compliance with any recommended treatments and/or medication regimens, and shall specify any changes in recommended treatments and the reasons for such changes. Dr. Hill shall ensure that these reports are forwarded to the Board on a quarterly basis, or as otherwise directed by the Board. In its discretion, the Board may request additional information from the treating psychiatrist.

13. Dr. Hill 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. Further, Dr. Hill shall provide a copy of this Order to each physician approved pursuant to paragraphs 8, 11, and 12, above.

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

Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Hill's certificate will be fully restored, except for any permanent limitations or restrictions the Board deems fit to impose as a condition of release from probation.

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



Thomas E. Gretter, M.D.
Secretary

4/23/95

Date

(SEAL)

REPORT AND RECOMMENDATION 6 PM 1:10
IN THE MATTER OF SAM HILL, D.O.

The Matter of Sam Hill, D.O., came on for hearing before Melinda R. Early, Esq., Hearing Examiner for the State Medical Board of Ohio, on December 1, 1994.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated September 14, 1994, (State's Exhibit 5), the State Medical Board of Ohio notified Sam Hill, D.O., that it proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The bases for the Board's proposed action were the following factual allegations:
1. In June 1989, the Board placed Dr. Hill's certificate to practice osteopathic medicine on probation for three years following a one year suspension, of which all but thirty days was stayed. The probationary term began in May 1991 after Dr. Hill unsuccessfully appealed the Board's Order. Dr. Hill's probation was subject to certain terms and conditions, among which was the requirement that Dr. Hill "obey all federal, state, and local laws, and all rules governing the practice of [osteopathic] medicine in Ohio." In December 1993 and March 1994, Dr. Hill submitted quarterly declarations, pursuant to a probationary term, in which he stated that he was in compliance with the regulations related to the practice of osteopathic medicine in Ohio;
 2. In April 1994, Colonel J. Hunter, a Board investigator, interviewed Dr. Hill regarding controlled substances prescriptions he had written for Patient 1 (identified on Patient Key, sealed to protect patient confidentiality). During that interview, Dr. Hill admitted that the prescriptions he had written for Patient 1 were actually written for his personal use, and that he had been writing prescriptions in this patient's name for several months. Dr. Hill admitted to Mr. Hunter that he was addicted to the drugs. Additionally, Dr. Hill admitted obtaining controlled substances for his use through sample drugs, prior to the time he began writing prescriptions in Patient 1's name;

- 95 FEB 16 PM 1:10
STATE MEDICAL BOARD
3. The Board listed controlled substances prescriptions Dr. Hill allegedly wrote to Patient 1 which were intended for his own use, from October 1993 to March 1994. A summary of these prescriptions is as follows: ten, Vicodin ES Tab; one, Codiclear DH liquid; two, Hydrocodone/APAP 7.5/750 Tab; one, Acetaminophen/Cod#3 Tab; one Lomotil Tab; one, Lonox; and two, Propoxyphene N 100/APAP Tab and one, Hydrocodone/APAP 7.5/500 Tab;
 4. Additionally, the Board listed controlled substances prescriptions Dr. Hill allegedly wrote to himself, for his use, from October 1993 to March 1994. In summary, these prescriptions were as follows: four, Vicodin ES tab; five, Hydrocodone/APAP 7.5/500 Tab; one, Hydrocodone Compd. Syrup; and one, Diphenoxylate/Atropine Tab; and
 5. During the investigative interview with Mr. Hunter, Dr. Hill advised Mr. Hunter that he was suffering from depression which began, approximately, when he moved his practice from Columbus, Ohio to Lynchburg, Ohio. Additionally, Dr. Hill advised Mr. Hunter that he had been treated for depression at Harding Hospital, once in the late seventies, and again in the early eighties. On or about April 22, 1994, Dr. Hill notified the Board that he was being admitted to the University of Cincinnati Hospitals for the treatment of depression. Dr. Hill further advised the Board that he believed his depression may have caused his drug dependency.

The Board asserted that Dr. Hill's acts, conduct, and/or omissions as alleged, in paragraphs 2 and 3, above, individually and/or collectively, constituted:

1. "[c]ommission 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 2925.22(A), Ohio Revised Code, Deception to obtain a dangerous drug, and Section 2925.23(A), Ohio Revised Code, Illegal processing of drug documents"; and
2. "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: Rules 4731-11-02(A), (C), and (E), Ohio Administrative Code. Pursuant to paragraph (F) of Rule 4731-11-02, Ohio Administrative Code, a violation of any provision of the rule shall constitute a violation of Sections 4731.22(B)(2), and (6), Ohio Revised Code."

95 FEB 16 PM 1:10

Regarding the Board's allegations that Dr. Hill wrote prescriptions in Patient 1's name, wrote prescriptions to himself, and secured controlled substances through samples, the Board asserted that Dr. Hill's "acts, conduct, and/or omissions, *** individually and/or collectively constitute[d]":

1. "[c]ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice,' as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 2925.11, Ohio Revised Code, Drug Abuse"; and
2. "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice or violation of the conditions of limitation upon which a limited or temporary registration or certificate to practice is issued,' as that clause is used in Section 4731.22(B)(15) of the Ohio Revised Code."

Regarding the Board's allegation that Dr. Hill submitted false quarterly declarations to the Board in December 1993 and March 1994, the Board charged that such "acts, conduct and/or omissions *** constitute[d]: 'publishing a false, fraudulent, deceptive, or misleading statement,' as that clause is used in Section 4731.22(B)(5), Ohio Revised Code."

Regarding the Board's allegations that Dr. Hill wrote controlled substances prescriptions to himself, the Board asserted that Dr. Hill's "acts, conduct and/or omissions *** individually and/or collectively, constitute[d], '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: Rules 4731-11-02(A) and (C), Ohio Administrative Code. Pursuant to paragraph (F) of Rule 4731-11-02, Ohio Administrative Code, a violation of any provision of the rule shall constitute a violation of Sections 4731.22(B)(2), and (6), Ohio Revised Code."

The Board asserted that Dr. Hill's alleged depression, as well as his previous hospitalizations for the treatment of depression, constituted: "[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills,' as that clause is used in Section 4731.22(B)(19), Ohio Revised Code."

95 FEB 16 PM 1:10

Finally, based on its allegations as set forth in paragraphs 2, 3, 4, and 5, above, the Board charged that Dr. Hill's "acts, conduct, and/or omissions *** individually, and/or collectively, constituted: '[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,' as that clause is used in Section 4731.22(B)(26), Ohio Revised Code."

The Board advised Dr. Hill of his right to request a hearing in this matter.

- B. On October 12, 1994, the Board received a letter from Kevin P. Byers, Esq., requesting a hearing on behalf of Dr. Hill. (State's Exhibit 6).

II. Appearances

- A. On behalf of the State of Ohio: Lee I. Fisher, Attorney General of Ohio, by Lili C. Kaczmarek, Assistant Attorney General.
- B. On behalf of the Respondent: Kevin P. Byers, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

- A. Presented by the State:
Colonel J. Hunter
- B. Presented by the Respondent:
Sam Hill, D.O.

II. Exhibits Examined

In addition to State's Exhibits 5 and 6, the following exhibits were identified and admitted into evidence in this Matter:

- A. Presented by the State
1. State's Exhibit 1: July 13, 1994, letter to Dr. Hill from the Board, notifying him of the Board's intention to take disciplinary action against his license to practice osteopathic medicine. (7 pp.)

95 FEB 16 PM 1:10

2. State's Exhibit 2: August 12, 1994, letter to the Board from Kevin P. Byers, Esq., requesting a hearing on behalf of Dr. Hill, regarding the allegations contained in the Board's July 13, 1994, letter.
3. State's Exhibit 3: August 17, 1994, letter to Mr. Byers from the Board, advising him that Dr. Hill's hearing had been initially set for August 26, 1994, but further advising that the hearing would be postponed pursuant to §119.09, Ohio Revised Code.
4. State's Exhibit 4: August 24, 1994, letter to Mr. Byers from the Board, scheduling the hearing for December 1, 1994. (2 pp.)
5. State's Exhibit 7: October 12, 1994, letter from the Board to Mr. Byers advising him that Dr. Hill's hearing had been initially set for October 26, 1994, but further advising that the hearing would be postponed pursuant to §119.09, Ohio Revised Code.
6. State's Exhibit 8: October 27, 1994, letter to Mr. Byers from the Board, scheduling Dr. Hill's hearing for December 1, 1994. (2 pp.)
7. State's Exhibit 9: November 23, 1994, Joint Motion for Consolidation.
8. State's Exhibit 10: November 23, 1994, Entry granting the motion for consolidation.
9. State's Exhibit 11: Board's computerized compilation of Dr. Hill's 1988-1989 disciplinary proceedings, "Formal Action Summary."
10. State's Exhibit 12: June 14, 1989, letter to Dr. Hill from the Board, transmitting certified copies of the Entry of Order; the Report and Recommendation of the Attorney Hearing Examiner; and an excerpt of the Minutes of the Board's June 14, 1989, meeting. (7 pp.)
11. State's Exhibit 13: May 28, 1991, letter to the Board from Paul W. Leithart, II, Esq., confirming that Dr. Hill had served his thirty day suspension.
12. State's Exhibit 14: Dr. Hill's March 21, 1994, and December 6, 1993, quarterly declarations submitted to the Board, each stating that he is in compliance with regulations related to the practice of osteopathic medicine in Ohio. (2 pp.)

- 95 FEB 16 PM 1:10
13. State's Exhibit 15: August 29, 1994, investigative subpoena duces tecum issued by the Board to the Medicine Shoppe Pharmacies, Hillsboro, Ohio. Attached are copies of four prescriptions filled by the pharmacy for Patient 1 and Dr. Hill, between November 15, 1993, and December 27, 1993, together with computer printouts itemizing prescriptions purchased by Patient 1 and Dr. Hill from October 1993 through April 30, 1994. (7 pp.) (Note: These documents have been sealed to protect patient confidentiality.)
 14. State's Exhibit 16: August 29, 1994, investigative subpoena duces tecum by the Board to the Hillcrest Pharmacy, Hillsboro, Ohio. Attached is a copy of a prescription Dr. Hill had written for Patient 1 which the pharmacy filled on October 15, 1993. (2 pp.) (Note: This document has been sealed to protect patient confidentiality.)
 15. State's Exhibit 17: August 29, 1994, investigative subpoena duces tecum issued by the Board to Rite Aid Pharmacy #142, Hillsboro, Ohio. Attached is a copy of a prescription the pharmacy filled on October 31, 1993, for Dr. Hill, together with a copy of a prescription Dr. Hill wrote for Patient 1 which the pharmacy filled on November 8, 1993. Also attached are computer printouts itemizing prescriptions the pharmacy filled between October 22, 1993, and December 9, 1993, for Patient 1 and Dr. Hill. (5 pp.) (Note: These documents have been sealed to protect patient confidentiality.)
 16. State's Exhibit 18: August 29, 1994, investigative subpoena duces tecum issued by the Board to Lukas Pharmacy, Lynchburg, Ohio. Attached are copies of prescriptions the pharmacy filled for Patient 1 from March 1993 through March 17, 1994, together with a computer printout of prescriptions filled for Patient 1 from March 18, 1993, through March 17, 1994. (7 pp.) (Note: These documents have been sealed to protect patient confidentiality.)
 17. State's Exhibit 19: August 29, 1994, investigative subpoena duces tecum issued by the Board to Revco Pharmacy #0446, Hillsboro, Ohio. Attached are copies of prescriptions Dr. Hill wrote for Patient 1, together with computer printouts itemizing prescriptions filled for Patient 1 from October 3, 1993, through March 1, 1994. Also attached is a computer printout for prescriptions the pharmacy filled for Dr. Hill from October 24, 1993 through January 9, 1994. (7 pp.) (Note: These documents have been sealed to protect patient confidentiality.)

18. State's Exhibit 20: November 23, 1994, investigative subpoena duces tecum issued by the Board to Revco Pharmacy #0446, Hillsboro, Ohio. Attached are copies of Dr. Hill's prescriptions the pharmacy filled between October 24, 1993, and January 9, 1994. (4 pp.)
19. State's Exhibit 21: November 23, 1994, investigative subpoena duces tecum issued by the Board to the Hillcrest Pharmacy, Hillsboro, Ohio. Attached are copies of Dr. Hill's prescriptions the pharmacy filled, together with a computer printout listing the prescriptions filled for Dr. Hill between October 25, 1993, and March 29, 1994. (4 pp.)
20. State's Exhibit 22: November 23, 1994, investigative subpoena duces tecum issued by the Board to Rite Aid Pharmacy #142, Hillsboro, Ohio. Attached are copies of prescriptions the pharmacy filled for Patient 1 on December 9, 1993, and for Dr. Hill on October 22, 1993, and November 28, 1993. (4 pp.) (Note: These documents have been sealed to protect patient confidentiality.)
21. State's Exhibit 23: November 23, 1994, investigative subpoena duces tecum issued by the Board to the Medicine Shoppe Pharmacies, Hillsboro, Ohio. Attached are copies of prescriptions the pharmacy filled for Dr. Hill from October 29, 1993 to February 18, 1994. (5 pp.)
22. State's Exhibit 24: Copies of pharmacies' computer printouts, itemizing prescriptions filled for Patient 1 and Dr. Hill from: Revco Pharmacy #0446, The Medicine Shoppe, and Rite Aid Pharmacy #142. (9 pp.) (Note: These documents have been sealed to protect patient confidentiality.)
23. State's Exhibit 25: Colonel J. Hunter's April 25, 1994, Report of Investigation, Complaint No. 94-0398. Attached are pharmacy computer printouts. (8 pp.) (Note: Attachments have been sealed to protect patient confidentiality.)

B. Presented by the Respondent

1. Respondent's Exhibit A: Dr. Hill's July 20, 1994 Ohio Physicians Effectiveness Program (O.P.E.P.) Advocacy Contract. (2 pp.)
2. Respondent's Exhibit B: November 15, 1994, letter to Mr. Byers from Edward J. Poczekaj, CCDC III, describing Dr. Hill's participation in the Ohio Physicians Effectiveness Program.

3. Respondent's Exhibit C: Dr. Hill's drug screens analyzed by National Health Laboratories, dated 7/27/94; 9/26/94; 9/28/94; 10/5/94; 10/19/94; 10/22/94; 10/27/94; and 10/31/94. (9 pp.)
4. Respondent's Exhibit D: Dr. Hill's A.A. meeting attendance logs for the period, July 20, 1994, through November 3, 1994. (2 pp.)
5. Respondent's Exhibit E: November 14, 1994, letter to the Board from Dr. Hill's patient, Carol J. Davis, supporting Dr. Hill. (2 pp.)
6. Respondent's Exhibit F: November 15, 1994, letter to the Board from Jay Cooper, R.N., Director of Development and Marketing, Highland District Hospital, Hillsboro, Ohio, supporting Dr. Hill.
7. Respondent's Exhibit G: November 14, 1994, letter to the Board from Eloise Yochum, Administrator, Highland District Hospital, supporting Dr. Hill.
8. Respondent's Exhibit H: January 11, 1994, article from the Hillsboro, O., Press Gazette, regarding Dr. Hill's practice.
9. Respondent's Exhibit I: November 22, 1994, letter to the Board from Brian K. Jolitz, D.O., Chief of Staff, Highland District Hospital, Hillsboro, Ohio, supporting Dr. Hill.
10. Respondent's Exhibit J: October 12, 1994, letter to the Board from Mr. Byers, requesting a hearing on behalf of Dr. Hill, regarding the allegations made in the Board's September 15, 1994, letter. (3 pp.) (Note: This document is a duplicate of State's Exhibit 6).

III. Post-Hearing Admissions

1. The record in this Matter was held open pending receipt of Dr. Hill's Shepherd Hill Hospital medical records. The following documents were received December 5, 1994, and are admitted to the record as Respondent's exhibits:

Respondent's Exhibit K: Dr. Hill's medical history and physical examination performed by Dr. Frederick Karaffa, M.D., on April 29, 1994. (3 pp.) (Note: This document has been sealed to protect patient confidentiality.)

Respondent's Exhibit L: Report of Dr. Hill's Psychological Assessment as examined and prepared by Patrick McGovern, Ph.D., on May 3, 1994. (3 pp.) (Note: This document has been sealed to protect patient confidentiality.)

Respondent's Exhibit M: Dr. Hill's May 26, 1994, Discharge Summary. (3 pp.) (Note: This document has been sealed to protect patient confidentiality.)

Respondent's Exhibit N: Dr. Hill's Integrated Summary prepared May 5, 1994, by Joan Nesbitt, R. N., and S. Abrahamsen, Jr., BA, NCAC I. (3 pp.) (Note: This document has been sealed to protect patient confidentiality.)

Respondent's Exhibit O: Dr. Hill's Counselor Discharge Summary prepared by Tina Holt, CCDC III, on July 8, 1994. (2 pp.) (Note: This document has been sealed to protect patient confidentiality.)

Respondent's Exhibit P: Dr. Hill's Recovery Plan Contract. (2 pp.) (Note: This document has been sealed to protect patient confidentiality.)

Respondent's Exhibit Q: Multidisciplinary Progress Notes for Dr. Hill's participation in Shepherd Hill Hospital's Aftercare program from July 6, 1994, through November 16, 1994. (5 pp.) (Note: This document has been sealed to protect patient confidentiality.)

2. Upon the Hearing Officer's motion, the following documents are admitted to the record:

Board Exhibit A: Excerpts from the *Physician's Desk Reference*, 47th edition, 1993, and 48th edition, 1994, concerning Hydrocodone Bitartrate, Vicoden ES Tablets, Codiclear DH syrup, and Hydrocodone with APAP.

Board Exhibit B: Excerpts from the *Physician's Desk Reference*, 47th edition, 1993, 48th edition, 1994, concerning Propoxyphene Napsylate 100/APAP (Darvocet - N).

Board Exhibit C: Excerpt from the *Physician's Desk Reference*, 47th Edition, 1993, and 48th edition, 1994, concerning Diphenoxylate HCl, Lomotil.

Board Exhibit D: Excerpt from the *Physician Desk Reference*, 47th edition, 1993, and 48th edition, 1994, concerning Acetaminophen Cod 3.

Board Exhibit E: Section 2925.11, Ohio Revised Code, Drug abuse.

95 FEB 16 PM 1:11

Board Exhibit F: Section 2925.22, Ohio Revised Code, Deception to obtain a dangerous drug; Section 2913.01, Ohio Revised Code, Definitions.

Board Exhibit G: Section 2925.23, Ohio Revised Code, Illegal processing of drug documents.

Board Exhibit H: Section 2925.31, Ohio Revised Code, Abusing harmful intoxicants.

Board Exhibit I: Section 4731-11-02(A), (C), (E), and (F), Ohio Administrative Code.

3. Upon the Hearing Examiner's own motion, the November 13, 1994, letter to the Board from Dirk N. Juschka, M.D., supporting Dr. Hill, is admitted to the record as Board Exhibit J.

PROCEDURAL MATTERS

The Board originally issued a Notice of Opportunity for Hearing letter to Dr. Hill on July 13, 1994 (State's Exhibit 1). This letter outlined factual allegations for the Board's proposed disciplinary action which included the allegation that Dr. Hill had written thirty-three controlled substances prescriptions in the name of Patient 1 for his own consumption. After further investigation, the Board amended its Notice of Opportunity for Hearing letter, on September 14, 1994, (State's Exhibit 5), to more correctly notify Dr. Hill of the factual allegations concerning the prescriptions he had written to Patient 1, and to himself, as well as to notify Dr. Hill of the Board's charges concerning the legal consequences of his alleged actions. The allegations set forth in the September 14, 1994, letter superseded those set forth in the July 13, 1994, letter, and were the basis of the hearing conducted on December 1, 1994.

SUMMARY OF EVIDENCE

1. In December 1988, the Board issued Dr. Hill a Notice of Opportunity for Hearing letter based on the Board's allegations that Dr. Hill employed an unregistered physician's assistant. On or about June 14, 1989, following an administrative hearing, the Board issued an Order suspending Dr. Hill's certificate to practice osteopathic medicine and surgery in the State of Ohio for one year. The Board stayed all but thirty days of the suspension, and placed Dr. Hill's certificate on probation for three years.

Dr. Hill appealed the Board's Order, and the Franklin County Court of Common Pleas stayed the Order pending the appeals. Following Dr. Hill's unsuccessful appeals, the Board's original Order became effective on or about March 21, 1991. Accordingly, Dr. Hill's license was suspended for thirty days. Dr. Hill's license to practice osteopathic medicine was reinstated on May 21, 1991, and the three year probation commenced.

Dr. Hill's probationary terms and conditions included the requirements that he, "obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio"; and "submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the provisions of probation." The Board's Order further stated that if Dr. Hill violated "the terms of this Order in any respect, the Board, after giving Dr. Hill notice and an opportunity to be heard, may set aside the stay order and impose the remaining eleven (11) months of suspension and/or take whatever disciplinary action it deems appropriate, up to and including the revocation of his certificate."

See State's Exhibits 11, 12, and 13 and the testimony of Dr. Hill (Tr. 40-42).

2. In April 1994, the Board received a complaint concerning Dr. Hill's prescribing practices. On April 20, 1994, Colonel J. Hunter traveled to Highland County, Ohio, where he contacted six pharmacists. None of the pharmacists expressed concern about Dr. Hill's prescribing practices, including his potential to over-prescribe. Each pharmacy provided Mr. Hunter with a computer printout of the prescriptions Dr. Hill had written for himself and Patient 1. Relying on the pharmacies' computer printouts, Mr. Hunter met with Dr. Hill on April 21, 1994, to discuss the prescriptions Dr. Hill had written to Patient 1, and to himself. During the interview with Mr. Hunter, Dr. Hill openly admitted that he had written prescriptions in Patient 1's name which were intended for his use. Moreover, Dr. Hill admitted that he was addicted to the drugs. Additionally, Dr. Hill reported to Mr. Hunter that prior to writing prescriptions in Patient's 1's name, he obtained drugs through samples.

See State's Exhibit 25, the testimony of Mr. Hunter (Tr. 22-25), and the testimony of Dr. Hill (Tr. 35-60).

3. Dr. Hill wrote sixteen controlled substances prescriptions in Patient 1's name from October 1993 to March 1, 1994. These prescriptions are more particularly described as follows:

95 FEB 16 PM 1:11

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Qty</u>	<u>Pharmacy</u>
504168	10/3/93	Vicodin ES Tab	4	Revco
198443	10/15/93	Codclear DH liq.	480	Hillcrest
506052	10/19/93	Vicodin ES Tab	10	Revco
412220	10/31/93	Acetaminophen/ Cod #3 Tab	20	Rite Aid
200625	11/03/93	Vicodin ES Tab	100	Lukas
412936	11/08/93	Vicodin ES Tab	20	Rite Aid
336197	11/15/93	Vicodin ES Tab	30	Medicine Shoppe
33655	11/19/93	Vicodin ES Tab	30	Medicine Shoppe
510475	11/26/93	Vicodin ES Tab	100	Revco
338747	12/27/93	Vicodin ES Tab	6	Medicine Shoppe
338746	12/27/93	Lomotil Tab	20	Medicine Shoppe
515241	01/02/94	Lonox Tab	30	Revco
515242	01/02/94	Vicodin ES Tab	10	Revco
203039	01/11/94	Propoxyphene N 100/APAP Tab	10	Lukas
203439	01/24/94	Vicodin ES Tab	15	Lukas
522205	03/01/94	Hydrocodone/ APAP 7.5/500 Tab	10	Revco

See State's Exhibits 15, 16, 17, 18, 19, and 24.

95 FEB 16 PM 1:11

4. Dr. Hill wrote ten controlled substances prescriptions for his own use from October 1993 through March 1994, which are more particularly described as follows:

STATE MEDICAL BOARD

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Qty</u>	<u>Pharmacy</u>
198995	10/25/93	Hydrocodone/ APAP 7.5/750 Tab	15	Hillcrest
335361	10/29/93	Hydrocodone Compd. Syrup	60	Medicine Shoppe
200256	11/09/93	Hydrocodone/ APAP 7.5/750 Tab	100	Hillcrest
414375	11/28/93	Diphenoxylate/ Atropine Tab	30	Rite Aid
414376	11/28/93	Hydrocodone/ APAP 7.5/500 Tab	30	Rite Aid
337367	12/03/93	Vicodin ES Tab	30	Medicine Shoppe
415406	12/09/93	Vicodin ES Tab	20	Rite Aid
341473	02/18/94	Vicodin ES Tab	30	Medicine Shoppe
208943	03/07/94	Hydrocodone/ APAP 7.5/500 Tab	30	Hillcrest
210516	03/29/94	Hydrocodone/ APAP 7.5/500 Tab	30	Hillcrest

See State's Exhibits 15, 16, 17, 19, 20, 21, 22, 23, and 24.

5. In the Board's September 14, 1994, letter three prescriptions were listed as ones Dr. Hill had written for Patient 1 which were intended for his own use. Examination of the prescriptions and computer printouts, however, revealed that Dr. Hill had written the prescriptions for himself, as follows:

Report and Recommendation
 In the Matter of Sam Hill, D.O.
 Page 14

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Qty</u>	<u>Pharmacy</u>
506593	10/24/93	Hydrocodone/ APAP 7.5/750 Tab		85 FEB 16 PM 1:11 Revco (Note: Listed on computer printout, only.)
507610	11/02/93	Hydrocodone/ APAP 7.5/750 Tab	15	Revco (Note: Listed on computer printout, only.)
516239	01/09/94	Propoxyphene N 100/APAP Tab	10	Revco (Note: Listed on computer printout, only.)

The Board's September 14, 1994 letter also identified two prescriptions as ones Dr. Hill had written for himself. Examination of the prescriptions and computer printouts, however, revealed that Dr. Hill had written the prescriptions for Patient 1 as follows:

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Qty</u>	<u>Pharmacy</u>
411578	10/22/93	Vicodin ES Tab	6	Rite Aid
415406	12/09/93	Vicodin ES Tab	20	Rite Aid

See State's Exhibits 15 - 24.

- The drugs which Dr. Hill prescribed, as outlined above, are all controlled substances. Hydrocodone Bitartrate (Codiclear DH, Vicodin ES, and Hydrocodone with APAP) is a Schedule III controlled substance; Propoxyphene N 100/APAP is a Schedule IV controlled substance; Diphenoxylate HCl (Lomotil and Lonox) is a

95 FEB 16 PM 1:11

Schedule V controlled substance; and Acetaminophen/Cod #3 is a Schedule III controlled substance.

See Board Exhibits A - D.

STATE MEDICAL BOARD

7. Dr. Hill did not deny writing the prescriptions to himself, or writing prescriptions in Patient 1's name as the Board had alleged in its September 14, 1994 Notice of Opportunity for Hearing letter. Dr. Hill testified that in addition to the prescriptions he wrote in Patient 1's name, he also wrote prescriptions in his mother-in-law's name when he was practicing in Columbus. Dr. Hill advised both Mr. Hunter and the attending physician at Shepherd Hill Hospital that he also obtained drugs through samples. Dr. Hill did not deny abusing the drugs which he had prescribed to Patient 1 and to himself.

See the testimony of Dr. Hill (Tr. 47-48, and 56) and Respondent's Exhibit K.

8. Dr. Hill testified that he began using opiates in 1989, around the time that he first became involved with the Board on disciplinary matters. Although his use of drugs fluctuated, he stated that he was aware that the use was increasing. The patient history taken by Dr. Karaffa at Shepherd Hill Hospital indicated that Dr. Hill's involvement with opiates began when he self-treated a painful rectal muscle spasm condition. Dr. Hill became dependent upon Hydrocodone with the self-prescribed therapy. When Dr. Hill was hospitalized at Shepherd Hill Hospital on April 29, 1994, he was then averaging 10, 7.5 mg Hydrocodone tablets per day. Dr. Hill last used drugs on April 29, 1994 when he took two Hydrocodone tablets, totaling 15 mg, immediately prior to entering Shepherd Hill Hospital.

Dr. Hill testified that he twice attempted to withdraw from the opiates by using catapres. Dr. Hill explained these attempts were unsuccessful because he denied that he was addicted.

See State's Exhibit 24, the testimony of Dr. Hill (Tr. 47-48, 52, and 78), and Respondent's Exhibit K.

9. Dr. Hill's Shepherd Hill Hospital discharge diagnosis was: Axis I, Hydrocodone dependence, nicotine dependence, and major depressive episode, recurrent, severe; Axis II, personality disorder, non-otherwise specified with avoiding traits; and Axis III, von Recklinghausen disease (Neurofibromatosis), Gastroesophageal reflux and proctalgia." Having completed assigned goals in level III treatment, Dr. Hill was discharged to the Central Ohio Recovery Residence (C.O.R.R.) program, an in-patient residential setting operated by Shepherd Hill Hospital, on May 16, 1994, for the level II phase of treatment.

When Dr. Hill entered C.O.R.R. he had begun to work on a treatment plan which included, a knowledge of his disease through A.A. meeting attendance, educational lectures, group sessions, self diagnosis, and the recognition of defense mechanisms which inhibited past recovery attempts. While at C.O.R.R., Dr. Hill continued to follow a treatment plan, and addressed addiction issues such as cross addiction/cross tolerance, and the development of a balanced, structured lifestyle. Dr. Hill was successful in completing Steps I, II, and III of the A.A. recovery program during level II recovery at C.O.R.R. Dr. Hill's other accomplishments during the level II treatment phase included, signing a contract with the Ohio Physicians Effectiveness Program (O.P.E.P.); developing a support network; working on identified socialization issues; identifying potential problems concerning medical licensure; and dealing with unresolved grief over his parents' deaths. Dr. Hill's C.O.R.R. discharge instructions were:

1. To continue with the recovery plan which included A.A./N.A. meeting attendance four times per week, and daily self treatment of the disease;
2. To attend weekly Caduceus group meetings, and weekly Aftercare group meetings for a one year minimum;
3. To continue follow-up with treating psychiatrist, Dr. Cole, to monitor depression and medication;
4. To continue developing relationship with wife; and
5. To work with sponsor and support groups to identify early recovery problems in order to avoid relapse.

See Respondent's Exhibits A, M, N, and O.

10. Dr. Hill testified that he travels from Lynchburg to Newark every Wednesday to attend Caduceus Group meetings at Shepherd Hill Hospital. While in Newark, Dr. Hill also attends Aftercare meetings. Additionally, Dr. Hill attends three A.A. meetings per week. He sees his treating psychiatrist, Dr. Cole, every four to six weeks for follow-up care concerning his depression and medication monitoring.

See the testimony of Dr. Hill (Tr. 58-60, and 82-83) and Respondent's Exhibit D.

11. Dr. Hill has complied with his O.P.E.P. contract by timely providing the program with random toxicology tests. The test results have all been negative. In a November 15, 1994 letter to Dr. Hill's legal counsel, Kevin Byers, Mr. Edward J. Poczekaj, Assistant to the Medical Director, O.P.E.P., assessed Dr. Hill as one who

95 FEB 16 PM 1:12

"appears to be demonstrating on-going recovery as well as conscientious fulfillment of recovery requirements as well as those of his advocacy contract."

See the testimony of Dr. Hill (Tr. 57-58, and 62-64) and Respondent's Exhibit A, B, and C.

12. In or about 1984, Dr. Hill sought counseling for treatment of depression at Harding Hospital. The treatment included a three month hospitalization. In 1990, Dr. Hill was hospitalized at Riverside Hospital for two weeks following an attempted suicide. Dr. Hill had taken an overdose of Elavil and Phenobarbital. In April 1994, Dr. Hill was hospitalized in the psychiatric unit at the University of Cincinnati Hospitals for the treatment of depression. Dr. Tony Tenoglia referred Dr. Hill to the University of Cincinnati.

Following the April 21, 1994 interview with Investigator Hunter, Dr. Hill contacted Dr. Tenoglia concerning his chemical dependency and how he should address the problem. Dr. Tenoglia believed, based on his phone interview with Dr. Hill, that Dr. Hill was a dual diagnosis of depression and chemical dependency. Thus, he felt that it would be more efficacious for Dr. Hill to first address the depression before attempting to treat the chemical dependency. He, therefore, arranged for Dr. Hill to be admitted to the University of Cincinnati Hospitals under the care of Dr. Paul Keck. Dr. Keck referred Dr. Hill to Shepherd Hill Hospital for the treatment and management of chemical dependency.

Dr. Karaffa noted in Dr. Hill's admitting history and physical that Dr. Hill had related a history of extreme mood swings. Additionally, Dr. Hill related to Dr. Karaffa that although he had initially begun using opiates to treat a painful muscle spasm condition, he discovered that the opiates seemed to help control the mood swings. Dr. Karaffa also noted that Dr. Keck had pointed out that Dr. Hill actually may have been unwittingly treating a latent bi-polar disorder.

While at Shepherd Hill Hospital, Dr. Hill was psychologically assessed to determine his personality style, the presence of a psychological symptom disorder, and the level of his intellectual functioning. The psychological testing results demonstrated Dr. Hill's avoidant personality traits and his tendency to be dysthymic with the ability to decompensate into major depression. The Wechsler Adult Intelligence Scale-revised IQ score was 109. The testing counselor, however, believed that this test result was underestimated due to Dr. Hill's early stages of detoxification.

Dr. Hill was referred to Dr. Cole, a psychiatrist with Licking Memorial Hospital, during his Shepherd Hill hospitalization. Dr. Cole confirmed Dr. Hill's diagnosis of major depression. She further defined Dr. Hill's condition as episodic, recurrent,

95 FEB 16 PM 1:12

and severe, with a possible AXIS II diagnosis of avoiding traits. Dr. Cole continued managing Dr. Hill's depression with Vivactil which had been previously prescribed by physicians at the University of Cincinnati. At hearing, Dr. Hill testified that Vivactil is controlling his depression.

STATE MEDICAL BOARD

During the April 21, 1994, interview with Investigator Hunter, Dr. Hill related treatment of his depression at Harding Hospital in the late 1970's and early 1980's. Dr. Hill further rationalized to Investigator Hunter that his depression led to his chemical dependency.

See State's Exhibit 25, the testimony of Mr. Hunter (Tr. 23-25), the testimony of Dr. Hill (Tr. 47, 49, 51, 60, and 81-83), and Respondent's Exhibits K, L, M, N, and O.

13. Pursuant to the Board's June 14, 1989, Order, under penalty of perjury, Dr. Hill submitted a quarterly declaration dated December 6, 1993, in which he stated that he was "in compliance with the regulations related to Osteopathic practice in Ohio." On March 21, 1994, Dr. Hill submitted another quarterly declaration with the same affirmation. Nevertheless, Dr. Hill testified at hearing that when he submitted the quarterly declarations to the Board, he did so knowing that the declarations were false. He further stated that he was not in compliance because he was obtaining drugs illegally.

See State's Exhibit 14, and the testimony of Dr. Hill (Tr. 85).

14. When questioned by his attorney regarding the impact of his chemical dependency on his practice of medicine, Dr. Hill responded that he wasn't aware that he suffered from an impairment of the ability to practice medicine. Dr. Hill did admit, when questioned by his attorney, that he had treated patients when he was under the influence of controlled substances. Moreover, Dr. Hill's Shepherd Hill Hospital patient records indicate that one of the effects of his chemical dependency was his need to use the drugs during the work day.

See the testimony of Dr. Hill (Tr. 74 and 76), and Respondent's Exhibit N.

15. Dr. Hill's counsel also asked if he believed that he was "currently suffering from an inability to practice medicine according to acceptable and prevailing standards of care due to your depression?" Dr. Hill responded, "[n]o."

See the testimony of Dr. Hill (Tr. 76).

16. Dr. Hill is a rural solo general practitioner in Lynchburg, Ohio. He has privileges at Highland District Hospital, a thirty-bed hospital. He submitted letters of support from two physician colleagues, two hospital administrators, and one

95 FEB 16 PM 1:12

patient. Dirk N. Juschka, M.D., stated in his letter that he and Dr. Hill, together with three other physicians, provide weekend call coverage for one another. As such, Dr. Juschka commented that he has not seen Dr. Hill exercise poor medical judgment, impropriety or ethical indiscretions. Moreover, Dr. Juschka indicated that he doesn't have any reservations about Dr. Hill providing coverage to his patients. He also stated that no member of the call schedule has expressed concern about Dr. Hill's ability to practice.

Similar sentiments were echoed by the hospital administrators. Both hospital administrators noted that Dr. Hill practices in an underserved community. Mr. Jay Cooper, Director of development and marketing at Highland District Hospital, stated that Dr. Hill has additionally served the community by working with the County Health Department, Community Action Organization and by providing medical care to the athletic programs.

See the testimony of Dr. Hill (Tr. 43-46), Respondent's Exhibits E, F, G, and I, and Board Exhibit J.

FINDINGS OF FACT

1. Dr. Hill knowingly wrote controlled substances prescriptions in the name of Patient 1, intending to use the controlled substances himself. Moreover, Dr. Hill presented the prescriptions, containing the false representation that the prescriptions were intended for Patient 1's use, to pharmacies in Highland County. The prescriptions Dr. Hill wrote in Patient 1's name which were intended for his use, are as follows:

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Qty</u>	<u>Pharmacy</u>
504168	10/3/93	Vicodin ES Tab Schedule III	4	Revco
198443	10/15/93	Codclear DH liq. Schedule III	480	Hillcrest
506052	10/19/93	Vicodin ES Tab Schedule III	10	Revco
412220	10/31/93	Acetaminophen/ Cod #3 Tab Schedule III	20	Rite Aid

Report and Recommendation
In the Matter of Sam Hill, D.O.
Page 20

200625	11/03/93	Vicodin ES Tab Schedule III	100	95 FEB 16 PM 1:12 Lukas
412936	11/08/93	Vicodin ES Tab Schedule III	20	Rite Aid STATE MEDICAL BOARD
336197	11/15/93	Vicodin ES Tab Schedule III	30	Medicine Shoppe
33655	11/19/93	Vicodin ES Tab Schedule III	30	Medicine Shoppe
510475	11/26/93	Vicodin ES Tab Schedule III	100	Revco
338747	12/27/93	Vicodin ES Tab Schedule III	6	Medicine Shoppe
338746	12/27/93	Lomotil Tab Schedule V	20	Medicine Shoppe
515241	01/02/94	Lonox Tab Schedule V	30	Revco
515242	01/02/94	Vicodin ES Tab Schedule III	10	Revco
203039	01/11/94	Propoxyphene N 100/APAP Tab Schedule IV	10	Lukas
203439	01/24/94	Vicodin ES Tab Schedule III	15	Lukas
522205	03/01/94	Hydrocodone/ APAP 7.5/500 Tab Schedule III	10	Revco

411578	10/22/93	Vicodin ES Tab Schedule III	95 FEB 16 8 PM 1:12 Rite Aid
415406	12/09/93	Vicodin ES Tab Schedule III	20 Rite Aid STATE MEDICAL BOARD

2. Dr. Hill has been chemically dependent upon Hydrocodone. He maintained a drug supply by writing prescriptions in his own name, as well as writing them in the name of Patient 1. He also obtained drugs through samples. Dr. Hill became dependent on Hydrocodone when he began self-prescribing the drug to control pain. He also discovered the added benefit of the drug's ability to control his wide-ranging mood swings. Dr. Hill's treating physician at the University of Cincinnati Hospital believed that Dr. Hill may have treated a latent bipolar disorder by using the drug.
3. Dr. Hill wrote controlled substances prescriptions in his name as follows:

<u>Rx No.</u>	<u>Date</u>	<u>Drug</u>	<u>Qty</u>	<u>Pharmacy</u>
198995	10/25/93	Hydrocodone/ APAP 7.5/750 Tab Schedule III	15	Hillcrest
335361	10/29/93	Hydrocodone Compd. Syrup Schedule III	60	Medicine Shoppe
200256	11/09/93	Hydrocodone/ APAP 7.5/750 Tab Schedule III	100	Hillcrest (Note: listed on computer printout, only.)
414375	11/28/93	Diphenoxylate/ Atropine Tab Schedule V	30	Rite Aid
414376	11/28/93	Hydrocodone/ APAP 7.5/500 Tab Schedule III	30	Rite Aid
337367	12/03/93	Vicodin ES Tab Schedule III	30	Medicine Shoppe

95 FEB 16 PM 1:12

415406	12/09/93	Vicodin ES Tab Schedule III	20	Rite Aid
341473	02/18/94	Vicodin ES Tab Schedule III	30	STATE MEDICAL BOARD Medicine Shoppe
208943	03/07/94	Hydrocodone/ APAP 7.5/500 Tab Schedule III	30	Hillcrest
210516	03/29/94	Hydrocodone/ APAP 7.5/500 Tab Schedule III	30	Hillcrest
506593	10/24/93	Hydrocodone/ APAP 7.5/750 Tab Schedule III	5	Revco (Note: Listed on computer printout, only.)
507610	11/02/93	Hydrocodone/ APAP 7.5/750 Tab Schedule III	15	Revco (Note: Listed on computer printout, only.)
516239	01/09/94	Propoxyphene N 100/APAP Tab Schedule IV	10	Revco (Note: Listed on computer printout, only.)

4. Pursuant to the Board's June 14, 1989, Order, Dr. Hill submitted two quarterly declarations to the Board, under the penalty of perjury, on December 6, 1993 and March 21, 1994. In each declaration, he stated that he was in compliance with the regulations governing the practice of medicine in Ohio. Dr. Hill submitted each declaration knowing that the affirmation was false.

95 FEB 16 PM 1:12

5. Dr. Hill has suffered from periods of depression for a number of years. He was treated for this condition as an in-patient at Harding Hospital, Columbus, Ohio, in 1984. In 1990, Dr. Hill attempted suicide by overdosing with Elavil and Phenobarbital, and was treated for two weeks at Riverside Hospital, Columbus, Ohio. In April 1994, Dr. Hill was an in-patient at the psychiatric unit of the University of Cincinnati Hospitals for the treatment of depression. Dr. Hill is currently under the care of Dr. Cole, a psychiatrist with Licking Memorial Hospital. Dr. Cole diagnosed Dr. Hill as having major depression. Additionally, it was Dr. Cole's opinion that Dr. Hill's depression is episodic, recurrent, and severe. She also believed that Dr. Hill might have a possible Axis II diagnosis of avoiding traits. Dr. Hill sees Dr. Cole in follow-up every four to six weeks. His depression is currently managed with Vivactil with good results.
6. Dr. Hill is a chemically dependent person who has been actively following a recovery treatment plan. He was treated as an in-patient for approximately two weeks at Shepherd Hill Hospital, Newark, Ohio, where he accomplished all treatment goals. Dr. Hill was then discharged to C.O.R.R. on May 16, 1994. While at C.O.R.R., Dr. Hill continued to follow a treatment plan, and worked on other issues associated with the disease. Since leaving C.O.R.R. on July 8, 1994, Dr. Hill has continued to: attend three A.A./N.A. meetings per week; attend weekly Caduceus meetings; attend weekly Aftercare meetings; provide random urine screens to his monitoring physician, all of which have been negative; and has complied with his O.P.E.P. advocacy contract.

CONCLUSIONS

1. Finding of Fact 1 supports a conclusion that Dr. Hill's acts, conduct and/or omissions, individually and/or collectively constitute "[c]ommission 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 2925.22(A), Ohio Revised Code, Deception to obtain a dangerous drug, and Section 2925.23(A), Ohio Revised Code, Illegal processing of drug documents."
2. Finding of Fact 1 supports a conclusion that Dr. Hill's acts, conduct, and/or omissions, individually and/or collectively, 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

95 FEB 16 PM 1:12

wit: Rules 4731-11-02(A) *** (E), Ohio Administrative Code. Pursuant to paragraph (F) of Rule 4731-11-02, Ohio Administrative Code, a violation of any provision of the rule shall constitute a violation of Sections 4731.22(B)(2), and (6), Ohio Revised Code." This Finding of Fact, however, does not support a conclusion that Dr. Hill violated Subparagraph (C) of Rule 4731-11-02, Ohio Administrative Code, as the Board charged.

Rule 4731-11-02(C), Ohio Administrative Code states that "[a] physician shall not utilize a controlled substance without taking into account the drug's potential for abuse, the possibility the drug may lead to dependence, the possibility the patient will obtain the drug for a nontherapeutic use or to distribute to others, and the possibility of an illicit market for the drug." The application of this Rule to the fact that Dr. Hill wrote prescriptions in Patient 1's name so that he could personally use the drugs, is ineffectual. One could speculate that the Board intended to charge Dr. Hill with having violated a more applicable provision of this Rule, however, such speculation, is not the province of an attorney hearing examiner. The State bears the burden of proving its charges and, on this issue, the State has failed to carry the burden.

3. Findings of Fact 1 and 3 support a conclusion that Dr. Hill's acts in writing controlled substances prescriptions in Patient 1's name, intending to use the drugs himself, and his acts in self-prescribing controlled substances, constitute "[c]ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice,' as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 2925.11, Ohio Revised Code, Drug abuse."

In writing controlled substances prescriptions in Patient 1's name for his use, Dr. Hill failed to comply with the provisions of Chapters 3719 and 4731, of the Ohio Revised Code. Accordingly, Dr. Hill's failure to comply with these statutory provisions subjects him to the general statutory prohibition of "knowingly obtain[ing], possess[ing], or us[ing] a controlled substance," as set forth in §2925.11(A), Ohio Revised Code. The controlled substances Dr. Hill prescribed in Patient 1's name were all Schedule III, IV, and V drugs. Thus, Dr. Hill's knowingly obtaining, possessing, and using these controlled substances qualifies as a third degree misdemeanor, as set forth in §2925.11(C)(2), Ohio Revised Code. Regarding the controlled substances Dr. Hill self-prescribed, Dr. Hill failed to comply with Chapter 4731, thereby subjecting himself to §2925.11(A), Ohio Revised Code.

Initially, Dr. Hill self-prescribed Hydrocodone for the treatment of a painful rectal muscle spasm condition. Although this would appear to be a legitimate prescribing of a controlled substance, there is evidence to support a conclusion that

95 FEB 16 PM 1:12

Dr. Hill did not comply with Controlled Substances Rules in Chapter 4731, Ohio Administrative Code.

Rule 4731-11-02(C) requires physicians to "not utilize a controlled substance without taking into account the drug's potential for abuse, the possibility the drug may lead to dependence ***." Although this Rule does not explicitly state that a physician should not utilize controlled substances once an evaluation of the associated risks is made, one can reasonably construe that the regulatory intent is to require physicians to implement a careful balancing test by weighing the inherent risks more heavily.

Dr. Hill testified that he recognized that his drug use was escalating. Additionally, he testified that he twice attempted to habituate himself with catapres, unsuccessfully. Dr. Hill, in self-prescribing controlled substances, either failed to consider the inherent risks of using controlled substances, or failed to balance the risks versus the benefits of continued use when he recognized that his use was accelerating. In either event, one can reasonably conclude that Dr. Hill violated the Controlled Substances Rules. Such a violation would further constitute a violation of §4731.22(B)(20), Ohio Revised Code. Accordingly, Dr. Hill is subject to the general prohibition of using, possessing, and obtaining controlled substances delineated in §2925.11(A), Ohio Revised Code. Inasmuch as the controlled substances Dr. Hill self-prescribed were Schedule III and IV, his violation of §2925.11(A) constitutes a third degree misdemeanor.

4. Findings of Fact 1 and 3 support a conclusion that Dr. Hill's acts, conduct, and/or omissions in writing controlled substances prescriptions in Patient 1's name intending the drugs for his use, and in self-prescribing controlled substances, constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice or violation of the conditions of limitation upon which a limited or temporary registration or certificate to practice is issued,' as that clause is used in Section 4731.22(B)(15) of the Ohio Revised Code." As analyzed in the previous conclusions, Dr. Hill's acts constitute violations of statutes and regulations. These violations therefore constitute a breach of the probationary term that Dr. Hill "obey all federal, state, and local laws, and all rules governing the practice of medicine on Ohio."
5. Finding of Fact 3 supports a conclusion that Dr. Hill's acts, conduct, and/or omissions, individually and/or collectively, 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: Rules 4731-11-02(A) and (C), Ohio Administrative Code. Pursuant to paragraph (F) of Rule 4731-11-02, Ohio Administrative Code, a violation of any

95 FEB 16 PM 1:13

provision of the rule shall constitute a violation of Sections 4731.22(B)(2) and (6), Ohio Revised Code."

6. Finding of Fact 4 supports a conclusion that Dr. Hill's acts, conduct, and/or omissions, individually and/or collectively, constitute "publishing a false, fraudulent, or deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.
7. The Board charged that Dr. Hill's acts in obtaining drugs through samples constituted a number of statutory and regulatory violations, including:
 1. "[c]ommission 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 2925.22(A), Ohio Revised Code, Deception to obtain a dangerous drug, and Section 2925.23(A), Ohio Revised Code, Illegal processing of drug documents";
 2. "[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: Rules 4731-11-02(A), (C), and (E), Ohio Administrative Code. Pursuant to paragraph (F) of Rule 4731-11-02, Ohio Administrative Code, a violation of any provision of the rule shall constitute a violation of Sections 4731.22(B)(2), and (6), Ohio Revised Code";
 3. "[c]ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice,' as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 2925.11, Ohio Revised Code, Drug abuse"; and
 4. "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice or violation of the conditions of limitation upon which a limited or temporary registration or certificate to practice is issued,' as that clause is used in Section 4731.22(B)(15) of the Ohio Revised Code."

Although Dr. Hill obtained drugs through samples, the evidence is insufficient to support a conclusion that Dr. Hill violated either Chapter 3719 or 4731 of the Ohio Revised Code. Moreover, the evidence is insufficient to support a conclusion that Dr. Hill violated Chapter 4731 of the Ohio Administrative Code in using samples.

95 FEB 16 PM 1:13

8. The evidence presented is insufficient to support a conclusion that Dr. Hill's acts, conduct, and/or omissions as set forth in Findings of Fact 1, 2, 3, and 5, constitute the "[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills,' as that clause is used in Section 4731.22(B)(19), Ohio Revised Code." The State did not present any evidence concerning the impact of Dr. Hill's depression and chemical dependency on his ability to practice medicine within acceptable and prevailing standards of care. Although Dr. Hill has been diagnosed with major depression and Hydrocodone dependence, it does not necessarily follow that he is physically or mentally incapable of practicing according to acceptable and prevailing standards of care. Dr. Hill testified that he is not aware that he is unable to practice according to acceptable and prevailing standards. Additionally, Dr. Hill submitted evidence which demonstrates that his physician colleagues do not question his medical judgment.
9. The evidence is also insufficient to support a conclusion that Dr. Hill's acts, conduct and/or omissions, as set forth in Findings of Fact 1, 2, 3, and 5, individually and/or collectively, constitute "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,' as that clause is used in Section 4731.22(B)(26), Ohio Revised Code. Once again, the State failed to present evidence necessary to support its charge that Dr. Hill is unable to practice medicine according to acceptable and prevailing standards because of his impairment. Absent evidence derived from an expert on the subject of addictionology, or such other appropriate evidence, one cannot conclude that simply because a practitioner is chemically dependent, he is impaired of the ability to practice according to acceptable and prevailing standards of care.

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Sam Hill, D.O., to practice osteopathic medicine and surgery in the State of Ohio, is REVOKED. Such revocation is stayed, and Dr. Hill's certificate is SUSPENDED for a period of thirty (30) days. The State Medical Board shall not consider reinstatement of Dr. Hill's certificate to practice unless and until all of the following minimum requirements are met:

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

95 FEB 16 PM 1:13

- b. In the event Dr. Hill has not been engaged in the active practice of osteopathic medicine and surgery for a period in excess of two (2) years prior to application for reinstatement, the Board may exercise its discretion under Section 4732.111, Ohio Revised Code, to require additional evidence of Dr. Hill's fitness to resume practice.
- c. Dr. Hill shall provide the Board with acceptable documentation evidencing continuing compliance with a recommended treatment plan consisting of at least the following elements:
 - i. Continuous participation in a drug and alcohol rehabilitation program, such as AA, NA, or Caduceus, approved in advance by the Board specifically for Dr. Hill. Dr. Hill shall participate, at least three times per week, or as otherwise directed by the Board;
 - ii. Continuous psychiatric counseling at intervals as deemed appropriate by the treating psychiatrist approved by the Board, with acceptable documentation provided to the Board at regular intervals;
 - iii. Weekly random drug screens; and
 - iv. Weekly meetings with a monitoring physician with whom Dr. Hill has established a relationship. The monitoring physician shall provide acceptable documentation to the Board at regular intervals.
2. Upon reinstatement and commencement of practice in Ohio, Dr. Hill's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of five (5) years:
 1. Dr. Hill shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
 2. Dr. Hill shall submit quarterly declarations under penalty of falsification pursuant to Section 2921.13, Ohio Revised Code, stating whether or not there has been compliance with all provisions of probation.
 3. Dr. Hill 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.

95 FEB 16 PM 1:13

4. In the event that Dr. Hill should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Hill 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 the probationary monitoring is otherwise being performed.
5. Dr. Hill shall immediately surrender his registration with the United States Drug Enforcement Administration. Further, Dr. Hill shall not purchase, prescribe, order, dispense, administer, or possess (except as provided in paragraph 6 below) any controlled substances, and shall be ineligible to reapply for or to hold registration with the United States Drug Enforcement Administration, without prior Board approval.
6. Dr. Hill shall abstain completely from the personal use or possession of drugs, except as prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Dr. Hill's history of chemical dependency.
7. Dr. Hill shall abstain completely from the use of alcohol.
8. Dr. Hill shall submit to random urine screenings for drugs and alcohol on a weekly basis, or as otherwise directed by the Board. Dr. Hill shall ensure that all screening reports are forwarded directly to the Board on a monthly basis. Dr. Hill shall submit the required urine specimens to a supervising physician to be approved by the Board. 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. In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Hill must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable.
9. Dr. Hill shall submit blood or urine specimens for analysis without prior notice at such times as the Board may request.
10. Dr. Hill shall maintain participation in an alcohol and drug rehabilitation program, such as AA, NA, or Caduceus, approved in advance by the Board specifically for Dr. Hill, no less than three (3)

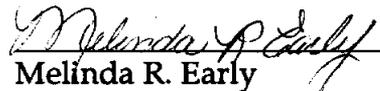
times per week, or as otherwise directed by the Board. At his 3 appearances before the Board or its designed representative, Dr. Hill shall submit acceptable documentary evidence of continuing compliance with this program.

11. Dr. Hill shall have a monitoring physician approved by the Board, who shall monitor him and provide the Board with reports on Dr. Hill's progress and status. Dr. Hill shall ensure that said reports are forwarded to the Board on a quarterly basis. In addition, the monitoring physician shall promptly report to the Board any problems related to Dr. Hill's practice that suggest that Dr. Hill has relapsed or may be about to relapse. In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Hill must immediately so notify the Board in writing and make arrangements acceptable to the Board for another physician to monitor his progress and status as soon as practicable.
12. Dr. Hill shall continue psychiatric therapy with a psychiatrist approved by the Board, at such intervals as are deemed appropriate by the treating psychiatrist, and shall comply with all treatment and/or medication regimens recommended by the approved treating psychiatrist, until such times as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the approved treating psychiatrist. Said reports shall indicate Dr. Hill's progress and status, including his compliance with any recommended treatments and/or medication regimens, and shall specify any changes in recommended treatments and the reasons for such changes. Dr. Hill shall ensure that these reports are forwarded to the Board on a quarterly basis, or as otherwise directed by the Board. In its discretion, the Board may request additional information from the treating psychiatrist.
13. Dr. Hill 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. Further, Dr. Hill shall provide a copy of this Order to each physician approved pursuant to paragraphs 8, 11, and 12, above.

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

Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Hill's certificate will be fully restored, except for any permanent limitations or restrictions the Board deems fit to impose as a condition of release from probation.

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



Melinda R. Early
Attorney Hearing Officer



STATE MEDICAL BOARD OF OHIO

17 South High Street, 17th Floor • Columbus, Ohio 43260-0117 • (614) 464-3111

EXCERPT FROM THE MINUTES OF APRIL 12, 1995

REPORTS AND RECOMMENDATIONS

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

Dr. Garg 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: Sheila A. Barnes, D.O.; Stanley E. Broadnax, M.D.; Kwok Wei Chan, M.D.; Frank DiBenedetto, D.O.; Naba Goswami, M.D.; Sam Hill, D.O.; Don R. Johnson, M.D.; William Patrick Mooney, D.O.; Harvey M. Rodman, M.D.; Kevin Smith, P.A.; and Steve Shu-Tzu Young, M.D. A roll call was taken:

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

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

In accordance with the provision in Section 4731.22(C)(1), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of this matter. Carla S. O'Day, M.D., was the Secretary involved in supervision of the cases under consideration this date.

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

.....

REPORT AND RECOMMENDATION IN THE MATTER OF SAM HILL, 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. Hill.

Dr. Garg advised Mr. Byers 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. Byers stated that he did not have any objection to the absence of a court reporter.

Dr. Garg reminded Mr. Byers 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. Byers would be allotted approximately five minutes for his address.

Mr. Byers stated that he is here on behalf of Dr. Hill, who can't be here. Dr. Hill is attending a caduceus meeting in Newark.

Mr. Byers stated that the Board is aware of Dr. Hill's objections to the Proposed Findings of Fact, Conclusions and Order in this matter. The recommended suspension in this case appears to be punitive. Dr. Hill understands that punishment is occasionally necessary, but he does not feel there is a need for additional punishment at this time. A tried and true risk vs. benefit analysis should be applied to this case. There would be no benefit in suspending Dr. Hill's license. The risk would go to Dr. Hill, his practice, his family, and his patients. Dr. Hill is the only practitioner in the area taking Medicare patients. Mr. Byers expressed concern that the patient population will go unserved should the Board suspend Dr. Hill's license.

Mr. Byers stated that the second part of their objections goes to the proposed DEA restrictions. He stated that the Appellate Court has observed the magnitude of DEA registration to a practitioner, especially in a rural, isolated area. If Dr. Hill relapses, he will do so with or without a DEA certificate. Mr. Byers stated that Dr. Hill has been as forthright as any licensee has been who has appeared before the Board. He has been sober for eleven months and twelve days. Dr. Hill asks to be allowed to remain in practice with a DEA.

Dr. Garg asked whether Ms. Kaczmarek wished to make a statement.

Ms. Kaczmarek stated that the evidence in this case supports the Proposed Order, whether the suspension be for 30, 60 or 90 days. Dr. Hill was forthright at the hearing, and admitted that he'd treated patients while under the influence of controlled substances. The Board must be concerned about that. Ms. Kaczmarek stated that, hopefully, Dr. Hill will continue to be abstinent and the community will not suffer. Ms. Kaczmarek stated that the Proposed Order will help to ensure that.

DR. AGRESTA MOVED TO APPROVE AND CONFIRM MS. EARLY'S PROPOSED FINDINGS

OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF SAM HILL, D.O. DR. STEINBERGH 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. STIENECKER MOVED TO AMEND THE FIRST PARAGRAPH OF THE PROPOSED ORDER IN THE MATTER OF SAM HILL, D.O., BY ADDING THE WORDS “NOT LESS THAN” PRIOR TO THE WORDS “THIRTY (30) DAYS.” MR. SINNOTT SECONDED THE MOTION.

Dr. Stienecker commented that his proposed amendment is merely an editorial change to ensure consistency within the provisions of the Proposed Order.

A vote was taken on Dr. Stienecker’s motion to amend:

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

The motion carried.

Dr. Heidt expressed concern that the Board has tried hard with Dr. Hill but doesn’t seem to be succeeding. He questioned whether a 30-day suspension would be enough of a shock for Dr. Hill to come around.

DR. HEIDT MOVED TO AMEND THE PROPOSED ORDER TO REQUIRE A SUSPENSION PERIOD OF NOT LESS THAN SIX (6) MONTHS. MR. SINNOTT SECONDED THE MOTION.

Dr. Stienecker asked for Dr. Heidt’s reasoning behind the amendment.

Dr. Heidt stated that Dr. Hill has been on probation with the Board since 1989 and continues to have problems. He is not sure that 30 days will be enough to stimulate his mind. He believes six months will do a better job.

Mr. Sinnott stated that he believes that the Board could very well have stopped with the first sentence of the

Proposed Order and revoked Dr. Hill's license. A thirty-day suspension is too lenient in this case, and is less than the citizens of Ohio would want or deserve. The Board needs to drive home the point with a longer suspension.

Dr. Buchan agreed, stating that after reviewing the record in this case he felt the Proposed Order was soft.

A vote was taken on Dr. Heidt's motion to amend:

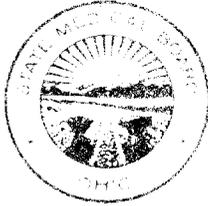
VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Stienecker	- nay
	Dr. Gretter	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Ms. Noble	- aye
	Mr. Sinnott	- aye
	Dr. Heidt	- aye
	Dr. Steinbergh	- nay

The motion carried.

DR. HEIDT MOVED TO APPROVE AND CONFIRM MS. EARLY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF SAM HILL, D.O. DR. BUCHAN SECONDED THE MOTION. A vote was taken:

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

The motion carried.



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor * Columbus, Ohio 43260-0315 * (614) 466-4944

AMENDED NOTICE OF OPPORTUNITY FOR HEARING

September 14, 1994

Sam Hill, D.O.
203 North Main Street
Lynchburg, OH 45142

Dear Doctor Hill:

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 put into effect the one year suspension imposed, but stayed by the previous Board Order, and/or 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 14, 1989, The State Medical Board of Ohio suspended your certificate to practice osteopathic medicine and surgery in the State of Ohio for a period of one year. The Board stayed that suspension for all but thirty days, and placed your certificate on probation for a period of three years subject to various terms, conditions and limitations.

The probationary term, condition or limitation in paragraph (1)(a) of the Board Order required you to "obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio." Further, the probationary term, condition, or limitation in paragraph (1)(c) of the Board Order required you to "submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the provisions of probation." Further, the probationary term, condition or limitation in paragraph (2) of the Board Order stated that if you violate "the terms of this Order in any respect, the Board, after giving (you) notice and an opportunity to be heard, may set aside the stay order and impose the remaining eleven (11) months of suspension and/or take whatever disciplinary action it deems appropriate, up to and including the revocation of his certificate."

Mailed 9/15/94

- (2) You appealed the Board's Order as described in paragraph (1) above and that Order was stayed by Franklin County Court during the pendency of your appeals. Following your unsuccessful appeals, the Board's original Order became effective on or about March 21, 1991. Your license was suspended and the Board's three year probation followed, subject in part to the same terms, conditions or limitations mentioned in paragraph (1) above.
- (3) On or about April 21, 1994, Investigator Hunter of the State Medical Board of Ohio interviewed you in regard to prescriptions for controlled substances that you had been writing for Patient 1 listed on the attached Patient Key (Key confidential pursuant to statute). You told the Investigator that those prescriptions were written for yourself and not Patient 1. Further, you stated that you were addicted to those drugs.

In response to further questioning, you stated that you had been writing prescriptions in the name of Patient 1 and taking them yourself for several months. You further stated that you obtained prescription drugs and controlled substances for self-consumption through the use of sample drugs prior to writing prescriptions in the name of Patient 1 for your own use.

- (4) Investigation of area pharmacies revealed the following controlled substance prescriptions you wrote in the name of Patient 1 for your own use since in or about October of 1993:

<u>#</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>	<u>Pharmacy</u>
1	10/03/93	Vicodin ES Tab	4	Revco
2	10/15/93	Codclear DH Liquid	480	Hillcrest
3	10/19/93	Vicodin ES Tab	10	Revco
4	10/24/93	Hydrocodone/APAP 7.5/750 Tab	5	Revco
5	10/31/93	Acetaminophin/Cod #3 Tab	20	Rite Aid
6	11/02/93	Hydrocodone/APAP 7.5/750 Tab	15	Revco
7	11/03/93	Vicodin ES Tab	100	Lukas
8	11/08/93	Vicodin ES Tab	20	Rite Aid
9	11/15/93	Vicodin ES Tab	30	Medicine Shoppe
10	11/19/93	Vicodin ES Tab	30	Medicine Shoppe
11	11/26/93	Vicodin ES Tab	100	Revco
12	12/27/93	Vicodin ES Tab	6	Medicine Shoppe

13	12/27/93	Lomotil Tab	20	Medicine Shoppe
14	01/02/94	Lonox Tab	30	Revco
15	01/02/94	Vicodin ES Tab	10	Revco
16	01/09/94	Propoxyphene N 100/ APAP Tab	10	Revco
17	01/11/94	Propoxyphene N 100/ APAP Tab	10	Lukas
18	01/24/94	Vicodin ES Tab	15	Lukas
19	03/01/94	Hydrocodone/APAP 7.5/500 Tab	10	Revco

- (5) Investigation of area pharmacies revealed the following controlled substance prescriptions you wrote in your name for your own use since in or about October of 1993:

<u>#</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>	<u>Pharmacy</u>
1	10/22/93	Vicodin ES Tab	6	Rite Aid
2	10/25/93	Hydrocodone/APAP 7.5/750 Tab	15	Hillcrest
3	10/29/93	Hydrocodone Ccompd Syrup	60	Medicine Shoppe
4	11/09/93	Hydrocodone/APAP 7.5/750 Tab	100	Hillcrest
5	11/28/93	Diphenoxylate/Atropine Tab	30	Rite Aid
6	11/29/93	Hydrocodone/APAP 7.5/500 Tab	30	Rite Aid
7	12/03/93	Vicodin ES Tab	30	Medicine Shoppe
8	12/09/93	Vicodin ES Tab	20	Rite Aid
9	02/18/94	Vicodin ES Tab	30	Medicine Shoppe
10	03/07/94	Hydrocodone/APAP 7.5/500 Tab	30	Hillcrest
11	03/29/94	Hydrocodone/APAP 7.5/500 Tab	30	Hillcrest

Your acts, conduct, and/or omissions as alleged in paragraphs (3) and (4) above, individually and/or collectively, constitute "(c)ommission 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 2925.22(A), Ohio Revised Code, Deception to obtain a dangerous drug, and Section 2925.23(A), Ohio Revised Code, Illegal processing of drug documents.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (3) and (4) above, individually and/or collectively, 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: Rules 4731-11-02(A), (C), and (E), Ohio Administrative Code. Pursuant to paragraph (F) of Rule 4731-11-02, Ohio Administrative Code, a violation of any provision of the rule shall constitute a violation of Sections 4731.22(B)(2), and (6), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (3), (4) and (5) above, individually and/or collectively, constitute "(c)ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice," as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 2925.11, Ohio Revised Code, Drug abuse.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (3), (4) and (5) above, individually and/or collectively, constitute a "(v)iolation of the conditions of limitation placed by the board upon a certificate to practice or violation of the conditions of limitation upon which a limited or temporary registration or certificate to practice is issued," as that clause is used in Section 4731.22(B)(15) of the Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (5) above, individually and/or collectively, 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: Rules 4731-11-02(A) and (C), Ohio Administrative Code. Pursuant to paragraph (F) of Rule 4731-11-02, Ohio Administrative Code, a violation of any provision of the rule shall constitute a violation of Sections 4731.22(B)(2), and (6), Ohio Revised Code.

- (6) Pursuant to paragraph (1)(C) of the June 14, 1989, Board Order described in paragraph (1) of this letter, you submitted a quarterly declaration dated December 6, 1993, under penalty of perjury stating that you were "in compliance with the regulations related to the practice of Osteopathic practice in Ohio."

September 14, 1994

Further, pursuant to paragraph (1)(C) of the June 14, 1989, Board Order described in paragraph (1) of this letter, you submitted a quarterly declaration dated March 21, 1994, under penalty of perjury stating that you were "in compliance with the regulations related to osteopathic practice in Ohio."

In fact, your acts, conduct, and/or omissions as alleged in paragraphs (3), (4), (5) and (7) of this letter, individually and/or collectively, show that you were not in compliance with the regulations related to Osteopathic medicine in Ohio.

Your acts, conduct, and/or omissions as alleged in paragraph (6) 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.

- (7) On or about April 21, 1994, during questioning by Investigator Hunter you stated that you had suffered from depression since moving your practice about a year ago to Lynchburg, Ohio, from Columbus, Ohio. You further stated that you were treated for depression at Harding Hospital at one time in the late seventies and early eighties.

On or about April 22, 1994, you notified the State Medical Board of Ohio that you were being admitted to the University of Cincinnati Hospital's psychiatric division to be treated for depression which you believed may have led to your drug dependency.

The University of Cincinnati Hospital is not a drug or alcohol treatment provider approved by the Board pursuant to Section 4731.25 of the Ohio Revised Code. However, you were to receive additional out-patient treatment for your chemical dependency from that hospital.

Your acts, conduct, and/or omissions as alleged in paragraphs (3), (4), (5) and (7) above, individually and/or collectively, constitute "(i)nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills," as that clause is used in Section 4731.22(B)(19), Ohio Revised Code.

September 14, 1994

Further, your acts, conduct, and/or omissions as alleged in paragraphs (3), (4), (5) and (7) above, individually and/or collectively, constitute "(i)mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), 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 348 885 082
RETURN RECEIPT REQUESTED

cc: Kevin P. Byers, Esq.

CERTIFIED MAIL NO. P 348 885 200
RETURN RECEIPT REQUESTED



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor * Columbus, Ohio 43260-0317 * (614) 466-9917

July 13, 1994

Sam Hill, D.O.
203 North Main Street
Lynchburg, OH 45142

Dear Doctor Hill:

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 14, 1989, The State Medical Board of Ohio suspended your certificate to practice osteopathic medicine and surgery in the State of Ohio for a period of one year. The Board stayed that suspension for all but thirty days, and placed your certificate on probation for a period of three years subject to various terms, conditions and limitations.

The probationary term, condition or limitation in paragraph (1)(a) of the Board Order required you to "obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio." Further, the probationary term, condition, or limitation in paragraph (1)(c) of the Board Order required you to "submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the provisions of probation." Further, the probationary term, condition or limitation in paragraph (2) of the Board Order stated that if you violate "the terms of this Order in any respect, the Board, after giving (you) notice and an opportunity to be heard, may set aside the stay order and impose the remaining eleven (11) months of suspension and/or take whatever disciplinary action it deems appropriate, up to and including the revocation of his certificate."

- (2) You appealed the Board's Order as described in paragraph (1) above and that Order was stayed by Franklin County Court during the pendency of your appeals. Following your unsuccessful appeals, the Board's original Order became effective on or about March 21, 1991. Your license was suspended and the Board's three year probation followed, subject in part to the same terms, conditions or limitations mentioned in paragraph (1) above.

Mailed 7/14/94

- (3) On or about April 21, 1994, Investigator Hunter of The State Medical Board of Ohio interviewed you in regard to prescriptions for controlled substances that you had been writing for Patient 1 listed on the attached Patient Key (Key confidential pursuant to statute). You told the Investigator that those prescriptions were written for yourself and not Patient 1. Further, you stated that you were addicted to those drugs.

In response to further questioning, you stated that you had been writing prescriptions in the name of Patient 1 and taking them yourself for several months. You further stated that you obtained prescription drugs and controlled substances for self-consumption through the use of sample drugs prior to writing prescriptions in the name of Patient 1 for your own use.

- (4) Investigation of area pharmacies revealed the following prescriptions written in the name of Patient 1 for your own use since in or about October of 1993:

<u>#</u>	<u>Date</u>	<u>Drug</u>	<u>Quantity</u>	<u>Pharmacy</u>
1	10/03/93	Vicodin ES Tab	4	Revco
2	10/15/93	Codclear DH Liquid	480	Hillcrest
3	10/19/93	Vicodin ES Tab	10	Revco
4	10/22/93	Vicodin ES Tab	6	Rite Aid
5	10/24/93	Hydrocodone/APAP 7.5/750 Tab	5	Revco
6	10/25/93	Hydrocodone/APAP 7.5/750 Tab	15	Hillcrest
7	10/29/93	Hydrocodone Compd Syrup	60	Medicine Shoppe
8	10/31/93	Acetaminophin/Cod #3 Tab	20	Rite Aid
9	11/02/93	Hydrocodone/APAP 7.5/750 Tab	15	Revco
10	11/03/93	Vicodin ES Tab	100	Lukas
11	11/08/93	Vicodin ES Tab	20	Rite Aid
12	11/09/93	Hydrocodone/APAP 7.5/750 Tab	100	Hillcrest
13	11/15/93	Vicodin ES Tab	30	Medicine Shoppe
14	11/19/93	Vicodin ES Tab	30	Medicine Shoppe
15	11/26/93	Vicodin ES Tab	100	Revco
16	11/28/93	Diphenoxylate/Atropine Tab	30	Rite Aid
17	11/29/93	Hydrocodone/APAP 7.5/500 Tab	30	Rite Aid

18	12/03/93	Vicodin ES Tab	30	Medicine Shoppe
19	12/09/93	Parafon Forte DSC 500	30	Rite Aid
20	12/09/93	Vicodin ES Tab	20	Rite Aid
21	12/27/93	Vicodin ES Tab	6	Medicine Shoppe
22	12/27/93	Lomotil Tab	20	Medicine Shoppe
23	01/02/94	Amantadine 100 Caps	10	Revco
24	01/02/94	Lonox Tab	30	Revco
25	01/02/94	Vicodin ES Tab	10	Revco
26	01/09/94	Propoxyphene N 100/ APAP Tab	10	Revco
27	01/11/94	Propoxyphene N 100/ APAP Tab	10	Lukas
28	01/24/94	Vicodin ES Tab	15	Lukas
29	01/24/94	Anaprox DS Tab	30	Lukas
30	02/18/94	Vicodin ES Tab	30	Medicine Shoppe
31	03/01/94	Hydrocodone/APAP 7.5/500 Tab	10	Revco
32	03/07/94	Hydrocodone/APAP 7.5/500 Tab	30	Hillcrest
33	03/29/94	Hydrocodone/APAP 7.5/500 Tab	30	Hillcrest

- (5) Pursuant to paragraph (1)(C) of the June 14, 1989 Board Order described in paragraph (1) of this letter, you submitted a quarterly declaration dated December 6, 1993, under penalty of perjury stating that you were "in compliance with the regulations related to the practice of osteopathic practice in Ohio."

Your acts, conduct, and/or omissions as alleged in paragraphs (3) through (5) above, individually and/or collectively, constitute "(c)ommission 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: Sections 2925.22(A) and 2925.23(A), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (3) through (5) above, individually and/or collectively, 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: Rules 4731-11-02(A), (C), and (E), Ohio Administrative Code. Pursuant to paragraph (F) of Rule 4731-11-02, Ohio Administrative Code, a violation of any provision of the rule shall constitute a violation of Sections 4731.22(B)(2), and (6), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (5) 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.

- (6) On or about April 21, 1994, during questioning by Investigator Hunter you stated that you had suffered from depression since moving your practice about a year ago to Lynchburg, Ohio, from Columbus, Ohio. You further stated that you were treated for depression at Harding Hospital at one time in the late seventies and early eighties.

On or about April 22, 1994, you notified the State Medical Board of Ohio that you were being admitted to the University of Cincinnati Hospital's psychiatric division to be treated for depression which you believed may have led to your drug dependency.

The University of Cincinnati Hospital is not a drug or alcohol treatment provider approved by the Board pursuant to Section 4731.25 of the Ohio Revised Code. However, you were to receive additional out-patient treatment for your chemical dependency from that Hospital.

Your acts, conduct, and/or omissions as alleged in paragraphs (3), (4), and (6) above, individually and/or collectively, constitute "(i)nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills," as that clause is used in Section 4731.22(B)(19), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (3), (4), and (6) above, individually and/or collectively, constitute "(i)mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), 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.

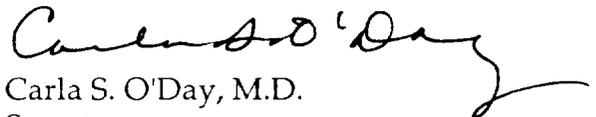
July 13, 1994

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,

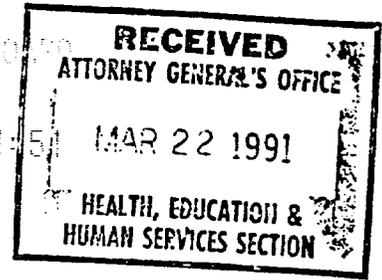


Carla S. O'Day, M.D.
Secretary

CSO:jmb
Enclosures:

CERTIFIED MAIL #P 348 885 082
RETURN RECEIPT REQUESTED

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT



Sam Hill, D.O., :
Plaintiff-Appellant, :
v. :
The State Medical Board of Ohio, :
Defendant-Appellee. :

No. 90AP-1247
(REGULAR CALENDAR)

D E C I S I O N

Rendered on March 21, 1991

STRIP, FARGO, SCHULMAN & HOPPERS CO., L.P.A., MR. PAUL W. LEITHART, II, and MR. A.C. STRIP, for appellant.

MR. LEE FISHER, Attorney General, and MR. JOHN DOWLING, for appellee.

APPEAL from the Franklin County Common Pleas Court.

BRYANT, J.

Plaintiff-appellant, Sam Hill, appeals from a judgment of the Franklin County Common Pleas Court affirming the order of defendant-appellee, the Ohio State Medical Board ("board"), suspending appellant's license to practice osteopathic medicine for thirty days and placing him on probation for three years.

On December 8, 1988, appellee mailed to appellant a letter advising appellant of alleged violations of R.C. 4731.41. Appellant requested a hearing on the charges, pursuant to R.C. 119.12. Following a hearing, the hearing officer issued a report finding that appellant employed John E. Patton as a physician's assistant from July 1, 1988 to September 6, 1988; that Patton was not registered as a physician's assistant during that time period; and that on September 6, 1988, when a board investigator arrived at appellant's place of business, the name tag Patton wore, as well as the outside of appellant's medical building, identified Patton as a certified physician's assistant.

Based on those findings, the hearing officer determined that appellant was in violation of R.C. 4731.41 and recommended that appellant's license to practice medicine be suspended for a period of one year, with all but thirty days of the suspension stayed. She further recommended that appellant be placed on probation for three years, with his license automatically reinstated within thirty days from the date of the board's order.

Appellant objected to the report, but the board adopted the hearing officer's findings of fact, conclusions, and proposed order, after deleting two of the recommended conditions of probation.

Appellant appealed to the Franklin County Common Pleas Court, which affirmed the board's order.

Appellant appeals therefrom, setting forth the following assignments of error:

"I. THE TRIAL COURT ERRED IN FAILING TO ADMIT ADDITIONAL EVIDENCE AS PROPERLY REQUESTED BY APPELLANT PURSUANT TO OHIO REVISED CODE SECTION 119.12.

"II. THE TRIAL COURT AND THE STATE MEDICAL BOARD ERRED IN ADOPTING THE ORDER.

"(A) THE ORDER IMPOSES PENALTIES WHICH ARE NOT JUSTIFIED BY THE VIOLATION COMMITTED.

"(B) THE ORDER IS AN ABUSE OF DISCRETION IN THAT IT IMPOSES PENALTIES WHICH ARE INCONSISTENT WITH PENALTIES IMPOSED BY THE STATE MEDICAL BOARD IN SIMILAR CASES IN THE PAST."

In his first assignment of error, appellant contends that the common pleas court erred in failing to admit and consider additional evidence, the Spring/Summer 1989 issue of Your Report from The State Medical Board of Ohio. With that additional evidence, appellant sought to argue that several of the actions reported therein were similar to appellant's case; and that the disciplinary action imposed was substantially less severe than herein.

R.C. 119.12 provides in pertinent part:

"Unless otherwise provided by law, in the hearing of the appeal, the court is confined to the record as certified to it by the agency. Unless otherwise provided by law, the court may grant a request for the admission of additional evidence when satisfied that such additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the agency."

As the trial court properly noted, appellant's hearing was on March 30, 1989, and the actions reported in the publication at issue occurred on or before December 16, 1988. Although the records forming the basis for the

publication are public record, appellant has failed to explain adequately why he was unable, with reasonable diligence, to ascertain that information prior to his hearing before the board.

Moreover, as the trial court also properly noted, the information in the publication would not be helpful to any meaningful review of and comparison with the sanctions imposed herein, as the publication reveals nothing of the specific facts giving rise to the cases appellant cites. Indeed, many of those sanctions, unlike the matter before us, arose out of actions terminated with consent agreements.

In short, we find no abuse of discretion in the common pleas court's refusing to grant appellant's motion to admit additional evidence on appeal. Appellant's first assignment of error is overruled.

In his second assignment of error, appellant contends that the board erred in adopting the hearing officer's proposed order because appellant's violation does not warrant the severe penalty imposed and is inconsistent with penalties the board imposed in prior similar cases.

In Brost v. State Med. Bd. of Ohio (June 28, 1990), Franklin App. No. 89AP-1488, unreported (1990 Opinions 2685), this court addressed a similar argument and stated:

"Under R.C. 119.12, a common pleas court must affirm an appealed administrative order if 'the order is supported by reliable, probative, and substantial evidence and is in accordance with law.' Henry's Cafe, Inc. v. Board of Liquor Control (1959), 170 Ohio St. 233, 236. In regard to a common pleas court's review under R.C. 119.12 of

administratively imposed penalties, the Supreme Court has held that 'the Court of Common Pleas 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.' Id. at paragraph three of the syllabus. Subsequent courts have interpreted Henry's Cafe to mean that 'if the penalty imposed is within the scope of the authority granted to the administrative agency, the judiciary cannot reverse, vacate or modify it,' Connors v. Ohio Dept. of Commerce (1982), 7 Ohio App. 3d 237, 238, even if the court 'considers the [penalty] to be harsh.' Kuzas v. State Medical Bd. (Mar. 29, 1990), Franklin App. No. 89AP-773, unreported (1990 Opinions 1238, 1243). See, also, Dept. of Liquor Control v. Santucci (1969), 17 Ohio St. 2d 69, 70-71; Keaton v. State (1981), 2 Ohio App. 3d 480, 483; Jackson v. Bd. of Nursing Edn. (Oct. 30, 1987), Mahoning App. No. 86 C.A. 136, unreported."

Contrary to appellee's assertion that this court in Brost strongly endorsed the holding of Henry's Cafe, in Brost we felt constrained by Henry's Cafe, despite our agreement with the common pleas court that the board's penalty appeared to be out of line with the violation found.

Whether or not we believe the penalty herein to be excessive, we similarly feel constrained to apply Henry's Cafe and overrule appellant's second assignment of error.

Having overruled both assignments of error, we affirm the judgment of the common pleas court.

Judgment affirmed.

BOWMAN, P.J. and PETREE, J., concur.

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

SAM HILL, D.O.,
Plaintiff-Appellant,
vs.
THE STATE MEDICAL BOARD,
Defendant-Appellee.

: **90AP1247**
:
: Case No. 89CV-07-4638
: JUDGE DAVID L. JOHNSON
:

NOTICE OF APPEAL

Notice is hereby given that Sam Hill, D.O., Plaintiff, hereby appeals to the Court of Appeals of Franklin County, Ohio, Tenth Judicial District from the judgment entered in this action on the 5th day of October, 1990.

Paul W. Leithart

Paul W. Leithart, II (LE110)
A. C. Strip (STR05)
STRIP, FARGO, SCHULMAN & HOPPERS
CO., L.P.A.
575 South Third Street
Columbus, OH 43215
Attorneys for Plaintiff-Appellant
Sam Hill, D.O.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Appeal was sent by regular U. S. Mail to John Dowling, Assistant Attorney General, 30 East Broad Street, Columbus, Ohio 43266-0410, on this 30th day of October, 1990.

Paul W. Leithart

Paul W. Leithart, II (LE110)
A. C. Strip (STR05)
Attorneys for Plaintiff-Appellant
Sam Hill, D.O.

FILED
COURT OF APPEALS
FRANKLIN CO. OHIO

1990 OCT 20 AM 9:26
THOMAS J. ENRIGHT
CLERK OF COURTS

RECEIVED
CLERK OF COURTS
OCT 20 AM 9:26

RECEIVED
ATTORNEY GENERAL'S OFFICE
OCT 25 1990/pjt
HEALTH, EDUCATION &
HUMAN SERVICES SECTION

LAW OFFICES OF
STRIP, FARGO,
SCHULMAN & HOPPERS
CO., L.P.A.
575 SOUTH THIRD STREET
COLUMBUS, OHIO 43215

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

SAM HILL, D.O., :
APPELLANT, :
-VS- : CASE NO. 89-CV-07-4638
STATE MEDICAL BOARD OF OHIO, : JUDGE DAVID JOHNSON
APPELLEE. :

DECISION AND ENTRY

Rendered this 5th day of October, 1990.

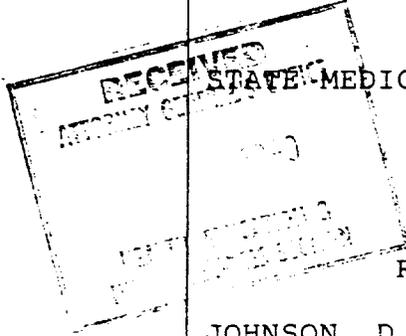
JOHNSON, D., JUDGE.

This matter is before the Court pursuant to an appeal brought under Revised Code §119.12 and on appellant's motion to admit additional evidence and for oral hearing.

Appellant, Sam Hill, D.O., purchased and assumed control of the Eastside Family Practice Medical Center from Dr. Inja Chang in June, 1988. Appellant retained John E. Patton, who had been employed and registered as a physician's assistant to Dr. Chang. Before a person trained and certified as a physician's assistant may practice in that capacity, he or she must first be registered as the assistant to a specific physician.

On and after July 1, 1988, Mr. Patton was employed by appellant. Although Mr. Patton was not registered as a physician's assistant to appellant, he functioned and identified himself as a physician's assistant at appellant's office.

Upon investigation, appellee, State Medical Board of Ohio, issued a letter of citation to appellant on December 8, 1988. On March 30, 1989, a hearing examiner conducted a hearing and concluded that the acts, conduct, and/or omissions of appellant constitute "assisting in or abetting the violation" of



1990 OCT -5 AM 10:56
FILED

Revised Code §4731.41 which prohibits a person from practicing medicine or surgery or any of its branches without a certificate from the State Medical Board. On June 14, 1989, the State Medical Board adopted the report and recommendation of the hearing officer and issued an order that appellant be suspended from the practice of medicine for one year. The order further provided that all but thirty days of such suspension be stayed and that appellant be subject to various probationary terms, conditions, and limitations for three years.

The Court will first address appellant's motion that he be given leave to admit additional evidence and an opportunity for an oral hearing.

Revised Code §119.12 provides that in hearing an administrative appeal, the Court is confined to the record as certified to it by the agency. Unless otherwise provided by law, the Court may admit additional evidence when satisfied that such evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing by the agency.

Appellant seeks to introduce the Spring/Summer of 1989 issue of Your Report from the State Medical Board of Ohio. Appellant's purpose is to demonstrate that appellee has applied lesser penalties to other physicians for similar violations.

Appellant's hearing was held on March 30, 1989. The disciplinary actions reported in the above publication were rendered on December 16, 1988. The records from which the report in the publication was compiled are public records. Appellant has not demonstrated why he could not have ascertained these records

prior to the agency hearing. Further, the compilation that appellant seeks to introduce would not be useful in the determination of this appeal. The compilation lists only name, case number, type of license or certificate to practice, a description of the allegations, and the disposition of the case. Since the report does not provide the facts of the cases cited, no meaningful comparison could be made between the sanctions imposed in those cases and the sanctions imposed in this case. Accordingly, appellant's motion to introduce additional evidence is hereby OVERRULED.

The Court has reviewed the record and the briefs of the parties and there is not need for oral arguments. Appellant is mistaken in his assertion that this appeal is pursuant to Revised Code §4731.22(D), and that, therefore, this hearing should proceed de novo as in the trial of a civil action. An appeal pursuant to Revised Code §4731.22(D) is taken where, due to an emergency situation, the State Medical Board has suspended a physician's certificate without a prior hearing. Clearly appellant had the benefit of a hearing before the order suspending his certificate issued. Therefore, that portion of Revised Code §119.12 cited by appellant is not applicable and this Court is confined to a review of the record. Appellant's motion for an oral hearing is hereby OVERRULED.

In an administrative appeal pursuant to Revised Code §119.12, the Court will affirm an order which is supported by reliable, probative, and substantial evidence and which is in accordance with law.

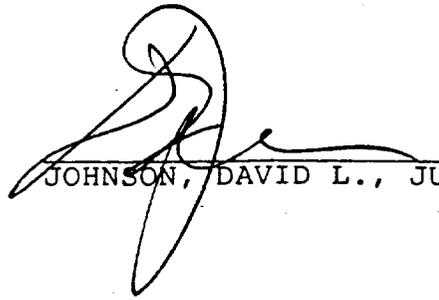
The facts are undisputed that appellant committed the

violation at issue. Appellant nonetheless contends that appellee abused its discretion by failing to consider mitigating circumstances and by imposing sanctions not commensurate with the violation.

Revised Code §4731.22(B) permits the State Medical Board to limit, suspend, or revoke a certificate upon adjudication of a violation. Appellee refused to consider appellant's inexperience and the pressures of a sole practice as mitigating factors. The Court considers such matters to be within the sound discretion of the State Medical Board and notes only that members of a profession are required to abide by the rules and regulations of the profession regardless of experience or stress. This Court will not reweigh the factors considered by appellee.

Appellant also argues that appellee violated the due process and equal protection of law by imposing a sanction not commensurate with the violation. The net effect of the order is to suspend appellant from the practice of medicine for thirty (30) days. After that period of time, appellant may resume practice subject only to reasonable probationary terms and conditions. This penalty does not appear to be disproportionate to the violations. The fact that the State Medical Board may prescribe differing penalties in similar circumstances is within its discretion. The Court declines the invitation to substitute its judgment for that of appellee.

Upon a review of the entire record, the Court finds no error prejudicial to appellant. The order is supported by reliable, probative, and substantial evidence and is in accordance with law. Therefore, the order of the State Medical Board of Ohio is AFFIRMED. Costs to appellant.



JOHNSON, DAVID L., JUDGE

Copies to:

Carl B. Fry
Richard D. Ferguson
Attorneys for Appellant

John C. Dowling
Assistant Attorney General
Attorney for Appellee

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

SAM HILL, D.O.
7963 LIBERTY ROAD
POWELL, OHIO 43065,

89CV-07-4638

JUL 05 1989

Plaintiff-Appellant,

-vs-

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

CASE NO.:

JUDGE:

ASSIGNED TO
JUDGE D. JOHNSON

Defendant-Appellee.

JUL 19 1989

NOTICE OF APPEAL

Appellant, Sam Hill, D.O., hereby appeals from the Order of The State Medical Board of Ohio, State of Ohio, dated June 14, 1989 and mailed June 27, 1989, in the proceeding captioned "In The Matter Of Sam Hill, D.O.", and files this Notice of Appeal with The State Medical Board of Ohio, State of Ohio, pursuant to Ohio Revised Code, Section 119.12 and alleges as follows:

1. On June 14, 1989, The State Medical Board of Ohio, State of Ohio ("The Medical Board") in a proceeding captioned "In The Matter of Sam Hill, D.O.", issued a final order pursuant to an adjudication (hereinafter referred to as the "Order"), a copy of which is attached hereto and incorporated herein by reference as "Exhibit A".

2. The Order was signed by Henry G. Cramblett, M.D., Secretary.

3. The grounds for this appeal are as follows:

(A) The Order imposes a penalty which is not justified by the level of violation alleged by The Medical Board against Dr. Hill; and

(B) The Order imposes a penalty which is not consistent with penalties imposed by The Medical Board in similar cases in the past.

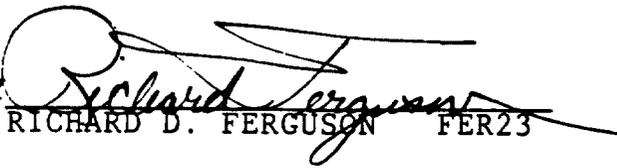
WHEREFORE, Appellant Sam Hill, D.O., requests the Court of Common Pleas of Franklin County, Ohio to hear this appeal, reverse the Order of The Medical Board filed in this matter on June 14, 1989, and reduce and/or eliminate the penalty associated therewith.

FURTHERMORE, Appellant Sam Hill, D.O., requests The Medical Board to prepare and file in the Court of Common Pleas of Franklin County, Ohio within thirty (30) days of receipt of this Notice of Appeal, pursuant to Ohio Revised Code, Section 119.12, a certified and complete record of the proceedings in the above-captioned case.

FRY & WALLER CO., LPA
Attorneys for Appellant
35 East Livingston Avenue
Columbus, Ohio 43215
614/228-2300

JUL 19 1989

BY 
CARL B. FRY FRY01

BY 
RICHARD D. FERGUSON FER23

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Notice of Appeal was delivered to The Court of Common Pleas of Franklin County, Ohio and the original was filed with The State Medical Board, pursuant to Ohio Revised Code, Section 119.12, this 5th day of July, 1989. The undersigned also certifies that a copy of the foregoing was delivered via regular U.S. mail, postage prepaid, to John Dowling, Assistant Attorney General, 30 E. Broad Street, Columbus, Ohio 43215, this 5th day of July, 1989.

BY 
RICHARD D. FERGI~~SON~~ FER29

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

June 14, 1989

Sam Hill, D.O.
7963 Liberty Road
Powell, Ohio 43065

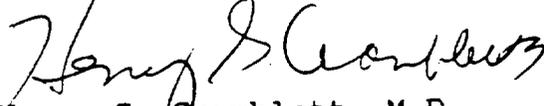
Dear Doctor Hill:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on June 14, 1989, including Motions approving the Findings of Fact and Conclusions of the Attorney Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO


Henry G. Cramblett, M.D.
Secretary

HGC:em
Enclosures

CERTIFIED MAIL NO. P 746 510 481
RETURN RECEIPT REQUESTED

cc: Carl B. Fry, Esq.

CERTIFIED MAIL NO. P 746 510 482
RETURN RECEIPT REQUESTED

Mailed June 27, 1989

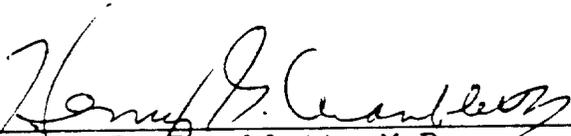
STATE OF OHIO
STATE MEDICAL BOARD

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board; and attached excerpt of Minutes of the State Medical Board, meeting in regular session on June 14, 1989, including Motions approving the Findings of Fact and Conclusions of the Hearing Examiner and adopting an amended Order, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Sam Hill, D.O., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.

(SEAL)



Henry G. Bramblett, M.D.
Secretary

June 16, 1989

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

★

★

SAM HILL, D.O.

★

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 14th day of June, 1989.

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 the modification, approval and confirmation by vote of the Board on June 14, 1989, the following Order is hereby entered on the Journal of the State Medical Board for the 14th day of June, 1989.

It is hereby ORDERED:

1. That the certificate of Sam Hill, D.O., to practice osteopathic medicine or surgery in the State of Ohio shall be SUSPENDED for a period of one (1) year. All but thirty (30) days of the suspension shall be stayed, and Dr. Hill's certificate shall be automatically reinstated thirty (30) days from the effective date of this Order, subject to the following probationary terms, conditions, and limitations for a period of three (3) years:
 - a. Dr. Hill shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
 - b. Within thirty (30) days of the effective date of this Order, Dr. Hill shall submit to the Board for its approval a program of approved Category I Continuing Medical Education related to the administration and management of a private medical practice. The exact number of hours and the specific content of the program shall be determined by the Board or its designee, but shall total not less than ten (10) hours or more than twenty (20) hours per year for each year of probation. This program shall be in addition to the Continuing Medical Education requirements for relicensure. The Board may require Dr. Hill to pass an examination related to the content of the program.

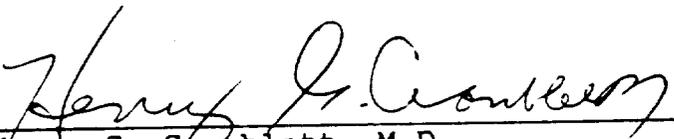
Sam Hill, D.O.

Dr. Hill shall provide documentary evidence satisfactory to the Board of his successful completion of such program.

- c. Dr. Hill shall submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the provisions of probation.
 - d. In the event that Dr. Hill should leave Ohio for three (3) continuous months, or reside or practice outside the State, Dr. Hill 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.
2. If Dr. Hill violates the terms of this Order in any respect, the Board, after giving Dr. Hill notice and an opportunity to be heard, may set aside the stay order and impose the remaining eleven (11) months of suspension and/or take whatever disciplinary action it deems appropriate, up to and including the revocation of his certificate.
 3. Upon successful completion of probation, Dr. Hill's certificate will be fully restored.

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

(SEAL)


Henry G. Cramblett, M.D.
Secretary

June 16, 1989

Date

REPORT AND RECOMMENDATION
IN THE MATTER OF SAM HILL, D.O.

MAY - 1 1989

The Matter of Sam Hill, D.O., came on for hearing before me, Wanita J. Sage, Esq., Hearing Examiner for the State Medical Board of Ohio, on March 30, 1989.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

- A. By letter of December 8, 1988 (State's Exhibit #1), the State Medical Board notified Sam Hill, D.O., that it proposed to take disciplinary action against his certificate to practice osteopathic medicine and surgery in Ohio. The Board alleged that, in July, 1988, Dr. Hill hired John E. Patton to work as a physician's assistant in his office. Although Mr. Patton was not registered to Dr. Hill, he held himself out and functioned as a physician's assistant between at least July and September, 1988. When Mr. Patton was interviewed by a Board investigator at Dr. Hill's office on or about September 6, 1988, Mr. Patton admitted that he had been working as a physician's assistant since July 1, 1988. At the time, Mr. Patton was wearing a name tag identifying himself as a P.A.C. and was listed as a P.A.C. on a sign on the outside of the building in which Dr. Hill's office was located. Although an application for registration as a physician's assistant had been forwarded on July 12, 1988, it had not been returned to the Board as of September 6, 1988.

The Board alleged that Mr. Patton's acts constituted violation of Section 4731.41, Ohio Revised Code, which prohibits a person from practicing medicine or surgery or any of its branches without a certificate from the State Medical Board. Therefore, the Board further alleged that the acts of Dr. Hill constituted "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: Section 4731.41, Ohio Revised Code. Dr. Hill was advised of his right to request a hearing in this Matter.

- B. By letter received by the State Medical Board on January 3, 1989 (State's Exhibit #3), Carl B. Fry, Esq., requested a hearing on behalf of Dr. Hill.

MAY - 1 1989

II. Appearance of Counsel

- A. On behalf of the State of Ohio: Anthony J. Celebrezze, Jr., Attorney General, by John C. Dowling, Assistant Attorney General
- B. On behalf of the Respondent: Carl B. Fry, Esq.

III. Testimony Heard

- A. Presented by the State
 - 1. Sam Hill, D.O., as on cross-examination
 - 2. Larry Hubble, Investigator, State Medical Board
- B. Presented by the Respondent
 - 1. Sam Hill, D.O.

IV. Exhibits Examined

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

- A. Presented by the State
 - 1. State's Exhibit #2: Certified mail receipt and return card showing service of State's Exhibit #1.
 - 2. State's Exhibit #4: January 10, 1989, letter to Carl B. Fry, Esq., from the State Medical Board advising that a hearing initially set for January 13, 1989, was postponed pursuant to Section 119.09, Ohio Revised Code.
 - 3. State's Exhibit #5: February 2, 1989, letter to Attorney Fry from the State Medical Board scheduling the hearing for March 30, 1989.
 - 4. State's Exhibits #6A and #6B: Copies of photographs of a sign for Eastside Family Practice Medical Center listing Sam Hill, D.O., and John Patton P.A.C.
 - 5. State's Exhibit #7: Mr. Patton's Application for Registration as a Physician's Assistant, showing a date-received stamp of September 14, 1988.
 - 6. State's Exhibit #8: Parts III and IV of a July, 1985, application for Charlene Charnesky for registration as a physician's assistant, showing Dr. Hill listed as an employing physician and his signature on the "Affidavit of Employing Physician(s)" portion of the form.

MAY - 1 1989

7. State's Exhibit #9: Parts III and IV of a July, 1984, application for Sharon Probst for registration as a physician's assistant, showing Dr. Hill as an employing physician and his signature on the "Affidavit of Employing Physician(s)" portion of the form.
 8. State's Exhibit #10: January 25, 1985, letter to the State Medical Board from Dr. Hill requesting that he be added as supervising physician for several physician's assistants; notarized statement of Dr. Hill agreeing, as the employing physician, to supervise those physician's assistants; resume of activities of the employing physician, Dr. Hill; and January 21, 1985, letter to the State Medical Board from Dennison Avenue Medical Clinic advising that the previous supervising physician of those physician's assistants had terminated his employment with the Clinic.
- B. Presented by the Respondent
1. Respondent's Exhibit A: March 16, 1989, letter to John C. Dowling, Assistant Attorney General, from Carl B. Fry, Esq., explaining the circumstances with regard to Dr. Hill and Mr. Patton and requesting a disposition of this Matter outside of the hearing process.
 2. Respondent's Exhibit B: Hearing Memorandum of Sam Hill, D.O.

FINDINGS OF FACT

1. On July 1, 1988, Sam Hill, D.O., assumed control of the medical practice known as Eastside Family Practice Medical Center, which he had purchased from Dr. Inja Chang in June, 1988. Dr. Hill retained all of Dr. Chang's former employees, including John E. Patton, who had been registered as a physician's assistant to Dr. Chang. On and after July 1, 1988, Mr. Patton was employed by Dr. Hill. Although Mr. Patton was not registered as a physician's assistant to Dr. Hill, he functioned and identified himself as a physician's assistant at Dr. Hill's office on and after July 1, 1988.

These facts are established by the testimony of Dr. Hill and by Respondent's Exhibits A and B.

MAY - 1 1989

2. On September 6, 1988, Dr. Hill and Mr. Patton met with a Medical Board investigator at Dr. Hill's office. At that time, Mr. Patton admitted that he had received an application for registration as a physician's assistant to Dr. Hill, but had not yet submitted it to the State Medical Board. At the time of the investigator's visit, Mr. Patton was wearing a name tag identifying himself as a P.A.C. (physician's assistant certified). Further, on the outside of the building in which Dr. Hill's office was located, a sign was posted which listed "Eastside Family Practice Medical Center, Sam Hill, D.O., John Patton P.A.C." Upon the request of the Board's investigator, Mr. Patton removed the name tag. Shortly after the investigator's visit, Mr. Patton's name was removed from the sign on the building.

These facts are established by the testimony of Dr. Hill and the testimony of Larry Hubble.

3. During the course of his employment by Dr. Hill between July 1 and September 6, 1988, Mr. Patton essentially performed the same duties with regard to patients as he had previously performed as a registered physician's assistant. Those duties included performing physical examinations, treating established patients, performing venipunctures, ordering lab tests, performing screenings and need assessments, and applying dressings and bandages to wounds. Mr. Patton was paid by Dr. Hill for providing such services, and Dr. Hill billed patients for Mr. Patton's services. During this period, Mr. Patton wore a name tag identifying himself as a physician's assistant and was identified as a physician's assistant by a sign posted on the building in which Dr. Hill had his office.

These facts are established by the testimony of Dr. Hill (Tr. at 14-16).

4. Mr. Patton did not submit an application to the State Medical Board for registration as a physician's assistant to Dr. Hill until September 14, 1988.

These facts are established by the testimony of Dr. Hill (Tr. at 13-14) and by State's Exhibit #7.

5. At all pertinent times, Dr. Hill was admittedly aware that a physician's assistant was required to be registered to a physician in order to act as a physician's assistant. He was also aware that applications for registration as a physician's assistant required the signature of the employing physician. Although he testified that he had asked Mr. Patton about his application several times, he did not insist upon its completion until after the visit by the Medical Board investigator.

These facts are established by the testimony of Dr. Hill (Tr. at 27-29, 34, 39), State's Exhibits #8 through #10, and Respondent's Exhibits A and B.

MAY - 1 1989

CONCLUSIONS

The acts, conduct, and/or omissions of Sam Hill, D.O., as set forth in the above Findings of Fact, constitute "assisting in or abetting the violation of...any provisions of this chapter", as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Section 4731.41, Ohio Revised Code.

The undisputed facts in this Matter show that Dr. Hill employed and utilized John E. Patton as a physician's assistant, knowing that Mr. Patton was not registered to him. The services Mr. Patton performed during the course of his employment by Dr. Hill from January 1 to at least September 6, 1988, constitute the practice of medicine or surgery (as defined in Section 4731.34, Ohio Revised Code) without a certificate, in violation of Section 4731.41, Ohio Revised Code. Dr. Hill not only enabled such illegal practice by his employment of Mr. Patton as a physician's assistant before he obtained registration, but also allowed such illegal practice to continue for over two months. He knew or should have known that Mr. Patton had not submitted an application for registration as his physician's assistant until mid-September, 1988.

Dr. Hill's claims of neglect due to lack of experience as a solo practitioner and lack of time to attend to administrative details do not constitute valid mitigating factors. When Dr. Hill undertook a solo practice, he undertook the responsibilities that go with such practice. As a licensed physician, Dr. Hill is and was responsible for apprising himself of and complying with the laws related to his profession. Indeed, by his own admission, he was fully aware that a physician's assistant was required by law to be properly registered before acting as a physician's assistant. Yet, he appeared to be under the impression that he was allowed to violate the law, as long as he complied "within a reasonable length of time." (Tr. at 28-29). Such view is misguided. The laws governing the practice of medicine and its related branches were promulgated by the Ohio General Assembly for the purpose of regulating the medical professions, as is necessary for protection of the public. Such laws cannot be circumvented or modified for the convenience of individual physicians or P.A.'s.

Although the Board may consider in mitigation the fact that Dr. Hill took immediate steps after the investigator's visit to ensure that Mr. Patton was no longer identified as a physician's assistant, his testimony suggests that he may have permitted Mr. Patton to continue examining patients, an act which constitutes the practice of medicine as defined by Section 4731.34, Ohio Revised Code. Dr. Hill testified that Mr. Patton's title was changed to "medical assistant" and that, "if he saw a patient that he thought needed a urinalysis or x-ray, (he was) to run it by me first and get my approval." (Tr. at 31). While Dr. Hill's candor indicates that he believed he was then in compliance with the law, it also indicates that he still may not have taken responsibility for apprising himself of and complying with the laws relevant to his practice.

MAY - 1 1989

PROPOSED ORDER

It is hereby ORDERED that:

1. The certificate of Sam Hill, D.O., to practice osteopathic medicine or surgery in the State of Ohio shall be SUSPENDED for a period of one (1) year. All but thirty (30) days of the suspension shall be stayed, and Dr. Hill's certificate shall be automatically reinstated thirty (30) days from the effective date of this Order, subject to the following probationary, terms, conditions, and limitations for a period of three (3) years:
 - a. Dr. Hill shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
 - b. Within thirty (30) days of the effective date of this Order, Dr. Hill shall submit to the Board for its approval a program of approved Category I Continuing Medical Education related to the administration and management of a private medical practice. The exact number of hours and the specific content of the program shall be determined by the Board or its designee, but shall total not less than ten (10) hours or more than twenty (20) hours per year for each year of probation. This program shall be in addition to the Continuing Medical Education requirements for relicensure. The Board may require Dr. Hill to pass an examination related to the content of the program. Dr. Hill shall provide documentary evidence satisfactory to the Board of his successful completion of such program.
 - c. Dr. Hill shall refrain from employing any physician's assistants without prior approval by the State Medical Board. The State Medical Board shall not provide such approval until Dr. Hill has taken and passed an examination to be administered by the Board or its designee related to the content of Ohio statutes and rules of the Board relating to the use and practice of physician's assistants. If Dr. Hill fails this examination, he must wait one (1) month between re-examinations.
 - d. Dr. Hill shall submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the provisions of probation.
 - e. Dr. Hill shall appear in person for interviews before the full Board or its designated representative at six (6) month intervals, or as otherwise requested by the Board.
 - f. In the event that Dr. Hill should leave Ohio for three (3) continuous months, or reside or practice outside the State, Dr. Hill 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.

MAY - 1 1984

2. If Dr. Hill violates the terms of this Order in any respect, the Board, after giving Dr. Hill notice and an opportunity to be heard, may set aside the stay order and impose the remaining eleven (11) months of suspension and/or take whatever disciplinary action it deems appropriate, up to and including the revocation of his certificate.
3. Upon successful completion of probation, Dr. Hill's certificate will be fully restored.

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


Wanita J. Sage
Attorney Hearing Examiner

EXCERPT FROM THE MINUTES OF JUNE 14, 1989

REPORTS AND RECOMMENDATIONS

Dr. O'Day advised that the Findings and Orders appearing on this day's agenda are those in the matters of Paul C. Venizelos, M.D.; Lynda Hendershot, P.A., and Lindia L. Singer, P.A.; John E. Patton, P.A.; Sam Hill, D.O.; Linda M. Karbonit, D.O.; Victor L. Ramos, M.D.; Alan F. Knull, M.D.; Harvey J. Snyder, Jr., M.D.; Carlton Villier, D.P.M.; Jonathan W. Nusbaum, M.D.; Frank T. W. Chin, Jr., M.D.; William E. Masters, M.D.; and Amir S. Ali, M.D.

Dr. O'Day continued that since distribution of the agenda materials, the Office of the Attorney General filed a motion to strike additional evidence from the record in the matters of Paul C. Venizelos, M.D., and Carlton Villier, D.P.M. The following documents were filed on behalf of Dr. Knull: Notice of Change of Counsel; Objections to the Report and Recommendation; and a request for oral presentation. On behalf of Dr. Nusbaum, a notice of appearance of counsel and a motion for permission to orally address the Board were filed.

The Board at this time took time to read the above-referenced documents.

Dr. O'Day asked if each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of Paul C. Venizelos, M.D.; Lynda Hendershot, P.A., and Lindia L. Singer, P.A.; John E. Patton, P.A.; Sam Hill, D.O.; Linda M. Karbonit, D.O.; Victor L. Ramos, M.D.; Alan F. Knull, M.D.; Harvey J. Snyder, Jr., M.D.; Carlton Villier, D.P.M.; Jonathan W. Nusbaum, M.D.; Frank T. W. Chin, Jr., M.D.; William E. Masters, M.D.; and Amir S. Ali, M.D. A roll call was taken:

ROLL CALL:	Dr. Cramblett	- aye
	Dr. Gretter	- aye
	Dr. Stephens	- aye
	Dr. Agresta	- aye
	Dr. Rothman	- aye
	Dr. Rauch	- aye
	Mr. Albert	- aye
	Dr. Kaplansky	- aye
	Ms. Rolfes	- aye
	Dr. O'Day	- aye

The motion carried.

.....

EXCERPT FROM THE MINUTES OF JUNE 14, 1989

REPORT AND RECOMMENDATION IN THE MATTER OF SAM HILL, D.O.

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

Dr. O'Day advised that a request to orally address the Board has been submitted by Carl B. Fry, Dr. Hill's attorney. Three affirmative votes are necessary to grant this motion.

MR. ALBERT MOVED TO GRANT MR. FRY'S REQUEST TO ADDRESS THE BOARD. DR. KAPLANSKY SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Gretter	- nay
	Dr. Stephens	- nay
	Dr. Agresta	- nay
	Dr. Rothman	- nay
	Dr. Rauch	- abstain
	Mr. Albert	- aye
	Dr. Kaplansky	- aye
	Ms. Rolfes	- nay
	Dr. O'Day	- aye

The motion carried.

Dr. O'Day advised Mr. Fry 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. Fry stated that he did not have any objection to the absence of a court reporter.

Mr. Fry advised that Dr. Hill was Mr. Patton's employing physician. He noted that most of the current Board Members were also members at the time the Board considered the similar case of Joel C. Ashenbaum, P.A. Applicant, and James H. Barry, M.D. The hearing examiner in that case recommended that the Board suspend Dr. Barry's license for 30 days; however, the Board reduced that suspension time to seven days. Mr. Fry stated that such a reduction in suspension time was appropriate. He added that he was shocked by Ms. Sage's proposed order in this case. He stated that Dr. Hill at most is guilty of a technical violation. He noted that Dr. Hill is a young physician who has been in practice since 1983, and has, as far as he was aware, worked mainly for clinical operations with multiple P.A.'s registered to him. Dr. Hill took over a difficult practice, not a popular practice.

Mr. Fry noted that this is a time when medical schools are seeking students because physicians are needed. He added that the proposed order is extremely harsh in view of the fact that Dr. Hill is a young physician who committed a technical violation over a two-month period. He asked that the Board remember that Mr. Patton had been registered for a number of years. Mr. Fry expressed concern that such a penalty might send the wrong message to other physicians. This is not a situation where harm was done to any patients, but is merely a technical violation. Mr. Fry asked for the Board's leniency and consideration. He stated that Dr. Hill has been deprived of employment because of this situation since, after the citation occurred,

he was involved in a legal situation in which Mr. Fry requested that the practice be taken back by the previous physician. Mr. Fry again stressed that the practice involved is a very difficult one.

Dr. O'Day asked Mr. Dowling if he wished to respond.

Mr. Dowling advised that the Findings of Fact and Conclusions are contained in the Hearing Examiner's Report and Recommendation, and asked that the Board consider them in reaching its conclusion.

DR. AGRESTA MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF SAM HILL, D.O. DR. ROTHMAN SECONDED THE MOTION.

MR. ALBERT MOVED THAT THE PROPOSED ORDER IN THE MATTER OF SAM HILL, D.O., BE AMENDED TO DELETE SUBPARAGRAPHS c AND e FROM PARAGRAPH 1 OF THE PROPOSED ORDER, AND TO RELETTER ALL REMAINING SUBPARAGRAPHS. DR. ROTHMAN SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Gretter	- aye
	Dr. Stephens	- aye
	Dr. Agresta	- aye
	Dr. Rothman	- aye
	Dr. Rauch	- abstain
	Mr. Albert	- aye
	Dr. Kaplansky	- aye
	Ms. Rolfes	- aye

The motion carried.

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

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Gretter	- aye
	Dr. Stephens	- aye
	Dr. Agresta	- aye
	Dr. Rothman	- aye
	Dr. Rauch	- abstain
	Mr. Albert	- aye
	Dr. Kaplansky	- aye
	Ms. Rolfes	- aye

The motion carried.

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

December 8, 1988

Sam Hill, D.O.
7963 Liberty Road
Powell, OH 43065

Dear Doctor Hill:

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) In July 1988, you hired Mr. John E. Patton to work as a physician's assistant in your office. He was not registered to you by the State Medical Board, but held himself out and/or functioned as a physician's assistant between at least July 1988 and September 1988.
- (2) When Mr. Patton was interviewed by a Board investigator at your office on or about September 6, 1988, he admitted he had been working as a physician's assistant since July 1, 1988, and, at the time, was wearing a name tag with his name and the identifier P.A.C. Further, on the outside of the building where your office is located appeared a listing for "Eastside Family Practice, Sam Hill, D.O., John Patton, P.A.C."
- (3) Although an application for physician's assistant registration was forwarded on July 12, 1988, that application had not been returned or filed with the Board as of September 6, 1988.

Mr. Patton's acts or conduct as alleged above constitute a violation of Section 4731.41, Ohio Revised Code, which requires that "no person shall practice medicine or surgery, or any of its branches without a certificate from the State Medical Board...."

The acts or conduct alleged in Paragraphs 1 and 2 above 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)(26), Ohio Revised Code, to wit: Section 4731.41, Ohio Revised Code.

December 8, 1988

Sam Hill, D.O.
Page Two

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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Henry G. Cramblett, M.D.
Secretary

HGC:jmb
Encls.

CERTIFIED MAIL P746 510 041
RETURN RECEIPT REQUESTED