Lauren L

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

December 12, 1985

Byron E. Swainey, M.D.
1225 State Route 42
Mason, Ohio 45040

Dear Doctor Swainey:

Please find enclosed a certified copy of the Entry of Order, the Report and Recommendation of Ms. Carol Rolfes, Member, State Medical Board of Ohio; a certified copy of the Motion by the State Medical Baord, meeting in regular session on December 3, 1985, confirming and approving said Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

Henry G. Cramblett, M.D.
Secretary

HGC:em

Enclosures

CERTIFIED MAIL NO. P 569 364 834
RETURN RECEIPT REQUESTED

cc: Jim Rimedio, Esq.
817 Main St., Suite 4A
Cincinnati, Ohio 45202

CERTIFIED MAIL NO. P 569 364 835
RETURN RECEIPT REQUESTED

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

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 Carol Rolfes, Member, State Medical Board of Ohio; and the attached copy of the Motion by the State Medical Board, meeting in regular session on December 3, 1985, 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 Byron E. Swainey, M.D., as it appears in the Journal of the State Medical Board of Ohio.

(SEAL)

Henry G. Cramblett, M.D.
Secretary

December 12, 1985
Date

STATE OF OHIO
THE STATE MEDICAL BOARD

IN THE MATTER OF *

*

BYRON E. SWAINEY, M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 3rd day of December, 1985.

Upon the Report and Recommendation, a true copy of which is attached hereto and incorporated herein, of Carol Rolfes, Member, in this matter designated pursuant to R.C. 4731.23, 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 3rd day of December, 1985.

It is hereby ORDERED:

1. That Dr. Byron E. Swainey's request for restoration of his license to practice medicine and surgery in the State of Ohio be denied;
2. Further, that the State Medical Board of Ohio shall not consider any future requests for restoration unless the following minimum requirements are met:

   A. Dr. Swainey shall sit for and pass the Ohio examination for licensure, in its entirety, in conformance with all statutory, regulatory and policy requirements in effect at the time of sitting; and

   B. Subsequently, Dr. Swainey shall complete and submit a written application for restoration, along with all appropriate fees, to the State Medical Board of Ohio.

   C. Upon reinstatement of Dr. Swainey's certificate pursuant to the above provisions, the Board may impose probationary terms, conditions and limitations on said certificate, including but not limited to restrictions or limitations upon Dr. Swainey's authority to prescribe, administer, dispense or handle controlled substances.

(SEAL)

Henry G. Cramblett, M.D.
Secretary

December 12, 1985
Date

STATE OF OHIO
THE STATE MEDICAL BOARD

REPORT AND RECOMMENDATION
IN THE MATTER OF BYRON E. SWAINEY, M.D.

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On October 11, 1984 and April 11, 1985 the matter of Byron E. Swainey, M.D., came before me, Ms. Carol Rolfes, Member, State Medical Board of Ohio.

INTRODUCTION AND SUMMARY

1. The State Medical Board, meeting in regular session on November 18, 1982, proposed to deny Dr. Swainey's request for restoration of his license to practice medicine and surgery in Ohio based on his prescribing practice of writing prescriptions in another family member's name for his wife's use.

2. Bryon E. Swainey, M.D., was present at both hearings and was represented by Jim Rimedio, Esq.

3. The State's case was presented by Christopher M. Culley, Assistant Attorney General.

4. State's Exhibits 1 through 3 were admitted to the record without objection as they relate to the failure of subpoenaed individuals to appear for the October 11, 1984 hearing.

5. Dr. Byron E. Swainey, after being first duly sworn, testified as follows:

   A. That he was currently unemployed.

   B. That he received his medical degree at the University of Cincinnati in 1944 and that he was first licensed in the State of Ohio in 1944 or 1945.

   C. That he first practiced primarily in Middletown, Ohio but was called to service in World War II; that the nature of his military duty was primarily with surgical teams.

   D. That at the end of his tour of duty, he returned to Ohio and practiced in Middletown, Mason and Westchester. He also worked at Miami University and Bowling Green State University.

   E. That State's Exhibit #4 was a letter dated June 4, 1979 from the State Medical Board requesting an informal meeting.

F. That he met with representatives of the Board in an informal session in 1979 regarding his prescribing practices. He had been prescribing medications for his wife, and may have promised the Board that he would discontinue that practice. He further stated that he tried to cooperate with the Board.

G. That State's Exhibit #5 was a voluntary surrender of license with what appeared to be his signature.

H. That State's Exhibit #6 was a paper headed "Voluntary Surrender of Controlled Substances Privileges" with his signature at the bottom.

I. That after the execution of these documents he requested his license be reinstated and was subsequently scheduled for an appearance before the Medical Board on that question.

J. That State's Exhibit #7 was a sheet of paper dated October 21, 1982, and addressed to Mr. Jim Rimedio notifying him of the appearance before the Medical Board on Thursday, November 18, 1982; and that he recalled receiving a copy of that letter.

K. That at the Board meeting, he did state that he prescribed or administered Demerol to his wife before the surrender of his license, and that he had written prescriptions in another family member's name and had obtained Demerol in that way.

L. That State's Exhibit #8 was a letter dated December 3, 1982, and addressed to him advising him of the Board's proposal to deny restoration of his license to practice medicine and surgery in Ohio, which he believed that he received.

M. That State's Exhibit #9 was a letter addressed to the Ohio State Medical Board requesting a hearing.

N. That State's Exhibit #10 was a letter to Mr. Rimedio advising of a hearing date of January 28, 1983.

O. That State's Exhibit #11 was a letter rescheduling the hearing which he probably received.

P. That State's Exhibit #12 was a letter to Mr. Rimedio notifying him of the current hearing of October 11, 1984.

Q. That his wife, Roberta, has a congenital prolapsed mitral valve. Further, she had rheumatic fever while a teenager or before. Before the diagnosis of prolapsed valve was made, she got severe chest pains which stimulate heart rate, with a rate of 170, 174; that this in turn would lead to faintness and apprehension. His wife was given Demerol to break up the cycle of attacks.

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R. That Mr. Ed Rothermel, his wife's first husband, was dependent upon her. Although they were divorced she still felt obligated to provide medicine and sometimes food. Mr. Rothermel lives in a house own by Roberta which she provides rent free.

S. That he could recall only one time he presecribed for his wife under a different name by using the name of his niece, Donna Schoep, who lives in Denton, Texas. He did this because he was going to another drug store late on Sunday night and he didn't care to have everyone knowing that Mrs. Swainey had to have Demerol.

T. That State's Exhibit #13 was a prescription for 30 Dalmane capsules, 30 milligrams, made out for Sharon Kripp, Roberta's daughter. He stated that his wife on occasion had used Dalmane but he did not believe this particular prescription was for her. He said he could not remember telling the Medical Board that this prescription was in fact for use by his wife; but that he could have prescribed for his wife through Sharon's name.

U. That Mr. Rothermel and Mrs. Swainey shared prescriptions of Demerol written in the name of Ed Rothermel.

V. It was stipulated that those items contained in Exhibit #14 are prescriptions that he had written for Ed Rothermel, knowing that his wife would receive a portion of that medication.

W. That State's Exhibit #15 was one of his prescriptions for Demerol, 50 milligrams, with what appeared to him as a change in the amount of tablets.

X. That State's Exhibit #16 was a prescription for twenty 50 milligram tablets of Demerol, dated November 20, 1981 and made out to Ed Rothermel.

Y. That Exhibits #15 and 16 were written in the name of Ed Rothermel with the understanding that the drugs would be shared by his wife.

Z. That he took most of these prescriptions to the pharmacy himself to have them filled, although a few were taken in by Mr. Rothermel.

AA. That his wife still requires this medication, and obtains it by presenting a letter from Dr. Gustin, a cardiologist in Cincinnati, stating that she needs the Demerol. She presents the letter to the emergency room doctor in charge and is usually given shots, not tablets. Dr. Gustin agreed she needed Demerol but would not prescribe it. Dr. Houser testified that he had gone against his word to the State Board and started prescribing. Rather than make her fight this thing and do without the medication, he went ahead prescribing Demerol.

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6. State's Exhibits 17, 18, 19 and 20 consist of notices of hearing that were sent to Mr. Rimedio and Dr. Swainey regarding the continuance of this case and the scheduling of the hearings. Said documents were admitted by stipulation.

7. Dr. Swainey testified on cross-examination by Mr. Rimedio as follows:

   A. At the time of the dissolution of his wife's marriage to Mr. Rothermel the latter was somewhat physically handicapped because of osteoporosis. It was necessary for them to help him with his grocery shopping and get his drugs.

   B. That when Mr. Rothermel turned 65, he was told by his family physician that he was well and didn't need a doctor any longer, but that after Dr. Swainey and Mrs. Swainey were married, Dr. Swainey took him as a patient. Because of the pain of osteoporosis, he had Mr. Rothermel on Demerol. Mrs. Swainey was on Demerol because of precoital pain; a history of rheumatic fever, and a prolapsed mitral valve.

   C. That Respondent's Exhibit A was a letter written by Dr. Gustin concerning his wife's condition dated March 15, 1983.

   D. That Respondent's Exhibit B was a letter from Emmett G. Cooper, M.D., Ph.D., concerning his wife's condition.

   E. That he relied upon the fact Dr. Gustin felt his wife was in need of Demerol, but would not prescribe it, as one of the reasons he shared the Rothermel prescription with his wife.

8. Respondent's Exhibits A and B were admitted into evidence over objections by the Assistant Attorney General.

9. Dr. Swainey testified on re-direct examination by Mr. Culley as follows:

   A. That he did not have with him a copy of the letter from Dr. Gustin that his wife carries with her to the emergency room. At this point, Mr. Rimedio offered another letter dated July 21, 1980 from Dr. Gustin to Dr. Swainey concerning Mrs. Swainey which was refused admission to the record on the basis of relevancy.

   B. That he saw nothing wrong in what he was doing; that he did not originate the use of Demerol by Mrs. Swainey; that other doctors ahead of him had used it and that he worked with those doctors at Miami and saw how it worked for her. After they were married he picked it up and went ahead and used it for the chest pain, et cetera.

   C. That he saw no reason for writing separate prescriptions for Mrs. Swainey and Mr. Rothermel because he knew they were more or less sharing the medication, and that there was no monetary gain as far as he was concerned.

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10. Dr. Swainey, on re-cross examination by Mr. Rimedio, testified as follows:

    A. That Exhibit C is a letter dated September 19, 1980 typed on Dr. Swainey's stationery and directed to Dr. Gustin.

    B. Respondent's Exhibit C was offered and received into evidence.

    C. That, to the best of his knowledge, the contents of State's Exhibit 3 were true.

    D. That Mr. Young, a Board investigator, had come to the office and said he wanted the doctor's license. He had no present recollection of what else Mr. Young said in regard to that. Mr. Young, who was accompanied by a detective, had said that in all probability the doctor would be prosecuted if he did not surrender his license and give up his right to practice medicine. That was the reason he had signed the surrender, more or less.

    E. That State's Exhibit 6 was signed at the same time and under the same circumstances as State's Exhibit 5.

    F. That Exhibit D was Dective Oliver's business card.

    G. That he did not feel that he would be arrested if he didn't comply.

    H. Respondent's Exhibits A, B, C and D were accepted into evidence.

11. Dr. Swainey, on re-direct examination by Mr. Culley, testified as follows:

    A. That the investigators came to his office in late morning.

    B. That something was said about having an attorney if he wanted, and that he simply refused to have an attorney.

    C. That the investigator did not explain any evidence that they may have had beyond prescriptions for Demerol.

    D. That he admitted he had been writing prescriptions for his wife and for Mr. Rothermel and, probably, that he was wrong for doing so.

    E. That the investigator asked him to read the surrender documents and he glanced at them; that he objected to signing them because he asked if he could think about it overnight before signing those documents and the investigator refused; that he took his Certificate of Licensure off the wall and handed it to him.

12. After the State rested its case, Mr. Rimedio stated that the case had been submitted and that he was "....not going to offer a scintilla of evidence."

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13. Mr. Culley, in his closing argument, stated that the facts show, by way of the exhibits and the admissions of Dr. Swainey himself, that while he was a licensed physician of the State of Ohio he wrote prescriptions for Schedule II substances in another family member's name as well as the names of others, and thereby obtained Demerol for his wife; that processing of drug documents in this fashion is a violation of Sections 4731.22(B)(2), (3), and (6), Ohio Revised Code and the Board is therefore warranted in its denial of the restoration of Dr. Byron Swainey's license.

14. In his closing argument, Mr. Rimedio stated that from a technical point the State is absolutely correct. The study of medicine necessarily requires an individual have a dedication to the care and concern of others. He stated that because of enforcement techniques in the Hamilton County area, a physician had said that while the patient should have drugs, he was not going to be the one to do it. Mr. Rimedio stated that Dr. Swainey lived with the patient and that suffering. Dr. Swainey, as early as 1980, knew it was wrong, but he did not do it for profit. There was no evidence to show that Mrs. Swainey is dependent or that she is addicted. The doctor knew it was wrong when he did it from a legal point of view, and knew it was right from a medical point of view. Dr. Swainey was put in a position where he was told he was going to be arrested unless he gave the investigator his license and was denied the right to think about it overnight. (Transcript of April 11, 1985 at pages 37, 38, 39, 40, 41, 42 and 43)

15. State's Exhibits #1 through #20 and Respondent's Exhibits A, B, C and D, which have been previously identified, are hereby admitted into evidence and considered as part of the record in these proceedings.

FINDINGS OF FACT

1. The State Medical Board, meeting in regular session on November 18, 1982, proposed to deny Dr. Swainey's request for restoration of his license to practice medicine and surgery in the State of Ohio based upon his prescribing practice of writing prescriptions in another family member's name for his wife's use.

2. Prior to the surrender of his license to practice medicine and surgery on June 11, 1982 and prior to the surrender of his controlled substances privileges on June 11, 1982, Dr. Swainey wrote a prescription for Demerol in the name of his niece, Donna Schoep, for use by his wife, Roberta Swainey. (Transcript of October 11, 1984 at page 19)

3. Prior to these surrenders, Dr. Swainey wrote prescriptions for Demerol in the name of his wife's former husband, Ed Rothermel, with the full knowledge that his wife would receive a portion of that medication. (Transcript of October 11, 1984 at pages 23, 24 and 25; State's Exhibits 14, 15 and 16)

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4. Dr. Swainey took most of these prescriptions to the pharmacy himself to have them filled, and paid for most of them. (Transcript of October 11, 1984 at page 26)

5. Dr. Swainey had previously informed the Board that he would discontinue prescribing Demerol for his wife. (Transcript of October 11, 1984 at page 28)

CONCLUSIONS

Although Dr. Byron E. Swainey offered justification for his actions, such as his wife's cardiologist's refusing to prescribe for her on an outpatient basis, his prescribing of Demerol in the name of his niece for the use of his wife and his prescribing of Demerol in the name of his wife's former husband with full knowledge that Dr. Swainey's wife would receive a portion of that medication, were all acts constituting the violation of Sections 4731.22(B)(2), (B)(3), and (B)(6), Ohio Revised Code.

PROPOSED ORDER

It is hereby ORDERED:

1. That Dr. Byron E. Swainey's request for restoration of his license to practice medicine and surgery in the State of Ohio be denied;

2. Further, that the State Medical Board of Ohio shall not consider any future requests for restoration unless the following minimum requirements are met:

   A. Dr. Swainey shall sit for and pass the Ohio examination for licensure, in its entirety, in conformance with all statutory, regulatory and policy requirements in effect at the time of sitting; and

   B. Subsequently, Dr. Swainey shall complete and submit a written application for restoration, along with all appropriate fees, to the State Medical Board of Ohio.

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3. Upon reinstatement of Dr. Swainey's certificate pursuant to the above provisions, the Board may impose probationary terms, conditions and limitations on said certificate, including but not limited to restrictions or limitations upon Dr. Swainey's authority to prescribe, administer, dispense or handle controlled substances.

This ORDER shall become effective as determined by the Board.

Carol Rolfes

Ms. Carol Rolfes
Hearing Member
State Medical Board of Ohio

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EXCERPT FROM THE MINUTES OF DECEMBER 3, 1985

REPORT AND RECOMMENDATION IN THE MATTER OF BYRON E. SWAINEY, M.D.

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

Dr. Rauch 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 Byron E. Swainey, 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. Rauch	- aye

Dr. Barnes arrived at this time. Dr. Rauch asked if he 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 Byron E. Swainey, M.D. He stated that he had.

.....

DR. BUCHAN MOVED TO APPROVE AND CONFIRM MS. ROLFES' FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER IN THE MATTER OF BYRON E. SWAINEY, M.D. DR. BARNES SECONDED THE MOTION. A discussion followed.

.....

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

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

The motion carried.

This document could not be found after a search of the records of State Medical Board of Ohio.