

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

RUTH C. FERRIS, M.D., :  
 Appellant, :  
 vs. : CASE NO. 89CV 02 764  
 THE STATE MEDICAL BOARD : JUDGE CLOSE  
 OF OHIO, :  
 Appellee. :

RECEIVED  
 ATTORNEY GENERAL'S OFFICE  
 AUG 7 1989  
 HEALTH, EDUCATION &  
 HUMAN SERVICES SECTION

DECISION AND ENTRY

Rendered this 1<sup>st</sup> day of August 1989

CLOSE, J.

This matter comes before the Court on a Revised Code Section 119.12 appeal. The record below has been filed with the Clerk; no Briefs have been filed. Upon review of the record and exhibits, the Court finds that the Decision is supported by reliable, substantial, and probative evidence, and is in accordance with law. Therefore, the Decision below

FILED  
 CLERK OF COURTS  
 FRANKLIN COUNTY, OHIO  
 AUG 2 1989  
 AFFIRMED

It being the intention of the Court to enter judgment immediately, it is hereby ORDERED, ADJUDGED, and DECREED that the Decision below is AFFIRMED and this appeal is DISMISSED at Appellant's cost.



MICHAEL L. CLOSE, JUDGE

Appearances:

W. DAVID BERTSCHE JR., Esq.  
Counsel for Appellant

RACHEL L. BELENKER, Esq., AAG.  
Counsel for Appellee

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COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

89CV-02-764

FEB 15 1989

IN THE MATTER OF

RUTH C. FERRIS, M.D.

Appellant

: Case No.  
: APPEAL FROM DECISION OF  
: OHIO STATE MEDICAL BOARD  
: Date of Mailing: 1/25/89

Comes now RUTH C. FERRIS and appeals to the Court of Common Pleas of Franklin County, Ohio from the decision of the Ohio State Medical Board.

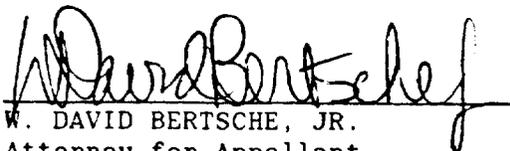
Appellant states the following grounds:

1. Abuse of discretion.
2. Denial of due process.
3. Denial of U.S. and State constitutional rights, and State Federal law.
4. Admission of evidence before Board or Hearing Examiner, and at hearing which should have been excluded.
5. The order of the State Medical Board is not supported by reliable, probative and substantial evidence.
6. The Order of the State Medical Board is not in accordance with law.
7. The State Medical Board decision denied Appellant due process and was based on a Report from the Hearing Examiner, who was biased against Appellant and whose report to the Board did not fairly and impartially state facts presented at hearing; nor conclusions based upon those facts.
8. The State Medical Board denied Appellant due process and was biased in its decision in that it allowed the Assistant Attorney General presenting the case for the Board, and representing the interest of the Board or the State before the Hearing Examiner, to be present at the Board's meeting while at the same time now allowing Appellant or her attorney to be present.
9. The decision of the Board rests upon inferences improperly drawn from the evidence.

LOSE

10. The charges before the Board were vague and failed to notify Appellant, of the reasons or basis for the charges and therefore denied Appellant due process.

Respectfully Submitted,



W. DAVID BERTSCHE, JR.  
Attorney for Appellant  
35 E. Seventh Street, Suite 500  
Cincinnati, Ohio 45202  
513/621-5428

CERTIFICATE OF SERVICE

A copy of this Appeal is served upon the Ohio State Medical Board this 3rd day of February, 1989.



W. David Bertsche, Jr.

FEB 15 1989

STATE OF OHIO  
THE STATE MEDICAL BOARD OF OHIO  
77 SOUTH HIGH STREET  
17TH FLOOR  
COLUMBUS, OHIO 43215

January 13, 1989

Ruth C. Ferris, M.D.  
11972 Seven Gables Road  
Cincinnati, Ohio 45249

Dear Doctor Ferris:

Please find enclosed 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 January 11, 1989, including Motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board.

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 746 514 658  
RETURN RECEIPT REQUESTED

cc: W. David Bertsche, Jr., Esq.

CERTIFIED MAIL NO. P 746 514 659  
RETURN RECEIPT REQUESTED

Mailed 1/26/89

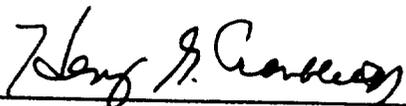
STATE OF OHIO  
STATE MEDICAL BOARD

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 January 11, 1989, including Motions approving and confirming said Report and Recommendation as the Findings and Order of the State Medical Board, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Ruth C. Ferris, M.D., 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

January 25, 1989  
\_\_\_\_\_  
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

\*

\*

RUTH C. FERRIS, M.D.

\*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 11th day of January, 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 is attached hereto and incorporated herein, and upon approval and confirmation by vote of the Board on January 11, 1989, the following Order is hereby entered on the Journal of the State Medical Board for the 11th day of January, 1989.

It is hereby ORDERED that the certificate of Ruth C. Ferris, M.D., to practice medicine and surgery in the State of Ohio shall be and is hereby REVOKED. This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.

(SEAL)



Henry G. Cramblett, M.D.  
Secretary

January 25, 1989

Date

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REPORT AND RECOMMENDATION  
IN THE MATTER OF RUTH C. FERRIS, M.D.

The Matter of Ruth C. Ferris, M.D., came on for hearing before me, Wanita J. Sage, Esq., Hearing Examiner for the State Medical Board of Ohio, on November 17, 1988.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Mode of Conduct

During the course of this hearing, rules of evidence were relaxed to allow both the State and the Respondent latitude in introducing evidence and examining witnesses.

II. Basis for Hearing

A. By letter of March 9, 1988 (State's Exhibit #1), the State Medical Board notified Ruth C. Ferris, M.D., that it proposed to take disciplinary action against her certificate to practice medicine and surgery in Ohio for one or more of the following reasons:

1. The Board alleged that Dr. Ferris' being found guilty, on or about August 25, 1987, of violating Section 3715.52(A) of the Revised Code, the sale of adulterated or misbranded drugs, and the acts underlying that finding of guilt constituted: "a plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice", as that clause is used in Section 4731.22(B)(11), Ohio Revised Code; and "failure to use reasonable care discrimination in administration of drugs", as that clause is used in Section 4731.22(B)(2), Ohio Revised Code.
2. In addition, on or about March 20, 1986, pursuant to a search warrant, a number of drugs were seized from Dr. Ferris' office as being misbranded in that they were either unlabeled or bore labels which did not conform to statutory requirements. The Board alleged that Dr. Ferris' holding of such drugs for use in her practice constituted: "failure to use reasonable care discrimination in the administration of drugs", as that clause is used in Section 4731.22(B)(2), Ohio Revised Code; and "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established", as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

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3. Based upon Dr. Ferris' testimony, on or about November 18, 1986, with regard to certain controlled substances which Patient A (so identified to protect patient confidentiality), Dr. Ferris' office nurse, had obtained from her office supply from March through June, 1986, without having had a physical examination, the Board alleged that Dr. Ferris' acts and omissions constituted: "failure to use reasonable care discrimination in the administration of drugs" and "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; "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; and "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established", as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.
4. The Board further alleged that Dr. Ferris' acts and omissions with regard to Patient B (so identified to protect patient confidentiality) who was under her care for a weight loss program from August, 1982, to December 19, 1984, constituted violations of Sections 4731.22(B)(2), (B)(3), and (B)(6), Ohio Revised Code.

Dr. Ferris was advised of her right to request a hearing in this Matter.

- B. By letter received by the State Medical Board on April 4, 1988 (State's Exhibit #2), W. David Bertsche, Jr., Esq., requested a hearing on behalf of Dr. Ferris.

### III. Appearances

- A. On behalf of the State of Ohio: Anthony J. Celebrezze, Jr., Attorney General, by Rachel L. Belenker, Assistant Attorney General
- B. On behalf of the Respondent: W. David Bertsche, Jr., Esq.

### IV. Testimony Heard

- A. Presented by the State
  1. Bruce T. Koehn, Police Officer and former RENU agent, Cincinnati Police Department
  2. Patient B
  3. John F. Condon, M.D.

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B. Presented by the Respondent

1. Ruth C. Ferris, M.D.

V. Exhibits Examined

In addition to those noted above, the following exhibits were identified and admitted into evidence in this Matter:

A. Joint Exhibits

1. Joint Exhibit A: Copy of complaint filed against Dr. Ferris in the Hamilton County Municipal Court on February 16, 1987, in Caso No. C-87-CRB-3703-A.

B. Presented by the State

1. State's Exhibit #3: April 6, 1988, letter to Attorney Bertsche from the State Medical Board advising that a hearing initially set for April 11, 1988, was postponed pursuant to Section 119.09, Ohio Revised Code.
2. State's Exhibit #4: June 22, 1988, letter to Attorney Bertsche from the State Medical Board scheduling the hearing for October 17, 1988.
3. State's Exhibit #5: October 11, 1988, Entry of this Hearing Examiner granting the Respondent's request for continuance and rescheduling the hearing for November 17, 1988.
4. State's Exhibit #6: Entry of the Hamilton County Municipal Court showing its August 25, 1987, finding of guilty, pursuant to Dr. Ferris' plea of no contest, of violation of Section 3715.52(A), Ohio Revised Code, sale of adulterated or misbranded drugs.
5. State's Exhibit #7: March 20, 1986, affidavit and search warrant with regard to a search of Dr. Ferris' office and seizure of misbranded drugs and records of controlled substances.
6. State's Exhibit #8: Inventory of drugs seized from Dr. Ferris' office on March 20, 1986, pursuant to a search warrant.
7. State's Exhibit #9: March 30 addendum to the inventory of drugs seized from Dr. Ferris' office on March 20, 1986, pursuant to a search warrant.
- \* 8. State's Exhibit #10: Authorization for release of medical records signed by Patient B and copy of Dr. Ferris' medical records for Patient B.

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- \* 9. State's Exhibit #11: July 30, 1985, letter to Patient B from John F. Condon, M.D., reporting the results of her recent physical examination and laboratory studies.
- \* 10. State's Exhibit #12: Dr. Ferris' office dispensing records (BNDD records) from March 19 through June 30, 1986, showing controlled substances dispensed to, among others, Patient A.
- 11. State's Exhibit #13: Transcript of an August 25, 1987, hearing before the Hamilton County Municipal Court with regard to the charges filed against Dr. Ferris in Cases No. C-87-CRB-3703-A, B, C, D, and E, State v. Ferris.
- \* 12. State's Exhibit #14: Transcript of hearings held on November 17 and 18, 1986, in the Hamilton County Common Pleas Court in Case No. B-863595, State v. Williams.

C. Presented by the Respondent

- 1. Respondent's Exhibit #1: Copy of a form utilized by Dr. Ferris in her practice (according to testimony at hearing, such form was completed by patients coming in for medications).

\* NOTE: THOSE EXHIBITS MARKED WITH AN ASTERISK (\*) ABOVE HAVE BEEN SEALED TO PROTECT PATIENT CONFIDENTIALITY.

FINDINGS OF FACT

- 1. Ruth C. Ferris, M.D., has been a physician in the State of Ohio for 50 to 53 years. For the past 20 to 30 years, Dr. Ferris has practiced exclusively in the area of bariatrics. Approximately 50 patients per day are treated at Dr. Ferris' office for weight control.

These facts are established by the testimony of Dr. Ferris (Tr. at 196; also, cf. Tr. at 165-166 and State's Exhibit #14 at 50-51).

- 2. On ~~March~~ 20, 1986, Agent Bruce T. Koehn, Regional Enforcement Narcotics Unit (RENU), Cincinnati, executed a search warrant on Dr. Ferris' office. At that time, the drugs which are listed on the inventory and addendum (identified at hearing as State's Exhibits #8 and #9) prepared by Agent Koehn, were seized as being misbranded in that the drugs were either unlabeled or bore labels which did not conform to statutory requirements. Some of these drugs were contained in manufacturers' bottles with labels showing outdated expiration dates; others, taken from Dr. Ferris' dispensing area, were contained in plastic bags labeled only with an office code which, when translated, identified the type of drug. Some of the expired manufacturers' bottles contained medications of the same types as those in the plastic bags. The medications seized included both controlled and noncontrolled substances.

These facts are established by the testimony of Agent Koehn (Tr. at 34-77) and by State's Exhibits #7 through #9.

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3. Dr. Ferris admitted that up to March 20, 1986, she had ordered medications, for dispensing to her bariatrics patients, in bulk bottles from manufacturers and medical supply houses. When these drugs were received, they were counted out into monthly dosages which were then put into sealable plastic bags. At the time these repackaged drugs were dispensed to patients, labels were applied. Those labels indicated only the doctor's name, address, and telephone number, and the dosage instructions for the drug.

Dr. Ferris stated that she had not been aware that a "fairly new law" required that drugs be labeled with other information, such as the usual name of the drug and the name and place of business of the manufacturer, packer, or distributor. She stated that as soon as Agent Koehn told her of these requirements, she immediately changed the labeling practices for her office and has since complied with the law.

Dr. Ferris denied that she had dispensed expired medications to patients. She stated that the outdated drugs that had been seized were samples which she had stored in the attic because she had not had time to dispose of them. Dr. Ferris further stated that she no longer dispenses scheduled medications; she now uses written prescriptions for controlled substances.

These facts are established by the testimony of Dr. Ferris (Tr. at 168-173, 204-205).

4. Drug-labeling requirements are established by Sections 3715.52 and 3715.64, Ohio Revised Code. Both of these Sections became effective September 13, 1957; neither has been amended since January 1, 1982.

These facts are established by Page's Ohio Revised Code Annotated (Anderson 1980).

5. On February 16, 1987, a complaint was filed against Dr. Ferris in the Hamilton County Municipal Court, Case No. C-87-CRB-3703-A. This complaint alleged that Dr. Ferris had violated Section 3715.52(A), Ohio Revised Code, in that she had, on or about March 20, 1986, held or offered for sale the drug Phentermine, which was misbranded according to the requirements of Section 3715.64(A), Ohio Revised Code. The complaint further stated that the misbranded drugs had been contained within a package that did not contain a label listing the usual name of the drug, name and place of business of the manufacturer, packer, or distributor.

On August 25, 1987, in exchange for Dr. Ferris' plea of no contest to this misdemeanor charge, four other charges which had been filed against her were dismissed. On this same date, pursuant to her plea of no contest, Dr. Ferris was found guilty of violating Section 3715.52(A), Ohio Revised Code, which prohibits the holding or offering for sale of any adulterated or misbranded drug. This finding of guilt was with reference to Dr. Ferris' holding or offering for sale in her office misbranded Phentermine, a Schedule IV controlled substance.

These facts are established by Joint Exhibit A and by State's Exhibits #6 and #13.

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6. During an approximate three-month period from March 20 through June 30, 1986, Patient A, then Dr. Ferris' office nurse, dispensed for herself from Dr. Ferris' office supply the controlled substances as listed in numbered paragraph 3 of the Board's March 9, 1988, citation letter (State's Exhibit #1), except that the amount of Phentermine she obtained on June 9, 1986, would appear to be 28. This total of 504 dosage units of controlled substances consisted of 56 Dextroamphetamine, a Schedule II controlled substance; 336 Phendimetrazine, a Schedule III controlled substance; and 112 Phentermine, a Schedule IV controlled substance.

These facts are established by State's Exhibit #12 and by State's Exhibit #14 at 5-6. Also, see State's Exhibit #14 at 37 for translation of the medication codes used on State's Exhibit #12.

7. Patient A had been a patient of Dr. Ferris for weight control prior to becoming employed as her office nurse. At hearing, Dr. Ferris claimed that Patient A had also been her patient during this March through June, 1986, period when she was self-dispensing medications. Dr. Ferris further claimed that she had given Patient A a physical examination when she started to treat her, and had regularly monitored her weight and blood pressure during this period. However, at a November 17, 1986, hearing in the Hamilton County Common Pleas Court, Dr. Ferris had testified that she had not known that Patient A had started taking any medications since she had come to work for her in approximately October, 1984 (State's Exhibit #14 at 54, 59, 63). It is noted that Dr. Ferris incorrectly testified at the present hearing that Patient A had started working for her in March, 1986 (cf. Tr. at 175 and State's Exhibit #14 at 54).

Although it is apparent that Dr. Ferris was not monitoring Patient A in a weight control program in 1986 as she claimed, Dr. Ferris' testimony at the 1986 Hamilton County hearing indicated that Patient A had had Dr. Ferris' permission to take controlled substance diet medications from the office supply whenever Patient A felt she needed them; Dr. Ferris had given her a "standing order" for them. Further, when asked if Patient A had paid for these self-dispensed medications, Dr. Ferris had testified, "No...when she came to work for us, we told her that was part of her fringe benefits, that she didn't pay for her medication anymore...because we like to see our nurses nice and thin...." (State's Exhibit #14 at 69).

These facts are established by the testimony of Dr. Ferris (Tr. at 173-176 and State's Exhibit #14 at 48-76).

8. From August 3, 1982, through December 19, 1984, Patient B, a 43-year-old female, was under the care of Dr. Ferris for a weight loss program. Dr. Ferris' patient record shows that Patient B was in Dr. Ferris' office on at least 32 occasions during this 29-month period--19 of these visits were charted and showed that medications were dispensed; 13 additional visits were indicated on a separate listing of dates on which HCG injections were given (Patient B testified that she had continued the weekly injections after the time of the last date listed). Nevertheless, during the entire course of her treatment, Dr. Ferris personally saw Patient B only twice, once on her initial visit and another time when the patient requested to see the doctor. At no time did Dr. Ferris physically examine Patient B.

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On Patient B's first visit, office personnel took her pulse rate and blood pressure, weighed and measured her, took a blood specimen for laboratory analysis, and ran a "machine" (identified by the testimony of Dr. Condon and Dr. Ferris as a device used to check speed of Achilles tendon reflex) over the bottoms of her feet to "check her thyroid." The office staff told Patient B that the machine showed she had a "sluggish thyroid." Thereafter, Patient B saw Dr. Ferris who reviewed the charted information and the history form which Patient B had completed. Dr. Ferris confirmed that the machine showed that Patient B had a sluggish thyroid. At that point, Patient B told Dr. Ferris that she was already taking Synthroid (a synthetic form of thyroid) prescribed by Dr. John Condon, Columbus, Ohio. Dr. Ferris advised her that she needed more thyroid. In addition to a 500 calorie diet and exercise, Dr. Ferris also strongly recommended that Patient B take HCG injections along with diet medications to hasten weight loss. Dr. Ferris told her that she would need to sign a statement if she wanted the HCG shots. Patient B signed a statement which read:

"Indications: HCG has not been demonstrated to be effective adjuvative (sic) therapy in the treatment of obesity. There is no substantial evidence that it increases weight loss beyond that resulting from caloric restriction, that it causes a more attractive or "normal" distribution of fat, or that it decreases the hunger and discomfort associated with calorie restricted diets.

I have read the above statement and request the HCG injection program."

Patient B was given an HCG injection on August 3, 1982. At the end of that visit, she was dispensed a month's supply of the hormone Thyroid (1 grain) and of Phentermine, a Schedule IV controlled substance anorectic. These medications were dispensed in plastic packets labeled with Dr. Ferris' name and the dosage instructions for the medications. At Patient B's request, her name and the date of her next visit for medications were added to the labels.

Thereafter, Patient B went to Dr. Ferris' office once each week for an HCG injection administered in the hip; every fourth week, she would be dispensed Thyroid and "appetite suppressant" (Schedule III and/or Schedule IV controlled substances) medications. Beginning the latter part of 1982, she was also dispensed diuretics and laxatives each month. She was weighed each week and, on the occasions she received medications, her pulse and blood pressure were checked and her measurements taken by the office staff. Before she received medications, Patient B was required to complete a form such as that identified at hearing as Respondent's Exhibit #1. Among other questions, this form asked, "Do you wish to be sure to see the doctor this visit? YES or NO." Except on one occasion, when Patient B consulted with Dr. Ferris about lowering her weight goal, Patient B indicated that she did not wish to see the doctor. Patient B testified that on only one occasion was she asked to wait so that Dr. Ferris could review her form before medications were dispensed; on all other occasions, she handed in her form and was promptly dispensed medications. Since she had stood where she could see Dr. Ferris' office door when she waited for the medications, Patient B was certain that her completed forms had not been taken to the doctor for review before she had been given the medications.

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On one occasion, when Patient B was unable to keep an appointment, she telephoned Dr. Ferris' office and spoke with Anita, Dr. Ferris' head nurse. Anita told her they would mail her medications to her. The patient record entry for September 24, 1983, shows that a two-month supply of the following medications were mailed to Patient B: Hydrodiuril, a diuretic; Thyroid, 1 grain; Phendimetrazine, a Schedule III controlled substance anorectic; and a laxative.

The patient record shows that Patient B had met her weight goal of 130 lbs. by the time of her December 21, 1982, office visit. At that time, she was continued on a diuretic, Thyroid, a controlled substance anorectic, and a laxative, but was put on a "two-month program." On that program, which allowed a 1,000 calorie diet, she was to return for medications on a bi-monthly, rather than monthly, basis and was to take one-half, rather than a whole, tablet twice each day of her "appetite suppressant" (at that time, Phentermine, a Schedule IV controlled substance); she was dispensed a two-month supply of each medication. Thereafter, on April 12, 1983, although Patient B was then at her lowest weight of 128.8 lbs., the patient record shows that her daily Phentermine dosage was increased by one-half tablet. After that visit, Patient B started to consistently gain weight; nevertheless, her multi-medication regimen was continued. On August 2, 1983, The Phentermine was replaced by Phendimetrazine, a Schedule III controlled substance anorectic. Patient B continued to gain weight, even though she requested and received from Anita additional "appetite suppressants" (Phendimetrazine, three tablets per day from September 25 through December 19, 1984). She eventually decided to discontinue treatments. Patient B admitted that she had saved the additional appetite suppressants Anita had given her so that she would have some to use after she discontinued treatment. At the time of Patient B's last visit on December 19, 1984, she was dispensed a month's supply of Thyroid, Phendimetrazine (enough for three tablets per day), and a laxative.

These facts are established by the testimony of Patient B (Tr. at 79-115), State's Exhibit #10, and Respondent's Exhibit #1. Also, see State's Exhibit #14 at 37 and Dr. Ferris' testimony (Tr. at 211-212) for translation of medication codes used on State's Exhibit #10. (Points of disagreement between the testimony of Dr. Ferris and Patient B are addressed in Finding of Fact #10, below.)

9. At no time after Patient B's initial visit in August, 1982, were any laboratory studies ordered by Dr. Ferris to monitor the effects of the Thyroid hormone and diuretics Patient B was being given on a regular basis over a period in excess of two years. Throughout Patient B's entire course of treatment with Dr. Ferris, she continued to take the Synthroid prescribed for her by Dr. John Condon. Dr. Condon prescribed Synthroid as replacement therapy; Patient B had had her left thyroid gland removed, and her right partially removed, in the early 1960's. Dr. Ferris was aware of Patient B's treatment by Dr. Condon at the time she started Patient B on extra Thyroid. The results of the laboratory studies ordered by Dr. Ferris' office on August 3, 1982, showed that Patient B's T-4 level at that time was 8.8, mid-normal in the usual normal range of 4 to 12.5. Dr. Ferris had started giving Patient B extra Thyroid before receiving these results, and continued it after receiving them.

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Around the middle of July, 1985, approximately seven months after Patient B had discontinued treatments with Dr. Ferris, Patient B saw Dr. John Condon for a physical examination. Laboratory studies ordered by Dr. Condon at that time showed "a definite abnormality with marked elevation of the T-4 level." (State's Exhibit #11). Because of this, a T-3 level was also run and was well up in normal range. In a July 30, 1985, letter to Patient B setting forth the results of her physical, Dr. Condon stated: "(Y)our thyroid function is in the high range of normal, and I think this probably is a result of the treatment you have had for weight loss. The fact that the T-4 is elevated above normal range over a long period of time could be hazardous, as it can produce a significant strain on the circulation. This, however, takes a long time to develop." Dr. Condon also found Patient B's serum cholesterol to be quite low; his letter stated: "Again, I think this reflects the medication and therapy you have been given for weight loss, and I do not think this is a biologically and biochemically stable situation." Dr. Condon further stated: "I think the treatment you have been receiving for weight loss is potentially hazardous, because these medications and hormone usages are not indicated by your body function."

At hearing, Dr. Condon testified that there had been no signs of marked thyroid toxicity at the time of this physical examination. However, he stated that Patient B's thyroid function had been at normal levels prior to Dr. Ferris' providing of additional thyroid; thus, giving her more thyroid was not clinically indicated and created risk of a toxic state. There was no way of telling whether or not Patient B had been in a toxic state before she had stopped taking the extra thyroid, but the fact that her T-4, but not T-3, level was elevated indicated that she had had an even higher T-4 which was on its way to falling toward more normal ranges. Dr. Condon stated that replacement therapy is the only legitimate purpose for administering thyroid hormone. Since Patient B had already been taking Synthroid as replacement therapy and her thyroid function had been at a normal level, it was Dr. Condon's opinion that Dr. Ferris had given Patient B the additional thyroid for purposes other than replacement and had unnecessarily exposed her to hazards, primarily of toxicity and eventual cardiovascular damage.

Dr. Condon also was of the opinion that Dr. Ferris' prescribing of diuretics for purposes of weight loss was not a legitimate therapeutic purpose. Although a diuretic gets rid of water, it does not help in losing fat. Weight loss is not among the indicated usages for such a potent drug.

In Dr. Condon's opinion, follow-up laboratory studies are necessary to properly monitor both the thyroid levels of patients being given the thyroid hormone and the potassium levels of patients being given diuretics. Diuretics may cause potassium loss to an extent where replacement is needed, and thyroid levels must be maintained within normal range to avoid toxicity. Upon initiation of such medications, initial monitoring should be at least every 30 days; even after a baseline is established, remonitoring should be done no less than every 60 days. Even closer monitoring should be done if a patient is receiving thyroid hormone for conditions other than hypothyroidism. Although Dr. Condon himself had been following-up Patient B's Synthroid treatment on an annual basis, that was because she had been established and remarkably stable on it over a period of many years.

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Dr. Condon estimated that it might take from five to seven months to get Patient B's thyroid level back to former usual range.

These facts are established by the testimony of Patient B (Tr. at 110-113), the testimony of Dr. Condon (Tr. at 116-159), and by State's Exhibits #10 and #11.

10. Although Dr. Ferris claimed that she had physically examined Patient B at the time of her initial visit, the patient record does not reflect such examination and Dr. Ferris was unable to state what it would have entailed. She explained that the extent of her physical examinations would depend on the patient: "Some young person doesn't need much checking up, might have no complaints. If it was some older person who has many complaints or so forth, then we are going to listen to their heart." (Tr. at 178). Significantly, when Dr. Ferris was questioned about her prescribing of Thyroid for Patient B prior to seeing lab results, she stated: "I wouldn't do that for every person, but she was young and healthy and didn't have any apparent physical problems." (Tr. at 195).

Dr. Ferris did not recall having seen Patient B more than twice during the course of her 29-month treatment for weight control. She admitted that she didn't check patients often as long as they had no complaints. She stated that, even though she didn't see them personally, looking at the patient's picture and history card each time was the same as having the patient there talking to her. She added that she enjoyed seeing the pictures, and the patients were happy because they didn't have to wait to see her. She stressed that if patients wished to see her, they had only to indicate that on their registration slips (Tr. at 177).

Dr. Ferris denied both that her office nurses dispensed medications without her prior authorization and that patients ever received medications before she had gone over their charts and their forms (such as that identified as Respondent's Exhibit #1). However, these assertions would appear to be inconsistent with Dr. Ferris' own 1986 testimony with regard to Patient A, as well as the testimony of Patient B, as set forth in Findings of Fact #7 and #8, above.

Dr. Ferris testified that she had started Patient B on a diuretic after the patient "complained of puffiness in her hands and said she was retaining fluid." (Tr. at 182). However, no such complaint is noted anywhere on the patient record, even though this patient was dispensed diuretics continuously for 23 months from October 26, 1982, through September 25, 1984.

With regard to the Thyroid hormone she provided Patient B for a period of 29 months, Dr. Ferris stated that she had not been sure whether or not this patient was still taking the Synthroid prescribed by Dr. Condon. She further stated that she had no reason to ask Patient B if she was. She indicated that she would give Thyroid to a patient even though that patient had a normal T-4 level because "they wouldn't be as fat as they are, if they didn't have some kind of a problem." (Tr. at 209). She stressed that Thyroid levels are very individual and that what is normal for one person might not be normal for another. She stated at one point that she might leave some patients on Thyroid for the rest of their lives (Tr. at 182).

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Although Dr. Ferris claimed that she got patients "off the appetite suppressants as soon as possible," Patient B was given Schedule III and Schedule IV controlled substance anorectics, sometimes in combination, on a regular basis over a period of 29 months. Dr. Ferris testified that she would not discontinue such medications when a patient reached her weight goal, but would "taper them off" by reducing the dosage; a patient who had been taking them for several months could not be expected to quit "cold turkey." She stated that if a patient started gaining, she would then again increase the dosage. Dr. Ferris indicated that she kept patients on such medication even though they failed to lose weight because, without it, they would gain weight (Tr. at 216). Further, she would give a patient medications for weight control, regardless of the amount of weight they wanted to lose. She stated that usually, when a person was five or ten pounds overweight, they couldn't wear the same clothes, so it was time to lose weight instead of gaining more--"Why wait until you are fat, fat before taking it off?" (Tr. at 220).

These facts are established by the testimony of Dr. Ferris (Tr. at 176-220), State's Exhibits #10 and #14, and Respondent's Exhibit #1.

#### CONCLUSIONS

1. The August 25, 1987, finding of the Hamilton County Municipal Court, that Dr. Ferris was guilty of violating Section 3715.52(A), Ohio Revised Code, as set forth in Finding of Fact #5, above, constitutes "a plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice", as that clause is used in Section 4731.22(B)(11), Ohio Revised Code. Further, the acts giving rise to that finding of guilt constitute "failure to use reasonable care discrimination in the administration of drugs", as that clause is used in Section 4731.22(B)(2), Ohio Revised Code.
2. Dr. Ferris admitted that, prior to the seizure of drugs from her office on March 20, 1986, she had been unaware of drug-labeling laws. She admitted that the labels her office affixed to the repackaged drugs which were dispensed to patients did not identify the type or name of the drugs they contained or other required information. Both controlled and noncontrolled substances were dispensed in such misbranded packets. Aside from violating the law, it is apparent that such labeling practices create risks for patients. Without either a generic or brand name, a patient would have no way of ascertaining from an independent outside source the properties or effects of the medications they were receiving. A patient would have no way of identifying the medications she was taking to another treating physician so that a determination could be made as to whether or not they would be compatible with other treatment. Patients had no way of knowing whether they were taking drugs that could be purchased over-the-counter, or controlled substances which might create dependency, regardless of use in accordance with Dr. Ferris' dosage instructions.

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It is ~~apparent~~ that Dr. Ferris' illegal labeling practices not only created risks for patients potentially requiring emergency or other treatment, but also deprived them of information necessary to formulate informed consent to treatment. Regardless of her many years in practice, Dr. Ferris, as well as any other physician, is responsible for informing herself of and complying with the laws governing her profession. Accordingly, it is concluded that the acts, conduct, and/or omissions of Ruth C. Ferris, M.D., as set forth in Findings of Fact #2 through #4, above, constitute:

- a. "Failure to use reasonable care discrimination in the administration of drugs", as that clause is used in Section 4731.22(B)(2), Ohio Revised Code; and
- b. "A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established", as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

It is noted in mitigation that Dr. Ferris claimed to have corrected her labeling practices immediately after being informed by Agent Koehn of their illegality. Further, Dr. Ferris claimed to have commenced using written prescriptions in lieu of dispensing controlled substances from her office.

3. The acts, conduct, and/or omissions of Dr. Ferris with regard to Patient A, as set forth in Findings of Fact #6 and #7, above, constitute:
  - a. "Failure to use reasonable care discrimination in the administration of drugs" and "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;
  - b. "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; and
  - c. "A departure from, or the failure to conform to, minimal standards of ~~care~~ of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established", as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Dr. Ferris' testimony at this hearing with regard to Patient A directly contradicted her 1986 testimony under oath in the Hamilton County Common Pleas Court. In 1986, Dr. Ferris testified that Patient A had started working for her in October, 1984; that she had been unaware that Patient A had started taking medications since that time; but that Patient A had her permission to take medications whenever she felt she needed them. At hearing in the present matter, Dr. Ferris testified that Patient A had started working for her in March, 1986, and had been under her care and monitoring during the period from March through June, 1986, when she self-dispensed a total of 504 dosage units of Schedule II, Schedule III, and Schedule IV controlled substances in a 102-day period. However, under either scenario, Dr. Ferris' acts and omissions violated each of the above

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Clearly if Dr. Ferris was unaware of the patient's "treatment", no legitimate therapeutic purpose had been established. Nor could there have been any legitimate therapeutic purpose if Dr. Ferris directed Patient A to self-dispense an average of 4.9 dosage units per day of controlled substances for weight control, an amount far in excess of usual therapeutic dosages. Likewise, regardless of whether Dr. Ferris directed such dispensing or simply gave Patient A free access to take whatever she wanted, she failed to use reasonable care discrimination in the administration of drugs and failed to employ scientific methods in the selection of drugs or other modalities for treatment of disease. Either scenario also clearly demonstrates a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances.

4. Further, Dr. Ferris' acts, conduct, and/or omissions with regard to her treatment of Patient B from August 3, 1982, through December 19, 1984, as set forth in Findings of Fact #8 through #10, above, constitute violations under Sections 4731.22(B)(2), (B)(3), and (B)(6), Ohio Revised Code.

It is apparent that Dr. Ferris had little involvement in Patient B's long-term "treatment." She also made no apparent effort to determine the etiology of Patient B's obesity. Without performing a thorough physical examination to rule out any contraindications, Dr. Ferris initiated a long-term regimen of diuretics, Thyroid, controlled substance anorectics, and laxatives for this patient for weight control. Patient B was continued on such medications long after she had lost her excess weight, and even when she was consistently gaining weight. When she gained, she received more and stronger controlled substances, even though she continued to gain, until Patient B herself made the decision to terminate "treatment." Throughout the entire 29 months of treatment, it had been left to Patient B's discretion whether or not she needed to see Dr. Ferris. Such dispensing and "treatment" for weight control violates each of the above provisions of law.

Dr. Ferris' routine, long-term use of diuretics, Thyroid, controlled substance anorectics, and laxatives for purposes of weight control demonstrates failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease. As Dr. John Condon stated, and the collective expertise of the Board will recognize, diuretics and Thyroid have no indicated usage for weight control and expose patients to unnecessary risks. Despite risks, Dr. Ferris ordered no follow-up studies to determine the effects of the Thyroid and diuretics Patient B was routinely given. Dr. Ferris' comments that patients could not quit appetite suppressants "cold turkey" suggest that she was aware of the obvious risk of creating drug dependency by long-term use of controlled substance anorectics. The continuation of such medications after Patient B had lost her excess weight further establishes the absence of legitimate therapeutic purposes, as well as violation of each of the other above provisions of law.

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On one occasion, Dr. Ferris' office mailed a two-month supply of Patient B's medications to her at her request. Again, at her request and without valid medical indication, Patient B was provided with additional amounts of Schedule III controlled substance anorectics for four months near the end of her treatment. These acts further demonstrate Dr. Ferris' failure to adequately examine and monitor patients and to establish legitimate therapeutic need for the medications they were routinely given.

In her treatment of Patient B, Dr. Ferris routinely failed to use reasonable care discrimination in the administration of drugs, to establish legitimate therapeutic purpose for drugs, to use acceptable scientific methods in their selection, and to conform to minimal standards of care of similar practitioners under the same or similar circumstances.

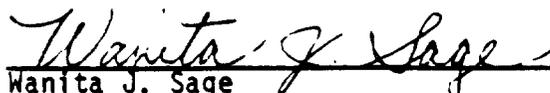
\* \* \* \* \*

It is apparent from Dr. Ferris' testimony that her "treatment" of Patient B is representative of her usual treatment of patients for weight control. Dr. Ferris' role in her office's treatments for weight control appears to be restricted to lending the appearance of medical legitimacy and the ability, by virtue of her medical license, to engage in long-term dispensing of controlled substances and dangerous drugs, often for strictly cosmetic, non-medical purposes. Dr. Ferris appears to be oblivious to the risks inherent in the routine and long-term drug regimens she authorizes. Even though Dr. Ferris claimed that she encouraged patients to develop proper dietary habits because they couldn't be "dependent on" diet medications forever, Patient B's treatment terminated only when the patient decided that it was not helping. There is little or no indication in the evidence and testimony presented at hearing that Dr. Ferris is capable of exercising sound independent medical judgment in the treatment of patients. There is also little or no indication that Dr. Ferris has engaged in the legitimate practice of medicine for at least the past 20 years.

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PROPOSED ORDER

It is hereby ORDERED that the certificate of Ruth C. Ferris, M.D., to practice medicine and surgery in the State of Ohio shall be and is hereby REVOKED. This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.

  
\_\_\_\_\_  
Wanita J. Sage  
Attorney Hearing Examiner

EXCERPT FROM THE MINUTES OF JANUARY 11, 1989

REPORTS AND RECOMMENDATIONS

Mr. Culley, Mr. Dowling, Mr. Costantini, Ms. Belenker, Ms. Thompson and Mr. Dilling left the meeting at this time.

.....

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 Albert A. Buytendorp, M.D., Eric Hoffrichter, D.P.M., Hubert Keylor, M.D., Ruth Ferris, M.D., and Bonifacio Ferrer, M.D. A roll call was taken:

ROLL CALL:	Dr. Gretter	- aye
	Dr. Barnes	- 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

.....

REPORT AND RECOMMENDATION IN THE MATTER OF RUTH C. FERRIS, M.D.

.....

DR. BARNES MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF RUTH C. FERRIS, M.D. MR. ALBERT SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Gretter	- aye
	Dr. Barnes	- 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  
65 South Front Street  
Suite 510  
Columbus, Ohio 43266-0315

March 9, 1988

Ruth C. Ferris, M.D.  
11723 Seven Gables Road  
Cincinnati, Ohio 45249

Dear Doctor Ferris:

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 medicine and surgery or to reprimand or place you on probation for one or more of the following reasons:

1. On or about August 25, 1987, you were found guilty of violating Section 3715.52(A) of the Revised Code, the sale of adulterated or misbranded food, drug, device or cosmetic, to wit: phentermine, a Schedule IV Controlled Substance.

The finding of guilt and the acts giving rise thereto as stated in the above paragraph 1 constitute "a plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11) of the Revised Code.

Further, the acts giving rise to the finding of guilt constitute "failure to use reasonable care discrimination in the administration of drugs," as that clause is used in Section 4731.22(B)(2) of the Revised Code.

2. On or about March 20, 1986, Agent Bruce T. Koehn, R.E.N.U., executed a search warrant on your office. At that time, a number of drugs (Inventory prepared by Agent Koehn attached) were seized as being misbranded in that the drugs either were unlabeled or the labels did not conform to statutory requirements. These drugs were being held by you for use in your practice.

The holding of such drugs, as alleged in the above paragraph 2, constitutes "failure to use reasonable care discrimination in the administration of drugs," as that clause is used in Section 4731.22 (B)(2) of the Revised Code.

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Further, the holding of such drugs for use in your practice, as alleged in the above paragraph 2, constitutes "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22 (B)(6), of the Revised Code.

3. On the following dates, Patient A (identified in the attached patient key, which is to be withheld from public disclosure) who was your office nurse, did obtain the following drugs from your office supply without having a physical examination of any kind:

<u>DATE</u>	<u>SUBSTANCE</u>	<u>SCHEDULE</u>	<u>AMOUNT</u>
3-20-86	Dextroamphetamine	II	56
	Phendimetrazine	III	112
	Phentermine	IV	28
4-08-86	Phendimetrazine	III	28
	Phentermine	IV	28
4-25-86	Phendimetrazine	III	56
	Phentermine	IV	28
5-13-86	Phendimetrazine	III	56
6-09-86	Phendimetrazine	III	28
	Phentermine	IV	(amount unknown)
6-30-86	Phendimetrazine	III	56

On or about November 18, 1986, you testified under oath that Patient A had your permission to take the above medications when she felt she needed them, that "she was supposed to have access to them if she wanted them," that as "part of her fringe benefits, that she didn't pay for her medication anymore" "because we like to see our nurses nice and thin". You stated, in response to questions concerning whether in fact you had authorized Patient A to take the above medications that "I said that I didn't know that she was starting to take them again, but if she needed them it was perfectly all right with me", that "she has a standing order for it" and that "she had that permission in the beginning that she could take her drugs when she needed them."

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The acts, conduct and/or omissions as alleged above and as expressed in your testimony, individually and/or collectively, constitute "failure to use reasonable care discrimination in the administration of drugs," and "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, such acts as alleged in the above paragraph (3), individually and/or collectively, constitute "selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes," as that clause is used in Section 4731.22(B)(3), Ohio Revised Code.

Further, such acts as alleged in the above paragraph (3), individually and/or collectively, constitute "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

4. Beginning in August, 1982 and continuing at least until December 19, 1984, Patient B (identified in the attached Patient Key) was under your care for a weight loss program. Of the approximately eighteen (18) office visits during that time period, you personally saw Patient B only on the first visit and once thereafter. Nevertheless, diuretics, thyroid medication and controlled substance stimulants were routinely dispensed to Patient B by your office staff under your direction.

The acts, conduct and/or omissions as alleged in the above paragraph (4), individually and/or collectively, constitute "failure to use reasonable care discrimination in the administration of drugs," and "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, such acts as alleged in the above paragraph (4), individually and/or collectively, constitute "selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes," as that clause is used in Section 4731.22(B)(3), Ohio Revised Code.

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March 9, 1988

Further, such acts as alleged in the above paragraph (4), individually and/or collectively, constitute "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

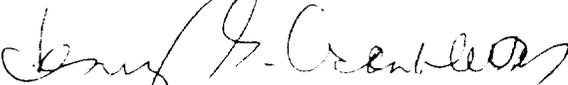
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, that request must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

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:caa

enclosures

CERTIFIED MAIL RECEIPT NO. P 026 073 435  
RETURN RECEIPT REQUESTED