

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

May 13, 1988

Gene D. Fry, M.D.
4617 Loganway #2
Hubbard, Ohio 44425

Dear Doctor Fry:

Please find enclosed a certified copy of the Entry of Order; the Report and Recommendation of Lauren Lubow, Attorney Hearing Examiner, State Medical Board of Ohio; an excerpt of the Minutes of the Board, meeting in regular session on May 11, 1988, 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 746 510 384
RETURN RECEIPT REQUESTED

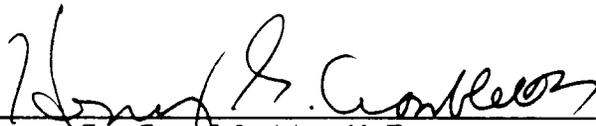
STATE OF OHIO
THE STATE MEDICAL BOARD OF OHIO
65 SOUTH FRONT STREET
SUITE 510
COLUMBUS, OHIO 43266-0315

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Lauren Lubow, Attorney Hearing Examiner, State Medical Board; and attached excerpt of Minutes of the State Medical Board, meeting in regular session on May 11, 1988, including Motions approving 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 Gene D. Fry, 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

May 13, 1988

Date

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

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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GENE D. FRY, M.D.

★

ENTRY OF ORDER

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

Upon the Report and Recommendation of Lauren Lubow, Attorney Hearing Examiner, State Medical Board, in this matter designated pursuant to R.C. 119.09, a true copy of which is attached hereto and incorporated herein, and upon approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board for the 11th day of May, 1988.

It is hereby ORDERED:

1. That the license of Gene D. Fry, M.D. to practice medicine and surgery in Ohio be SUSPENDED for an indefinite term, which shall last a minimum of thirty (30) days.
2. Further, that the State Medical Board of Ohio shall not consider reinstatement of Dr. Fry's certificate unless and until all the following minimum requirements are met:
 - a. Dr. Fry shall submit an application for reinstatement accompanied by appropriate fees.
 - b. On or before December 31, 1988, or as otherwise directed by the Board, Dr. Fry shall provide documentation satisfactory to the Board of his satisfactory completion of eighty-nine (89) hours of Category I Continuing Medical Education, in addition to

Gene D. Fry, M.D.

the thirty-one (31) hours for which he has already provided satisfactory documentation, during the period from January 1, 1983, to December 31, 1988. In addition, Dr. Fry shall submit a log of at least one-hundred twenty (120) hours of Category II Continuing Medical Education completed by him during the period from January 1, 1985, to December 31, 1988. It shall be Dr. Fry's responsibility to work with appropriate Board staff to ascertain what is satisfactory documentation and to obtain the same.

- c. Dr. Fry shall supply documentation acceptable to the Board of satisfactory completion of one-hundred (100) hours of approved Continuing Medical Education, at least forty (40) hours of which shall be in Category I, for each complete biennium, if any, during which his certificate remains suspended after the 1987-1988 biennium.
 - d. In the event that Dr. Fry has not been engaged in the active practice of medicine for a period of more than two (2) years prior to his application for reinstatement, Dr. Fry shall take and pass the SPEX examination or any similar written examination which the Board may deem appropriate to assess his clinical competency.
3. Subsequent to reinstatement of his certificate, Dr. Fry shall remain on probation for three (3) additional biennial registration periods. During this probationary period, Dr. Fry shall:
 - a. Submit documentation acceptable to the Board of satisfactory completion of the requisite hours of Continuing Medical Education.
 4. Upon successful completion of probation, Dr. Fry's certificate will be fully restored.

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

May 13, 1988

Date

REPORT AND RECOMMENDATION
IN THE MATTER OF GENE D. FRY, M.D.

88 APR -5 P1:31

The Matter of Gene D. Fry, M.D., came on for hearing before me, Lauren Lubow, Esq., Hearing Examiner for the State Medical Board of Ohio, on December 19, 1986.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

- A. By letter of August 14, 1986 (State's Exhibit #6), the State Medical Board notified Gene D. Fry, M.D., that it proposed to take disciplinary action against his license to practice medicine and surgery in the State of Ohio. The Board's proposal was based on its determination that Dr. Fry had completed only seventeen (17) of the required forty (40) hours of Category I Continuing Medical Education (C.M.E.) for the 1983-1984 biennium. The Board alleged that Dr. Fry's failure to complete the required C.M.E. constituted violation of Section 4731.281, Ohio Revised Code. The Board further alleged that Dr. Fry was in violation of Section 4731.22(B)(16), Ohio Revised Code, as in effect prior to March 17, 1987: "Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of, or conspiring to violate any provision of this chapter (Chapter 4731.) or any rule promulgated by the Board", to-wit: Section 4731.281, Ohio Revised Code, and Rule 4731-10-03, Ohio Administrative Code.

In addition, the Board alleged that Dr. Fry's certifying on his renewal card that he had completed the required C.M.E. when, in fact, he had not done so, constituted "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the Board", as that clause is used in Section 4731.22(A), Ohio Revised Code.

- B. By letter received by the State Medical Board on September 2, 1986 (State's Exhibit #7), Dr. Fry requested a hearing in this matter.

II. Appearance of Counsel

- A. On behalf of the State of Ohio: Anthony J. Celebrezze, Jr., Attorney General, by Christopher M. Culley, Assistant Attorney General.
- B. Having previously been advised of his right to representation, Dr. Fry appeared without counsel.

III. Testimony Heard

Dr. Fry was the sole witness at hearing.

APR -5 P131

IV. Exhibits Examined

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

A. Presented by the State

1. State's Exhibit #1: Copy of Dr. Fry's Application for Biennial License Renewal for the 1985-1986 biennium. Dr. Fry's signature dated October 15, 1984, appears in the C.M.E. certification portion of the renewal card.
2. State's Exhibit #2: November 5, 1985, letter to Gene D. Fry, M.D., from the State Medical Board requesting him to complete a log of C.M.E. and to provide documentation that he had actually attended forty (40) hours of Category I credits.
3. State's Exhibit #3: Dr. Fry's C.M.E. log and documentation as received by the State Medical Board on December 4, 1985.
4. State's Exhibit #4: January 10, 1986, letter to Gene Fry, M.D. from the State Medical Board advising that he must submit verification of thirty-two (32) additional Category I credits and that medical teaching and peer review are Category II credits.
5. State's Exhibit #5: Letter received by the State Medical Board on January 24, 1986, from Dr. Fry stating that he was deficient in Category I C.M.E. credits because he had considered teaching in medical school as Category I, rather than Category II, activity. Dr. Fry further indicated that he was willing to make up the deficiency.
6. State's Exhibit #8: September 5, 1986, letter to Gene D. Fry, M.D., from the State Medical Board advising that a hearing initially set for September 15, 1986, was postponed pursuant to Section 119.09, Ohio Revised Code.
7. State's Exhibit #9: November 19, 1986, letter to Gene D. Fry, M.D., from the State Medical Board scheduling the hearing for December 19, 1986.

B. Post-Hearing Additions to the Record

At the close of the December 19, 1986, hearing, the record was left open for a period of thirty (30) days to allow Dr. Fry to submit a proposal for public service work to be done in lieu of suspension of his medical license, as well as to provide documentation to verify his claim that he had completed sufficient additional Category I C.M.E. credits during the 1985-1986 biennium to make up for his twenty-three (23) hour deficiency for the 1983-1984 biennium. The following documents were received within this thirty (30) day period and are hereby admitted into the record in this matter:

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'88 APR -5 P1:31

1. January 9, 1987, letter to the State Medical Board from W. Clare Reese, M.D., Program Director, Family Practice Center, Youngstown, with regard to Dr. Fry's proposal to obtain thirty (30) hours of volunteer work.
2. January 16, 1987, letter to the State Medical Board from Dr. Fry enclosing a listing and partial documentation of C.M.E. credits earned during the 1985-1986 biennium.

FINDINGS OF FACT

1. In completing his renewal application for the 1985-1986 registration period, Gene D. Fry, M.D., certified that he had completed during the 1983-1984 biennium the requisite hours of Continuing Medical Education (C.M.E.), as required by Section 4731.281, Ohio Revised Code.

This fact is established by State's Exhibit #1.

2. Thereafter, in connection with a random audit, as authorized by Section 4731.281, Ohio Revised Code, the State Medical Board of Ohio by letter dated November 5, 1985, instructed Dr. Fry to provide documentation of his C.M.E. completed during the 1983-1984 biennium. On December 4, 1985, Dr. Fry provided documentation of 1983-1984 C.M.E. credits, only eight (8) hours of which qualified as Category I credits. Upon further investigation, the staff of the State Medical Board discovered that Dr. Fry had earned for that biennium an additional nine (9) hours of Category I credits, for a total of seventeen (17) hours. The Continuing Medical Education Program certified by the Ohio State Medical Association and approved by the State Medical Board pursuant to Section 4731.281, Ohio Revised Code, requires for each biennial period the completion of one-hundred (100) hours of C.M.E., at least forty (40) hours of which must be in Category I. Therefore, Dr. Fry has a twenty-three (23) hour deficiency in Category I C.M.E. credits for the 1983-1984 biennial period.

These facts are established by State's Exhibits #2 through #4 and by the admission of Dr. Fry (Tr. at 11).

3. At the close of hearing, the record in this matter was held open for thirty (30) days to allow Dr. Fry to submit documentation to verify his claim that he had completed enough (at least 63) Category I C.M.E. credits during the 1985-1986 biennium to satisfy not only the forty (40) hour requirement for that biennium, but also the twenty-three (23) hour deficiency for the previous biennium. Dr. Fry was instructed to direct such documentation to the attention of this Hearing Examiner. On January 22, 1987, Dr. Fry sent a listing purporting to show completion of 60.5 Category I credits during 1986; however, supporting documentation was provided for only fourteen (14) of these credits. To date, Dr. Fry has submitted no further documentation of C.M.E. credits earned.

These facts are established by testimony of Dr. Fry (Tr. at 11), by the hearing record (Tr. at 16-22), and by the post-hearing documentation admitted to the record in this matter.

CONCLUSIONS

'88 APR -5 P1:31

1. The failure of Gene D. Fry, M.D., to complete the requisite Continuing Medical Education for the 1983-1984 biennium, as he had certified on his renewal application, constitutes violation of both Section 4731.281, Ohio Revised Code, and Rule 4731-10-03, Ohio Administrative Code.
2. Consequently, Dr. Fry's failure to obtain the requisite Continuing Medical Education constitutes violation of Section 4731.22(B)(16), Ohio Revised Code, as in effect prior to March 17, 1987: "Violating..., directly or indirectly,...any provision of this chapter (Chapter 4731.) or any rule promulgated by the Board", to-wit: Section 4731.281, Ohio Revised Code, and Rule 4731-10-03, Ohio Administrative Code.
3. Further, Dr. Fry's acts in certifying to the State Medical Board that he had completed the statutorily required Continuing Medical Education when he had not, in fact, done so, constitutes "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the Board", as that clause is used in Section 4731.22(A), Ohio Revised Code.

* * * * *

A physician is responsible for knowing the requirements of his profession. The relationship between C.M.E. and a physician's ability to deliver appropriate health care, reflecting current knowledge and skills, is obvious and vital. Dr. Fry indicated that he had received C.M.E. information, but had neglected to review it in a timely fashion, instead apparently relying upon the advice of a colleague to determine what would satisfy his C.M.E. requirements (Tr. at 10-11). Under such circumstances, Dr. Fry's claim that his false certification of C.M.E. credits was caused by his misunderstanding or confusion as to what constituted Category I, as opposed to Category II, credits cannot excuse his actions and omissions in this matter. Further, Dr. Fry's failure to avail himself of the opportunity he was given to verify his claim that he had made up his Category I deficiency in the following biennium does not speak well for his good faith in this matter.

PROPOSED ORDER

88 APR -5 P1:31

M.D.

It is hereby ORDERED:

1. That the license of Gene D. Fry, M.D., to practice medicine and surgery in Ohio be suspended for an indefinite term, which shall last a minimum of thirty (30) days.
2. Further, that the State Medical Board of Ohio shall not consider reinstatement of Dr. Fry's certificate unless and until all the following minimum requirements are met:
 - a. Dr. Fry shall submit an application for reinstatement accompanied by appropriate fees.
 - b. On or before December 31, 1988, or as otherwise directed by the Board, Dr. Fry shall provide documentation satisfactory to the Board of his satisfactory completion of eighty-nine (89) hours of Category I Continuing Medical Education, in addition to the thirty-one (31) hours for which he has already provided satisfactory documentation, during the period from January 1, 1983, to December 31, 1988. In addition, Dr. Fry shall submit a log of at least one-hundred twenty (120) hours of Category II Continuing Medical Education completed by him during the period from January 1, 1985, to December 31, 1988. It shall be Dr. Fry's responsibility to work with appropriate Board staff to ascertain what is satisfactory documentation and to obtain the same.
 - c. Dr. Fry shall supply documentation acceptable to the Board of satisfactory completion of one-hundred (100) hours of approved Continuing Medical Education, at least forty (40) hours of which shall be in Category I, for each complete biennium, if any, during which his certificate remains suspended after the 1987-1988 biennium.
 - d. In the event that Dr. Fry has not been engaged in the active practice of medicine for a period of more than two (2) years prior to his application for reinstatement, Dr. Fry shall take and pass the SPEX examination or any similar written examination which the Board may deem appropriate to assess his clinical competency.
3. Subsequent to reinstatement of his certificate, Dr. Fry shall remain on probation for three (3) additional biennial registration periods. During this probationary period, Dr. Fry shall:
 - a. Submit documentation acceptable to the Board of satisfactory completion of the requisite hours of Continuing Medical Education.

4. Upon successful completion of probation, Dr. Fry's certificate will be fully restored.

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


Lauren Lubow
Attorney Hearing Examiner

88 APR -5 P 1:31

OHIO
MEDICAL

EXCERPT FROM THE MINUTES OF MAY 11, 1988

REPORTS AND RECOMMENDATIONS

Ms. Nester left the meeting at this time.

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

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

Dr. Stephens asked if each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of Thomas J. Markoski, D.O., Judith A. Wolfe, M.D., Mark P. Namey, D.O., Gene D. Fry, M.D., Clarence A. DeLima, M.D., and Harry H. Hillier, D.O. A roll call was taken:

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

.....
REPORT AND RECOMMENDATION IN THE MATTER OF GENE D. FRY, M.D.

.....
DR. GRETTER MOVED TO APPROVE AND CONFIRM MS. LUBOW'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF GENE D. FRY, M.D. DR. BARNES SECONDED THE MOTION.

.....
A roll call vote was taken on Dr. Gretter's motion to approve and confirm:

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

The motion carried.

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

August 14, 1986

Gene D. Fry, M.D.
4617 Logan Way
Hubbard, Ohio 44425

Dear Doctor Fry:

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. In completing your renewal application card for registration of your certificate to practice medicine or surgery for the current biennial registration period, you did certify that you completed during the last biennium the requisite hours of continuing medical education, as required by Section 4731.281, Ohio Revised Code.
2. By letter dated November 5, 1985, the State Medical Board of Ohio instructed you to provide documentation of your continuing medical education completed during the last biennium. You responded by correspondence received December 4, 1985, documenting at least sixty (60) hours of Category II credit, but only eight (8) hours of Category I credit. Further investigation by the staff of the State Medical Board revealed that you obtained an additional nine(9) hours of Category I credit, for a total of seventeen (17) hours. The Continuing Medical Education Program certified by the Ohio State Medical Association and approved by the Ohio State Medical Board pursuant to Section 4731.281, Ohio Revised Code, a copy of which Program is attached hereto and incorporated by reference herein, requires the completion of one-hundred (100) hours of Continuing Medical Education, at least forty (40) hours of which shall be in Category I.

Your failure to complete the requisite Continuing Medical Education, as alleged in the above Paragraph (2), constitutes a violation of Section 4731.281, Ohio Revised Code.

August 14, 1986

Further, such failure to obtain the requisite Continuing Medical Education 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 clause is used in Section 4731.22(B)(16), Ohio Revised Code, to wit: Section 4731.281, Ohio Revised Code, and Rule 4731-10-03, Ohio Administrative Code.

Further, your acts in certifying to the State Medical Board that you had completed the statutorily required continuing medical education, as set forth in the above Paragraph (1), when you had not, in fact, done so, constitutes "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the Board," as that clause is used in Section 4731.22(A), 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 Sections 4731.22 and 4731.281, Ohio Revised Code, and Rules 4731-10-03, Ohio Administrative Code, are enclosed for your information and review.

Very truly yours,



Henry G. Cramblett, M.D.
Secretary

HGC:caa

enclosures

CERTIFIED MAIL RECEIPT NO. P 569 361 861
RETURN RECEIPT REQUESTED