

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

May 13, 1988

Mark P. Namey, D.O.
990 Biscayne Drive
Hermitage, Pennsylvania 16148

Dear Doctor Namey:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Mark E. Kouns, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on May 11, 1988, including Motions approving 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 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 746 510 380
RETURN RECEIPT REQUESTED

cc: John W. Bosco, Esq.

CERTIFIED MAIL NO. P 746 510 381
RETURN RECEIPT REQUESTED

Mailed 5/19/88

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

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 Mark E. Kouns, Attorney Hearing Examiner, State Medical Board; and attached excerpt of Minutes of the State Medical Board, meeting in regular session on May 11, 1988, including Motions approving the Findings of Fact and the 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 Mark P. Namey, 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. Cramblett, M.D.
Secretary

May 13, 1988

Date

IN THE MATTER OF *

*

MARK P. NAMEY, D.O. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 11th day of May, 1988.

Upon the Report and Recommendation of Mark E. Kouns, Attorney Hearing Examiner, State Medical Board, in this matter designated pursuant to R.C. 4731.23, a true copy of which is attached hereto and incorporated herein, and upon modification, approval, and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board for the 11th day of May, 1988.

It is hereby ORDERED:

1. That the license of Mark P. Namey, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be and is hereby SUSPENDED for a minimum period of one (1) year, commencing with the effective date of this Order. Dr. Namey's license shall be returned only upon his demonstration, by documentary evidence acceptable to this Board, that he is no longer drug dependent and that he has maintained continuous abstinence from controlled substances, drugs and chemicals for a minimum of one (1) year from the effective date of this Order. Such evidence shall include, at a minimum:
 - a. Evidence of continuous participation in a drug rehabilitation program acceptable to the State Medical Board not less than five (5) times per week;
 - b. Evidence of psychiatric treatment by a psychiatrist approved by the State Medical Board, as frequently as determined necessary by the psychiatrist, but not less than once per month.

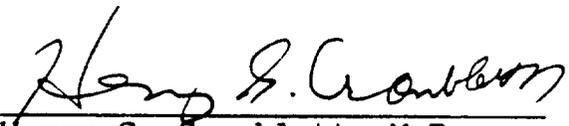
Mark P. Namey, D.O.

Dr. Namey shall submit to the Board for its approval the name and qualifications of the psychiatrist of his choice prior to initiating such treatment;

- c. Negative urine screening reports to be prepared on a weekly basis by a physician to be approved by the Board. Dr. Namey shall submit daily specimens, which shall be screened from drugs weekly on a random basis. Such reports shall be made available for inspection by the State Medical Board upon request.
2. Further, that upon reinstatement, Dr. Namey's license to practice osteopathic medicine and surgery shall be subject to the following probationary terms, conditions, and limitations for a period of at least two (2) years:
 - a. Dr. Namey shall strictly comply with all the terms and conditions set forth in his February 11, 1987 Consent Agreement with the Board, which is attached hereto and fully incorporated herein.
 3. Further, that the expiration of the period of probation established under the February 11, 1987 Consent Agreement shall not terminate Dr. Namey's probation unless and until termination of said probation is deemed appropriate by the Board. Dr. Namey may not request termination of this probation for at least two years from the effective date of this Order.

This Order shall become effective upon final approval of the same by the State Medical Board of Ohio as provided by law.

(SEAL)


Henry G. Cramblett, M.D.
Secretary

May 13, 1988
Date

REPORT AND RECOMMENDATION
IN THE MATTER OF MARK P. NAMEY, D.O.

The Matter of Mark P. Namey, D.O., (hereinafter referred to as Respondent), came on for hearing before me, Mark E. Kouns, Esq., Hearing Examiner for the State Medical Board of Ohio (hereinafter referred to as the Board), on the 29th day of February, 1988, pursuant to the provisions of Chapters 4731. and 119. of the Ohio Revised Code.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Mode of Conduct

- A. During the course of this hearing, the rules of evidence were relaxed so as to afford both the State and the Respondent wide latitude in the offering of evidence as well as inquiring of the witnesses through both direct and cross-examination.

II. Basis for Hearing

By letter of August 12, 1987, (State's Exhibit #1), the Board notified Respondent, Mark P. Namey, D.O., that it proposed to determine whether or not to take disciplinary action with reference to Respondent and his certificate to practice osteopathic medicine and surgery based upon allegations that Respondent had entered into a Consent Agreement with the Board and thereafter failed to comply with certain terms of the same; that Respondent had self-administered Phendimethazine Tartrate; that Respondent had engaged in conduct constituting a felony; and by engaging in such conduct Respondent had thereby violated Sections 4371.22(B)(2), (3), (10), and (15) of the Ohio Revised Code. Further, the Board advised Respondent his opportunity to request a hearing and of his right to be represented by counsel.

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III. Appearance of Counsel

- A. On behalf of the State of Ohio: Anthony J. Celebrezze, Jr., Attorney General of Ohio, by Christopher J. Constantini, Esq., Assistant Attorney General
- B. On behalf of Respondent: Messrs. Bernard, Haffey & Bosco, Co., L.P.A., and John W. Bosco, Esq.

IV. Testimony Heard

- A. Presented by the State
 - 1. Randall G. Tharp, D.O.
 - 2. Lisa Marie Struna, employee of Warren General Emergency Center and Randall G. Tharp, D.O.
 - 3. Diann Thompson, Enforcement Coordinator, State Medical Board of Ohio
- B. Presented by the Respondent
 - 1. Barbara Namey, wife of Respondent.
 - 2. Shayen George, licensed psychologist
 - 3. John T. Namey, M.D., father of the Respondent.

V. Exhibits Offered, Admitted and Examined

- A. Presented by the State
 - 1. State's Exhibit #1: A copy of a letter dated August 12, 1987, from Henry G. Cramblett, M.D., Secretary of the Board, to the Respondent, advising the Respondent of the Board's intention to consider disciplinary action against Respondent's certificate based upon certain allegations and further advising the Respondent of his opportunity to request a hearing in the matter and of his right to be represented by counsel. Attached to the letter and forming a part of the Exhibit are an original "Receipt For Certified Mail" (numbered P 026 074 656), a "Domestic Return Receipt" (green card) (numbered P 026 074 656), and a copy of the Consent Agreement.

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2. State's Exhibit #2: A letter dated August 27, 1987, from John W. Bosco, Esq., Counsel for the Respondent to the Board advising the Board that he (Mr. Bosco) represented Respondent and requesting a hearing in the matter. A copy of the transmittal envelope bearing certified mail #P 515 205 245 is attached to the letter and forms a part of the exhibit.
3. State's Exhibit #3: A copy of a letter dated September 1, 1987, from the Board's Case Control Officer to John W. Bosco, Esq., acknowledging receipt of counsel's letter of August 27, 1987, advising that Respondent's formal hearing had initially been set for September 10, 1987, and further advising that the initial hearing had been postponed and counsel would be advised as to the rescheduled date for hearing.
4. State's Exhibit #4: A copy of a letter dated October 14, 1987, from the undersigned Attorney Hearing Examiner to Counsel for Respondent advising that Respondent's formal hearing had been scheduled for February 29, 1988, at 10:00 A.M., in the offices of the Board.
5. State's Exhibit #5: A copy of a document consisting of two typewritten pages, captioned "CONSENT AGREEMENT BETWEEN MARK P. NAMEY, D.O. AND THE STATE MEDICAL BOARD OF OHIO", and received in the offices of the Board on February 11, 1987, at 11:49 A.M.
6. State's Exhibit #6: A copy of a Public Notice from Penny McKenzie, Acting Chief of Licensure for the Board, announcing that Respondent among others, had been licensed on February 11, 1987, as a Doctor of Osteopathic Medicine.
7. State's Exhibit #7: (Consisting of three pages) A copy of the Minutes from the May 14, 1987, meeting of the Board.
8. State's Exhibit #8: (Consisting of several pages) A copy of A.A. attendance logs submitted to the Board by Respondent.

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9. State's Exhibit #9: (A composite exhibit consisting of items numbers 9-A through 9-K, inclusive) Copies of urine screens submitted by Respondent to the Board covering the period from 2/4/87 through 6/10/87.
10. State's Exhibit #10: A letter dated July 16, 1987, and received in the offices of the Board on July 21, 1987, from Randall G. Tharp, D.O., to Mr. John Rohal of the Board, outlining a series of events involving Respondent, with a copy of the transmittal envelope attached thereto.
11. State's Exhibit #11: A letter received in the offices of the Board on August 11, 1987, addressed from Robert A. Evans, D.O., Medical Director of the Detoxification Unit of Geauga Community Hospital, Chardon, Ohio, to the Board in which Dr. Evans advised the Board that he had agreed to serve as Respondent's Supervising Physician.
12. State's Exhibit #12: A copy of a urine screen taken from Respondent on 7/10/87 and received by the Board on July 21, 1987.
13. State's Exhibit #13: A letter from Respondent to John W. Rohal, Assistant Director and Henry G. Cramblett, M.D., Secretary of the Board, dated August 7, 1987 and received by the Board on August 11, 1987, in which Respondent describes his version of the events of July 5, 1987.

Presented by the Respondent

1. Respondent's Exhibit-A: A letter dated 8-10-87 from Randall G. Tharp, D.O., to Mr. John Rohal regarding Respondent's urine test and Dr. Tharp's role as sponsoring physician.
2. Respondent's Exhibit-B: A copy of a letter dated July 15, 1987 from Randall G. Tharp, D.O., to the Ohio Osteopathic Association regarding Respondent.

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3. Respondent's Exhibit-C: A vial containing six (6) pills.
4. Respondent's Exhibit-D: A letter dated May 7, 1987 from Randall G. Tharp, D.O., sent to the Board on behalf of Respondent.
5. Respondent's Exhibit-E: A letter dated June 18, 1987, by Randall G. Tharp, D.O., sent to the Board regarding Respondent.
6. Respondent's Exhibit-F: A copy of Respondent's urine test results from Warren General Hospital for date of 07/01/87.
7. Respondent's Exhibit-G: A copy of Respondent's urine test results from Warren General Hospital for date of 06/22/87.

FINDINGS OF FACT

1. The Board had jurisdiction over both the Respondent and the subject matter in the instant proceeding.

(These facts are established by reference to State's Exhibits #1, #2, #3, #4, and #5).
2. On February 5, 1987, Respondent signed and entered into a Consent Agreement with the Board which agreement became effective on February 11, 1987.

(This fact is established by reference to State's Exhibits #5 and #7 and the testimony of Diann Thompson at page 91, line 21 through page 92, line 22, inclusive of the transcript).
3. Under Paragraph 8 of the Consent Agreement, Respondent was required to submit daily urine specimens for random urine drug screenings to his supervising physician. Further, weekly urine screenings were to have been done on a random basis. Respondent did not submit daily urine specimens to his supervising physician as required. Rather, Respondent submitted weekly urine specimens to his supervising physician.

Further, Respondent did not advise his supervising physician that random weekly urine screens were required by the terms of the Consent Agreement. During the twenty-four week period between February 11, 1987 and July 31, 1987, Respondent submitted only twelve (12) urine screens to the Board. Under the terms of Paragraph 8 of the Consent Agreement, it was the responsibility of Respondent to ensure that the weekly urine screen reports were forwarded directly to the Board on a monthly basis.

(These facts are established by the testimony of Diann Thompson at page 96, line 4 through page 97, line 13, inclusive of the transcript and the testimony of Dr. Tharp at page 16, line 15 through page 17, line 9, inclusive of the transcript, together with reference to State's Exhibits #5, #8 and #9-A through #9-K, inclusive).

4. Pursuant to the terms of Paragraph 6 of the Consent Agreement, Respondent was required to "...attend Alcoholic Anonymous, Narcotics Anonymous, Caduceus, Drug Addicts Anonymous or other drug rehabilitation programs acceptable to the BOARD, no less than three times per week." During the period from February 11, 1987, through May 15, 1987, Respondent did not attend Alcoholics Anonymous or other drug rehabilitation programs acceptable to the Board at least three times per week as required.

(These facts are established by reference to State's Exhibits #5 and #8, together with the testimony of Diann Thompson at page 97, line 14 through page 99, line 18, inclusive of the transcript).

5. The ultimate responsibility with respect to seeing to it that Respondent's supervising physician performed the duties imposed upon him under the Consent Agreement rested with Respondent.

(This fact is established by the testimony of Diann Thompson at page 102, line 8 through page 103, line 10, inclusive of the transcript together with reference to State's Exhibit #5).

Under the terms of Paragraph 2 of the Consent Agreement, Respondent was required to submit to the Board quarterly declarations under penalty of perjury, stating whether he had complied with all the conditions of the Consent Agreement. The Respondent violated the terms of Paragraph 2 of the Consent Agreement by submitting quarterly declarations that had not been notarized.

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(These facts are established by reference to State's Exhibit #5, together with the testimony of Diann Thompson at page 114, line 9 through page 115, line 3, inclusive, and at page 125, line 17 through line 20, inclusive of the transcript).

7. Under the terms of Paragraph 4 of the Consent Agreement Respondent promised to abstain completely from the personal use or possession of drugs except those prescribed, administered, or dispensed to Respondent by his treating physician. On July 5, 1987, Respondent ingested two tablets of Phendimetrazine Tartrate, a controlled substance. The two Phendimetrazine Tartrate tablets ingested by Respondent had not been prescribed, administered or dispensed to Respondent by his treating physician.

(These facts are established by reference to State's Exhibits #5 and #13, together with the testimony of Dr. Tharp at page 19, line 5 through page 20, line 9, inclusive; at page 58, line 5 through line 12, inclusive; and at page 37, line 17 through page 38, line 3 of the transcript; the testimony of Barbara Namey at page 134, line 16 through page 135, line 3, inclusive of the transcript; and the testimony of Dr. John T. Namey at page 168, line 1 through line 4, inclusive, and at page 170, line 1 through line 13, inclusive of the transcript).

8. A few days after July 5, 1987, Respondent was prescribed Xanax as a precautionary measure for nervousness by his father and treating physician, Dr. John T. Namey, who had knowledge at the time that Respondent was under a Consent Agreement.

(These facts are established by the testimony of Dr. John T. Namey at page 167, line 19 through page 169, line 3 and at page 170, line 17 through page 172, line 8 of the transcript, together with reference to State's Exhibit #13).

9. Between the latter part of June and early July, 1987, Respondent's treating physician Dr. John T. Namey, prescribed Fiorinal, a short-acting barbiturate analgesic to Respondent for cluster headaches. Thereafter, on July 9, 1987, Respondent's urine screen showed positive for the presence of a short-acting barbiturate.

(This fact is established by the testimony of Dr. John T. Namey, at page 169, line 1 through line 23, inclusive; and at page 172, line 9 through line 23, inclusive of the transcript, together with reference to State's Exhibits #12 and #13).

10. Dr. Randall G. Tharp notified the Board that he remained as Respondent's supervising physician through and including August 13, 1987.

(This fact is established by the testimony of Dr. Tharp at page 48, line 7 through page 51, line 21 of the transcript, together with reference to Respondent's Exhibit-A and State's Exhibits #11 and #13).

11. On July 5, 1987, Respondent called Lisa Marie Struna, daughter and an employee of Dr. Tharp, and persuaded Ms. Struna to grant him access to the offices of Dr. Tharp. Once inside the offices, Ms. Struna opened a cupboard where medication was kept. Respondent then removed a white bottle from the top of the cupboard and proceeded to remove tablets from the bottle. Respondent then resealed the bottle, returned the bottle to the cupboard and exited the offices with the tablets in his possession. The tablets over which Respondent obtained control and possession were Phendimetrazine Tartrate tablets and were the property of Dr. Tharp.

(These facts are established by the testimony of Lisa Marie Struna at page 67, line 14 through page 70, line 19, inclusive of the transcript, together with reference to State's Exhibits #10 and #13).

12. On July 5, 1987, when Ms. Struna granted Respondent access to her father's offices, and the medication covered therein, she did not have knowledge of the fact that:

- (1) Respondent suffered from a chemical dependency problem;
- (2) Respondent had a limitation placed upon his medical license; and

13:54 03 MAR 88 (38) The type of medication which Respondent obtained from the medication cupboard was Phendimetrazine Tartrate tablets.

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Neither did the Respondent disclose any of the above facts to Ms. Struna at the time he took the tablets. At the time, Ms. Struna was of the opinion that only sinus and allergy medication was contained in the medication cupboard.

(These facts are established by reference to the testimony of Lisa Marie Struna at page 67, line 14 through page 71, line 5, inclusive, at page 72, line 13 through line 16, inclusive, at page 76, line 11 through line 13, inclusive, and at page 78, line 6 through page 84, line 8, inclusive of the transcript).

13. The Phendimetrazine ingested by Respondent was methamphetamine, a weight control pill.

(This fact is established by the testimony of Dr. Tharp at page 37, line 17 through line 22, inclusive of the transcript, together with reference to State's Exhibit #13).

14. On July 5, 1987, Respondent asked Lisa Marie Struna to help him out by assisting Respondent in gaining access to her father's offices and the medication cupboard therein. Respondent stated to Ms. Struna that he had had bad weekend. Further, Respondent advised Dr. Tharp that he took two pills on July 5, because "he (Respondent) had a bad time."

(These facts are established by reference to the testimony of Lisa Marie Struna at page 67, line 14 through page 68, line 18, inclusive of the transcript and the testimony of Dr. Tharp at page 57, line 14 through page 58, line 4, inclusive of the transcript, together with reference to State's Exhibit #13).

15. Respondent was not authorized to take medication from the private offices of Dr. Tharp nor was the Respondent employed at the private offices of Dr. Tharp.

(This fact is established by the testimony of Dr. Tharp at page 20, line 12 through line 14, inclusive and at page 24, line 1 through page 25, line 10 of the transcript).

16. Respondent failed to return the unused tablets belonging to Dr. Tharp within 24 hours as promised by Respondent.

(This fact is established by reference to the testimony of Dr. Tharp at page 20, line 4 through line 14, inclusive of the transcript).

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CONCLUSIONS OF LAW

1. Respondent's conduct in failing to comply with Paragraphs 2, 4, 6, and 8 of his Consent Agreement, as outlined in the foregoing Findings of Fact leads the Attorney Hearing Examiner to conclude that Respondent violated Section 4731.22(B)(15) of the Ohio Revised Code by engaging in conduct which violated the conditions of limitation placed upon his certificate to practice by the Board.
2. The Attorney Hearing Examiner concludes that the State has failed to prove the Respondent violated Paragraph 7 of his Consent Agreement as alleged in Paragraph (7) of State's Exhibit #1. Dr. Tharp testified at hearing that he remained Respondent's supervising physician through August 13, 1987.
3. Respondent's conduct in the self-administration of two tablets of Phendimetrazine Tartrate on July 5, 1987, constitutes a failure to use reasonable care discrimination in the administration of drugs, and a failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease contrary to and in violation of Section 4731.22(B)(2) of the Ohio Revised Code.

The evidence fails to disclose Respondent was suffering from any disease for which the acceptable scientific or medical treatment would have been the administration of Phendimetrazine Tartrate.

4. Respondent's conduct in administering Phendimetrazine Tartrate to himself constitutes administering drugs for other than legal or legitimate therapeutic purposes contrary to and in violation of Section 4731.22(B)(3) of the Ohio Revised Code.

The evidence established that Respondent's proffered reason for administering two Phendimetrazine Tartrate tablets to himself on July 5, 1987, was not for any legal or legitimate therapeutic purposes, but rather as a remedy for him having had a bad time or a bad weekend.

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5. Respondent's conduct in gaining access to the private offices of Dr. Tharp on July 5, 1987, and thereafter removing eight Phendimetrazine tablets constitutes a violation of Section 2925.21(A) of the Ohio Revised Code (THEFT OF DRUGS), the same being a felony of the fourth degree.

In engaging in such felonious conduct Respondent violated Section 4731.22(B)(10) of the Ohio Revised Code.

Section 2925.21(A) of the Revised Code states: "No person shall obtain any dangerous drug by attempting or committing a theft offense as defined in section 2913.01 of the Revised Code."

Sections 2925.01(C) states that, as used in Chapter 2925. of the Revised Code, the term "dangerous drug" has the same meaning as in Section 4729.02 of the Revised Code. Further, Section 4729.02(B)(1) of the Revised includes within the meaning of the term "dangerous drug" any drug which"... under Chapter 3719. of the Revised Code, may only be dispensed upon a prescription."

Under Paragraph 9 of his Consent Agreement, Respondent was authorized to prescribe controlled substances only with the counter-signature of an attending physician. Under Paragraph 10 of the Consent Agreement, Respondent was prohibited from administering any controlled substance.

Section 3719.41 Schedule III(A)(1)(6) lists Phendimetrazine as a Schedule III controlled substance. Respondent's lack of authority to prescribe Phendimetrazine Tartrate under Section 3719.41 makes that drug a dangerous drug vis-a-vis Respondent for purposes of Section 2925.21(A) of the Revised Code.

Section 2913.01(A)(1) of the Revised Code defines "theft offense" to include a violation of Section 2913.02 of the Revised Code (i.e. Theft). Respondent committed a theft offense when, on July 5, 1987, he entered the private offices of Dr. Tharp and without the consent of Dr. Tharp obtained eight Phendimetrazine Tartrate tablets, the same being the property of Dr. Tharp and thereafter ingested two of the tablets, thus, permanently depriving Dr. Tharp of his property.

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PROPOSED ORDER

It is hereby ORDERED:

1. That the license of Mark P. Namey, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be and is hereby suspended for a period of one (1) year, commencing with the effective date of the Order.
2. Further, that upon reinstatement, Dr. Namey's license to practice osteopathic medicine and surgery shall be subject to the following probationary terms, conditions, and limitations for a period of at least two (2) years:
 - (a) Dr. Namey shall strictly comply with all the terms and conditions set forth in his February 11, 1987, Consent Agreement with the Board, which is attached hereto and fully incorporated herein.
3. Further, that the expiration of the period of probation established under the February 11, 1987 Consent Agreement shall not terminate Dr. Namey's probation unless and until termination of said probation is deemed appropriate by the Board. Dr. Namey may not request termination of this probation for at least two years from the effective date of this Order.

This Order shall become effective upon final approval of the same by the State Medical Board of Ohio as provided by law.



Mark E. Kouns
Attorney Hearing Examiner

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EXCERPT FROM THE MINUTES OF MAY 11, 1988

REPORTS AND RECOMMENDATIONS

Ms. Nester left the meeting at this time.

Dr. Stephens advised that the Findings and Orders appearing on this day's agenda are those in the matters of Dr. Thomas J. Markoski, Dr. Judith A. Wolfe, Dr. Mark P. Namey, Dr. Gene D. Fry, Dr. Clarence A. DeLima, and Dr. Harry H. Hillier.

He further advised that since distribution of the Board's agenda materials, the Board has received objections filed in the matter of Dr. DeLima and supplemental objections have been filed in the matter of Dr. Hillier. Time was given to the Board to review these documents.

Dr. Stephens 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 Thomas J. Markoski, D.O., Judith A. Wolfe, M.D., Mark P. Namey, D.O., Gene D. Fry, M.D., Clarence A. DeLima, M.D., and Harry H. Hillier, D.O. A roll call was taken:

ROLL CALL:	Dr. Cramblett	- aye
	Dr. Gretter	- aye
	Dr. Barnes	- aye
	Dr. Kaplansky	- aye
	Dr. Rauch	- aye
	Mr. Albert	- aye
	Dr. O'Day	- aye
	Ms. Rolfes	- aye
	Mr. Jost	- aye
	Dr. Stephens	- aye

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REPORT AND RECOMMENDATION IN THE MATTER MARK P. NAMEY, D.O.

Dr. Stephens 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.

MR. ALBERT MOVED TO APPROVE AND CONFIRM MR. KOUNS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF MARK P. NAMEY, D.O. DR. GRETTER SECONDED THE MOTION.

MS. ROLFES MOVED THAT THE PROPOSED ORDER IN THE MATTER OF MARK P. NAMEY, D.O., BE AMENDED TO SUBSTITUTE THE FOLLOWING LANGUAGE IN PARAGRAPH 1:

1. That the license of Mark P. Namey, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be and is hereby

suspended for a minimum period of one (1) year, commencing with the effective date of this Order. Dr. Namey's license shall be returned only upon his demonstration, by documentary evidence acceptable to this Board, that he is no longer drug dependent and that he has maintained continuous abstinence from controlled substances, drugs and chemicals for a minimum of one (1) year from the effective date of this Order. Such evidence shall include, at a minimum:

- a. Evidence of continuous participation in a drug rehabilitation program acceptable to the State Medical Board not less than five (5) times per week;
- b. Evidence of continuous and active participation in the Impaired Physician Program;
- c. Evidence of psychiatric treatment not less than once per week by a psychiatrist approved by the State Medical Board. Dr. Namey shall submit to the Board for its approval the name and qualifications of the psychiatrist of his choice prior to initiating such treatment;
- d. Negative urine screening reports to be prepared on a weekly basis by a physician to be approved by the Board. Dr. Namey shall submit daily specimens, which shall be screened for drugs weekly on a random basis. Such reports shall be made available for inspection by the State Medical Board upon request.

MS. ROLFES FURTHER MOVED THAT ALL OTHER CONDITIONS OF THE PROPOSED ORDER REMAIN THE SAME. DR. O'DAY SECONDED THE MOTION.

Dr. Rauch asked what the Board's procedure is when it removes a physician's ability to earn a living and then requires that person to undergo psychiatric treatment and urine screens. He asked how a physician can earn the money to pay for such things.

Mr. Bumgarner stated that this may be perceived as a problem, and added that the Associations have been interested in this problem. But Mr. Bumgarner continued that he doesn't necessarily think that the Board can worry too much about the support of the physician involved, but must worry primarily about the protection of the public.

Dr. Rauch stated that if he was a relapsing physician and could not afford to maintain his treatment, he would never report to the Board again.

Mr. Jost stated that from the objections Dr. Namey has filed in this case, it appears that Dr. Namey is trying to minimize what happened. In this case there was considerable evidence of relapse and lack of cooperation on the physician's part as to participation in A.A. meetings. Mr. Jost stated that he strongly supports the proposed Order, as well as Ms. Rolfes' amendment to that Order. Mr. Jost asked if weekly psychiatric treatment would be beneficial in a case such as this.

Dr. Stephens stated that he also had some question about that requirement. He stated that the treating psychiatrist should have the opportunity to decide how frequently he should see someone under his care, and the Board cannot make that judgment.

MS. ROLFES MOVED TO AMEND PARAGRAPH C OF THE PROPOSED AMENDMENT TO REQUIRE PSYCHIATRIC TREATMENTS, AS FREQUENTLY AS DETERMINED NECESSARY BY THE PSYCHIATRIST, BUT NOT LESS THAN ONCE PER MONTH. DR. O'DAY SECONDED THE MOTION.

Mr. Albert noted that one of the proposed amendments requires that Dr. Namey attend a drug rehabilitation five times per week. He asked if there are that many programs available, noting that it seemed like a lot to him.

Dr. Kaplansky stated that the language for this requirement is language the Board has approved in the past.

Ms. Rolfes stated that five meetings per week is not considered excessive by those active in A.A. programs, especially for someone who has exhibited difficulty in keeping with the program.

Mr. Jost asked if Ms. Rolfes means A.A. when she suggests a drug rehabilitation program. Ms. Rolfes stated that she does.

Dr. Barnes stated that there is inconsistency in penalties imposed. He stated that the Board in this case is proposing a license suspension for someone who has actually stolen scheduled substances. In another case the Board has recently considered, the charge was for fraudulent answers on the application, and the recommended penalty was for permanent denial. Dr. Barnes stated that the latter case is a less heinous offense, and yet a more severe penalty is being recommended.

Mr. Bumgarner suggested that if Dr. Barnes is unhappy with the proposed Order, he may wish to table this matter to draft what he feels would be a more appropriate Order.

Dr. Stephens stated that one issue is that of morality while the other is an issue of impairment.

Dr. Barnes stated that stealing drugs seems to be a more serious offense than omitting information from an application.

Mr. Jost agreed with Dr. Barnes, but stated that in the cases of fraud in the application which the Board considered at the April, 1988 Board meeting, the proposed orders of permanent denial were amended to allow future application after a specified time.

Dr. O'Day left the meeting during the previous discussion.

A roll call vote was taken on Ms. Rolfes' motion to amend the proposed amendment:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Gretter	- aye
	Dr. Barnes	- aye
	Dr. Kaplansky	- aye
	Dr. Rauch	- abstain
	Mr. Albert	- aye
	Ms. Rolfes	- aye
	Mr. Jost	- aye

The motion carried.

Dr. Gretter stated that, in looking at the items which are contained in the proposed amendment, he believes he understands the reasoning behind them. He added that he has difficulty with requiring evidence of participation in a drug rehabilitation program and in the impaired physician program, as required in paragraphs A and B of the amendment to the proposed Order, and asked what such evidence would entail.

Ms. Rolfes stated that what the Board has done with other physicians is to require that the physicians bring logs of their attendance at meetings. As far as paragraph B is concerned, a letter from the O.S.M.A. Physician's Effectiveness Program would be sufficient.

Mr. Bumgarner stated that concerning paragraph A, the Board has received logs of attendance that are initialled by the chair of the meeting for that particular evening.

Mr. Bumgarner stated that he does have some problem with paragraph B as proposed, stating that he does not know what participation in that program would entail. Mr. Bumgarner continued that, as he understands it, the O.S.M.A. Program deals mostly with intervention for other physicians in need of rehabilitation.

Mr. Wills stated that primarily, Dr. Namey would work with Dr. Tenoglia and would do whatever he thinks is appropriate for treatment. Dr. Tenoglia generally has agreements with such individuals, and assists them in participating in educational programs. Mr. Wills stated that it is difficult for him to say specifically what Dr. Tenoglia might require, but Dr. Tenoglia does keep in touch with physicians working through the O.O.A. impairment programs to make sure that they are complying with the terms of their rehabilitation. Mr. Wills stated that he assumes Dr. Tenoglia would be willing to report to the Board. Mr. Wills stated that the O.O.A. program is similar to that of the O.S.M.A. and suggested that Mr. Clinger might better be able to address this matter.

Mr. Clinger stated that the primary thrust of the O.S.M.A. program is to find impaired physicians and intercept them, get them into treatment, and be their advocates after treatment. The program also works to assist physicians in locating A.A. meetings.

Dr. Barnes stated that in that case paragraph B of the amendment does not make sense.

Mr. Clinger stated that one of the main functions of the P.E.P. at the stage of Dr. Namey's illness is to assist him in finding A.A. programs to attend, and to act as his advocate and assist him in complying with the Board's order.

MR. JOST MOVED TO AMEND PARAGRAPH B OF THE PROPOSED AMENDMENT TO STATE AS FOLLOWS:

- a. Cooperation with the appropriate Association's Impaired Physician's Program.

DR. BARNES SECONDED THE MOTION.

Dr. Cramblett noted that such language would ask that the association be aware that Dr. Namey has fallen off the wagon, and ask for the association's assistance in making certain that Dr. Namey complies with the terms of the Board's Order.

Mr. Graff stated that there are two separate issues involved here. There are impaired physicians groups which are normally run out of programs like A.A., and he thought that that was the intent of the initial motion to amend. Mr. Graff stated that notifications to the associations' impaired physicians committees and interaction might be helpful, but he is not sure what level of active recovery they can provide to the Board.

Mr. Bumgarner stated that he for one would not like to see the Board abdicate its monitoring responsibilities. He stated that these requirements are not voluntary, but part of a Board Order. Participation in the Association's Impaired Physician's Program does not necessarily fit in this case since the physician has already been identified and intervention has taken place. At this time the Board is concerned with monitoring the physician's rehabilitation, and this is a Board responsibility.

Dr. Kaplansky agreed with Mr. Bumgarner, adding that as far as the Board knows, Dr. Namey may not even be a member of the Association.

MR. JOST ASKED TO WITHDRAW HIS MOTION. DR. BARNES AGREED.

MR. JOST MOVED TO AMEND THE AMENDMENT TO WITHDRAW PARAGRAPH B. DR. BARNES SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Gretter	- aye
	Dr. Barnes	- aye
	Dr. Kaplansky	- aye
	Dr. Rauch	- abstain
	Mr. Albert	- aye
	Ms. Rolfes	- aye
	Mr. Jost	- aye

The motion carried.

A roll call vote was taken on Ms. Rolfes' motion to amend as amended:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Gretter	- aye
	Dr. Barnes	- aye
	Dr. Kaplansky	- aye
	Dr. Rauch	- abstain
	Mr. Albert	- aye
	Ms. Rolfes	- aye
	Mr. Jost	- aye

The motion carried.

MR. JOST MOVED TO APPROVE AND CONFIRM MR. KOUNS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER AS AMENDED IN THE MATTER OF MARK P. NAMEY, D.O. DR. BARNES SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Gretter	- aye
	Dr. Barnes	- aye
	Dr. Kaplansky	- aye

Dr. Rauch
Mr. Albert
Ms. Rolfes
Mr. Jost

- abstain
- aye
- aye
- aye

The motion carried.

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

August 12, 1987

Mark P. Namey, D.O.
1405 Roemer Blvd.
Farrell, PA 16121

Dear Doctor Namey:

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 February 5, 1987, you signed a Consent Agreement with the State Medical Board of Ohio, which placed certain conditions of limitation upon your certificate to practice medicine or surgery in Ohio. This Agreement became effective February 11, 1987, and is attached hereto and fully incorporated herein.
- (2) Between February 11, 1987 and July 31, 1987, you were to submit daily urine specimens for a randomly chosen weekly screen. Randall G. Tharp, D.O., who has been your supervising physician since at least May 7, 1987, has notified the Board that you have not been submitting daily urine specimens, nor have the screens been done in a random manner, as required by Paragraph 8 of the Consent Agreement.
- (3) Between February 11, 1987 and July 31, 1987, a period of twenty-four weeks, you were to submit to urine screens on a weekly basis, with the screening reports being forwarded directly to the Board on a monthly basis, pursuant to Paragraph 8 of the Consent Agreement. During that time period, the Board received reports for only twelve screens.
- (4) The documentary evidence of participation in Alcoholics Anonymous submitted by you to the Board demonstrates your failure to attend at least three meetings of such drug/alcohol rehabilitation programs each week as required by Paragraph 6 of the Consent Agreement.
- (5) You have failed to submit quarterly declarations stating whether or not there has been compliance with the conditions of the Consent Agreement as required by Paragraph 2 of the Consent Agreement.

August 12, 1987

- (6) You have failed to "abstain completely from the personal use or possession of drugs, except those prescribed, administered or dispensed to you by your treating physician," as required by Paragraph 4 of the Consent Agreement. This is shown in part, by your admission to Dr. Tharp of your self-administration of phendimetrazine tartrate, a Schedule III controlled substance, and use of Xanax, a Schedule IV controlled substance, and the urine screen on or about July 9, 1987, which tested positive for short-acting barbiturates.
- (7) Dr. Tharp notified the Board of his resignation as your supervising physician effective no later than July 16, 1987. Although by August 6, 1987, you had not designated a new supervising physician and none had been approved by the Board, you continued to practice medicine by serving as house physician at Geauga Hospital, in violation of Paragraph 7 of The Consent Agreement.

The acts and/or omissions, as alleged in the above paragraphs 2 through 7, individually and/or collectively, constitute the "violation 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) of the Revised Code.

Further, your self-administration of phendimetrazine tartrate as alleged in paragraph 6 above constitutes a violation of "failure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease", as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code.

Further, your self-administration of phendimetrazine tartrate as alleged in paragraph 6 above constitutes the "selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes", as that clause is used in Section 4731.22(B)(3), Ohio Revised Code.

- (8) On or about July 5, 1987, you did knowingly obtain eight tablets of phendimetrazine tartrate, a Schedule III controlled substance, which is a dangerous drug, with purpose to deprive the owner of said property, without the consent of the owner or person authorized to give consent, and/or beyond the scope of the express or implied consent of the owner or person authorized to give consent.

Such acts and/or omissions constitute the "commission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10) of the Revised Code, to wit: Section 2925.21(A) of the Revised Code, Theft of Drugs, a felony of the fourth degree.

August 12, 1987

Further, such acts and/or omissions, individually and/or collectively, constitute the "violation of the condition of limitation placed by the Board upon a certificate to practice . . ." as that clause is used in Section 4731.22(B)(15) of the Revised Code, to wit: Paragraph 1 of the Consent Agreement.

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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Henry G. Cramblett, M.D.
Secretary

HGC:jmb

Enclosures:

CERTIFIED MAIL #P 026 074 656
RETURN RECEIPT REQUESTED

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43215

87 FEB 11 AM 1:49

OFFICE OF
MEDICAL
COUNSEL

CONSENT AGREEMENT
BETWEEN
MARK P. NAMEY, D.O.
AND
THE STATE MEDICAL BOARD OF OHIO

THIS CONSENT AGREEMENT IS entered into by and between MARK P. NAMEY, D.O. and THE STATE MEDICAL BOARD OF OHIO, a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

MARK P. NAMEY, D.O., enters into this Agreement being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

This Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

MARK P. NAMEY, D.O., admits that he suffered from a chemical dependency problem and that he underwent in-patient treatment at the Milwaukee Psychiatric Hospital's drug and alcohol abuse treatment center at Gateway Rehabilitation Center from July 1, 1985 to July 28, 1985.

WHEREFORE, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, MARK P. NAMEY, D.O., knowingly and voluntarily agrees with THE STATE MEDICAL BOARD OF OHIO to the following conditions:

1. DR. NAMEY shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio.
2. DR. NAMEY shall submit quarterly declarations under penalty of perjury stating whether there has been compliance with all the conditions of this CONSENT AGREEMENT.
3. DR. NAMEY shall appear in person for interviews before the full BOARD or its designated representative at three month intervals, or as otherwise requested by the Board.
4. DR. NAMEY shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by his treating physician who shall have full knowledge of DR. NAMEY'S history of drug dependency and this Consent Agreement.
5. DR. NAMEY shall abstain completely from the use of alcohol.
6. DR. NAMEY agrees to attend Alcoholics Anonymous, Narcotics Anonymous, Caduceus, Drug Addicts Anonymous, or other drug rehabilitation programs acceptable to the BOARD no less than three times per week. In his Quarterly Reports to the BOARD or its designated representative DR. NAMEY shall provide documentary evidence of continuing compliance with this program.
7. DR. NAMEY shall have a supervising physician, approved by the BOARD, who shall monitor and provide the BOARD with reports on the doctor's progress. DR. NAMEY is to ensure that said reports are forwarded to the BOARD on a quarterly basis. In the event that the designated supervising physician becomes unable or unwilling to serve as the supervising physician, DR. NAMEY must immediately so notify the BOARD in writing, and make arrangements acceptable to the BOARD for another supervising physician as soon as practicable. Furthermore, DR. NAMEY shall not practice unless and until such supervising physician is approved by the BOARD.

Page Two
Mark P. Namey, D.O.
Consent Agreement

- 8. DR. NAMEY shall submit daily urine specimens for random urine drug screenings to a physician to be approved by the BOARD. Such screenings shall be conducted weekly on a random basis, or as otherwise determined by the BOARD. DR. NAMEY shall ensure that the weekly screening reports are forwarded directly to the BOARD on a monthly basis. The BOARD retains the right to require DR. NAMEY to submit blood or urine specimens for analysis without prior notice.
- 9. DR. NAMEY shall be permitted to order or prescribe controlled substances only with the counter-signature of an attending physician holding a full license to practice medicine and surgery in the State of Ohio.
- 10. DR. NAMEY shall not administer or dispense any controlled substances.

The above described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties. Upon the request of either party, the STATE MEDICAL BOARD shall schedule an appearance of MARK P. NAMEY, D.O., before the BOARD at its formal meeting to discuss the appropriateness of modifying or terminating the above stated terms or conditions. This Agreement shall remain in effect for a minimum of two years prior to any request for termination of said Agreement.

If, in the discretion of the Secretary of THE STATE MEDICAL BOARD OF OHIO, MARK P. NAMEY, D.O., appears to have violated or breached any terms or conditions of this Agreement, the STATE MEDICAL BOARD OF OHIO reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Agreement.

Any action initiated by the BOARD based on alleged violations of this CONSENT AGREEMENT shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

It is AGREED and UNDERSTOOD by and between both parties that this CONSENT AGREEMENT shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code.

The terms and conditions of this Agreement shall become effective immediately upon the parties' signatures hereto.

Mark P. Namey D.O.
MARK P. NAMEY, D.O.

Henry G. Cramblett
HENRY G. CRAMBLETT, M.D.
Secretary

Feb 5, 1987
DATE

2/11/87
DATE

67 FEB 11 AM 1:49

William W. Johnson
WILLIAM W. JOHNSON, Esquire
Supervising Member

11 Feb 87
DATE

Christopher M. Culley
CHRISTOPHER M. CULLEY, Esquire
Assistant Attorney General

2-11-87
DATE

The document for this date cannot be found in the records of the Ohio State Medical Board.