RICHLAND COUNTY
COURT OF APPEALS
JUN 4 1987
GENE COFFEY
CLERK

IN THE COURT OF APPEALS
RICHLAND COUNTY, OHIO

SAM A. LERRO, M.D., Appellant-Appellee, vs. STATE OF OHIO, STATE MEDICAL BOARD OF OHIO, Appellee-Appellant.	:	CASE NO. 2481

NOTICE OF VOLUNTARY WITHDRAWAL

Now comes Appellant, State Medical Board of Ohio, by and through counsel, and gives notice of its voluntary withdrawal of notice of appeal, filed in the instant action on May 27, 1987.

Respectfully submitted,

ANTHONY J. CELEBREZZE, JR.
Attorney General

CHRISTOPHER M. CULLEY
Assistant Attorney General
1680 State Office Tower
30 East Broad Street
Columbus, Ohio 43266-0410
(614) 466-8600

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Notice of Voluntary Withdrawal was sent this 3 day of June, 1987, by ordinary U.S. mail, postage pre-paid to John L. Wagner, Moulton, Ricksecker, Wagner & Hoover, 118 Hardingway West, P.O. Box 576, Galion, Ohio 44833.

CHRISTOPHER M. CULLEY
Assistant Attorney General

5190S

RICHLAND COUNTY
COURT OF APPEALS
FILED
JUN 1987
CLERK

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO

FIFTH APPELLATE DISTRICT

'87 JUN 30 P4:25
OH
MEDIC

SAM A. LERRO, M.D.,	:	
Appellee	:	
-vs-	:	JUDGMENT ENTRY
STATE OF OHIO, STATE MEDICAL BOARD OF OHIO,	:	
Appellant	:	CASE NO. CA-2481

Appeal dismissed at appellant's request and costs.

Norman J. Putman

Ira G. Turpin

JUDGES

RECEIVED
ATTORNEY GENERAL'S OFFICE
JUN 1 0 1987
HEALTH, EDUCATION &
HUMAN SERVICES SECTION

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

IN THE COMMON PLEAS COURT OF RICHLAND COUNTY, OHIO

SAM[redacted] A. LERRO, M.D.,

PLAINTIFF,

CASE NO. 86-551-C

VS.

THE STATE MEDICAL BOARD, STATE OF OHIO,

DEFENDANT.

JUDGMENT ENTRY

FILED
FEB 23 11 48 AM '87
GENE COFFEY
CLERK OF COURTS

I, Gene Coffey, Clerk of Courts Richland County, Ohio, hereby certify that the foregoing is a true and correct copy of the filed with me Feb 25 1987
Deputy Clerk of Courts

- - - - -

This matter came on for final hearing before the Court on January 26, 1987, upon the Appeal of Sam[redacted] A. Lerro, M.D., and upon due consideration of the transcript of the proceedings of The State Medical Board of Ohio and arguments of counsel. The conduct and acts of Dr. Lerro do not support a complete revocation of his license to practice medicine and surgery.

RECEIVED
ATTORNEY GENERAL'S OFFICE
FEB 26 1987
ADMINISTRATIVE AGENCIES SECTION

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the Order of The State Medical Board of Ohio, dated 15 August 1986 is modified to the extent that his license to practice medicine and surgery is suspended for a period of one year.

2. Dr. Lerro's oral statement in open court and his execution of such statement on a document attached hereto that he surrenders his appropriate Ohio licenses and that he will not apply for a same or similar like license or licenses in other states is lawfully binding upon him. In the event he would attempt in any manner to circumvent this particular order, the Court on its motion or upon the motion of the State Medical Board,

shall issue a show cause order to be filed with this Court.

Max K. Chilcote, Judge

Filed July 18, '87

TO: The Honorable Judge Max K. Chilcote
and The State Medical Board of the
State of Ohio

Case No. 86-551-C
Court of Common Pleas
Richland County, Ohio

Dated: 25 February 1987

The undersigned hereby relinquishes and surrenders his licenses to practice medicine and surgery, to dispense drugs and any or all activities connected thereto. Further, such relinquishment and surrender is permanent and that I will not ever reapply for such licenses in Ohio or apply for the same or similar type of licenses in any other state of the United States of America.

Samuel A. Lerro

Witnessed by:

Attorney John Wagner

THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

SAMUEL A. LERRO, M.D.

NOTICE OF APPEAL

Samuel A. Lerro, M.D., Appellant, hereby gives Notice of Appeal from the Order of the State Medical Board of Ohio, dated 15 August 1986. A copy of the said Order is attached hereto, marked Exhibit A, and incorporated herein by reference.

This Appeal is to the Court of Common Pleas of Richland County, Ohio and is based on the ground that said Order is not supported by reliable, probative and substantial evidence and is not in accordance with law in the following respects:

1. The single, isolated prescription he wrote for Phenobarbital, a Schedule IV Controlled Substance --- and a prescription which was not filled by the pharmacist, does not support the severe proposed Order of revoking Dr. Lerro's license to practice medicine and surgery in the State of Ohio.

2. While Dr. Lerro's license was under suspension, he did provide hypnosis and physical therapy to persons. We respectfully submit that that conduct is not in itself the "practice of medicine".

3. The bills sent to the Industrial Commission for physician's services rendered to Patient A, during the period of time when his certificate to practice was suspended, was at the instance of his secretary and without his approval.

4. The services provided by Dr. Lerro at Physician's Weight Loss

MOULTON, RICKSECKER, WAGNER AND HOOVER, ATTORNEYS-AT-LAW, GALION, OHIO

Center, in his opinion, were services which could legally be performed by persons who were not doctors. Dr. Lerro testified, for example, that the services could well be performed by a nurse.

5. Dr. Lerro wrote a prescription for a Schedule IV Controlled Substance during the time period when his DEA Certificate was under suspension. That conduct is not, however, an act which would constitute the "selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes". Nor does it demonstrate "a failure to use reasonable care discrimination in the administration of drugs.

6. Providing hypnosis, physical therapy and participating in a simple examination procedure at a weight loss clinic is not "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provisions of Chapter 4733 Ohio Revised Code or any rule promulgated by the Board".

In light of the above, it is submitted that complete revocation of Dr. Lerro's license to practice medicine and surgery is much too severe and that the appropriate action for this Board to take would be to admonish the licensee and to require periodic reporting of his practice to the State Medical Board of Ohio.

Respectfully submitted,

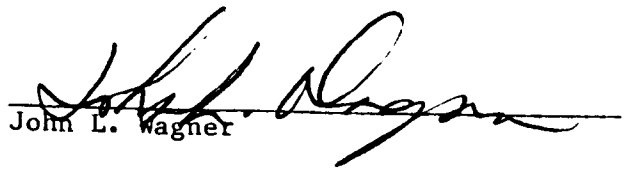
John L. Wagner
MOULTON, RICKSECKER, WAGNER & HOOVER
118 Harding Way West
Galion, Ohio 44833
Phone (419) 468-1131
Attorney for Dr. Lerro

CERTIFICATE OF SERVICE

I certify that copies of the Objections to the Report and Recommendation

MOULTON, RICKSECKER, WAGNER AND HOOVER, ATTORNEYS-AT-LAW, GALION, OHIO

and Proposed Order were mailed to Administrator, State Medical Board of Ohio, 65 South Front St., Columbus, Ohio 43215 and to Assistant Attorney General, Christopher M. Cully, 30 East Broad St., Columbus, Ohio 43215 this 25th day of August, 1986.



John L. Wagner

MOULTON, RICKSECKER, WAGNER AND HOOVER, ATTORNEYS-AT-LAW, GALION, OHIO

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43226-0315

August 15, 1986

Samuel A. Lerro, M.D.
1666 Victoria Court
Ontario, Ohio 44862

Dear Doctor Lerro:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Lauren Lubow, Esq., Hearing Examiner, Medical Board; a certified copy of the Motions by the State Medical Board, meeting in regular session on August 14, 1986, approving and confirming said Report and Recommendation as the Findings and Order of the State Medical Board.

You are hereby notified that you may appeal this Order to the Court of Common Pleas of the County in which your place of business is located, or the county in which you reside. If you are not a resident and have no place of business in this state, you may appeal to the Court of Common Pleas of Franklin County, Ohio.

To appeal as stated above, you must file a notice of appeal with the Board setting forth the Order appealed from, and the grounds of the appeal. You must also file a copy of such notice with the Court. Such notices of appeal shall be filed within fifteen (15) days after the date of mailing of this letter and in accordance with Section 119.12, Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Henry G. Cramblett, M.D.
Secretary

HGC:em

Enclosures

CERTIFIED MAIL NO. P 569 364 877
RETURN RECEIPT REQUESTED

cc: John L. Wagner, Esq.

CERTIFIED MAIL NO. P 569 364 878
RETURN RECEIPT REQUESTED

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43226-0315

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 Lauren Lubow, Esq., Hearing Examiner, State Medical Board of Ohio; and the attached copy of the Motions by the State Medical Board, meeting in regular session on August 14, 1986, approving and confirming said Report and Recommendation as the Findings and Order of the State Medical Board, constitutes a true and complete copy of the Findings and Order of the State Medical Board in the matter of Samuel A. Lerro, 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 and in its behalf.

(SEAL)

Henry G. Cramblett, M.D.
Secretary

8-15-86
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

SAMUEL A. LERRO, M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 14th day of August, 1986.

Upon the Report and Recommendation of Lauren Lubow, Esq., Hearing Examiner, in this matter designated pursuant to R.C. 119.09, a true copy of which is attached hereto and incorporated herein, which Report and Recommendation was approved and confirmed 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 14th day of August, 1986.

It is hereby ORDERED:

That the license of Samuel A. Lerro, M.D., to practice medicine and surgery in the State of Ohio be REVOKED.
This Order shall become effective thirty (30) days from the date of mailing of notification of approval by the State Medical Board of Ohio.

(SEAL)

Henry G. Cramblett, M.D.
Secretary

8-15-86

Date

STATE OF OHIO
THE STATE MEDICAL BOARD

'86 AUG -0 P7:12

REPORT AND RECOMMENDATION
IN THE MATTER OF SAMUEL A. LERRO, M.D.

On June 16, 1986, the hearing regarding the Board's citation of April 10, 1986, against Samuel A. Lerro, M.D., was held before me, Lauren Lubow, Hearing Examiner for the State Medical Board of Ohio.

INTRODUCTION AND SUMMARY OF EVIDENCE

1. On April 10, 1986, the State Medical Board of Ohio issued a citation against Samuel A. Lerro, M.D., alleging violation of the Medical Practice Act on the basis of the following allegations (State's Exhibit #1):

   A. That Dr. Lerro had provided medical treatment for compensation to a patient during the time when his certificate to practice medicine and surgery was suspended pursuant to Order of the State Medical Board; and

   B. That between December 3, 1985 and March 24, 1986 Dr. Lerro prescribed, administered or dispensed Tranxene 7.5 mg. to a patient during the time period when his D.E.A. certificate permitting him to prescribe, administer and dispense controlled substances was suspended pursuant to Order of the State Medical Board; and

   C. That on or about April 1, 1986, Dr. Lerro prescribed Phenobarbital, a controlled substance, for a patient during the time period when his D.E.A. certificate permitting him to prescribe, administer, and dispense controlled substances was suspended pursuant to Order of the State Medical Board; and

   D. That Dr. Lerro practiced medicine as a consulting physician for Physicians Weight Loss Center of Ontario, Ohio, during the time when his certificate to practice medicine or surgery was suspended pursuant to Order of the State Medical Board.

2. Dr. Lerro requested a hearing on the Board's allegations by letter of April 15, 1986. (State's Exhibit #2)

3. By letter of April 21, 1986, the State Medical Board scheduled and postponed a hearing in this matter pursuant to Section 119.09, Ohio Revised Code. (State's Exhibit #3)

4. By letter of May 6, 1986, the State Medical Board scheduled a hearing for June 25, 1986. (State's Exhibit #4)

5. In a letter dated May 9, 1986, Dr. Lerro's attorney, John L. Wagner, Esq., requested a continuance of the hearing. (State's Exhibit #5)

6. By letter of June 5, 1986, the State Medical Board rescheduled Dr. Lerro's hearing for June 16, 1986. (State's Exhibit #6)

7. Assistant Attorney General Christopher M. Culley, Esq., appeared on behalf of the State.

8. John L. Wagner, Esq., appeared on behalf of the Respondent, Dr. Lerro.

9. Mr. Culley proceeded by calling Dr. Lerro on cross-examination as the State's first witness. Dr. Lerro's testimony outlined the following:

   A. That during the period between January 29, 1986, and March 28, 1986 he had examined the area of the body in which an individual identified as Patient A complained of pain, and provided treatment in the form of physical therapy, shiatsu (acupressure) and hypnosis. (Tr. at 26, 27) In addition, he submitted billing to the Ohio Industrial Commission for the hypnosis, physical therapy, and the shiatsu treatments rendered to Patient A as the physician in charge. (Tr. at 87, 88) He testified that he did not write a prescription for or provide or administer Tranxene to Patient A during this time period, although he did advise Patient A that he could continue to take Tranxene left over from a prior prescription written by another physician if he wanted to do so. (Tr. at 21-25)

   B. That he had written a prescription for Phenobarbital, 15 mg., for an individual identified as Patient B and had given said prescription to Patient B on April 1, 1986. (Tr. at 43)

C. That since December 1, 1985, he has been employed at the Physicians Weight Loss Center in Ontario, Ohio, for one afternoon per week. He testified that his duties there were "just to read EKG's, read the lab work, examine the patient." (Tr. at 86) He further stated that while he looked at EKG records he did not read them, but only observed them to see if they looked normal. (Tr. at 49) His responsibility was to determine whether a person would function in the weight loss program without any risk. (Tr. at 49) He testified that he was paid and hired as a physician and would not have been employed by the Weight Loss Center if he were not licensed as a physician. (Tr. at 86, 87)

10. State's next witness was Ronald James Isaac, who testified:

A. That he is the owner of the Physicians Weight Loss Center where Dr. Lerro was employed. He confirmed that Dr. Lerro was employed to read the EKG's, read the blood chemistry, and look over the medical histories of the patients, as well as to check patients to make sure that it was acceptable for them to enter the weight loss program. (Tr. at 56)

11. The State's next witness, Robert E. Mortimer, testified:

A. That he is employed as a police officer for the city of Mansfield, Ohio, with the rank of detective.

B. That he is in possession of the original prescription for Phenobarbital written for Patient B, of which State's Exhibit #12 is a photocopy.

C. That he obtained the prescription from Patient B on April 3rd or 4th, 1986.

12. In addition to those already noted, the following exhibits were identified and admitted to the record:

A. Presented by the State:

1. State's Exhibit #7, October 18, 1985, letter from the State Medical Board to Dr. Lerro enclosing a certified copy of the Report and Recommendation and Entry of Order suspending Dr. Lerro's Ohio medical license and his D.E.A. certificate.

2. State's Exhibit #8, certified copy of the Order of the Richland County Court of Common Pleas partially suspending the Board's Order of October 18, 1985.

3. State's Exhibit #9, certified copy of the Judgment Entry of the Richland County Court of Common Pleas affirming the Order of the State Medical Board.

4. State's Exhibit #10, March 27, 1986 cover letter from Dr. Lerro to the Industrial Commission of Ohio.

5. State's Exhibit #11, copies of medical records forwarded by Dr. Lerro to the Industrial Commission of Ohio.

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B. Presented by the Respondent:

1. Respondent's Exhibit A, March 17, 1986 letter from John Wagner, Esq., to Samuel A. Lerro, M.D.

FINDINGS OF FACT

1. By Entry of Order dated October 18, 1985, the State Medical Board of Ohio suspended Dr. Samuel A. Lerro's license to practice medicine and surgery in the State of Ohio. The Board also suspended Dr. Lerro's Drug Enforcement Administration certificate for one year. Both suspensions were to begin on December 1, 1985.

2. By Order filed on December 2, 1985, the Richland County Court of Common Pleas stayed the Board's Order suspending Dr. Lerro's medical license pending appeal, but specifically did not stay the suspension of Dr. Lerro's D.E.A. certificate.

3. By Judgment Entry filed January 27, 1986, the Richland County Court of Common Pleas affirmed the Medical Board's October 18, 1985 suspension Order.

4. By his own admission, Samuel A. Lerro, M.D., wrote a prescription for Phenobarbital, a Schedule IV controlled substance, while his D.E.A. certificate to prescribe controlled substances was suspended pursuant to Order of the State Medical Board.

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5. Samuel A. Lerro, M.D., kept detailed notes on the condition and complaints of Patient A and treated that patient with hypnosis and physical therapy during the period when his certificate to practice medicine and surgery was suspended pursuant to Order of the State Medical Board.

6. Samuel A. Lerro, M.D., billed the Industrial Commission of Ohio for physician's services rendered to Patient A during the period of time when his certificate to practice medicine and surgery in Ohio was suspended.

7. Samuel A. Lerro, M.D., provided medical services to individuals enrolled in the Physicians Weight Loss Center by his examination of them and his interpretation of EKG laboratory test results during the period when his certificate to practice medicine and surgery was suspended pursuant to Order of the State Medical Board.

8. By his own admission, Samuel A. Lerro, M.D., would not have been employed by the Physician Weight Loss Center if he were not licensed as a physician.

9. There is no evidence to support the allegation that Samuel A. Lerro, M.D., prescribed or provided Tranxene, a controlled substance, to a patient during the period when his D.E.A. certificate was suspended.

CONCLUSIONS

1. By his own admission, Dr. Samuel A. Lerro wrote a prescription for Phenobarbital, a Schedule IV controlled substance, on April 1, 1986 during the time period when his D.E.A. certificate was under suspension. The Board Order suspending the D.E.A. certificate for one year is clear. The partial stay granted by the Court of Common Pleas is equally straightforward, specifying that the stay was not intended to apply to the D.E.A. suspension. In spite of the succinct language of both Orders, Dr. Lerro claims that he was confused, and believed that his medical license, rather than his D.E.A. certificate, had been suspended for one year. Such a contention makes Dr. Lerro's prescribing during this time even more puzzling, as a physician is not permitted to prescribe any medication without a valid medical license, controlled or otherwise.

Dr. Lerro's conduct in this instance demonstrates a "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)(11), Ohio Revised Code. Further, such acts constitute the "selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes" in violation of Section 4731.22(B)(3), Ohio Revised Code. Dr. Lerro's actions further demonstrate a failure to use reasonable care discrimination in the administration of drugs in contravention of Section 4731.22(B)(2), Ohio Revised Code, as Dr. Lerro knew, or should have known, that he did not have legal authority to prescribe, administer, or dispense controlled substances.

2. Dr. Lerro did provide medical treatment to Patient A while his medical license was suspended pursuant to Order of the State Medical Board. Dr. Lerro has thorough records of his examination and treatment of Patient A, documenting the results of physical and verbal examinations, as well as his recommendation that the patient take controlled substances. By his own admission, Dr. Lerro billed the Industrial Commission for his treatment of the patient. Dr. Lerro knew, or should have known, that even performing a perfunctory examination of Patient A, providing physical therapy, hypnosis and shiatsu treatments for Patient A's condition, and billing the Industrial Commission for his services as a physician would constitute the provision of medical treatment during the period when his license was suspended.

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Dr. Lerro's conduct in this instance constitutes "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provisions of [Chapter 4731., Ohio Revised Code] or any rule promulgated by the Board," as that language is used in Section 4731.22(B)(16), Ohio Revised Code, to wit: Section 4731.41, Ohio Revised Code, practice of medicine or surgery without a certificate.

3. Dr. Lerro did, during the period when his certificate to practice medicine and surgery was suspended, continue to practice medicine as a consulting physician for Physicians Weight Loss Center. Dr. Lerro certainly knew, or should have known, theat reading EKG's, reading lab work, and examining patients to determine fitness for a given diet program constituted the practice of medicine, even if only in a superficial way.

Such acts constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provisions of Chapter 4731., or any rule promulgated by the Board," as that language is used in Section 4731.22(B)(16), Ohio Revised Code,

to wit: Section 4731.41, Ohio Revised Code, practice of medicine or surgery without a certificate. Dr. Lerro's acts further constitute a violation of Section 4731.22(B)(8), Ohio Revised Code, "the obtaining of or attempting to obtain money or anything of value by fraudulent misrepresentations in the course of his practice."

PROPOSED ORDER

It is hereby ORDERED that the license of Samuel A. Lerro, M.D., to practice medicine and surgery in the State of Ohio be revoked.

This Order shall become effective thirty (30) days from the date of mailing of notification of approval by the State Medical Board of Ohio.

Lauren Lubow, Esq.
Hearing Examiner
State Medical Board of Ohio

'86 MAR -0 P7:13

EXCERPT FROM THE MINUTES OF AUGUST 14, 1986

REPORT AND RECOMMENDATION IN THE MATTER OF SAMUEL LERRO, M.D.

Mr. Johnston asked if each member of the Board had received, read, and considered the hearing record, the proposed findings and order, and any objections filed to the proposed findings and order in the matter of Samuel Lerro, M.D. A roll call was taken:

ROLL CALL:	Dr. Cramblett	- aye
	Dr. Lancione	- aye
	Dr. Barnes	- aye
	Dr. Buchan	- aye
	Dr. Lovshin	- aye
	Ms. Rolfes	- aye
	Dr. Rothman	- aye

.....

DR. LANCIONE MOVED TO APPROVE AND CONFIRM MS. LUBOW'S FINDINGS OF FACT AND CONCLUSIONS IN THE MATTER OF SAMUEL LERRO, M.D. DR. BARNES SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Lancione	- aye
	Dr. Barnes	- aye
	Dr. Buchan	- aye
	Dr. Lovshin	- aye
	Ms. Rolfes	- aye
	Dr. Rothman	- aye
	Mr. Johnston	- abstain

The motion carried.

DR. LANCIONE MOVED TO APPROVE AND CONFIRM MS. LUBOW'S PROPOSED ORDER IN THE MATTER OF SAMUEL LERRO, M.D. DR. BARNES SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Lancione	- aye
	Dr. Barnes	- aye
	Dr. Buchan	- aye
	Dr. Lovshin	- aye
	Ms. Rolfes	- aye
	Dr. Rothman	- aye
	Mr. Johnston	- abstain

The motion carried.

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

April 10, 1986

Samuel A. Lerro, M.D.
1666 Victory Court
Ontario, Ohio 44862

Dear Doctor Lerro:

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:

On or about October 9, 1985, the State Medical Board of Ohio entered an Order suspending your license to practice medicine or surgery for ninety (90) days and limiting your certificate by suspending your right to obtain or hold a Drug Enforcement Administration Certificate for twelve (12) months, effective December 1, 1985. On or about December 2, 1985, the Court of Common Pleas of Richland County, Ohio partially suspended the Order of the State Medical Board pending determination of your appeal, leaving in full force and affect the portion of the Order suspending your right to hold a D.E.A. Certificate for twelve (12) months. On or about January 27, 1986, the Court of Common Pleas of Richland County issued a Judgment Entry affirming the Order of the State Medical Board. Your license to practice medicine or surgery was thus suspended effective January 27, 1986, and continuing through April 26, 1986.

1. You did provide medical treatment for compensation to Patient A, who is identified in the attached patient key (Key to be withheld from public disclosure), on or about the dates listed below, during the time period when your certificate to practice medicine or surgery was suspended pursuant to Order of the State Medical Board: January 29, 1986; February 4, 8, 12, 17, 21, and 26, 1986; and March 3, 7, 10, 15, 19, 24, and 28, 1986.

Such acts, in the above paragraph (1), individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provisions of (Chapter 4731., Ohio Revised Code) or any rule promulgated by the Board", as that language is used in Section 4731.22(B)(16), Ohio Revised Code, to wit: Section 4731.41, Ohio Revised Code, Practice of Medicine or Surgery Without Certificate.

2. You did prescribe, administer, or dispense Tranxene 7.5 mg., a Schedule 4 Controlled Substance, to Patient A on or about the dates listed below, during the time period when your right to prescribe, administer, and dispense Controlled Substances was suspended pursuant to Order of the State Medical Board: December 3, 6, and 10, 1985; January 4, 8, 13, 17, and 29, 1986; February 4, 8, 12, 17, 21, and 26, 1986; and March 3, 7, 10, 15, 19, and 24, 1986.

Such acts in the above paragraph (2), individually and/or collectively, constitue "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, in that they involved the prescribing, administering, or dispensing of Controlled Substances without legal authority to do so.

Further, such acts in the above Paragraph (2), individually and/or collectively, constitute "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)(11), Ohio Revised Code.

Further, such acts in the above Paragraph (2), 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.

3. On or about April 1, 1986, during the time period when your right to prescribe Controlled Substances was suspended pursuant to Order of the State Medical Board, you did prescribe to Patient B, who is identified in the attached patient key, the Schedule 4 Controlled Substance, Phenobarbital, 15 mg., in the amount of thirty-six (36). Said prescription was refillable one (1) time.

Such acts in the above paragraph (3), individually and/or collectively, 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, in that they involved the prescribing, administering, or dispensing of Controlled Substances without legal authority to do so.

Further, such acts in the above Paragraph (3), individually and/or collectively, constitute "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)(11), Ohio Revised Code.

Further, such acts 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.

STATE OF OHIO
THE STATE MEDICAL BOARD

April 10, 1986

4. During the previously mentioned period of suspension of your certificate to practice medicine or surgery, you did practice medicine for compensation as a consulting physician for Physicians Weight Loss Center, 2266 Stumbo Road, Ontario, Ohio. Said practice entailed your appearing at Physicians Weight Loss Center one day each week for the purpose of reviewing patient histories and performing physical examinations on candidates for diet treatment.

Such acts, in the above Paragraph (4), individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provisions of (Chapter 4731., Ohio Revised Code) or any rule promulgated by the Board", as that language is used in Section 4731.22(B)(16), Ohio Revised Code, to wit: Section 4731.41, Ohio Revised Code, Practice of Medicine or Surgery Without Certificate.

Further, such acts in the above Paragraph (4), individually and/or collectively, constitute "the obtaining of or attempting to obtain money or anything of value by fraudulent misrepresentations in the course of his practice", as that clause is used in Section 4731.22(B)(8), Ohio Revised Code.

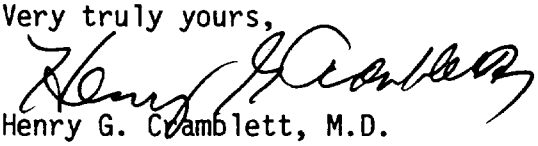
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing that request must be made within thirty (30) days of the time of mailing of this notice.

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

In the event that there is no request for such hearing made within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice 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 NO. P 569 364 755
RETURN RECEIPT REQUESTED

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

THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :

SAMUEL A. LERRO, M.D.

RICHLAND COUNTY
CLERK OF COURTS
FILED
OCT 23 4 22 PM '85
GENE COFFEY
CLERK OF COURTS

NOTICE OF APPEAL

RECEIVED
OHIO STATE
MEDICAL BOARD
'85 OCT 28 P1:51

Samuel A. Lerro, M.D., Appellant, hereby gives Notice of Appeal from the Order of the State Medical Board of Ohio, dated October 18, 1985. A copy of said Order is attached hereto, marked Exhibit A, and incorporated herein by reference.

This Appeal is to the Court of Common Pleas of Richland County, Ohio and is based on the ground that said Order is not supported by reliable, probative and substantial evidence and is not in accordance with law in the following respects:

1. The adjudication hearing, held on December 5, 1984, was not conducted by a Referee or Examiner having been admitted to the practice of law in the state of Ohio.

2. The Report and Recommendation, as well as the proposed Order, was not signed by the person who conducted the hearing of December 5, 1984. The hearing was conducted by a Dr. O'Connor and the Report and Recommendation was signed by a Dr. Stephens. This is contrary to the provisions of R.C. 4731.23 and contrary to the Constitutional requirements of a fair hearing and due process.

3. In the adjudication hearing, hearsay and other inadmissable testimony and evidence was entered into the record, over the objection of counsel for appellant.

4. Dr. Lerro was found to have demonstrated a "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" because he wrote a prescription and mailed the drugs to a former employee living out of state. Not only was this an isolated incident --- but there is neither a law nor a regulation prohibiting such conduct. Appellant further says that this conduct does not demonstrate "selling, prescribing, giving away or administering drugs for other than legal and ligitimate therapeutic purposes, nor is it "a departure from, or the failure to confirm to, minimal standards of care of similar

MOULTON, RICKSECKER, WAGNER AND HOOVER, ATTORNEYS-AT-LAW, GALION, OHIO

practioners under the same or similar circumstances, whether or not actual injury to a patient is established."

5. Dr. Lerro wrote a number of prescriptions for a patient, whom he later determined was probably a drug addict. The Board found that his conduct demonstrated a "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" and "selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes", and "a departure from, or the failure to conform to, minimal standards of care of similar practioners under the same or similar circumstances, whether or not actual injury to the patient is established". The evidence in this case simply does not support those findings.

Respectfully submitted.

John L. Wagner, Atty. for Appellant
MOULTON, RICKSECKER, WAGNER & HOOVER
P.O. Box 576, Galion, Ohio 44833
Phone: (419)468-1131

MOULTON, RICKSECKER, WAGNER AND HOOVER, ATTORNEYS-AT-LAW, GALION, OHIO

IN THE COURT OF COMMON PLEAS OF RICHLAND COUNTY, OHIO

SAMUEL A. LERRO, M.D., :

Appellant, :

vs. :

THE STATE MEDICAL BOARD OF OHIO, :

Appellee. :

CASE NO. 85-630-C

J U D G M E N T

This matter came on before the Court the 4th day of November 1985 on the Motion of the Plaintiff for suspension of the Order of The State Medical Board dated October 18, 1985, and upon due consideration of the same, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Order of The State Medical Board dated October 18, 1985, is suspended until there has been a final determination of this Appeal, except

2. To the extend of Dr. Lerro's D.E.A. Certificate, which shall be suspended until this Court has made a determination regarding the Appeal.

Judge
Common Pleas Court of Richland County

APPROVED:

John L. Wagner, Attorney for Plaintiff

PROOF OF SERVICE

I hereby certify that a copy of the above Judgment was sent by ordinary U. S. Mail to Mary Jo Maxwell, Assistant Attorney General, State Office Tower, 10th Floor, 30 East Broad St., Columbus, Ohio 43215 this 29th day of November, 1985.

John L. Wagner
MOULTON, RICKSECKER, WAGNER & HOOVER
118 Harding Way West, P.O. Box 576
Galion, Ohio 44833
Phone: (419) 468-1131
Attorney for Plaintiff

MOULTON, RICKSECKER, WAGNER AND HOOVER, ATTORNEYS-AT-LAW, GALION, OHIO

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

October 18, 1985

Samuel A. Lerro, M.D.
1666 Victoria Court
Ontario, Ohio 44862

Dear Doctor Lerro:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Timothy L. Stephens, Jr., M.D., Member, State Medical Board of Ohio; and Minutes of the Board Meeting of October 9, 1985, containing motions amending the Report and Recommendation, the reasons therefore, and adopting said amended Report and Recommendation as the Findings and Order of the State Medical Board.

You are hereby notified that you may appeal this Order to the Court of Common Pleas of the county in which your place of business is located, or the county in which you reside. If you are not a resident and have no place of business in this state, you may appeal to the Court of Common Pleas of Franklin County, Ohio.

To appeal as stated above, you must file a notice of appeal with the Board setting forth the Order appealed from, and the grounds of the appeal. You must also file a copy of such notice with the Court. Such notices of appeal shall be filed within fifteen (15) days after the date of mailing of this letter and in accordance with Section 119.12, Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Henry G. Cramblett by WWO

Henry G. Cramblett, M.D.
Secretary

HCG:em

Enclosures

CERTIFIED MAIL NO. P 569 361 914
RETURN RECEIPT REQUESTED

cc: John L. Wagner, Esq.

CERTIFIED MAIL NO. P 569 361 915
RETURN RECEIPT REQUESTED

STATE OF OHIO
THE 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 Timothy L. Stephens, Jr., M.D., Member, State Medical Board of Ohio; and the attached copy of the Minutes of the October 9, 1985 Meeting of the State Medical Board of Ohio containing motions amending the Report and Recommendation of Timothy L. Stephens, Jr., M.D., the reasons therefore, and adopting said amended Report and Recommendation as the Findings and Order of the State Medical Board, constitutes a true and complete copy of the Findings and Order of the State Medical Board in the matter of Samuel A. Lerro, M.D., as it appears in the Journal of the State Medical Board of Ohio.

(SEAL)

Henry G. Cramblett by WWJ
Henry G. Cramblett, M.D.
Secretary

18 Oct 1985
Date

STATE OF OHIO
THE STATE MEDICAL BOARD

IN THE MATTER OF *

*

SAMUEL A. LERRO, M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 9th day of October, 1985.

Upon the Report and Recommendation, a true copy of which is attached hereto and incorporated herein, of Timothy L. Stephens, Jr., M.D., Hearing Member in this matter designated pursuant to R.C. 4731.23, Which Report and Recommendation was amended 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 9th day of October, 1985.

It is hereby ORDERED:

> That Dr. Lerro's license to practice medicine and surgery will be suspended for a period of ninety (90) days, his D.E.A. certificate will be suspended for a period of twelve (12) months, and he will appear before the Board at three month intervals at the Board's discretion.
>
> The effective date of December 1, 1985 is placed on the Order.

(SEAL)

Henry G. Cramblett by WWS
Henry G. Cramblett, M.D.
Secretary

18 Oct 1985
Date

STATE OF OHIO
THE STATE MEDICAL BOARD

REPORT AND RECOMMENDATION
IN THE MATTER OF SAMUEL A. LERRO, M.D.

A hearing in the matter of Samuel A. Lerro, M.D., was held before Medical Board Member Deirdre O'Connor, M.D., on December 5, 1984. Dr. O'Connor subsequently stepped down from the Board and I, Timothy L. Stephens, Jr., M.D., was assigned as hearing member. After carefully reviewing the transcript and exhibits from the December 5, 1984 hearing, I have determined that there is sufficient evidence upon which to base a recommendation without reopening the record for additional testimony or evidence.

INTRODUCTION AND SUMMARY OF EVIDENCE

1. On April 13, 1983, the State Medical Board of Ohio issued a citation against Samuel Lerro, M.D., alleging violations of the Medical Practice Act on the basis of the following allegations (State's Exhibit A):

   A. That Dr. Lerro had written two prescriptions in his own name, had them filled, and sent the drugs to an individual in California; and

   B. That between January, 1982 and December, 1982, Dr. Lerro had written a series of prescriptions for injectable Talwin, a controlled substance, in his own name, and then administered the drug to a patient whom he knew to be addicted to Talwin.

2. Dr. Lerro requested a hearing on the Board's allegations by letter of May 9, 1983. (State's Exhibit B)

3. By letter of May 12, 1983, the State Medical Board scheduled and postponed a hearing in this matter pursuant to Section 119.09, Ohio Revised Code. (State's Exhibit C)

4. A hearing was scheduled for July 11, 1984, by letter of April 18, 1984. (State's Exhibit D)

5. In a letter dated June 28, 1984, Dr. Lerro's attorney requested a continuance of the hearing. (State's Exhibit E)

6. The State Medical Board rescheduled Dr. Lerro's hearing for October 11, 1984, by letter of August 10, 1984. (State's Exhibit F)

7. Dr. Lerro's hearing was again rescheduled to October 10, 1984, by letter of September 18, 1984. (State's Exhibit G)

8. A letter dated November 14, 1984, confirmed that the hearing was ultimately rescheduled to Wednesday, December 5, 1984. (State's Exhibit H)

9. Dr. Lerro arrived after the start of the hearing on December 5, 1984. He was reprsented by his attorney, John Wagner.

10. Assistant Attorney General Mary Joseph Maxwell appeared on behalf of the State.

11. Ms. Maxwell proceeded by calling Mr. Charles Eley, an investigator for the State Medical Board, as the State's first witness. Mr. Eley's testimony outlined the following:

    A. That he first spoke with Dr. Lerro on November 16, 1982, after being notified by a pharmacy that the doctor was purchasing large amounts of the controlled substance Talwin. Dr. Lerro had explained that he was purchasing Talwin for use by one of his patients, Ed Zartman, who was a Talwin addict.

    B. That he had also asked Dr. Lerro about two prescriptions which he had written in his own name, one for Desoxyn, and the other for Biphetamine 20. Dr. Lerro had admitted to writing these prescriptions and explained that he had forwarded the medications to a former patient who had moved to California and was unable to obtain the drugs there.

    C. That State's Exhibit J is a form he prepared which summarizes drug purchases made by Dr. Lerro at specified pharmacies.

12. The testimony of the State's next witness, Sgt. Robert E. Mortimer of the Mansfield Police Department, revealed the following:

    A. That he had participated in a joint investigation by the Mansfield Police Department and the Medical Board of Dr. Lerro's drug purchases.

    B. That during an interview with Dr. Lerro the doctor had admitted:

        1) writing and filling two prescriptions for controlled substances in his own name which he subsequently sent to a former patient in California;

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2) obtaining large amounts of Talwin for the purpose of administering it to a patient, Mr. Edward Zartman, whom he knew to be a drug addict.

C. That Dr. Lerro had provided this information about his drug purchases voluntarily.

13. The State's next witness, Mr. Warren Edward Zartman, testified:

A. That he is a former patient of Dr. Lerro's.

B. That he was a Talwin addict and had gone to Dr. Lerro to obtain the drug.

C. That Dr. Lerro had agreed to help him overcome his addiction to Talwin by tapering off his dosage and hypnotizing him.

D. That he saw Dr. Lerro for injections two or three time each day, usually in his office.

E. That Dr. Lerro was treating him for both his Talwin addiction and pain resulting from physical ailments.

F. That Dr. Lerro encouraged him to go to a hospital for treatment of his addiction. He did enter a hospital, but he did not stay.

G. That Dr. Lerro also sent him to a psychiatrist, who he saw for a short time.

H. That he obtained drugs from others beside Dr. Lerro.

I. That he ultimately overcame his addiction by willpower.

14. Dr. Lerro's own testimony outlined the following circumstances and events:

A. That he uses Talwin all the time in his practice.

B. That Talwin "is a reasonable pain medicine, but not a good one." (Transcript at 41)

C. That he gave Mr. Zartman Talwin injections on a daily basis. He never gave Mr. Zartman Talwin to allow him to give himself injections, but he did give him syringes filled with Phenergan, a mild tranquilizer.

D. That he did not know Mr. Zartman was a drug addict, although he knew he was in a lot of pain and had undergone several operations.

E. That he never gave Mr. Zartman a full injection of Talwin because he intended to taper off the dosage.

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F. That he obtained the Talwin himself rather than giving prescriptions directly to the patient, because he wanted to control administration of the drug.

G. That he gradually decreased Mr. Zartman's injections from three or four times a day to once a day.

H. That he tried giving Mr. Zartman other medications for pain, including "almost all the real narcotics," but "he still continued to have pain." (Transcript at 48)

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I. That he had written the two prescriptions marked as State's Exhibit K and had made them out to himself. He had the prescriptions filled and sent the drugs, Biphetamine and Desoxyn, to Shirley Hale, a former employee who had moved to California. He explained that Ms. Hale had been having marital problems and had gained a lot of weight, and he "thought (the drugs) would help her a lot." Dr. Lerro further stated that Ms. Hale had been hospitalized several times for a neck injury, but her problems were "apparently...drug related." (Transcript at 49)

J. That he was unable to obtain patient records on Mr. Zartman because Mr. Zartman had actually been his retired partner's patient, not his.

K. That he is 65 years old and in good health. He is not considering retirement. Within the last year he has worked twelve hours every day, including weekends, and is now involved in emergency room work.

15. State's Exhibit I was identified as being copies of the subpoenas and subpoena duces tecum for the patient records of Edward Zartman and Shirley Hart (sic). These were admitted to the record along with State's Exhibits A through H and J, which have been previously identified.

16. Respondent's Exhibit #1, a brief biography of Dr. Lerro, was received in evidence and made part of the record.

FINDINGS OF FACT

1. By his own admission, Samuel A. Lerro, M.D., wrote two prescriptions for Schedule II controlled substances in his own name, which he caused to have filled and sent to a former employee in California.

2. By his own admission, Samuel A. Lerro, M.D., wrote in his own name and caused to have filled numerous prescriptions for injectable Talwin, a Schedule II controlled substance, in 1982.

3. Some or all of the Talwin obtained with these prescriptions was administered by Dr. Lerro to a patient, Edward Zartman.

4. Mr. Zartman was not primarily a patient of Dr. Lerro's, and Dr. Lerro did not personally maintain records of his treatment.

5. Dr. Lerro continued to administer injectable Talwin to Mr. Zartman on a daily basis, in spite of his awareness that Mr. Zartman was addicted to Talwin.

   This finding is based on the corroborative testimony of Mr. Charles Eley and Sgt. Robert Mortimer that Dr. Lerro had told them in an interview that Mr. Zartman was a Talwin addict. Dr. Lerro later denied at his hearing that he knew of Mr. Zartman's addiction (Transcript at 42); yet his subsequent testimony suggests otherwise. On page 46 of the transcript, Dr. Lerro speaks of the patient's "fixation on the drug or need for the drug." On page 44, Dr. Lerro mentions that he had referred Mr. Zartman for detoxification and psychiatric care. Clearly, Dr. Lerro's continued acquisition and administration of Talwin to Mr. Zartman was done with full knowledge of the latter's addiction.

CONCLUSIONS

1. By his own admission, Dr. Lerro wrote prescriptions for Schedule II controlled substances in his own name, had them filled, and mailed the drugs to a former employee living out of state. There is no evidence that Dr. Lerro had the opportunity to examine this individual or to monitor her use of these potentially addictive and frequently abused substances. In fact, Dr. Lerro's own testimony notes several causes for concern about potential misuse of these drugs by his former employee: in addition to her marital problems, she was experiencing physical ailments which were, in Dr. Lerro's own words, "apparently...drug related." (Transcript at 49)

   Dr. Lerro justifies his unusual handling of his former employee's problems by expressing concern for her welfare and explaining that she was unable to obtain these drugs in California. Yet in the same breath he testifies that she has been hospitalized several times, presumably on the advice of a physician. Dr. Lerro's long-distance treatment under these circumstances is inappropriate at best. At worst, it is potentially fatal.

   Dr. Lerro's conduct in this instance demonstrates a "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 that clause is used in Section 4731.22(B)(2), Ohio Revised Code.

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Further, Dr. Lerro's conduct in this instance demonstrates "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, Dr. Lerro's conduct in this instance demonstrates "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.

2. By his own admission, Dr. Lerro wrote in his own name and caused to have filled numerous prescriptions for injectable Talwin, a schedule II controlled substance, with the intention of administering it to Edward Zartman. Dr. Lerro knew, or certainly should have known, that Mr. Zartman was addicted to the medication he was providing. He knew, or certainly should have known, that Mr. Zartman had not followed through with a recommended detoxification program or psychiatric treatment. In spite of his knowledge, Dr. Lerro chose to continue this course of treatment for at least a year with a patient who was not even under his primary care.

   Dr. Lerro's conduct in this instance demonstrates a "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 that clause is used in Section 4731.22(B)(2), Ohio Revised Code.

   Further, Dr. Lerro's conduct in this instance demonstrates "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, Dr. Lerro's conduct in this instance demonstrates "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.

PROPOSED ORDER

It is hereby ORDERED that the license of Samuel A. Lerro, M.D., to practice medicine and surgery in the State of Ohio be revoked.

This Order shall become effective as determined by the State Medical Board of Ohio.

Timothy L. Stephens, Jr., M.D.
Hearing Member
State Medical Board of Ohio

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STATE OF OHIO
THE STATE MEDICAL BOARD

EXCERPT FROM DRAFT MINUTES OF OCTOBER 9, 1985

REPORT AND RECOMMENDATION IN THE MATTER OF SAMUEL A. LERRO, M.D.

Mr. Schmidt and Ms. Thompson remained out of the room.

Dr. Rauch asked if each member of the Board received, read, and considered the hearing record, the proposed findings and order, and any objections filed to the proposed findings and order in the matter of Samuel A. Lerro, M.D. A roll call was taken:

ROLL CALL:	Dr. Cramblett	- aye
	Dr. Lancione	- aye
	Dr. Buchan	- aye
	Dr. Lovshin	- aye
	Ms. Rolfes	- aye
	Dr. Oxley	- aye
	Dr. Barnes	- aye
	Dr. Stephens	- abstain
	Mr. Johnston	- abstain

Dr. Stephens read the proposed order of his report and recommendation, the original of which shall be maintained in the exhibits section of this journal.

Ms. Rolfes pointed out that in the objections, Dr. Lerro's attorney stated that it is not legal for the hearing officer to sign a proposed order for a case he had not heard.

Mr. Bumgarner advised that in this matter, Dr. O'Connor was the Board member present during the hearings. As usual, when a Board Member leaves the Board before writing a Report and Recommendation on a case already begun, another member of the Board is appointed to review the record and transcript as it stands and make the decision to proceed or to ask for creation of a new record, or an addition to the record.

Ms. Rolfes again stated that the attorney questioned the legality of this.

Dr. Stephens stated that this is a Board procedure. He carefully reviewed the transcript and thought the facts were very clear and he saw no reason to reopen the case. Dr. Stephens stated that he stands by his proposed order.

Dr. Cramblett added that all members of the Board have reviewed the entire record as well.

DR. BUCHAN MOVED TO APPROVE AND CONFIRM DR. STEPHENS' FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER IN THE MATTER OF SAMUEL A. LERRO, M.D. DR. OXLEY SECONDED THE MOTION. A discussion followed.

Dr. Lancione spoke against the motion, stating that the proposed order is too severe. He stated that in 1982 Dr. Lerro gave Talwin to one patient. Dr. Lancione added that when Talwin was first introduced, it was reported to be non-addictive, and was almost an over-the-counter drug. After it had been out for a year or so it

was found that it could be addictive. Dr. Lancione stated that in Dr. Lerro's case, he is in family practice and was trying to help a patient with Talwin addiction. He stated that there was no other case involved in the allegations. He added that Dr. Lerro tried a number of different methods to help the man with his addiction, including sending the patient to a psychiatrist and giving him reduced amounts of Talwin over a period of time. Dr. Lancione stated that Dr. Lerro only did what he had to do to help the patient, and although what he did might have been a bad error in judgment, it is not enough to revoke a license.

Dr. Lancione continued that he doesn't see a difference in a physician giving amphetamines to a patient sitting in the office and a patient in another state, as long as he knew the patient well. Dr. Lancione recommended a suspension of Dr. Lerro's license for a period of 90 days, with suspension of his D.E.A. certificate for a period of one year. Dr. Lancione added that he doesn't feel there is a judge who would uphold a revocation in this case.

Dr. Stephens stated that he took all of the extenuating circumstances into consideration when he wrote the report and recommendation. He stated that there were severe deviations where this physician wrote prescriptions for himself, filled them, and sent them to this former employee living in California. He stated that it was not just one instance of writing for himself, but many instances.

Dr. Lancione stated that doctors buy drugs to dispense to patients. Dr. Stepehens agreed, but added that physicians don't write the prescriptions in their own names. He added that he cannot justify this practice.

Dr. Buchan asked Dr. Lancione how he reacts to Dr. Lerro sending medication to a former employee, noting that it went on for a year. Dr. Lancione stated that from his review of the transcript, he can only see that Dr. Lerro wrote one prescription for this purpose. Dr. Buchan disagreed, stating that it was more than once, and he hadn't seen the person for a while when he did it.

DR. LANCIONE MOVED TO MODIFY THE PROPOSED ORDER TO STATE THAT DR. LERRO'S LICENSE WILL BE SUSPENDED FOR A PERIOD OF NINETY (90) DAYS, AND HIS D.E.A. CERTIFICATE WILL BE SUSPENDED FOR A PERIOD OF TWELVE (12) MONTHS. DR. BARNES SECONDED THE MOTION. A discussion followed.

Dr. Barnes stated that the Board must determine what is serious and what isn't. He stated that what Dr. Lerro did does not appear to be a heinous deed.

Dr. Rauch stated that each Board Member must make his or her own determination on how serious each charge is. He reminded the Board that it could revoke Dr. Lerro's license, and then stay the revocation and place conditions on the order.

Dr. Barnes stated that he doesn't feel Dr. Lerro did anything really awful.

Ms. Rolfes disagreed, stating that Dr. Lerro supplied drugs to a known addict. She feels that the Board is looking at a person who has a problem with judgment, who is not necessarily an evil person, but questioned whether he should be car-

ing for the public with such a problem with judgment. She added that it seems to her that his treatment of a known drug addict was severely wrong. She added that the entire hearing process showed that Dr. Lerro was confused in that he didn't bring the medical records he was supposed to bring and he was late for the hearing.

Dr. Lancione stated that if the Board saw that Dr. Lerro handled ten or more cases in this manner, he would agree that Dr. Lerro was out of his league. He again stated that the Board has only shown that he behaved in this manner for one patient. He tried to help the patient by reducing the dosage and referring him to a psychiatrist. He also tried to get the patient admitted into the hospital.

Dr. Lovshin suggested that appearances before the Board would be appropriate.

Dr. Lancione restated his motion as follows:

DR. LANCIONE MOVED TO MODIFY THE PROPOSED ORDER TO STATE THAT DR. LERRO'S LICENSE TO PRACTICE MEDICINE AND SURGERY WILL BE SUSPENDED FOR A PERIOD OF NINETY (90) DAYS, HIS D.E.A. CERTIFICATE WILL BE SUSPENDED FOR A PERIOD OF TWELVE (12) MONTHS, AND HE WILL APPEAR BEFORE THE BOARD AT THREE MONTH INTERVALS AT THE BOARD'S DISCRETION. DR. BARNES SECONDED THE MOTION. A discussion followed.

Dr. Stephens asked if the Board was here to uphold the laws about physicians writing prescriptions to themselves for drugs to dispense or not. He stated that this was a completely wrong action, and he objects strongly to it.

A roll call vote was taken on Dr. Lancione's motion:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Lancione	- aye
	Dr. Buchan	- aye
	Dr. Lovshin	- aye
	Ms. Rolfes	- nay
	Dr. Oxley	- aye
	Dr. Barnes	- aye
	Dr. Stephens	- nay
	Mr. Johnston	- abstain
	Dr. Rauch	- aye

The motion carried.

A roll call vote was taken on Dr. Buchan's motion as amended:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Lancione	- aye
	Dr. Buchan	- aye
	Dr. Lovshin	- aye
	Ms. Rolfes	- nay
	Dr. Oxley	- aye
	Dr. Barnes	- aye

Dr. Stephens	- nay
Mr. Johnston	- abstain
Dr. Rauch	- aye

The motion carried.

.....

DR. BUCHAN MOVED AN EFFECTIVE DATE OF DECEMBER 1, 1985 ON THE ORDER OF SAMUEL A. LERRO, M.D. DR. BARNES SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- aye
	Dr. Lancione	- aye
	Dr. Buchan	- aye
	Dr. Lovshin	- aye
	Ms. Rolfes	- aye
	Dr. Oxley	- aye
	Dr. Barnes	- aye
	Dr. Stephens	- abstain
	Mr. Johnston	- abstain

The motion carried.

Dr. Stephens asked what purpose appearances before the Board will serve in this case. He noted that the Board already has a lot of people making appearances. Dr. Buchan commented that the Board may only require Dr. Lerro to make a couple of appearances. He added that many times when asking questions, the Board can get a good feeling for problems and for the physician's practice.

Dr. Lancione added that the Board's investigator will report to the Board prior to Dr. Lerro's appearance.

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

April 13, 1983

Samuel Lerro, M.D.
295 Glessner Avenue
Mansfield, OH 44903

Dear Doctor Lerro:

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, reprimand, revoke, suspend, place on probation, refuse to register or reinstate your license to practice medicine and surgery, in Ohio, under the provisions of Section 4731.22, Ohio Revised Code, for the following reasons:

1. On or about the following dates, you wrote the following prescriptions for controlled substances, in the amounts and strengths indicated, in your name:

Date	Substance	Amount
05/05/82	Biphetamine	20
06/08/82	Desoxyn	70

You sent or caused to be sent said prescriptions to California to be used by a patient who is labelled as Patient No. 1 and named in the attached Patient Key (to be withheld from public disclosure) because said patient could not obtain the drugs in California.

2. On or about the following dates, you wrote the following prescriptions for controlled substances, in the amounts and strengths indicated, in your name:

Date	Substance	Amount
01/06/82	Talwin	2-10cc vials
01/27/82	Talwin	2-10cc vials
02/03/82	Talwin	2-10cc vials
02/24/82	Talwin	2-10cc vials
03/17/82	Talwin	1-10cc vials
03/26/82	Talwin	1-10cc vials
04/01/82	Talwin	1-10cc vials
08/25/82	Talwin	1-10cc vials
09/27/82	Talwin	1-10cc vials
09/19/82	Talwin	1-10cc vials
09/29/82	Talwin	2-10cc vials
10/05/82	Talwin	1-10cc vials
10/12/82	Talwin	1-10cc vials
10/14/82	Talwin	1-10cc vials
10/16/82	Talwin	1-10cc vials
10/17/82	Talwin	1-10cc vials
10/19/82	Talwin	2-10cc vials
10/21/82	Talwin	2-10cc vials
10/26/82	Talwin	1-10cc vials

Date	Substance	Amount
10/30/82	Talwin	2-10cc vials
11/02/82	Talwin	2-10cc vials
11/04/82	Talwin	3-10cc vials
11/09/82	Talwin	1-10cc vials
11/10/82	Talwin	2-10cc vials
11/14/82	Talwin	2-10cc vials
11/16/82	Talwin	2-10cc vials
11/16/82	Talwin	2-10cc vials
11/23/82	Talwin	2-10cc vials
11/23/82	Talwin	2-10cc vials
12/10/82	Talwin	2-10cc vials

Some or all of said drugs were used for a patient who is labelled as Patient No. 2 and is named in the attached Patient Key (to be withheld from public disclosure). At the time you administered or caused to be administered said drugs for Patient No. 2, you knew that the patient was addicted to Talwin.

Such acts in Paragraphs 1 and 2, committed individually and/or collectively, constitute a "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 that clause is used in Section 4731.22(B)(2), Ohio Revised Code.

Further, such acts, in Paragraphs 1 and 2, 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 in Paragraphs 1 and 2, committed 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, please be advised that you may request a hearing on this matter. If you wish to request such a 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 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, reprimand, revoke, suspend, place on probation, refuse to register, or reinstate your certificate to practice medicine or surgery.

A copy of the appropriate versions of Section 4731.22, Ohio Revised Code, is enclosed for your review.

Very truly yours,

Anthony Ruppersberg, Jr., M.D.
Secretary

AR:jmb

Enclosure:

CERTIIFIED MAIL #P349 641 943
RETURN RECEIPT REQUESTED