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

June 16, 1989

Harvey J. Snyder, Jr., M.D.
1122 Robinson Avenue
Barberton, Ohio 44203

Dear Doctor Snyder:

Please find enclosed copies of the Entry of Order; the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on June 14, 1989, including Motions approving the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal may be taken to the Franklin County Court of Common Pleas only.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Henry G. Cramblett, M.D.
Secretary

HGC:em
Enclosures

CERTIFIED MAIL NO. P 746 510 486
RETURN RECEIPT REQUESTED

cc: Willliam J. Brown, Esq.

CERTIFIED MAIL NO. P 746 510 487
RETURN RECEIPT REQUESTED

Mailed June 27, 1989

STATE OF OHIO
STATE MEDICAL BOARD

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board; and attached excerpt of Minutes of the State Medical Board, meeting in regular session on June 14, 1989, including Motions approving the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Harvey J. Snyder, Jr., 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

June 16, 1989
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

HARVEY J. SNYDER, JR., M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 14th day of June, 1989.

Upon the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, Medical Board, in this matter designated pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the modification, approval and confirmation by vote of the Board on June 14, 1989, the following Order is hereby entered on the Journal of the State Medical Board for the 14th day of June, 1989.

It is hereby ORDERED:

1. That the current application of Harvey J. Snyder, Jr., M.D., for reinstatement of his certificate to practice medicine and surgery in Ohio shall be and is hereby DENIED.

2. The Board shall not consider reinstatement of Dr. Snyder's certificate to practice unless and until all the following minimum requirements are met:

   a. Dr. Snyder shall submit an application for reinstatement accompanied by appropriate fees.

   b. Dr. Snyder shall submit to the Board and receive its approval for a plan of practice in Ohio which, unless and until otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Snyder's activities will be directly supervised and overseen by another physician approved by the Board.

   c. Dr. Snyder shall take and pass the SPEX examination or any similar written examination which the Board deems appropriate to assess his clinical competency.

   d. Dr. Snyder shall take and pass an examination to be administered by the Board or its designee related to the content of Ohio statutes and

rules of the Board relating to the practice of medicine and surgery. If Dr. Snyder fails this examination, he must wait one (1) month between re-examinations.

3. Upon reinstatement, Dr. Snyder's certificate to practice medicine and surgery in Ohio shall be limited and restricted, unless and until otherwise determined by the Board, to practice in a supervised structured environment in which Dr. Snyder's activities will be directly supervised and overseen by another physician approved by the Board. Dr. Snyder shall obtain the Board's prior approval for any alterations to the practice plan which was approved by the Board prior to the reinstatement of his certificate to practice. In the event that Dr. Snyder's supervising physician under the approved practice plan becomes unable or unwilling to so serve, Dr. Snyder shall immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Snyder shall refrain from practicing unless and until such supervision is in place, unless otherwise determined by the Board. In any event, Dr. Snyder shall not be permitted to engage in the practice of obstetrics or gynecology.

4. Further, upon reinstatement, Dr. Snyder's certificate shall be subject to the following probationary terms, conditions, and limitations for a period of eight (8) years:

   a. Dr. Snyder shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.

   b. Dr. Snyder shall submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the conditions of probation.

   c. Dr. Snyder shall appear in person for interviews before the full Board or its designated representative at three (3) month intervals, or as otherwise requested by the Board.

Harvey J. Snyder, Jr., M.D.

d. The Board shall require quarterly reports in writing from Dr. Snyder's supervising physician, which reports shall comment specifically upon the nature of Dr. Snyder's case load, the quality of his patient care, and any problem areas identified. Dr. Snyder shall ensure that these reports are submitted to the Board on a quarterly basis, or as otherwise directed by the Board.

e. In the event that Dr. Snyder should leave Ohio for three (3) continuous months, or reside or practice outside the State, Dr. Snyder must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period.

f. If Dr. Snyder violates probation in any respect, the Board, after giving Dr. Snyder notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate to practice.

g. Upon successful completion of probation, Dr. Snyder's certificate will be fully restored except for those limitations and restrictions set forth in paragraph 3, above.

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

June 16, 1989

Date

REPORT AND RECOMMENDATION
IN THE MATTER OF HARVEY J. SNYDER, JR., M.D.

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The Matter of Harvey J. Snyder, Jr., M.D., came on for hearing before me, Wanita J. Sage, Esq., Hearing Examiner for the State Medical Board of Ohio, on February 15, 1989. On March 16, 1989, the hearing record was reopened until March 31, 1989, for submission of additional information (see V., below).

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

A. By letter of July 13, 1988 (State's Exhibit #1), the State Medical Board notified Harvey J. Snyder, Jr., M.D., that it proposed to take disciplinary action against or to refuse to reinstate his certificate to practice medicine and surgery in Ohio for one or more of the following reasons:

1. By an August 13, 1980, Order of the State Medical Board, Dr. Snyder's certificate to practice medicine and surgery was limited, prohibiting him from engaging in obstetrics practice and from rendering prenatal or postnatal care. This Order was based upon the Board's findings that Dr. Snyder had committed acts in violation of Sections 4731.22(B)(2), (B)(6), and (B)(15), Ohio Revised Code, as in effect prior to August 27, 1982. The Board realleged that the acts of Dr. Snyder underlying the Board's Order violated Sections 4731.22(B)(2), (6), and (15), Ohio Revised Code, as in effect at that time.

2. By Order of December 2, 1981, the State Medical Board suspended Dr. Snyder's certificate to practice medicine and surgery for an indefinite term, based upon its findings that he had committed acts in violation of the Board's previous Order and in violation of Section 4731.22(B)(6), Ohio Revised Code. The Board realleged that the acts of Dr. Snyder underlying the Board's December 2, 1981, Order violated Section 4731.22(B)(6), Ohio Revised Code, and the Board's August 13, 1980, Order.

3. On or about September 14, 1983, the Summit County Common Pleas Court entered an Order affirming the State Medical Board's December, 1981, Order of suspension and vacating that court's previous stay of the Board's Order. The Board alleged that Dr. Snyder's certificate to practice medicine and surgery was therefore suspended as of September, 1983, but that he continued to practice medicine and surgery in Ohio through at least March 21, 1985. Such acts were alleged to constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board", as that clause is used in Section 4731.22(B)(16), Ohio Revised Code (as in effect prior to March 17, 1987), to wit: Section 4731.41, Ohio Revised Code, Practice of Medicine or

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Surgery Without Certificate. The Board further alleged that such acts demonstrated that Dr. Snyder lacked the good moral character required by Sections 4731.08 and 4731.222, Ohio Revised Code, for his certificate to be reinstated.

4. In addition, because Dr. Snyder's certificate to practice medicine and surgery had been suspended for more than two years, the State Medical Board alleged that he would be subject to the requirements of Section 4731.222, Ohio Revised Code.

Dr. Snyder was advised of his right to request a hearing in this Matter.

B. By letter received by the State Medical Board on July 27, 1988 (State's Exhibit #2), William J. Brown, Esq., requested a hearing on behalf of Dr. Snyder.

II. Appearances

A. On behalf of the State of Ohio: Anthony J. Celebrezze, Jr., Attorney General, by John C. Dowling, Assistant Attorney General

B. On behalf of the Applicant: Karl W. Schedler, Esq.

III. Testimony Heard

A. Presented by the State

1. Harvey J. Snyder, Jr., M.D., as on cross-examination

B. Presented by the Applicant

1. Harvey J. Snyder, Jr., M.D.

2. Marwan Adjan, M.D.

3. Ying Teh Yu, M.D.

IV. Exhibits Examined

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

A. Presented by the State

1. State's Exhibit #2A: July 27, 1988, letter to the State Medical Board from William J. Brown, Esq., requesting a hearing on behalf of Dr. Snyder (duplicate of State's Exhibit #2 except for date-received stamp).

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2. State's Exhibit #3: August 10, 1988, letter to William J. Brown, Esq., from the State Medical Board advising that a hearing initially set for August 11, 1988, was postponed pursuant to Section 119.09, Ohio Revised Code.

3. State's Exhibit #4: October 31, 1988, letter to Attorney Brown from the State Medical Board scheduling the hearing for December 21, 1988.

4. State's Exhibit #5: December 16, 1988, Entry of this Hearing Examiner confirming the continuance of the December 21, 1988, hearing and rescheduling it for February 15, 1989.

5. State's Exhibit #6: Certified copy of the State Medical Board's Findings and Order in the matter of Harvey J. Snyder, Jr., M.D., as approved at its August 13, 1980, meeting.

6. State's Exhibit #7: Certified copy of the State Medical Board's Findings and Order in the matter of Harvey J. Snyder, Jr., M.D., as approved at its December 2, 1981, meeting.

7. State's Exhibit #8: September 14, 1983, Judgment Order of the Summit County Common Pleas Court, Case No. CV 81 12 3266, Snyder v. State Medical Board.

8. State's Exhibit #9: May 2, 1988, letter to the State Medical Board from William J. Brown, Esq., advising that Dr. Snyder had practiced medicine from September, 1983, to March, 1985, on advice of counsel.

9. State's Exhibit #10: Decision of the Court of Appeals for Summit County, Snyder v. State Medical Board, 18 Ohio App. 3d 47 (1984).

10. State's Exhibit #11: Dr. Snyder's September 25, 1986, Application for Reinstatement of Certificate to Practice Medicine and Surgery.

11. State's Exhibit #12: August 24, 1987, second request letter to Dr. Snyder from the State Medical Board for additional information with regard to Form II (Resume of Activities) of his Application for Reinstatement.

B. Presented by the Applicant

1. Applicant's Exhibit A: June 18, 1984, letter to the State Medical Board from Robert Bruce Henn, Esq., stating that Dr. Snyder had continued to practice medicine on the advice of counsel and that Judge Baird's attempt to vacate his previously granted stay of the Board's Order was ineffective under Section 119.12, Ohio Revised Code.

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V. Other Matters

By Entry of March 16, 1989, this Hearing Examiner reopened the hearing record until March 31, 1989, for the submission of additional evidence and legal briefs with regard to the issue of the legality of Dr. Snyder's practice of medicine from September 17, 1983, to March 21, 1985. On March 31, 1989, both the State and the Respondent submitted briefs on this issue. In addition, the State submitted a certified copy of the December 11, 1981, Journal Entry of Judge Baird, Summit County Common Pleas Court, staying the Order of the State Medical Board. The following documents are hereby admitted to the record in this Matter:

A. The Hearing Examiner's March 16, 1989, Entry and Order Reopening the Hearing Record;

B. The State's March 31, 1989, Post-Hearing Brief, with Exhibits A and B consisting of the December 11, 1981, Journal Entry of the Summit County Common Pleas Court and the September 14, 1983, Judgment Order of the Summit County Common Pleas Court; and

C. The Respondent's March 31, 1989, Memorandum of Law, with Exhibit A consisting of a June 7, 1984, letter to Dr. Snyder from the State Medical Board advising that the previous stay of the Board's Order had been vacated and that the suspension of Dr. Snyder's certificate was therefore effective.

FINDINGS OF FACT

1. On August 13, 1980, the State Medical Board of Ohio approved and confirmed Findings and an Amended Order in the Matter of Harvey J. Snyder, Jr., M.D., as set forth in State's Exhibit #6, which exhibit is fully incorporated herein by reference. Based upon its Findings of Fact and Conclusions indicating that Dr. Snyder had committed acts in violation of Sections 4731.22(B)(2), (B)(6), and (B)(15), Ohio Revised Code (as in effect prior to August 27, 1982), the State Medical Board ordered that Dr. Snyder's certificate to practice medicine and surgery be limited to prohibit him from engaging in obstetrics practice in all settings, from rendering prenatal care to pregnant women, from rendering postnatal care to mothers or infants, and from delivering babies. The Board's Order further required that Dr. Snyder make his clinical records available for review by an agent of the State Medical Board on a monthly basis.

These facts are established by State's Exhibit #6.

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2. Although Dr. Snyder subsequently appealed the Board's Order of August 13, 1980, to the Summit County Common Pleas Court, he obtained no order from that court staying the execution of the Board's Order. Nevertheless, Dr. Snyder thereafter continued to practice obstetrics, including the providing of prenatal care and the delivering of babies. At the present hearing, Dr. Snyder claimed that he had done so upon the advice of the attorney he had retained at that time to represent his case on appeal.

   These facts are established by the testimony of Dr. Snyder (Tr. at 11-13, 17-22).

3. On December 2, 1981, the State Medical Board approved and confirmed Findings and an Order in the Matter of Harvey J. Synder, Jr., M.D., as set forth in State's Exhibit #7, which exhibit is fully incorporated herein by reference. Based upon its Findings of Fact and Conclusions indicating that Dr. Snyder had committed acts in violation of both the Board's August 13, 1980, Order and Section 4731.22(B)(6), Ohio Revised Code, the State Medical Board ordered that Dr. Snyder's certificate to practice medicine and surgery in Ohio be immediately suspended for an indefinite term.

   These facts are established by State's Exhibit #7.

4. Thereafter, Dr. Snyder appealed the Board's December 2, 1981, Order to the Summit County Common Pleas Court. On December 11, 1981, that court issued an order staying the execution of the Board's Order "until the matter before this court is finally adjudicated," but limiting Dr. Snyder's certificate to practice during the pendency of this appeal to prohibit him from engaging in obstetrics practice, providing prenatal and postnatal care, and delivering babies. Effective September 17, 1983, the Summit County Common Pleas Court affirmed the Board's December 2, 1981, Order and ordered that the previous stay order be "vacated and rendered null and void."

   These facts are established by Exhibit A of the State's Post-Hearing Brief and State's Exhibit #8.

5. Thereafter, Dr. Snyder continued to practice medicine and surgery in Ohio from September 17, 1983, to March 21, 1985, at which time all appeals had been exhausted. At hearing in the present matter, Dr. Snyder stated that he had been aware that the Summit County Common Pleas Court had attempted to vacate its stay order, but had continued to practice upon the advice of his attorney at that time. A June 18, 1984, letter (Applicant's Exhibit A) to the State Medical Board from Robert Bruce Henn, Esq., confirms that Dr. Snyder was so advised by his attorney.

   These facts are established by the testimony of Dr. Snyder (Tr. at 14-16, 22-26, 29, 37), State's Exhibit #8, and Applicant's Exhibit A.

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6. On or about April 18, 1984, the Court of Appeals for Summit County affirmed the decision of the Summit County Common Pleas Court, upholding the Board's Order of December 2, 1981. In finding, among other things, that Dr. Snyder had unlawfully practiced obstetrics in violation of the terms of the Board's August 13, 1980, Order, the Court of Appeals specifically stated that Dr. Snyder's claim that he had done so in reliance upon the advice of his attorney was not a valid defense in that the August, 1980, Order had expressly stated that it was effective immediately and no stay of that Order had been granted pending appeal. Dr. Snyder admitted that he had continued to practice obstetrics after the Board's August, 1980, Order, but stated that he had quit practicing obstetrics when, apparently at some time before June, 1981, he had obtained new counsel who had advised him that such practice was illegal. After the Board's December, 1981, Order, he had continued practicing general medicine pursuant to the stay order of the Summit County Common Pleas Court, but had not practiced obstetrics.

   These facts are established by the testimony of Dr. Snyder (Tr. at 11-16, 18-26) and by State's Exhibits #7 and #10.

7. On his application for reinstatement submitted to the Medical Board in September, 1986, Dr. Snyder failed to account for his activities from September, 1983, to March, 1985, as required by Form II of that application. This information was requested by the State Medical Board on October 1, 1986, and again on October 27, 1986, and August 24, 1987. The requested information was supplied by letter of May 2, 1988, from Dr. Snyder's attorney at that time, advising that Dr. Snyder had practiced medicine upon the advice of counsel during the period in question.

   These facts are established by State's Exhibit #9, #11, and #12.

8. Dr. Snyder has not been engaged in the active practice of medicine or surgery for approximately four years. During that time, he has attended two or three lectures and has read medical journals. Dr. Snyder stated at hearing, "I can still speak the jargon. I don't know if I could still handle the practice, but I think I could." Dr. Snyder admitted that he was not familiar with either provisions of the Ohio Revised Code or Rules of the Board relating to the practice of medicine.

   These facts are established by the testimony of Dr. Snyder (Tr. at 32-33).

9. Both Dr. Marwan Adjan and Dr. Ying Teh Yu testified on behalf of Dr. Snyder. Both of these physicians stated that Dr. Snyder had, in the past, performed a valuable community service by providing care to patients who were unable to afford hospitalization or expensive medical care.

   These facts are established by the testimony of Dr. Adjan (Tr. at 38-41) and the testimony of Dr. Yu (Tr. at 42-46).

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CONCLUSIONS

1. State's Exhibit #6, which includes a detailed summary of testimony presented at Medical Board hearings held on February 12 and March 11, 1980, constitutes reliable, substantial, and probative evidence that the acts of Harvey J. Snyder, Jr., M.D., underlying the Board's Order of August 13, 1980, violate:

   a. Section 4731.22(B)(2), Ohio Revised Code: "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;"

   b. Section 4731.22(B)(6), Ohio Revised Code: "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;" and

   c. Section 4731.22(B)(15), Ohio Revised Code (as in effect prior to August 27, 1982): "The violation of any provision of a code of ethics of a national professional organization...."

2. State's Exhibit #7, which includes a detailed summary of testimony presented at Medical Board hearings held on March 19 and June 24, 1981, constitutes reliable, substantial, and probative evidence that the acts of Dr. Snyder underlying the Board's Order of December 2, 1981, violate Section 4731.22(B)(6), Ohio Revised Code, and the terms of the Board's August 13, 1980, Order.

3. The evidence presented in this Matter is insufficient to support a conclusion that Dr. Snyder's practice of medicine from September 17, 1983, to March 21, 1985, constituted violation of Sections 4731.22(B)(16) and/or 4731.41, Ohio Revised Code. The language of Section 119.12, Ohio Revised Code--as in effect on December 11, 1981, when the Summit County Common Pleas Court granted a stay of the Board's December 2, 1981, Order--is set forth at page 3 of Respondent's Memorandum of Law. That language would appear to prohibit the Summit County Common Pleas Court from vacating its previously granted stay order in the event an appeal was taken from its judgment. Such appeal was taken subsequent to that court's attempt to vacate its stay order. Thus, pursuant to statute, the court's attempt to vacate its stay order was ineffective and that stay order was required to be given "full force and effect until the matter is finally adjudicated." It was not until August 27, 1982, that Section 119.12 was amended to limit the duration of stay orders to 15 months. As pointed out in Respondent's Brief (pp. 5-6), the 1982 amendment cannot be applied retroactively to limit the duration of the 1981 stay order or to permit the court to vacate it in view of Dr. Snyder's subsequent appeal of the court's judgment. As

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stated by the Respondent, a statute, unless expressly made retroactive, cannot be applied retroactively to deprive an individual of a substantative right. Certainly, the right to practice medicine (within the limits prescribed by the court) until the exhaustion of his appeals must be deemed a substantative right, which was granted to Dr. Snydeer by operation of law upon the court's issuance of the stay order in 1981. Therefore, it would appear that the advice of Dr. Snyder's attorney with regard to his practice from September, 1983, until the exhaustion of his appeals in March, 1985, was correct and that Dr. Snyder's reliance upon that advice was justified.

4. For the reasons set forth in Conclusion #3, above, a conclusion that Dr. Snyder's acts with regard to his practice from September, 1983, to March, 1985, demonstrate that he lacks the good moral character required by Sections 4731.08 and 4731.222, Ohio Revised Code, is not supported by the evidence. There was no showing that he violated the prohibition against his practice of obstetrics during this period.

5. Dr. Snyder has not been engaged in the active practice of medicine or surgery for a period of approximately four years. Therefore, he is subject to the provisions of Section 4731.222, Ohio Revised Code. This Section authorizes the Board to determine Dr. Snyder's fitness to resume practice before restoring his certificate to good standing. Under this section, the State Medical Board may require Dr. Snyder to pass an oral or written examination, or both, to determine his present fitness to resume practice; require him to obtain additional training and to pass an examination upon completion of such training; and/or restrict or limit the extent, scope, or type of his practice.

* * * * * * * *

The acts of Dr. Snyder underlying the Board's 1980 and 1981 Orders show, among other things, that Dr. Snyder was practicing below minimal standards of care for physicians to an alarming degree at that time. While those acts have already been considered and sanctioned by the Board in 1980 and 1981, the current Board may consider those acts for purposes of determining Dr. Snyder's present fitness to resume practice and of formulating appropriate terms and conditions for reinstatement of his license pursuant to Section 4731.222, Ohio Revised Code. Clearly, Dr. Snyder is not presently fit to resume prctice. Despite the Board's earlier findings that his practice was substandard, Dr. Snyder's testimony indicated that he had made no effort since at least 1985 to improve or increase his medical training and knowledge, other than attending two or three lectures and reading medical journals. Dr. Snyder himself expressed doubts about whether he could "still handle the practice." Further, he admitted that he was not familiar with provisions of law governing his profession. While witnesses for Dr. Snyder indicated that he had in the past performed a valuable community service by providing care to indigent patients, this Board must take stringent precautions to assure that any patients he may treat in the future receive quality care.

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PROPOSED ORDER

It is hereby ORDERED that:

1. The current application of Harvey J. Snyder, Jr., M.D., for reinstatement of his certificate to practice medicine and surgery in Ohio shall be and is hereby DENIED.

2. The Board shall not consider reinstatement of Dr. Snyder's certificate to practice unless and until all the following minimum requirements are met:

   a. Dr. Snyder shall submit an application for reinstatement accompanied by appropriate fees.

   b. Dr. Snyder shall submit to the Board and receive its approval for a plan of practice in Ohio which, unless and until otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Snyder's activities will be directly supervised and overseen by another physician approved by the Board.

   c. Dr. Snyder shall successfully complete at least twenty-four (24) months of training in a post-graduate training program approved in advance by the State Medical Board. Such training shall be directly related to areas of practice set forth in the proposed plan of practice required by provision 2b, above.

   d. Dr. Snyder shall take and pass the SPEX examination or any similar written examination which the Board deems appropriate to assess his clinical competency.

   e. Dr. Snyder shall take and pass an examination to be administered by the Board or its designee related to the content of Ohio statutes and rules of the Board relating to the practice of medicine and surgery. If Dr. Snyder fails this examination, he must wait one (1) month between re-examinations.

3. Upon reinstatement, Dr. Snyder's certificate to practice medicine and surgery in Ohio shall be limited and restricted, unless and until otherwise determined by the Board, to practice in a supervised structured environment in which Dr. Snyder's activities will be directly supervised and overseen by another physician approved by the Board. Dr. Snyder shall obtain the Board's prior approval for any alterations to the practice plan which was approved the Board prior to the reinstatement of his certificate to practice. In the event that Dr. Snyder's supervising physician under the approved practice plan becomes unable or unwilling to so serve, Dr. Snyder shall immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as

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soon as practicable. Dr. Snyder shall refrain from practicing unless and until such supervision is in place, unless otherwise determined by the Board.

4. Further, upon reinstatement, Dr. Snyder's certificate shall be subject to the following probationary terms, conditions, and limitations for a period of eight (8) years:

   a. Dr. Snyder shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.

   b. Dr. Snyder shall submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the conditions of probation.

   c. Dr. Snyder shall appear in person for interviews before the full Board or its designated representative at three (3) month intervals, or as otherwise requested by the Board.

   d. The Board shall require quarterly reports in writing from Dr. Snyder's supervising physician, which reports shall comment specifically upon the nature of Dr. Snyder's case load, the quality of his patient care, and any problem areas identified. Dr. Snyder shall ensure that these reports are submitted to the Board on a quarterly basis, or as otherwise directed by the Board.

   e. In the event that Dr. Snyder should leave Ohio for three (3) continuous months, or reside or practice outside the State, Dr. Snyder must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period.

   f. If Dr. Snyder violates probation in any respect, the Board, after giving Dr. Snyder notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate to practice.

   g. Upon successful completion of probation, Dr. Snyder's certificate will be fully restored except for those limitations and restrictions set forth in paragraph 3, above.

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

Wanita J. Sage

Wanita J. Sage
Attorney Hearing Examiner

EXCERPT FROM THE MINUTES OF JUNE 14, 1989

REPORTS AND RECOMMENDATIONS

Dr. O'Day advised that the Findings and Orders appearing on this day's agenda are those in the matters of Paul C. Venizelos, M.D.; Lynda Hendershot, P.A., and Lindia L. Singer, P.A.; John E. Patton, P.A.; Sam Hill, D.O.; Linda M. Karbonit, D.O.; Victor L. Ramos, M.D.; Alan F. Knull, M.D.; Harvey J. Snyder, Jr., M.D.; Carlton Villier, D.P.M.; Jonathan W. Nusbaum, M.D.; Frank T. W. Chin, Jr., M.D.; William E. Masters, M.D.; and Amir S. Ali, M.D.

Dr. O'Day continued that since distribution of the agenda materials, the Office of the Attorney General filed a motion to strike additional evidence from the record in the matters of Paul C. Venizelos, M.D., and Carlton Villier, D.P.M. The following documents were filed on behalf of Dr. Knull: Notice of Change of Counsel; Objections to the Report and Recommendation; and a request for oral presentation. On behalf of Dr. Nusbaum, a notice of appearance of counsel and a motion for permission to orally address the Board were filed.

The Board at this time took time to read the above-referenced documents.

Dr. O'Day asked if each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of Paul C. Venizelos, M.D.; Lynda Hendershot, P.A., and Lindia L. Singer, P.A.; John E. Patton, P.A.; Sam Hill, D.O.; Linda M. Karbonit, D.O.; Victor L. Ramos, M.D.; Alan F. Knull, M.D.; Harvey J. Snyder, Jr., M.D.; Carlton Villier, D.P.M.; Jonathan W. Nusbaum, M.D.; Frank T. W. Chin, Jr., M.D.; William E. Masters, M.D.; and Amir S. Ali, M.D. A roll call was taken:

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

The motion carried.

.....

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

E. _RPT FROM THE MINUTES OF JUNE 14, 1989

REPORT AND RECOMMENDATION IN THE MATTER OF HARVEY J. SNYDER, JR., M.D.

Dr. O'Day stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and order in the above matter. No objections were voiced by Board Members present.

MR. ALBERT MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF HARVEY J. SNYDER, JR., M.D. DR. GRETTER SECONDED THE MOTION.

MS. ROLFES MOVED THAT THE PROPOSED ORDER IN THE MATTER OF HARVEY J. SNYDER, JR., M.D., BE AMENDED AS FOLLOWS:

A. To add the following to the end of Paragraph 3:

In any event Dr. Snyder shall not be permitted to engage in the practice of obstetrics or gynecology.

DR. ROTHMAN SECONDED THE MOTION.

Ms. Rolfes noted that the initial Order in this case limited Dr. Snyder's practice. A second hearing was held because Dr. Snyder continued to practice beyond the original limitations placed upon his license in the first case. The proposed amendment only reinforces the terms of the original Order.

Dr. Stephens stated that he has no problem with Ms. Rolfes' motion at all, but he expressed concern about the Order requiring postgraduate training, and suggested that the Board might instead require Dr. Snyder to pass the SPEX. Dr. Stephens stated that he does not think there is any place that will accept Dr. Snyder for postgraduate training.

Ms. Rolfes stated that Dr. Snyder has admitted that he has deficiencies since he has been unable to practice. She felt that the required training was in the public's best interest.

Dr. Rothman asked why the proposed limitation would be better than not allowing Dr. Snyder to practice at all.

Mr. Bumgarner stated that this case dates back to the Board's original action, when the Board imposed an Order limiting Dr. Snyder's license. Dr. Snyder was alleged to have violated the original limitation shortly after the Order took effect. The Board held a hearing and reached the decision that the limitation had been violated, and an indefinite suspension was imposed. Dr. Snyder has since requested restoration of the indefinitely suspended license. In reading the proposed order, there is a question as to whether or not the original limitation would stay intact. Ms. Rolfes' motion would ensure that it would.

A roll call vote was taken on Ms. Rolfes' motion:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Gretter	- aye
	Dr. Stephens	- aye
	Dr. Agresta	- aye
	Dr. Rothman	- aye
	Dr. Rauch	- abstain
	Mr. Albert	- aye
	Dr. Kaplansky	- aye
	Ms. Rolfes	- aye

The motion carried.

DR. AGRESTA MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF HARVEY J. SNYDER, JR., AS AMENDED. DR. ROTHMAN SECONDED THE MOTION.

DR. STEPHENS MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF HARVEY J. SNYDER, JR., M.D. TO DELETE SUBPARAGRAPH (c) OF PARAGRAPH 2. DR. ROTHMAN SECONDED THE MOTION.

Dr. Stephens stated that the above-mentioned condition of the Order requires Dr. Snyder to complete 24 months of training. Dr. Stephens stated that he does not feel that Dr. Snyder would be able to find a program to accept him, and he did not feel comfortable with the Board imposing a requirement which would be impossible for Dr. Snyder to fulfill.

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

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Gretter	- aye
	Dr. Stephens	- aye
	Dr. Agresta	- aye
	Dr. Rothman	- aye
	Dr. Rauch	- abstain
	Mr. Albert	- aye
	Dr. Kaplansky	- aye
	Ms. Rolfes	- nay

The motion carried.

DR. GRETTER MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF HARVEY J. SNYDER, JR., M.D., AS AMENDED. DR. STEPHENS SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Gretter	- aye
	Dr. Stephens	- aye
	Dr. Agresta	- aye
	Dr. Rothman	- aye

Dr. Rauch	- abstain
Mr. Albert	- aye
Dr. Kaplansky	- aye
Ms. Rolfes	- aye

The motion carried.

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

July 13, 1988

Harvey J. Snyder, Jr., M.D.
1122 Robinson Avenue
Barberton, OH 44203

Dear Doctor Snyder:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation for one or more of the following reasons:

(1) On or about August 13, 1980, the State Medical Board of Ohio approved and confirmed the Findings and Order in the matter of Harvey J. Snyder, Jr., M.D., which are attached hereto (labeled "Attachment A") and incorporated by reference herein. Based on findings of fact and conclusions indicating that you had committed acts in violation of Sections 4731.22(B)(2), 4731.22(B)(6) and 4731.22(B)(15), Ohio Revised Code, the Order of the State Medical Board limited your certificate to practice medicine or surgery, prohibiting you from engaging in obstetrics practice in all settings, from rendering prenatal care to pregnant women, from rendering post-natal care to mothers or infants, and from delivering babies. The Order further required that you make your clinical records available for review by an agent of the Board on a monthly basis.

Your acts underlying the Board's order, as alleged in the above paragraph (1), individually and/or collectively, violate Sections 4731.22(B)(2), 4731.22(B)(6), and 4731.22(B)(15), Ohio Revised Code, as in effect prior to August 27, 1982, as set forth with particularity in Attachment A.

(2) On or about December 2, 1981, the State Medical Board of Ohio approved and confirmed the Report and Recommendation in the Matter of Harvey J. Snyder, Jr., M.D., which is attached hereto (labeled "Attachment B") and incorporated by reference herein. Based on findings of fact and conclusions indicating that you had committed acts in violation of the Board's Order as described in the above paragraph (1), and in violation of Section 4731.22(B)(6), Ohio Revised Code, the Order of the State Medical Board suspended your certificate to practice medicine or surgery for an indefinite term.

Your acts underlying the Board's order, as alleged in the above paragraph (2), individually and/or collectively, violate Section 4731.22(B)(6), Ohio Revised Code, and the August 13, 1980 Order of the State Medical Board, as set forth with particularity in Attachment B.

(3) On or about September 14, 1983, the Court of Common Pleas of Summit County, Ohio entered an Order affirming the Order of the State Medical Board as described in the above paragraph (2), and vacating its previous Order suspending the Board's Order pending appeal. Your certificate to practice medicine or surgery was therefore suspended as of September 17, 1983. During the period beginning on or about September 17, 1983, and continuing through at least March 21, 1985, you continued to practice medicine or surgery in Ohio while your certificate remained suspended.

Such acts in the above paragraph (3), 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 this chapter or any rule promulgated by the Board", as that clause is used in Section 4731.22(B)(16), Ohio Revised Code (as in effect prior to March 17, 1987), to wit: Section 4731.41, Ohio Revised Code, <u>Practice of Medicine or Surgery without Certificate</u>.

Further, such acts in the above paragraph (3), individually and/or collectively, demonstrate that you lack the good moral character required by Sections 4731.08 and 4731.222, Ohio Revised Code, for your certificate to be reinstated.

(4) In addition to the above grounds, because your certificate to practice medicine or surgery has been suspended for more than two (2) years, the State Medical Board may, pursuant to Section 4731.222, Ohio Revised Code, require you to pass an oral or written examination, or both, to determine your present fitness to resume practice; require you to obtain additional training and to pass an examination upon completion of such training; and/or restrict or limit the extent, scope, or type of your practice.

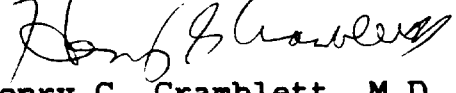
Pursuant to Chapter 119, Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, that request must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Henry G. Cramblett, M.D.
Secretary

HGC:jmb
Encls.

CERTIFIED MAIL #P746 510 030
RETURN RECEIPT REQUESTED

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

March 18, 1985

Mr. B. Douglas Anderson
Assistant Attorney General
30 E. Broad St.
Columbus, OH 43215

Re: Harvey J. Snyder, Jr.,
v. Ohio State Medical Board
No. 84-1334

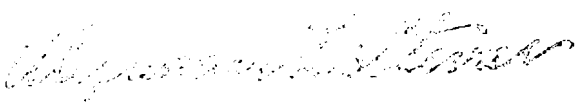
Dear Mr. Anderson:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied. Justice Powell took no part in the consideration or decision of this petition.

Very truly yours,

Alexander L. Stevas, Clerk



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

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

SC-18

BARRETT BROTHERS, PUBLISHERS, SPRINGFIELD, OHIO

THE SUPREME COURT OF THE STATE OF OHIO

OHIO STATE
MEDICAL BOARD

THE STATE OF OHIO,
City of Columbus.

'84 OCT 29 P3:54 19 84 *TERM*

To wit: October 10, 1984

Harvey J. Snyder, Jr.,
Appellant,

vs.

State of Ohio Medical Board,
Appellee.

No. 84-978

REHEARING

It is ordered by the court that rehearing in this case is denied.

RECEIVED
OCT 1 2 1984
ADMINISTRATIVE AGENCIES S

FOR YOUR
INFORMATION
ONLY
NOT FOR FILING

CHIEF JUSTICE

W. Brown, J., not participating.

I, JAMES Wm. KELLY, of Clerk the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal No.....Page.....

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this 10th *day of* October, *19* 84

JAMES WM. KELLY *Clerk.*

By ..... *Deputy.*

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MAY 21 1984
ADMINISTRATIVE AGENCIES SECTION

RECEIVED
OHIO STATE
MEDICAL BOARD

JAMES B McCARTHY
MAY 17 11 18 AM '84
SUMMIT COUNTY
CLERK OF COURTS

'84 MAY 23 A9:39

COURT OF APPEALS
NINTH JUDICIAL DISTRICT
SUMMIT COUNTY, OHIO

HARVEY J. SNYDER, M.D.

Plaintiff-Appellant

-vs-

STATE OF OHIO
STATE MEDICAL BOARD

Defendant-Appellee

C.A. NO. 11346

NOTICE OF APPEAL

Notice is hereby given that Harvey J. Snyder, M.D. hereby appeals to the Supreme Court of Ohio from the judgment entered in this action by the Court of Appeals for the Ninth Judicial District on the 18th day of April, 1984.

The case involves a substantial constitutional question of the Constitution of Ohio and the Constitution of the United States.

The case involves a question of public interest.

Bernard L. Moutz
Bernard L. Moutz
Attorney at Law
3808 Mogadore Road
Mogadore, Ohio 44260
216-628-8444

and

Robert B. Henn
Attorney at Law
P. O. Box 611
Medina, Ohio 44258
216-722-6640

I hereby certify that a copy of the within NOTICE was transmitted to counsel of record on the 17TH day of MAY 1984, by depositing a copy thereof in the United States Mail.

Bernard L. Moutz

RECEIVED

APR 24 1984

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ADMINISTRATIVE AGENCIES SECTION

STATE OF OHIO)
) ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

HARVEY J. SNYDER, JR., M.D. Plaintiff-Appellant v. STATE OF OHIO, STATE MEDICAL BOARD Defendant-Appellee	C.A. NO. 11346 APPEAL FROM JUDGMENT ENTERED IN THE COMMON PLEAS COURT COUNTY OF SUMMIT, OHIO CASE NO. CV 81 12 3266

DECISION AND JOURNAL ENTRY

Dated: April 18, 1984

This cause was heard February 2, 1984, upon the record in the trial court, including the transcript of proceedings, and the briefs. It was argued by counsel for the parties and submitted to the court. We have reviewed each assignment of error and make the following disposition:

GEORGE, J.

The appellant, Harvey J. Snyder, Jr., appeals the judgment of the trial court affirming the Ohio State Medical Board's decision to revoke Snyder's license to practice medicine in Ohio. This court affirms the judgment.

On August 13, 1980, the board issued an order prohibiting Snyder from practicing obstetrics, rendering any pre-natal or post-natal care, and delivering babies. With the exception of these limitations, he was still permitted to practice

APR 24 1984

medicine. The board's decision was affirmed by the trial court and the court of appeals.

After the board's decision of August 13, 1980, Snyder continued to practice obstetrics despite the limitations on his medical license. On December 2, 1981, the board indefinitely suspended Snyder's license. This order was affirmed by the trial court. Snyder appeals to this court raising the following assignments of error.

> "1. The State Medical Board of Ohio denied appellant due process of law by its failure to present reliable, probative and substantial evidence to support its order indefinitely suspending the right of appellant to practice medicine and surgery in the State of Ohio.
>
> "4. The Court of Common Pleas denied appellant due process of law by its failure to follow the mandate imposed upon it by O.R.C. Sec. 119.12."

Snyder was cited for violating R.C. 4731.22(B)(6) and (12); failing to conform to the minimal standards of care in his practice, and practicing medicine beyond the scope of his license. Snyder first argues that his actions were not beyond the scope of his license. He admitted that he continued his obstetrics practice after his license was limited by the board on August 13, 1980. However, he argues that he did so on the advice of his attorney, who informed him that he could continue practicing obstetrics while the board's order was being appealed.

The August 13, 1980, order of the board expressly stated that it was effective immediately. The record reveals that

APR 2 4 1984

Snyder was not granted a stay of this order pending appeal. As such, Snyder's subsequent obstetrics practice was beyond the scope of his license. Snyder's claim that he was relying on the advice of his attorney is no defense. This is the general rule in criminal cases. 25 Ohio Jurisprudence 3d 168, Criminal Law, Section 63. This rule clearly applies to civil actions. See generally, McCrary v. Jones (1941), 34 Ohio Law Abs. 612; and Link v. Wabash R.R. Co. (1962), 370 U.S. 626.

Next, Snyder argues that the evidence does not support the board's finding that he failed to conform to the minimal standards of care in his treatment of Elizabeth Cline. This court has reviewed the record and finds reliable, probative, and substantial evidence to support the board's decision.

Finally, Snyder argues that the trial court erred by refusing to weigh the evidence in determining whether Snyder failed to conform to the minimal standards of care. There was conflicting evidence concerning Snyder's medical skills. Upon appeal from the board's decision, the standard of review that guides the trial court is whether there exists reliable, probative, and substantial evidence to support the board's decision. R.C. 119.12. In Univ. of Cincinnati v. Conrad (1980), 63 Ohio St. 2d 108, 111, the Ohio Supreme Court defined this standard of review as follows:

> "***.
>
> "In Andrews, this court acknowledged that determining whether an agency order is supported by

APR 2 4 1984

> reliable, probative and substantial evidence essentially is a question of the absence or presence of the requisite quantum of evidence. Although this in essence is a legal question, inevitably it involves a consideration of the evidence, and to a limited extent would permit a substitution of judgment by the reviewing common pleas court."
>
> "***."

However, the court went on to state that:

> "***.
>
> "In undertaking this hybrid form of review, the court of common pleas must give due deference to the administrative resolution of evidentiary conflicts.***."

In the instant case, there was conflicting testimony given by medical experts concerning whether Snyder's treatment to Cline met the minimum standard of care in his practice. The trial court refused to weigh this testimony. In Arlen v. State (1980), 61 Ohio St. 2d 168, 174, the Ohio Supreme Court stated:

> "***The weight to be given to such expert opinion testimony depends upon the board's estimate as to the propriety and reasonableness, but such testimony is not binding upon such an experienced and professional board."
>
> "***."

Clearly, the board's judgment should not be second guessed by the trial court. Thus, the trial court was correct in refusing to reweigh the expert testimony. Rather, the court properly found that the requisite quantum of evidence was present to support the board's order. Accordingly, these assignments of error are overruled.

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ASSIGNMENTS OF ERROR

"2. The State Medical Board of Ohio denied (sic) equal protection under law by its failure to set forth the minimal standards of care of similar practitioners under the same or similar circumstances in which appellant found himself.

"3. The State Medical Board of Ohio denied appellant due process of law by a failure to produce evidence of violation of minimal standards of care of the general practice of medicine and surgery, exclusive of obstetrics."

In Arlen v. State, supra, 172-173, the Ohio Supreme Court stated:

"***.

"A medical disciplinary proceeding, such as in the instant cause, is a special statutory proceeding which purports to maintain sound professional conduct. The licensing board, which is comprised of individuals fitted by training and expertise to perform the duties imposed upon it, weighs and considers whether a certain act is one of 'reasonable care discrimination' or a departure from the 'minimal standards of care' within the medical profession."

"***."

A physician must conform to reasonable standards of medical care based upon that used by practitioners under similar circumstances. Each physician is therefore charged with the knowledge of the appropriate medical standard of care. For this reason, the medical board, which is in major part composed of physicians, does not require expert opinion testimony to establish minimal standards of care. The board has its own expertise and is capable of drawing its own conclusions as to whether Snyder failed to conform to the minimum standard of care.

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Accordingly, these assignments of error are overruled.

ASSIGNMENT OF ERROR 5

"The State Medical Board of Ohio denied appellant due process of law by its failure to consider written objections to the report and recommendation of its hearing officer before approval of the hearing officer's recommendation."

Snyder contends that the board failed to consider his objections to the hearing officer's report and recommendations. He argues that the trial court erred in excluding an affidavit purporting to represent the time spent by the board in reviewing his objections.

The record reveals that Snyder's objections were filed with the board and that these objections were subsequently considered. Evidence concerning the time taken by the board to read Snyder's objections is immaterial. As this court previously stated in Snyder v. State (October 21, 1981), Summit App. No. 10187, unreported, pg. 4, due process means the right to be heard. Snyder was entitled to notice, a hearing, proceedings according to law, and a judgment rendered on the facts adduced. Snyder was not denied due process of law. Thus, this assignment of error is overruled.

Accordingly, the judgment of the trial court is affirmed.

The court finds that there were reasonable grounds for this appeal.

We order that a special mandate, directing the County of Summit Common Pleas Court to carry this judgment into

APR 2 4 1984

execution, shall issue out of this court. A certified copy of this journal entry shall constitute the mandate, pursuant to App. R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App. R. 22(E).

Costs taxed to appellant.

Exceptions.

Presiding Judge
- for the Court -

QUILLIN, P. J.
MAHONEY, J.
CONCUR

APPEARANCES:

BERNARD L. MOUTZ, Attorney at Law, 3803 Mogadore Rd., Mogadore, OH 44260 for Plaintiff.
ROBERT B. HENN, Attorney at Law, 45 Public Square, Medina, OH 44256 for Plaintiff.
ANTHONY J. CELEBREZZE, JR., Attorney General, 30 E. Broad St., Columbus, OH 43215 for Defendant.

IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

HARVEY J. SNYDER, JR., M.D.	::	CASE NO. 81-12-3266
APPELLANT	::	
		JUDGE BAIRD
-vs-	::	
STATE OF OHIO THE STATE MEDICAL BOARD	::	NOTICE OF APPEAL
	::	#11346
APPELLEE	::	

Notice is hereby given that the Plaintiff, Harvey J. Snyder, Jr., M.D. hereby appeals to the Court of Appeals of Summit County, Ohio, Ninth Appellate District, from the Judgment Entry entered in this cause on September 14, 1983.

Bernard L. Moutz
Robert Bruce Henn
Attorneys for Appellant
3808 Mogadore Road
Mogadore, Ohio 44260
216-628-8444

I hereby certify that a copy of the within NOTICE was transmitted to counsel of record on the 16TH day of SEPT. 1983, by depositing a copy thereof in the United States Mail.

Bernard L. Moutz

SEP 1983

JAMES E. [illegible]
SEP 14 11 03 AM '83
SUMMIT COUNTY
CLERK [illegible]

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

HARVEY J. SNYDER, JR., M.D.	)	CASE NO. CV 81 12 3266
Appellant	)	JUDGE BAIRD
-vs-	)	
STATE OF OHIO, STATE MEDICAL BOARD	)	JUDGMENT ORDER
Appellee	)	

- - -

This cause came on for the Court's consideration of an appeal filed by Appellant, Harvey J. Snyder, Jr. (hereinafter "Snyder"), following a decision by the Ohio State Medical Board (hereinafter "Board") which revoked Appellant's license to practi medicine in the state of Ohio.

On November 15, 1979, Appellant was advised by the Board that he had been cited for six alleged violations of the Medical Practice Act, O.R.C. Chapter 4731. On February 12, 1980 and March 11, 1980 hearings were held before an officer of the Board at Snyder's request, at which times both Appellant and Appellee presented witnesses and conducted cross-examination. Following a review of all the evidence, including exhibits admitted at the hearings, the full Board issued an order on August 13, 1980, prohibiting Snyder from practicing obstetrics, rendering any pre-natal or post-natal care, and delivering babies. Snyder's license was only limited in these respects, and did not otherwise prohibit him from practicing medicine. This decision was affirmed on appeal by the Summit County Common Pleas Court and subsequently by the Ninth District Court of Appeals.

2 [illegible] SEP 1983

Snyder was then given the opportunity for another hearing on evidence of allegations similar to those which precipitated the Board's order of August 13, 1980. Appellant appeared before a hearing officer without counsel on March 19, 1981 and with counsel on June 24, 1981. Following this hearing, the full Board ordered that Snyder's license to practice medicine be indefinitely suspended, effective upon the date of the decision. It is this decision that is the subject of this appeal. This Court stayed the suspension of Snyder's license on December 11, 1981, pending the outcome of this appeal.

The Board cited Appellant for alleged violations of the Medical Practice Act, Chapter 4731 of the Ohio Revised Code, to-wit: practicing medicine beyond the scope of his license [O.R.C. § 4731.22(B)(12)], as limited by the Board's order of August 13, 1980; and failing to conform to minimal standards of care in his practice, which standards are required of similar practitioners under the same or similar circumstances. [O.R.C. § 4731.22(B)(6)].

Specifically, Snyder was cited by the Board for deliverin Rhianna Cline, daughter of one Elizabeth Cline, on or about September 25, 1980, in violation of the limitations on Snyder's license to practice medicine. Further, the Board charged that Snyder failed to meet minimum standards of care in the treatment of Elizabeth Cline and the delivery and treatment of her baby.

Section 4731.22, O.R.C., mandates that the Board take action to "limit, reprimand, revoke, suspend, place on probation, refuse to register or reinstate a certificate (to practice medicine)," for certain violations outlined in the statute,

20 SEP 1983

including those with which Snyder is charged. The decision as to the imposition of disciplinary action is discretionary with the Board, "to the extent permitted by law."

This appeal is governed by the provisions of O.R.C. § 119.12, which sets out specific limitations on the scope of the Court's review in administrative appeals such as this. Specifically,

> "The Court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record ... that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of such a finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law."

The Court must therefore determine whether:

1) there exists in the record reliable, probative, and substantial evidence that Appellant Snyder practiced medicine beyond the scope of his license, and

2) whether there exists in the record evidence that is reliable, probative, and substantial in nature to support the charge that Appellant Snyder departed from, or failed to conform to "minimal standards of care of similar practitioners under the same or similar circumstances."

With respect to the Court's first area of examination, Snyder's testimony at the hearing on June 24, 1981 reveals that he was treating Elizabeth Cline and at least one other woman for pre-natal and obstetrical care. He recalled that, prior to Elizabeth Cline's arrival at his office on September 24, 1978 he "had just delivered another woman at approximately, oh, eleven o'clock in the morning there at the office, and this other woman was still on the delivery table an hour or so later ... ."

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(T.O.P. p. 94). His testimony goes on to describe his treatment of Elizabeth Cline prior to and during her delivery.

Snyder testified he was aware of the order limiting his license by prohibiting him from practicing obstetrics, though he said he understood from his former attorney that a stay had been obtained on the order limiting his license, pending appeal of that decision. There is no evidence in the record to suggest that a stay of the Board's ruling had been applied for or granted. The record reflects that the last communication Snyder had from the Board at that time was the notification of the limitation placed on his license pursuant to the Board's order of August 13, 1980.

That order reads as follows:

> "The certificate to practice medicine and surgery of Harvey J. Snyder, Jr., M.D. is hereby limited as follows:
>
> > Dr. Snyder shall cease all obstetrical practice in all settings, including office, home, and hospital; shall not render any prenatal care to pregnant women; shall not render any post-natal care to mothers or infants, and shall not deliver babies . . .
>
> This order shall become effective immediately upon approval by the Board." (emphasis added)

The Board approved the order on August 13, 1980, and Snyder received a copy of the order on August 23, 1980. The content of the order does not appear to be confusing or ambiguous. The mandatory language is not conditioned upon a ruling on appeal, nor did it become operative at the direction of Snyder's attorne The limitations placed on Snyder's license to practice medicine in this state are clear to the Court from the above order, and should have been equally clear to Snyder. Yet within one month

of receiving that order, Snyder had resumed his obstetrical practice.

Appellant states that his attorneys advised him the order of the Board was not effective until the appeal had been taken, and that he could continue to practice obstetrics. Any reliance by Snyder on such advice was unreasonable and contrary to the finding of the Board as communicated to Snyder. The Ohio Revised Code makes no provision for limiting the liability of one who acts in contravention of an order of the Board on advice of attorney, but instead mandates that the Board disciplin one for practicing medicine beyond the scope of his license.

Appellant looks to the disposition of a complaint filed in Barberton Municipal Court on November 12, 1980 as support for his contention that he is not guilty of the violations with which he is charged by the Board in this case. The complaint alleged that Snyder was practicing obstetrics without a license, in violation of Ohio Revised Code § 4731.41. The Municipal Court construed the statute liberally, in favor of the defendant Snyder, and determined that Snyder's license had been "limited" but not "suspended" as charged in the complaint. Snyder was found not guilty of the offense as charged. This ruling is thus not determinative of the issue of whether or not Snyder practiced medicine beyond the scope of limitations placed on his license.

Snyder admitted: knowledge of the limitation on his license; practicing obstetrics in spite of that limitation; and delivering babies beyond the date when the Board's order became effective. The record thus provides reliable, probative, and substantial evidence, through Appellant's own testimony, that he

20 SEP 1983

did practice medicine beyond the scope of his license. The finding of the Board on this issue is therefore affirmed.

The question of whether or not Snyder acted in conformity with established procedures is a question of fact, requiring for its determination an analysis of the medical procedures and methods followed by Snyder in the care of Elizabeth Cline and the delivery of her baby. Both Appellant and Appellee offered testimony by physicians wherein a professional opinion was given as to whether or not Appellant's conduct fell within the minimum standards of care of practitioners under the same or similar circumstances. Physicians testifying for the Appellant related that methods used by Snyder were acceptable medical practice. Appellee's physicians testified that Snyder's methods were below the minimum standard of care. However,

> "expert testimony as to a standard of practice is not mandatory in a license revocation hearing and the (medical) board may rely on its own expertise to determine whether a physician failed to conform to minimum standards of care... [T]he need for expert opinion testimony is negated where the trier of facts is possessed of appropriate expertise and is capable of drawing its own conclusions and inferences ... (The) medical board is capable of interpreting technical requirements of the medical field and is quite capable of determining when a certain conduct falls below a reasonable standard of medical care." Arlen v. Ohio State Medical Board (1980), 61 O.S. 2d 168, 173.

Thus, the Medical Board can properly discount the testimony of any or all physicians or "experts" who testified at the hearing, and is free to draw its own conclusions from the facts as related concerning the events preceding and following the birth of Rhianna Cline. Appellant's arguments speak to the weight of the evidence presented, and appear to request a ruling

by this Court based on the weight Appellant alleges should have been given to the testimony of each witness. It is not the Court's prerogative to dictate to the Board which evidence shall be given greater weight. "The weight to be given to such expert opinion testimony depends on the board's estimate as to the propriety and reasonableness." Arlen, at 174.

Appellant argues that his medical procedures were acceptable, based upon the fact that the baby was resuscitated and survived. However, an analysis of procedures according to minimum standards of care depends largely upon the methodology employed in comparison to accepted standards of care by professionals under the same or similar circumstances. The results achieved through use of the particular procedures under examinatic are not dispositive of the question.

The Ohio Legislature has established procedures, through Chapter 47 of the Ohio Revised Code, whereby the Ohio State Medical Board is given the authority to police the members of its profession according to standards adopted by the profession. The findings of the Board are based upon the collective expertise of its members, all medical professionals. This Court's review of those findings is necessarily narrow in scope. As noted before, the Court is limited to an examination of the record before it to ensure that the Board's ruling is supported by the evidence therein.

The Court finds that there is ample reliable, probative, and substantial evidence in the record from which the Board could have concluded that Snyder departed from, or failed to conform to, "minimal standards of care of similar practitioners

under the same or similar circumstances" in his treatment of Elizabeth Cline, and in the delivery and subsequent treatment of Rhianna Cline.

It is therefore ORDERED that the December 2, 1981 order of the Ohio State Medical Board, whereby the license of Harvey J. Snyder, Jr. to practice medicine in the state of Ohio was indefinitely suspended, be and is hereby affirmed.

It is further ORDERED that the stay granted Appellant by order of this Court on December 11, 1981, be and is hereby vacated and rendered null and void.

This order shall become effective on the third day after its filing.

Costs to Appellant.

JUDGE WILLIAM R. BAIRD

cc: Attorney Robert Henn
Attorney Bernard Moutz
Asst. Atty. Gen. Jeffrey Jurca

20 SEP 1983

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

Dec 11 2 58 PM '01

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

HARVEY J. SNYDER, JR.	CASE NO. CV 81 123266
Plaintiff	JUDGE BAIRD
-vs-	
STATE OF OHIO STATE MEDICAL BOARD	JOURNAL ENTRY SUSPENDING ORDER OF MEDICAL BOARD
Defendant	

Upon motion by plaintiff-appellant Harvey J. Snyder, Jr., and it being made to appear to this court that an unusual hardship to the appellant would result from the execution of the agency's order pending determination of the appeal, it is hereby

ORDERED that

The order of appellee State Medical Board, indefinitely suspending the license to practice medicine of plaintiff-appellant Harvey J. Snyder, Jr., be, and it hereby is, stayed until the matter before this court is finally adjudicated.

During the pendency of this appeal, the certificate to practice medicine and surgery of Harvey J. Snyder, Jr., M.D. is hereby limited as follows:

> Dr. Snyder shall cease all obstetrical practice in all settings, including office, home and hospital, shall not render any prenatal care to pregnant women, shall not render any post-natal care to mothers or infants, and shall not deliver babies.
>
> In addition, Dr. Snyder shall make available his clinical records for review by an investigator or other agent of the Board on a monthly basis.

It is so ordered.

APPROVED:

JEFFREY J. JURCA

ROBERT B. HENN

William Baird
Judge of the Court of Common Pleas

BERNARD L. MOUTZ
ATTORNEY AT LAW
3808 MOGADORE RD.
MOGADORE, OHIO
PHONE 826-4105

ATTACHMENT 3

BEFORE THE STATE MEDICAL BOARD OF

IN THE MATTER OF *

*

HARVEY J. SNYDER, JR., M.D. *

ORDER

This matter came on for consideration before the State Medical Board of Ohio the 2nd day of December, 1981.

Upon the Report and Recommendation, a true copy of which is attached hereto and incorportated herein, of Leonard L. Lovshin, M.D., the Hearing Member in this matter designated pursuant to R.C. 4731.23, the Findings of Fact, Conclusions, and Proposed Order are Hereby APPROVED and CONFIRMED by vote of the State Medical Board of Ohio as reflected by the motions of the Board at its meeting for the above date, a true copy of said motions being attached hereto and incorporated herein.

WHEREFORE, it is hereby ORDERED that effective immediately the certificate of Harvey J. Snyder, Jr., to practice medicine and surgery in the State of Ohio is SUSPENDED INDEFINITELY.

This ORDER is to be entered upon the Journal of the State Medical Board of Ohio for this 2nd day of December, 1981, and the original thereof shall be kept with said Journal.

(SEAL)

Anthony Ruppersberg, Jr., M.D.
Secretary

12 - 2 - 81
Date

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

NOV 13 1981

REPORT AND RECOMMENDATION
IN THE MATTER OF HARVEY J. SNYDER, JR., M.D.

The matter of Harvey J. Snyder, Jr., M.D., came before me, Leonard L. Lovshin, M.D., Member of the State Medical Board of Ohio for hearing on March 19, 1981 and June 24, 1981.

INTRODUCTION

1. In August of 1980, the State Medical Board issued an order to Dr. Snyder indicating that he would be unable to conduct obstetrical practice or to deliver babies. (State's Exhibit #1) The order is on appeal, but it has never been stayed, therefore, since August 18, 1980, Dr. Snyder has been ordered by the State Medical Board not to operate an obstetrical practice or to deliver babies. (Transcript at 7)

2. It is alleged by the State Medical Board that Dr. Snyder has continued to operate an obstetrical practice and to deliver babies:

   A. One Mary Litten received prenatal care from Dr. Snyder on September 26, 1980. Specifically, Dr. Snyder examined her abdomen and indicated that the baby was due very soon thereafter. (State's Exhibit #2) Later the State decided not to present her testimony so this charge was dropped.

   B. It is alleged that on or about September 25, 1980, Dr. Snyder did deliver the baby of Elizabeth Cline. Further, it is alleged that Dr. Snyder's conduct with respect to Elizabeth Cline and her baby, was not only in violation of the Board's order, but below minimal standards of care as that clause is used in Section 4731.22(B)(6), Ohio Revised Code. (State's Exhibit #2)

3. State's Exhibit #3 is a letter from Michael Weigand, an attorney for Dr. Snyder, requesting a hearing on behalf of Dr. Snyder.

4. State's Exhibit #4 and #5 are copies of scheduling notices.

Copies of these were sent to Mr. Weigand and Dr. Snyder. Neither Dr. Snyder nor his attorney appeared at the March 19, 1981 hearing although Dr. Snyder and his counsel were duly notified. Mr. Jeffrey J. Jurca, Assistant Attorney General, indicated that he had agreed with counsel for Dr. Snyder that he would present the State's witnesses on direct examination and proffer exhibits. It was agreed that counsel for Dr. Snyder would cross-examine the witnesses and object to the exhibits at a later date.

At the June 24, 1981 hearing, Dr. Snyder was represented by attorneys Robert Bruce Henn and Bernard L. Moutz.

5. Dr. Gary Benfield was sworn in as a witness for the State. His testimony revealed the following:

   A. Dr. Benfield is a physician licensed to practice medicine in the State of Ohio. He is Board Certified in Pediatrics and Neonatal-Perinatal Medicine.

   B. Dr. Benfield became involved with the Cline baby on September 25, 1980 following admission of the baby to Children's Hospital in Akron, where Dr. Benfield is on the staff. The Cline baby was transported from Dr. Snyder's office, and was admitted in the early morning, and put in the Newborn Intensive Care Unit.

   C. Dr. Benfield presented a history of the case as follows: The baby was quite sick at the moment of birth. It was not breathing. Dr. Snyder attempted to resuscitate the baby. Dr. Benfield feels the resuscitation method used and Dr. Snyder's action concerning Miss Cline are totally inadequate and would be a departure from or a failure to conform to minimal standards of care of similar practitioners in the same or similar circumstances. (Transcript at 15-17)

   D. The baby had a ruptured liver, was near death, and needed emergency surgery. Dr. Benfield felt that when Dr. Snyder massaged the epigastric region repeatedly and deeply to force air out of the lungs this stripped the capsule of the liver and caused the problem. (Transcript I at 20-21, Transcript II at 39)

   E. The hospital records of the Cline baby were admitted to the record. (State's Group Exhibit #6)

6. Dr. Louis DeGreefe was sworn in as a witness for the state.

His testimony revealed the following:

A. Dr. DeGreefe is a second year resident OB-GYN at Aultman Hospital.

B. Dr. DeGreefe was part of the transport team (a resident, a nurse, and the ambulance driver) that made a visit to Dr. Snyder's office on the 25th of September, 1980.

C. When Dr. DeGreefe first saw Miss Cline's baby it was very pink and was in no obvious distress.

D. Dr. Snyder told Dr. DeGreefe that when the baby was delivered, it was not breathing. Dr. Snyder said that he put the baby to his mouth and blew in the baby's mouth. Nothing else was said about the resuscitation. Dr. Snyder didn't use an Ambubag because he didn't have one. An Ambubag is a rubberized container that is squeezed with a mask that fits over the baby's face so that oxygen can be delivered to the baby's lungs.

E. Dr. DeGreefe feels that an Ambubag is a much better method of securing breathing of a baby who is having trouble. When no Ambubag is present, the mouth to mouth method utilized by Dr. Snyder is valid. However, Dr. DeGreefe feels it would be prerequisite to have an Ambubag available in a situation where a doctor was preparing to deliver a baby. (Transcript II at 25-26)

7. Miss Elizabeth Cline was sworn in as a witness for the state. Her testimony revealed:

A. Dr. Snyder knew that it takes an hour and a half for Miss Cline to get to his office from her home.

B. Dr. Snyder suggested that Miss Cline come to his office to be checked on September 24 about four weeks before her baby was due. It appears she arrived in the early afternoon. She was in labor and partly dilated. Her water had broken and the contractions were about 15 minutes apart. Dr. Snyder told Miss Cline that she was dilated about one centimeter, and the baby was in the right position. Nothing was said about the possibility of a breech birth. By the time she got home that evening, the pains were more frequent. She was nauseated and got chills and was getting sick. Miss Cline called Dr. Snyder and came back to Barberton. By the time she arrived, she could feel the presenting part which

turned out to be the baby's buttocks. It was a breech presentation. Dr. Snyder was panicking while he was trying to deliver the baby, he couldn't find his gloves or forceps.

C. When the baby was born, it was blue. Dr. Snyder tried mouth to mouth resuscitation and then he dipped the baby in a pan of water. The baby remained blue. The baby turned pink after Mrs. Snyder gave her the oxygen. (Transcript II at 61-62)

D. Mrs. Snyder suggested Dr. Snyder call the hospital. Finally, she gave him a direct order to call the hospital.

E. The morning after the baby was born, Miss Cline had breakfast at the Snyder's home. The housekeeper was present. Miss Cline remembered discussing the birth of the baby with the housekeeper. Miss Cline doesn't recall telling the housekeeper that she thought Dr. Snyder had done a great job or that she was very thankful for his delivery of the baby. (Transcript II at 64)

F. Miss Cline does not recall Dr. Berfield calling the house when she was there.

8. Ms. Emily Arcuri was sworn in as a witness for the state. Her testimony revealed:

A. Miss Cline called Dr. Snyder at 3:00 on September 24, 1980. He said for her to come to his office and he would check her. Miss Cline and Ms. Arcuri arrived at Dr. Snyder's office about 4:30 or 5:00. Dr. Snyder said that Miss Cline was not ready to have the baby yet and he told her to go back home and wait. (Transcript at 48)

B. When Ms. Arcuri and Miss Cline got back home Miss Cline started having a blood discharge. Dr. Snyder was called and he told Ms. Arcuri to bring Miss Cline back. They arrived at Dr. Snyder's office about 10:30.

Ms. Arcuri was with Miss Cline at the time the baby was born.

C. Ms. Arcuri felt that Dr. Snyder panicked as he was delivering the Cline baby. She doesn't know what a physician normally would do in this situation, but she has seen people act panicky before. Dr. Snyder went to get something

out of his cabinet. He couldn't find it.

D. When Dr. Snyder was delivering the baby, he held it around the waist and was just tugging. The baby was born blue. Dr. Snyder was blowing in the baby's mouth and administering mouth to mouth resuscitation. Dr. Snyder started pushing on its solar plexus area.

E. The baby's color did not change much until the baby was wrapped in warm blankets and oxygen was administered. (Transcript at 53)

F. When Dr. Snyder was working on the baby, Miss Cline was just laying there bleeding. Mrs. Snyder told Dr. Snyder, "You better stitch her up because she is bleeding pretty bad." (Transcript at 54)

G. Ms. Arcuri believes Mrs. Snyder told Dr. Snyder to call the hospital.

9. George Kuzmishin, M.D., was sworn in as a witness for the respondent. He testified to the following:

A. Dr. Kuzmishin is a general surgeon. He has known Dr. Snyder for 20 years, purely in a professional capacity.

B. When Dr. Snyder refers a patient to Dr. Kuzmishin for a surgical procedure, Dr. Kuzmishin has found, as a rule, the diagnosis has been correct. (Transcript II at 89)

C. Dr. Snyder has never referred a pregnant woman to Dr. Kuzmishin, as far as he can remember.

10. Dr. Harvey Snyder was sworn in as a witness. His testimony revealed:

A. It was his understanding at the time he took Miss Cline as an obstetrical patient that the Board's earlier order had been stayed by virtue of appeal to the Court of Common Pleas of Summit County, and therefore, to the best of his knowledge, he was operating within the purview of the law.

B. Dr. Snyder did not know where Shelby, Ohio was when he started treating Miss Cline. She never specifically told the doctor where it was or how long it took her to get to his office.

C. When Dr. Snyder first saw Miss Cline on September 24, 1980, and examined her, he found her membranes were leaking, she was having little or no contractions, the mouth of the womb was tight shut, and the baby was head down. (Transcript II at 94, 103)

D. Concerning Elizabeth Cline, his diagnosis at the time she first presented herself on September 24, 1980, was that the baby was in a frontal presentation position and there was no complication. When Miss Cline came to him the second time, the baby had rotated and was in a breech position.

E. Dr. Snyder did not feel that there was a danger of infection when he sent Miss Cline home with her membranes ruptured. Dr. Snyder cited a textbook prepared by Dr. Eastman of Harvard University that states that if a doctor avoids any cervical examination and the patient does not engage in coitus, there should be no problem with infection even though the membranes are ruptured. (Transcript II at 98)

F. Miss Cline called Dr. Snyder at his home about 9:00 that evening. He got the delivery room area of his office ready.

G. At the time she came to his office, at about 10:30 that evening, the baby was in fetal distress and there was no time do anything but deliver the baby right away or risk damage to the baby or the death of the baby.

H. The doctor called his wife and tried to get the baby out by telling Miss Cline to "push".

I. Dr. Snyder never attempted to rotate the baby when it started coming out.

J. When the baby started coming out it didn't look pink. Dr. Snyder started looking for his forceps. Other than the piper forceps all the other instruments Dr. Snyder needed were on the table.

K. When the baby came out it was limp. There was no muscle tone at all. Dr. Snyder started immediately giving the baby mouth to mouth resuscitation. He has previously used this procedure on newborn babies.

L. A doctor might put his hand over the baby's stomach area and push down gently to see if there is an air bubble there. There would be no point in pushing down hard. The baby didn't burp so apparently the air Dr. Snyder was giving to the baby was going into it's lungs.

M. After the baby was breathing, someone, either the doctor or his wife, got a pan of warm water to warm the baby. Then Dr. Snyder's wife warmed up blankets and put the baby in them.

N. After the baby was delivered Dr. Snyder did have a discussion with his wife as to whether or not the baby should be hospitalized. It was decided to be on the safe side, the hospital should be called. (Transcript II at 120)

O. Dr. Snyder did not talk to Dr. Benfield on the phone the next morning. Dr. Snyder denies telling Dr. Benfield that he massaged the baby's epigastric region deeply in order to stimulate breathing. (Transcript II at 124)

P. Any injury that occurred to the baby was almost a necessary adjunct to the breech delivery, which is sometimes very difficult, and in the course of such delivery sometimes the baby can suffer internal injury. The tear to the liver capsule was not because of anything that Dr. Snyder did in the course of the resuscitation, but rather occurred during the delivery and was unavoidable.

Q. The Cline's baby liver was not damaged, the capsule had merely come loose. The operative report doesn't tell of there being any damage to the liver, either on the surface or internally. (Transcript II at 137)

11. Respondent's Exhibit #1 was marked for identification and introduced expressing the opinion of Dr. Gauderer from the University of Pediatric Surgical Association, Incorporated from Cleveland, Ohio. It concerns Dr. Gauderer's opinion about the matter of the breech delivery. He states, "the liver is proportionately very large in newborns, and not as well protected as in older children and adults. It is not surprising, therefore, that injury of this organ is possible."

12. Carol Beth Snyder was sworn in to testify on behalf of the respondent. Her testimony revealed:

A. Carol Beth Snyder is married to Dr. Snyder. She is a R.N., and sometimes acts as a nurse for Dr. Snyder.

B. When the baby came out it was blue and limp.

C. The water that the baby was put in was not warm enough, so Mrs. Snyder put the baby in warmed up blankets.

D. Dr. Snyder had no problems finding his instruments, it was Mrs. Snyder's fault. (Transcript II at 165)

E. Mrs. Snyder said it was her husband's decision to send the baby to the hospital. (Transcript II at 167)

13. Dr. Richard Cotterman was called as a witness for the respondent. His testimony revealed:

A. Dr. Cotterman is a specialist in anesthesiology. In the field of anesthesiology the doctor does have occasion to resuscitate patients.

B. In the case of small children an Ambubag is one of the accepted ways to resuscitate them. Mouth to mouth resuscitation is also an acceptable method.

C. Dr. Cotterman has known Dr. Snyder about 31 years and feels he is a very competent physician, but he has never seen Dr. Snyder at work at his office.

14. Dr. Robert Roberts was sworn in to testify for the respondent. His testimony revealed the following:

A. Dr. Roberts' specialty is pulmonary medicine and critical care medicine.

B. Dr. Roberts has known Dr. Snyder about 10 years. He took an advanced cardiac life support course at Barberton Citizens Hospital with Dr. Snyder. There was instruction on both adults and children. The course that he and Dr. Snyder took certified them for two years. The next re-certification will be in 1982.

C. His experience with Dr. Snyder has always been good.

15. Dr. Vytantas Apynys was sworn in as a witness for the respondent. He testified to the following:

A. Dr. Apynys specializes in obstetrics. He does breech

deliveries.

B. If a patient has an apparent breech condition, a cesarean section is not necessarily recommended. It depends on the condition of the individual. (Transcript II at 183)

C. In his experience, Dr. Apynys has had babies spontaneously turn within the uterus after a frontal presentation was diagnosed. Dr. Apynys had one patient whose baby turned within 4 hours before delivery, but the water hadn't broken. After the water has broken, it's not very possible that the baby will turn if the mother is in labor. (Transcript II at 198-200)

D. If there is a difficult birth from the breech position and the actual delivery of the baby is difficult in terms of getting the head out, there could be a possibility of internal injury to the child.

E. If a baby was injured internally in a difficult breech delivery, this would not necessarily mean that the attending physician had exercised less than proper care in that delivery. (Transcript II at 187)

F. Sometimes it's a choice between injuring the child and delivering a dead baby.

G. Mouth to mouth resuscitation to revive a baby is an excellent practice according to Dr. Apynys.

H. Dr. Apynys has known Dr. Snyder since 1960. He feels that Dr. Snyder is a competent doctor. (Transcript II at 191)

I. In a hospital setting where the patient comes in with the baby virtually in the stages of being delivered, with meconium present and obvious signs of fetal distress, it would not be possible to section that woman to deliver that baby because the baby would die. (Transcript II at 192-193)

J. According to Dr. Apynys, if you had a patient whose membranes have ruptured, but her cervix was not dilated at all, then sending her home would not be below minimal standards of care. However, Dr. Apynys would not send her home if she lived approximately an hour and a half away.

16. Terry Parsons was sworn in as a witness for the respondent. His testimony revealed:

    A. Mr. Parsons attended the previous State Medical Board hearing which resulted in the Board action outlined in paragraph 1 above. At that time, Mr. Parsons heard Dr. Benfield say to Dr. Zuspan, "We have been after Snyder for five years and now we finally got something to go on." (Transcript II at 206). Both Dr. Benfield and Dr. Zuspan appeared as witnesses for the state at that previous proceeding.

17. Muriel Williams was sworn in to testify for the respondent. She revealed the following:

    A. Mrs. Williams helps out at Dr. Snyder's house. She was at the Snyder's house on September 25, 1980. She made Miss Cline breakfast that morning.

    B. When Mrs. Williams had a conversation with Miss Cline and her friends and family that morning, praise was given for the way the baby was delivered. (Transcript II at 211)

18. Deborah Peterson was sworn in as a witness for the respondent. Her testimony revealed the following:

    A. Mrs. Peterson is a former patient of Dr. Snyder's.

    B. He delivered her baby which was a breech birth. She said that, "I've been doctored by some very very fine physicians in my lifetime and if medicine is an art, I would say Dr. Snyder is a master." (Transcript II at 224)

After considering all of the testimony and evidence presented at the hearing, and after having read the transcript and all exhibits introduced, I make the following findings and reach the following conclusions:

FINDINGS OF FACT

1. After formal hearing, the State Medical Board of Ohio, on August 31, 1980, limited the certificate of Harvey J. Snyder, Jr., M.D., to practice medicine and surgery as follows:

"Dr. Snyder shall cease all obstetrical practice in all settings, including office, home, and hospitals, shall not render any prenatal care to pregnant women, shall not render any post-natal care to mothers or infants, and shall not deliver babies."

2. The order was received by Dr. Snyder on August 23, 1980 and was not stayed or modified by court order.

3. Dr. Snyder did render prenatal care.

4. Despite the spontaneous rupture of Miss Cline's membranes at about 11:30 A.M. on September 24, and her beginning labor shortly thereafter, Dr. Snyder, after examining the patient at about 4:30 P.M. advised her to return home (80 miles away) to await further developments. (Transcript I at 34-36)

5. A precipitous breech delivery occurred at Dr. Snyder's office at about 11:00 P.M., after the patient barely made it back from her home in Shelby, 80 miles away. The breech presentation of the baby had not previously been diagnosed.

6. The baby was not breathing when first born and was in critical condition.

7. Dr. Snyder didn't use an ambubag to resuscitate the baby because he didn't have one available. Instead, Dr. Snyder blew in the baby's mouth and administered mouth to mouth resuscitation, while pushing on the solar plexus area, Dr. Snyder then dipped the baby in a pan of water.

8. After the baby improved and had been transported to Childrens Hospital in Akron, an emergency operation had to be performed to control massive hemorrhage from a torn liver capsule. (Transcript I at 20-22)

9. The baby survived.

CONCLUSIONS

It is my conclusion that:

1. The obstetrical services performed by Dr. Snyder for Elizabeth Cline were in direct violation of a previous order of the State Medical Board which limited his certificate to practice medicine and surgery by forbidding all obstetrical practice.

2. Dr. Snyder's actions were below minimal standards of care as that clause is used in Section 4731.22(B)(6), Ohio Revised Code in caring for Elizabeth Cline and her child in view of the fact that:

   A. Dr. Snyder should not have sent the patient, Miss Cline, back to her home in Shelby 80 miles away after first examining her on September 24, 1980, and determining that her membranes had ruptured with leakage of fluid, she was partially dilated and in labor.

   B. Dr. Snyder should have known that the baby was in a breech presentation which would present a complicated delivery.

   C. Attempts at resuscitation were somewhat unorthodox and inadequate at first.

      1. An ambubag should be available in a situation where a doctor is preparing to deliver a baby.

      2. Dr. Snyder blew into the baby's mouth and administered mouth to mouth resuscitation, while pushing on the solar plexus area.

      3. Dr. Snyder dipped the baby in a pan of water in hopes of reviving it. This procedure did not work and oxygen was finally administered.

3. After the baby was born it was transported to Children's Hospital in Akron. An emergency operation had to be performed to control massive hemorrhage from a torn liver capsule. This complication was most probably caused by maneuvers performed by Dr. Snyder during or after birth. Therefore, there was enough evidence presented to conclusively prove a violation of minimal standards of care in relation to this matter.

PROPOSED ORDER

The certificate to practice medicine and surgery of Harvey J. Snyder, Jr., M.D., is hereby suspended indefinitely.

This Order shall become effective immediately upon approval by the Board.

Leonard L. Lovshin, M.D.
Member, State Medical Board of Ohio

STATE OF OHIO
THE STATE MEDICAL BOARD

EXCERPT FROM THE MINUTES OF DECEMBER 2, 1981

REPORT AND RECOMMENDATION IN THE MATTER OF HARVEY J. SNYDER, JR., M.D.

Prior to discussion of this topic, Dr. Ruppersberg and Dr. Clarke disqualified themselves.

Dr. Cover asked the Board if it had read the transcript in the above matter. A roll call was taken:

ROLL CALL:

Dr. Cramblett	- aye
Dr. Lancione	- aye
Dr. Lovshin	- aye
Dr. Clarke	- aye
Dr. Yut	- aye
Dr. Oxley	- aye
Dr. Ferritto	- aye
Dr. Ruppersberg	- aye

Dr. Cover asked the Board if it had read the objections to the Report and Recommendation. A roll call was taken:

ROLL CALL:

Dr. Cramblett	- aye
Dr. Lancione	- aye
Dr. Lovshin	- aye
Dr. Clarke	- aye
Dr. Yut	- aye
Dr. Oxley	- aye
Dr. Ferritto	- aye
Dr. Ruppersberg	- aye

Dr. Lovshin read the Proposed Order from the following Report and Recommendatic

.....

DR. YUT MOVED TO APPROVE AND CONFIRM DR. LOVSHIN'S REPORT AND RECOMMENDATION IN THE MATTER OF HARVEY J. SNYDER, JR., M.D. DR. LANCIONE SECONDED THE MOTION. A discussion followed.

ROLL CALL VOTE:

Dr. Cramblett	- aye
Dr. Lancione	- aye
Dr. Lovshin	- abstain
Dr. Clarke	- abstain
Dr. Yut	- aye
Dr. Oxley	- aye
Dr. Ferritto	- aye
Dr. Ruppersberg	- abstain

The motion carried.

JAMES B McCARTHY
Nov 6 1 22 PM '81
SUMMIT COUNTY
CLERK OF COURTS

IN THE SUPREME COURT OF OHIO

HARVEY J. SNYDER, JR., M. D.,

Plaintiff-Appellant

v.

STATE OF OHIO
THE STATE MEDICAL BOARD,

Defendant-Appellee.

CASE NO. 10187

NOTICE OF APPEAL FROM THE
COURT OF APPEALS FOR THE
NINTH APPELLATE DISTRICT

Robert Bruce Henn
Bernard L. Moutz
Attorneys for Plaintiff-Appellant
124 W. Lafayette Road
Medina, Ohio 44256
(216) 941-7705

Jeffrey J. Jurca
Assistant Attorney General
Attorney for Defendant-Appellee
State Office Towers
30 East Broad Street
Columbus, Ohio 43215
(614) 466-6410

Plaintiff-appellant Harvey J. Snyder, Jr., by his attorneys, Robert Bruce Henn and Bernard L. Moutz, hereby gives his notice of appeal to the Supreme Court of Ohio.

This appeal is taken from the Court of Appeals for the Ninth Appellate District of Ohio. The order appealed from was issued on October 21, 1981. The case originated in the Summit County Court of Common Pleas and was appealed from that court to the Ninth District Court by plaintiff-appellant, Harvey J. Snyder, Jr.

This case involves both a substantial constitutional question and a question of great public interest.

Bernard L. Moutz

I hereby certify that a copy of the within Notice of was transmitted to counsel of record on the 6th day of Nov 1981, by depositing a copy thereof in the United States Mail.

Bernard L. Moutz

RECEIVED
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ADMINISTRATIVE ASSEMBLIES SECTION
OHIO STATE MEDICAL BOARD

STATE OF OHIO)
) ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

HARVEY J. SNYDER, JR., M.D.

Plaintiff-Appellant

v.

STATE OF OHIO
THE STATE MEDICAL BOARD, et al.

Defendants-Appellees

C.A. NO. 10187

APPEAL FROM JUDGMENT ENTERED IN THE COMMON PLEAS COURT COUNTY OF SUMMIT, OHIO CASE NO. CV 80 9 2389

DECISION AND JOURNAL ENTRY

Dated: October 21, 1981

This cause was heard August 31, 1981, upon the record in the trial court, and the briefs. It was argued by counsel for the parties and submitted to the court. We have reviewed each assignment of error and make the following disposition:

HUNSICKER, J.

On or about November 15, 1979, Dr. Harvey J. Snyder was cited by the State Medical Board of Ohio charging him with violations of R.C. 4731.22(B)(6), (12), and (15) alleging certain violations by Dr. Snyder of his obstetrical practice in all settings.

'81 OCT 22 PM 2 52
OHIO STATE MEDICAL BOARD

The matter was heard by the Ohio State Medical Board testimony being taken before a referee. An order was adopted and Dr. Snyder notified to:

> "***cease all obstetrical practice in all settings, including office, home, and hospital, shall not render any prenatal care to pregnant women, shall not render any post-natal care to mothers or infants, and shall not deliver babies."

Dr. Snyder was properly notified of the order so given.

Dr. Snyder filed a complaint for administrative appeal to the court of common pleas from the order of the Ohio State Medical Board as provided by R.C. 119.12. This matter was heard by the court of common pleas which entered the following judgment entry April 22, 1981.

> "This matter came on for hearing upon the record and briefs of counsel, and, after a careful review of same, the Court finds, for the reasons expressed in its Opinion and Decision of April 9, 1981, that the August 13, 1980 Order of the State Medical Board of Ohio limiting Appellant's license is supported by reliable, probative, and substantial evidence and is in accordance with law.
>
> "The Order of the State Medical Board is hereby AFFIRMED."

An appeal was lodged in this court by Dr. Snyder who says:

> "1. Medical Board of the State of Ohio failed to conduct a fair and impartial hearing.

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"2. The decision of the Medical Board of the State of Ohio was based on testimony of expert witnesses whose opinions were formed by hearsay evidence.

"3. Appellant was effectively deprived of due process by failure of the Medical Board of the State of Ohio to adequately inform appellant of right to counsel and the necessity therefore.

"4. The assignments as set forth above deprived appellant of his constitutional rights of due process of law as guaranteed by the Fifth and Fourteenth Amendments."

The appellant Dr. Snyder in assignments of error three and four raises the issue of due process in the notice of hearing and requiring Dr. Snyder to testify in violation of the Fifth Amendment to the United States Constitution. We find neither of these claims tenable. One of the exhibits in this case is a letter from the Ohio Medical Board notifying Dr. Snyder of the hearing on specific charges detailed at length. There is also a statement in that letter telling Dr. Snyder that he can appear in person, by an attorney, or by one authorized to practice before the Board. All of this was in strict conformity with R.C. 119.07.

This was an administrative hearing on authorization to practice medicine. The terms of R.C. 4715.37 were followed in furnishing the charges and notice of the time and place of

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the hearing. That Dr. Snyder decided to appear in person was his choice. The Board was not required to advise him more fully than the law requires or to otherwise instruct him to employ a lawyer.

Due process means the right to be heard; it is usually not clearly defined but it requires a hearing after notice then a proceedings according to law and a judgment rendered on the facts adduced. There was a full compliance with due process in the instant case.

We accept the definition of due process given in Hortonville Dist. v. Hortonville Ed. Assn. (1976), 426 U.S. 482, 494:

> "***.
>
> "Due process, as this Court has repeatedly held, is a term that 'negates any concept of inflexible procedures universally applicable to every imaginable situation.'***Determining what process is due in a given setting requires the Court to take into account the individual's stake in the decision at issue as well as the State's interest in a particular procedure for making it.***."

Dr. Snyder was not denied any of his constitutional rights. We reject assignment of error three and four.

Dr. Snyder says the Ohio Medical Board failed to conduct a fair and impartial hearing. Opportunity was given Dr.

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Snyder to present witnesses to testify orally or by written comment of their confidence in him and his work. Letters of commendation plus exhibits presented at the trial are among the papers given to the trial board. We have examined them in the light of the testimony given at the hearing. There are no indications that the Board did not conduct a fair and impartial hearing. There were serious charges of failure to conform to minimal standards of care in which at least one death occurred.

Our examination of the record does not disclose unfair practice on the part of the Board. We reject assignment of error one.

Rules of Evidence 702 and 703 and 704 deal with the testimony of experts. They are:

"Rule 702 TESTIMONY BY EXPERTS

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

"Rule 703 BASES OF OPINION TESTIMONY BY EXPERTS

"The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by him or admitted in evidence at the hearing.

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"Rule 704 OPINION ON ULTIMATE ISSUE

"Testimony in the form of an opinion or inference otherwise admissible is not objectionable solely because it embraces an ultimate issue to be decided by the trier of fact."

The medical experts who testified did so properly even though for purposes of accomodation they were used first before the lay witness patients of Dr. Snyder testified. The members of the Medical Board of Ohio is made up of doctors of medicine in large part and under Arlen v. State (1980), 61 Ohio St. 2d 168:

"Expert testimony as to a standard of practice is not mandatory in a medical disciplinary proceeding to determine whether a physician's conduct falls below a reasonable standard of medical care."

In the instant case the testimony given by the experts was based on what later was presented by the lay witnesses and such expert opinion evidence in light of Arlen, supra, was suplusage.

As can be seen by Evidence Rule 704, the evidence admitted at the trial by the lay witnesses justified the opinion evidence of the experts.

We reject assignment of error two.

We have examined all claims of error and find none prejudicial to the substantial rights of the appellant. The

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judgment of the court of common pleas is affirmed.

The court finds that there were reasonable grounds for this appeal.

We order that a special mandate, directing the County of Summit Common Pleas Court to carry this judgment into execution, shall issue out of this court. A certified copy of this journal entry shall constitute the mandate, pursuant to App. R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App. R. 22(E).

Costs taxed to appellant.

Exceptions.

William H. Victor

Presiding Judge
- for the Court -

VICTOR, P. J.
QUILLIN, J.
CONCUR

(Hunsicker, J., retired Judge of the Ninth District Court of Appeals, sitting by assignment pursuant to Article IV, §6(C), Constitution).

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OHIO STATE MEDICAL BOARD

APPEARANCES:

ROBERT BRUCE HENN, Attorney at Law, 124 W. LaFayette Rd., Medina, OH 44256 for Plaintiff-Appellant.

BERNARD L. MOUTZ, Attorney at Law, 3808 Mogadore Rd., Mogadore, OH 44260 for Plaintiff-Appellant.

WILLIAM J. BROWN, Attorney General, and JEFFREY J. JURCA, Asst. Attorney General, 30 E. Broad St., 15th Floor, Columbus, OH 43215 for Defendants-Appellees.

JAMES B McCARTHY
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SUMMIT COUNTY
CLERK OF COURTS

JAMES B McCARTHY
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SUMMIT COUNTY
CLERK OF COURTS

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STATE MEDICAL BOARD
MAY 1
ADMINISTRATIVE ASSISTANT

IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

HARVEY J. SNYDER, JR., M.D.	:	CASE NO. 80-9-2389
APPELLANT	:	JUDGE PRICE
vs	:	#10187
STATE OF OHIO THE STATE MEDICAL BOARD	:	NOTICE OF APPEAL
APPELLEE	:	

Notice is hereby given that the Plaintiff, Harvey J. Snyder, Jr., M.D. hereby appeals to the Court of Appeals of Summit County, Ohio, Ninth Appellate District, from the Judgment Entry entered in this cause on April 22, 1981.

Robert Bruce Henn
Attorney for Appellant

FLEISCHNER, SCHUTZ & HENN
11925 Pearl Road
Strongsville, Ohio 44136
238-9200

PROOF OF SERVICE

A copy of the foregoing Notice of Appeal was sent by U.S. regular mail this 7th day of May, 1981, to Jeffrey J. Jurca, Assistant Attorney General, Attorney for Appellee, State Office Tower, 30 East Broad Street, Columbus, Ohio 43215.

Robert Bruce Henn
Attorney for Appellant

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

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STATE OF OHIO
THE STATE MEDICAL BOARD
COLUMBUS, OHIO

HARVEY J. SNYDER, M.D. :

Appellant, :

v. :

THE STATE OF OHIO :
STATE MEDICAL BOARD

:

Appellee.

:

NOTICE OF APPEAL

Notice of appeal is hereby given that Harvey J. Snyder, M.D. herewith appeals the finding and order of the State of Ohio State Medical Board mailed to his home address on August 20, 1980 to the Summit County Court of Common Pleas through Case No. 80-9-2389 in accordance with Chapter 119 in the Ohio Revised Code and further requests that a transcript of proceedings held before the State of Ohio State Medical Board be filed with the Summit County Common Pleas Court.

Michael L Weigand

Michael L. Weigand
Attorney At Law
682 West Tuscarawas Avenue
Barberton, Ohio 44208

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OHIO STATE MEDICAL BOARD

IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

- - -

HARVEY J. SNYDER, JR., M.D.,	)	CASE NO. 80-9-2389
Appellant,	)	OPINION
-vs-	)	and
STATE OF OHIO THE STATE MEDICAL BOARD,	)	DECISION
Appellee.	)	

RECEIVED
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ADMINISTRATIVE AGENCIES SECTION

- - -

The Appellant Harvey J. Snyder, Jr., M.D. has appealed the State Medical Board of Ohio order of August 13, 1980, which provided:

> Dr. Snyder shall cease all obstetrical practice in all settings, including office, home, and hospital, shall not render any prenatal care to pregnant women, shall not render any post-natal care to mothers or infants, and shall not deliver babies.
>
> In addition, Dr. Snyder shall make available his clinical records for review by an investigator or other agent of the Board on a monthly basis.

Appellant urges that he was denied due process because the Board failed to advise the witnesses of their right to counsel. The fact is that the subpoena served upon the witnesses advised them of their right to counsel. Further, the provision for informing witnesses of their right to counsel is for the benefit of the witnesses and not the parties.

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Appellant urges that the admission of the testimony of Drs. Zuspan and Benfield was not proper because their testimony was not reliable. It is the function of the trier of the facts to determine the credibility and reliability of the witnesses and to determine what weight to give to their testimony. This Court may not substitute its discretion for that of the trier of the facts, in this case, the hearing officer.

However, it should be noted that this Court has examined the transcript of their testimony and is of the opinion that they were properly qualified as experts and that their testimony was relevant and reliable and was properly admitted.

Appellant urges that Dr. Snyder should have been placed on probation. This Court cannot substitute its discretion for that of the Board in determining the action to be taken as a result of the Board's findings.

Appellant also urges that the action of the Board was contrary to law because the Board failed to inform the Appellant of his right to counsel. From the record it is clear that Appellant was informed of his right to counsel and an examination the record discloses that the persons involved including the Asst. Attorney General exerted themselves to see that Appellant's rights were protected. (State's Exhibit 1) (Transcript, page 4 line 24,25 and page 5 line 1-5)

Appellant complains that the evidence against him was provided by his own testimony on cross examination and that he was not told before he was interrogated that he was entitled to have counsel.

This Court is of the opinion that if the testimony of Appellant were completely disregarded that there is ample reliable, probative and substantial evidence to support the action of the Board.

After a careful review of the proceeding by the State Medical Board of Ohio, this Court is of the opinion that the actions of the Board were lawful; they were not arbitrary or capricious and that the finding of the Board is supported by the weight of the reliable, probative and substantial evidence.

This Court therefore affirms the August 13th order of the State Medical Board of Ohio.

Exception to Appellant.

Counsel for the Board to submit an entry.

cc: Mr. Harry A. Tipping
Mr. Jeffrey J. Jurca

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Dr. Yut	- aye
Dr. Oxley	- aye
Mr. Paulo	- aye
Dr. Ferritto	- aye
Dr. Ruppersberg	- aye

The motion carried.

Mr. Guisto left the meeting at this time.

FINDINGS AND ORDER IN THE MATTER OF HARVEY J. SNYDER, JR., M.D.

Prior to discussion of the Findings and Order in the Matter of Harvey J. Snyder, Jr., M.D., Dr. Clarke and Dr. Ruppersberg left the meeting. Mr. Jurca and Mr. Wenger remained out of the room.

Dr. Cover asked the Board Members if they had read or considered the record of Harvey J. Snyder, Jr., M.D. A roll call was taken:

ROLL CALL:	Dr. Lancione	- aye
	Dr. Cramblett	- aye
	Dr. Yut	- aye
	Dr. Oxley	- aye
	Mr. Paulo	- aye
	Dr. Ferritto	- aye

Dr. Cover read the Conclusions and Order of the following Finding and Order:

FINDINGS AND ORDER
IN THE MATTER OF HARVEY J. SNYDER, JR., M.D.

The matter of Harvey J. Snyder, Jr., M.D. came on before me, Evelyn L. Cover, D.O., Member of the State Medical Board of Ohio on February 12, 1980 and March 11, 1980.

INTRODUCTION AND SUMMARY OF EVIDENCE

1. A letter (State's Exhibit #1) from the State Medical Board of Ohio dated November 15, 1979 citing alleged violations of Section 4731.22 of the Ohio Revised Code was sent to Dr. Snyder, who subsequently requested and was granted a formal hearing, held February 12 and March 11, 1980.

2. In offering its case the State presented ten (10) witnesses, including two physicians, Frederick Zuspan, M.D., who testified as an expert witness, and Gary Benfield, M.D., Medical Director of the Newborn Intensive Care Unit at Children's Hospital in Akron. The State also called Dr. Snyder on cross-examination without objection from Dr. Snyder.

3. Concerning the care rendered Joanne Powers, identified in the November 15, 1979 citation letter as Patient A, and her child, the following evidence is relevant:

   A. Joanne Powers testified that based on her menstrual history, she thought the baby was due sometime in mid-March. (February Transcript at 138). Frederick P. Zuspan, M.D., testifying as the State's expert, stated that based on the size of the child at birth, it probably had not yet reached 36 weeks gestation. (February Transcript at 32) Further, the autopsy report on the Powers baby indicated that the cause of death was cardiorespiratory failure due to Hyaline Membrane Disease due to prematurity. (State's Exhibit #10). This comports with testimony of Gary Benfield, M.D., to the effect that failure of labor to commence following rupture of the mother's membranes, and the multiple injections of Oxytocin required to induce labor, indicate the child was not yet ready to be born. (February Transcript at 92) Dr. Snyder testified that his decision to induce labor was based on his conclusion that the patient was polyhydramnic (Mrs. Powers, who had previously delivered four children, stated her stomach wasn't very big on the delivery date (February Transcript at 139)), on the degree to which the mother's womb had opened and the child's head had moved into the pelvis, and on his belief that the child would otherwise be born on the weekend, at which time the

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doctor had planned to be out of town. (March Transcript at 42) However, Dr. Snyder had earlier testified he induced labor at the insistance of the patient, even though he thought it was "a little bit early and a little risky." (February Transcript at 220) As to his failure to evaluate fetal maturity prior to induction of labor, a process deemed necessary by Dr. Zuspan (February Transcript at 14-15), Dr. Snyder indicated the expense would be prohibitive. (March Transcript at 43)

B. Dr. Snyder administered Oxytocin to Mrs. Powers by six to nine separate subcutaneous injections. Dr. Zuspan testified that the only acceptable mode of injection of Oxytocin is by the intravenous route. He stated that intramuscular injection would constitute a failure to use reasonable care, discrimination and administration of drugs. (February Transcript at 16-17) Dr. Snyder testified that he injected Oxytocin subcutaneously because it allowed more freedom to the patient and to himself. He acknowledged awareness of the FDA regulations restricting the use of Oxytocin to instances where it is medically indicated, and further establishing intravenous drip as the only acceptable method of administration (State's Exhibit #9), and he further acknowledged that subcutaneous injection has been considered antiquated for a number of years. The doctor stated he has now switched to intravenous drip. (March Transcript at 25-26)

C. Concerning the course of events subsequent to delivery, Dr. Snyder admitted that the child was experiencing difficulty breathing for the first hour (March Transcript at 44), but maintained she was adequately examined and monitored until the following morning. The doctor did not laryngoscopically view the child's throat, expressing a belief that such a device should be used on the babies only by one highly proficient in its use. (March Transcript at 46) Dr. Zuspan had earlier testified that laryngoscopic vision is essential to assure clearance of the trachea in a newborn infant experiencing breathing difficulties. (February Transcript at 17-18)

D. Mr. and Mrs. Powers both testified that the baby's breathing became shallower in the hours after birth, that the grunting breathing sounds continued, and that the baby appeared pale. (February Transcript at 134, 157) During this time Dr. Snyder provided for the baby's warmth by wrapping it in blankets supplied by the parents. Dr. Zuspan testified that failure to maintain adequate temperature would contribute to the progress of Hyaline Membrane Disease by raising oxygen consumption. (February Transcript at 18, 21) Further, Dr. Benfield stated his opinion that the care rendered by Dr. Snyder in the matter of the Powers delivery did not conform to minimal standards. (Feb. Trans. at 92)

4. Marcy Nagy, identified in paragraph 2 of the November 15, 1979 citation letter as Patient B, testified that she visited Dr. Snyder during her first pregnancy, and that she informed him of a family history of diabetes. She was also gaining weight rapidly. Though the doctor did check her weight and blood pressure on each visit, he never performed a pelvic exam or blood test, and failed to perform a urinalysis until the patient's last visit, at which time the patient requested it. (February Transcript at 161-164) Dr. Zuspan testified that the minimum evaluation on a pregnant woman's first visit to her doctor would include a complete physical and pelvic, complete blood count, urine exam for albumin and sugar, V.D.R.L., blood type and Rh factor, antibody screening battery for Rh-patients, rubella test, pap smear, and gonorrhea culture. (February Transcript at 26-27) Speaking to the facts alleged in connection with Marcy Nagy, Dr. Zuspan noted a glucose tolerance test would also be indicated. Dr. Snyder, on the other hand, indicated a family history of diabetes would mean very little, noting, "who does not have a history of diabetes in their family?" The doctor further indicated a belief that no doctor performs a blood sugar on prenatal patients. He maintained, however, that he did perform a pelvic exam on the patient's second

visit. (March Transcript at 29-30)

5. Renate Swartz, identified in paragraph 3 of the November 15, 1979 citation letter as Patient C, testified that she saw Dr. Snyder during her fourth pregnancy. She stated the doctor performed pelvic exams during some, but not all visits, and that he aways checked her blood pressure and weight. She testified he did no blood tests other than one test for anemia, and that she did not recall him ever performing a urinalysis. The doctor advised induction of labor about two days prior to delivery, which the patient refused. The baby was born at home before the doctor could be contacted. In cross-examining the witness, Dr. Snyder failed to challenge her version of the facts, stating she had covered everything pretty well. (March Transcript at 10)

6. Karen Bower, identified in the November 15, 1979 citation letter as Patient D, testified that she first visited Dr. Snyder in about the fourth month of her first pregnancy. She testified that other than a test to determine Rh factor, the doctor performed no blood tests during the course of her pregnancy, and only one urinalysis, when she was nearing term. She stated he did a single pelvic exam toward the end of the pregnancy, and no pap smear. Mrs. Bower further testified that Dr. Snyder suggested inducing labor about a week before the delivery, because he felt the baby was ready. (March Transcript at 60-69) Mrs. Bower testified that Dr. Snyder slapped her on the leg in anger when she resisted his efforts to examine her during labor. (March Transcript at 63, 66) William Bower, husband of Karen Bower, testified that Dr. Snyder struck his wife on the buttocks when she ceased being cooperative. (March Transcript at 71)

7. A. Karen Niles, identified in the November 15, 1979 citation letter as Patient E, testified that Dr. Snyder took a blood sample on her first visit, and performed urinalyses on two separate occasions. She stated the doctor did not perform a pap smear at any time. She further added that she advised Dr. Snyder she was Rh-, but that he did not do an Rh test. In cross-examining the witness Dr. Snyder stated that he did not worry about the baby being Rh- because he knew that the father was negative. (March Transcript at 14-20)

   B. Mrs. Niles testified that Dr. Snyder suggested induction on her due date, which she refused. When she went into labor two weeks later, she allowed the doctor to strip her membranes only after he threatened to leave her. (March Transcript at 16-17) Asked if he would have carried out his threat, the doctor replied, "The lady paddles her own canoe because I was bailing out." (March Transcript at 35) Dr. Snyder further testified he gave the baby a thorough physical exam. As to the doctor's use of a shoelace to tie the umbilical cord, Dr. Zuspan testified such practice would be acceptable as long as the lace was clean. (February Transcript at 37)

8. Concerning the care rendered Susan Hetler, identified in the November 15, 1979 citation letter as Patient F, and her child, the following evidence is relevant:

   A. William Hetler, husband of the patient, testified that after the delivery of his wife's child, Dr. Snyder wanted to pull the placenta out, but that he and his wife objected. (February Transcript at 171-172) Dr. Snyder indicated that manual removal of the placenta is necessary in many home birth situations in order to prevent a lot of waiting. He stated this is done by pushing the stomach and pulling the cord, and added that there is no need to anesthetize the mother. (March Transcript at 37-39) In this particular case Dr. Snyder stated he had been up all night and needed to get home. (March Transcript at 39)

   B. Mr. Hetler testified that Dr. Snyder stayed at the Hetler home about one and a half hours after the baby was delivered, then gave Mr. Hetler a syringe full of Oxytocin and left. The doctor told him to inject his wife if the placenta did not deliver in the next

hour or so, but gave no instructions as to how or where to inject it. Mr. Hetler noted that he was a corpsman while in the Navy, but stated Dr. Snyder did not know this. (February Transcript at 172-173) Dr. Snyder confirmed he did not know or ask about Mr. Hetler's qualifications (March Transcript at 40) Dr. Zuspan testified that a physician would never leave a patient with the placenta still in, as very serious hemorrhages can develop if the placenta gets trapped. He added the patient is much more infection prone at that time. He further testified that removal of the placenta may require anesthetizing the patient with a general anesthetic. (February Transcript at 39)

C. Dr. Zuspan testified that Dr. Snyder's method of freeing the Hetler child's foreskin would be an appropriate method of freeing adhesions. (Feb. Trans. at 40)

9. Concerning his consistent failure to test for venereal disease, Dr. Snyder testified he finds no gonorrhea in his part of the world. He noted if the couple is happily married and the husband has no symptoms he sees no reason for doing so. (March Transcript at 24)

10. Dr. Snyder testified he is not Board Certified in any specialty, and has no obstetrical training other than that received during his internship, plus some experience while in the Army. He keeps current by reading Female Patient, plus relevant articles found in other journals. (February Transcript at 212-213)

11. Pamela Doyne, appearing as a witness for Dr. Snyder, testified that the doctor provided maternity care and assisted in the delivery of her child in his office. Mrs. Doyne testified that Dr. Snyder had her start seeing him three months after he confirmed her pregnancy. She testified that the doctor weighed her and checked her blood pressure on each visit, but checked her urine only once, toward the end of her pregnancy. (February Transcript at 188, 189) Mrs. Doyne testified that during her seven hour labor, which she characterized as difficult, Dr. Snyder monitored the baby by listening to her stomach about once every half hour. She testified that the doctor washed her off before the delivery, and thoroughly examined the baby shortly after delivery. (February Transcript at 193, 194) Mrs. Doyne noted that the baby was wrapped in blankets and kept warm throughout her stay in the doctor's office, and that the doctor told her he had no incubator because one was never needed. (February Transcript at 196, 201) Mrs. Doyne further testified that Dr. Snyder did not perform a pap smear at any time.

12. Marjorie Parsons, appearing as a witness for Dr. Snyder, testified the doctor delivered both of her children in his office. Ms. Parsons testified Dr. Snyder ascertained by test that she was Rh positive prior to the first child's birth, and further stated he performed a pap smear at her checkup six weeks after the birth. (February Transcript at 209, 211) Ms. Parsons testified that both of her children were adequately cared for and kept warm at birth.

13. Approximately fifty (50) letters mailed to the State Medical Board in support of Dr. Snyder were admitted into evidence. (Petitioner's Group Exhibit D) Nearly all of these praised Dr. Snyder as a man of the highest character who consistently places concern for the patient ahead of personal considerations. Most of the writers were patients of the doctor who believed the action against him stemmed from his willingness to perform home deliveries. These people stressed that Dr. Snyder is the only available alternative to a hospital delivery for patients desiring home delivery for economic, philosophical, moral, and health reasons.

Included in the letters of support were the following:

A. A letter from Philip N. Gilcrest, M.D., Chairman of the Department of Family Practice, Barberton Citizen's Hospital. Dr. Gilcrest was assigned by the Executive Medical Council to monitor Dr. Snyder's medical and surgical admissions. At the time the letter was written the monitoring was to continue two more months, but there was no mention of the extent of time it had continued thus far. Dr. Gilcrest stated he has noted

no deficiencies in Dr. Snyder's standard of care.

B. A letter from Thomas F. Ulrich, M.D. Dr. Ulrich indicated Dr. Snyder conducts his life and practice according to the best of Christian principles, ethically, with no compromises. The letter did not include a professional evaluation of Dr. Snyder's practice.

C. Letters from Lillian Brader and Mrs. Ollie Elliott. Both stated they are nurses who have assisted Dr. Snyder in office and home births. Ms. Brader noted the doctor uses sterile technique and is competent in home deliveries, and Mrs. Elliott characterized him as a dependable and competent doctor.

After considering all of the testimony and evidence presented at the hearing, and after having read the transcript and all exhibits introduced, I make the following findings:

FINDINGS OF FACT

Based on the testimony and evidence, I find:

1. Dr. Snyder's induction of labor leading to the premature birth of the child of Joanne Powers was not medically indicated, and was initiated without a prior evaluation of fetal maturity.

2. Dr. Snyder induced labor in Mrs. Powers by injecting Oxytocin subcutaneously, a dangerously improper method of administration of that drug.

3. Dr. Snyder examined the Powers baby inadequately, if at all, and failed to adequately provide for the baby's oxygen requirements and temperature maintenance.

4. In connection with the prenatal care rendered to Marcy Nagy, Dr. Snyder failed to performed any urinalyses, pelvic exams, or blood tests, even after being informed of the patient's family history of diabetes.

5. In connection with the care rendered to Renate Swartz, Dr. Snyder suggested induction of labor without medical indication to do so. Further, he failed adequately to examine the patient during office visits prior to delivery, as discussed in paragraph 5 of the Introduction of Summary of Evidence.

6. In connection with the care rendered to Karen Bower, Dr. Snyder failed to perform any hemoglobin, hematocrit, serology or gonorrhea tests, and performed only one urinalysis near term, and no pap smear at any time. Dr. Snyder further suggested induction of labor without medical indication to do so. The doctor also slapped the patient without justification.

7. In connection with the care rendered to Karen Niles, Dr. Snyder suggested induction of labor without medical indication to do so. During prenatal care the doctor tested the patient's blood pressure only when she demanded it, failed to perform a pap smear at any time, and performed a blood test only on the patient's first visit. The doctor further threatened to abandon the patient during labor in order to gain her permission to strip her membranes, though there was no medical indication to do so.

8. In connection with the delivery of Susan Hetler's baby, Dr. Snyder attempted to manually remove the placenta. After the parents refused to allow this, Dr. Snyder left the patient before delivery of the placenta. The doctor further left a syringe of Pitocin with the patient's husband, a person of unknown training, without giving him any instructions as to proper method of administration.

CONCLUSIONS

1. Dr. Snyder violated Section 4731.22(B)(6), Ohio Revised Code in caring for Joanne Powers (Patient A) and her child, as described in Paragraph 1 of the November 15, 1979 citation letter.

2. Dr. Snyder violated Section 4731.22(B)(6), Ohio Revised Code in caring for Marcy Nagy (Patient B), as described in Paragraph

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2 of the November 15, 1979 citation letter.

3. Dr. Snyder violated Section 4731.22(B)(6), Ohio Revised Code in caring for Renate Swartz (Patient C) and her child, as described in Paragraph 3 of the November 15, 1979 citation letter.

4. Dr. Snyder violated Sections 4731.22(B)(6) and 4731.22(B)(15), Ohio Revised Code in caring for Karen Bower (Patient D), as described in Paragraph 4 of the November 15, 1979 citation letter.

5. Dr. Snyder violated Sections 4731.22(B)(2) and 4731.22(B)(6), Ohio Revised Code in caring for Karen Niles (Patient E) and her child, as described in Paragraph 5 of the November 15, 1979 citation letter.

6. Dr. Snyder violated Section 4731.22(B)(6), Ohio Revised Code in caring for Susan Hetler (Patient F), as described in Paragraph 6 of the November 15, 1979 citation letter.

ORDER

The certificate to practice medicine and surgery of Harvey J. Snyder, Jr., M.D., is hereby limited as follows:

Dr. Snyder shall cease all obstetrical practice in all settings, including office, home, and hospital, shall not render any prenatal care to pregnant women, shall not render any post-natal care to mothers or infants, and shall not deliver babies.

This Order shall become effective immediately upon approval by the Board.

Evelyn L. Cover, D.O.
Member, State Medical Board of Ohio

Dr. Lancione stated that he would be in favor of amending the Order to state that Dr. Snyder would be allowed to continue with obstetrical practices if he participates in a three to six month residency program in obstetrics.

Dr. Cramblett asked why Dr. Cover did not order revocation of Dr. Snyder's license based on evidence submitted. Dr. Cover stated that he was brought before her because of problems with his obstetrical practice, and that that is all the evidence that was submitted. The hospitals dismissed only his obstetrical privileges, nothing else, and those were the only complaints the Board has received for consideration. Dr. Cramblett stated that after reviewing and considering the record in this case, he felt that revocation would be appropriate.

Dr. Lancione disagreed with Dr. Cramblett, stating that Dr. Snyder is a family practitioner who appears to be having trouble with home deliveries, but is possibly very capable in other areas of practice. Dr. Lancione didn't feel that the Board should take away a license simply because a doctor's obstetrics training is not up to date.

Dr. Ferritto asked which standard applied in this case: the sophisticated hospital practice standard, or the doctor's home practice standard. Dr. Ferritto stated that he doesn't know the community or the standards of that community.

Dr. Ferritto stated that he may be out of his field, but Dr. Snyder has a record in testimony that he delivered 400 plus babies within the period under investigation with only one fatality, and that fatality occurred after the baby left the premises. Dr. Ferritto asked if more than one baby out of 400 plus might die in more sophisticated suroundings.

Dr. Cramblett advised that he cannot answer that question, but a baby weighing 4 lbs. 6 oz, who is otherwise normal, should not die.

Dr. Cover stated that she is recommending taking away Dr. Snyder's obstetrical privileges. She asked Dr. Cramblett if he felt that his performance was unacceptable as a general practitioner. Dr. Cramblett stated that he did.

Dr. Lancione moved to approve and confirm the Findings and Order of Evelyn L. Cover, D.O. in the matter of Harvey J. Snyder, Jr., M.D. Mr. Paulo seconded the motion.

Dr. Yut moved that the Order be amended to read as follows:

The certificate to practice medicine and surgery of Harvey J. Snyder, Jr., M.D., is hereby limited as follows:

Dr. Snyder shall cease all obstetrical practice in all settings, including office, home, and hospital, shall not render any prenatal care to pregnant women, shall not render any post-natal care to mothers or infants, and shall not deliver babies.

In addition, Dr. Snyder shall make available his clinical records for review by an investigator or other agent of the Board on a monthly basis.

This Order shall become effective immediately upon approval by the Board.

Dr. Lancione seconded the motion to amend. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Lancione	- aye
	Dr. Cramblett	- nay
	Dr. Yut	- aye
	Dr. Oxley	- aye
	Mr. Paulo	- aye
	Dr. Ferritto	- aye

The motion carried.

A roll call vote was taken on Dr. Lancione's motion to approve and confirm the Findings and the amended Order.

ROLL CALL VOTE:	Dr. Lancione	- aye
	Dr. Cramblett	- nay
	Dr. Yut	- aye
	Dr. Oxley	- aye
	Mr. Paulo	- aye
	Dr. Ferritto	- aye

The motion carried.

Dr. Clarke and Dr. Ruppersberg returned to the meeting.

FINDINGS AND ORDER IN THE MATTER OF JACK IRWIN SMITH, M.D.

Mr. Jurca and Mr. Wenger remained out of the room during discussion of the above.

Dr. Cover asked the Board Members if they had read or considered the record of Jack Irwin Smith, M.D. A roll call was taken:

ROLL CALL:	Dr. Lancione	- aye
	Dr. Cramblett	- aye
	Dr. Clarke	- aye
	Dr. Yut	- aye
	Dr. Oxley	- aye
	Mr. Paulo	- aye
	Dr. Ferritto	- aye
	Dr. Ruppersberg	- aye

Dr. Nelson and Mr. Birnatowicz left the meeting at this time.

Dr. Lancione read the Findings of Fact, Conclusion and Order of the following Findings and Order:

FINDINGS AND ORDER
IN THE MATTER OF JACK IRWIN SMITH, M.D.

The matter of Jack Irwin Smith, M.D., came before me, Peter Lancione, M.D., Member of the State Medical Board of Ohio on May 29, 1980.

INTRODUCTION AND SUMMARY OF EVIDENCE

1. Jack Irwin Smith, M.D., was forwarded and did receive a letter of denial dated February 29, 1980, denying renewal of his license to practice medicine and surgery in Ohio. The denial was based upon Dr. Smith's failure to satisfy CME requirements within the triennial registration period of January 1, 1977 to December 31, 1979.

2. On March 24, 1980, Dr. Smith requested a hearing, as provided for in Chapter 119, Ohio Revised Code.

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 1006
180 East Broad Street
Columbus, Ohio 43215

November 15, 1979

Harvey J. Snyder, Jr., M.D.
1122 Robinson Ave.
Akron, Ohio 44203

Dear Doctor Snyder:

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 certificate to practice medicine and surgery under the provisions of Section 4731.22, Revised Code, for one or more of the following reasons:

1. On or about the morning of February 15, 1979, one Patient A attended your office, which is in your home, for a routine prenatal visit at approximately 36 weeks of her seventh pregnancy. You examined Patient A and advised her that you felt it was time for her baby to be born. You then ruptured her membranes.

   Over the course of the next twelve (12) hours, you attempted to induce labor by giving injections to Patient A. On or about 9:00 p.m. on February 15, 1979, Patient A's baby girl was born, and had difficulty breathing. You kept Patient A and her baby in your office overnight. The baby was wrapped in a blanket and kept at her mother's side. On or about the morning of February 16, 1979, you sent Patient A and the baby home. At no time did you physically examine the baby; provide adequate oxygen and warmth for the baby; conduct any tests on the baby such as a chest x-ray, CBC, or blood sugar; or hospitalize the baby. At no time did you tell Patient A not to breast feed the baby.

   Upon return to her home, Patient A put her baby to breast, at which time the baby passed bloody mucous from her nose and stopped breathing. The baby was rushed by rescue squad to the Emergency Room of Children's Hospital Medical Center of Akron. On arrival, the baby was moribund, having an occasional gasping respiration. Her heart was beating, her weight was recorded at 1980 grams (4 lbs. 6 oz.), and her temperature

was unregisterable, being less than 94° F. The baby was resuscitated and placed in an incubator. The baby was then moved to the Newborn Intensive Care Unit and placed on a respirator for artificial ventilation.

On or about 4:08 p.m. on February 17, 1979, Patient A's baby died after approximately forty-three (43) hours of life. The official cause of the baby's death was ruled to be hyaline membrane disease.

Such acts, in Paragraph 1 above, individually and/or collectively, constitute "a departure from, or 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. On or about October 1977 to February 1978, you provided prenatal care for one Patient B. Although this was Patient B's first pregnancy, and she had a family history of diabetes and was rapidly gaining weight, at no time did you perform any blood tests, urinalyses or pelvic examinations. On Patient B's last visit to you she insisted that you take her blood pressure, which you had not done during any of Patient B's previous visits. You did so only after an argument.

Such acts in Paragraph 2 above, individually and/or collectively, constitute "a departure from, or 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.

3. On or about May 1978 to February 1979, you provided prenatal care for one Patient C, who was experiencing her fourth pregnancy. At no time did you perform any blood tests or urinalyses on Patient C, or take her blood pressure, other than taking a drop of blood from Patient C's fingertip on one occasion, which you placed on a slide and held up to light, at which time you told Patient C it was "OK".

On or about February 12, 1979, you advised Patient C that her baby was about to be delivered, and that if she would return to your office that night, you could induce labor by rupturing her membranes. Patient C refused and went into labor two days later.

Although Patient C is Rh-, you advised her after delivery of the baby, that there was no need to check the baby's blood.

Such acts in Paragraph 3 above, individually, and/or collectively, constitute "a departure from, or failure to conform to, minimal standards

of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established", as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

4. On or about July, 1977 to December, 1977 you provided prenatal care to one Patient D, who was experiencing her first pregnancy. At no time did you perform a hemoglobin, hematocrit, serology, or test for gonorrhea. You performed only one blood test, which Patient D's husband helped perform with a "test kit".

   Approximately one week prior to term you wished to initiate labor in your office, but Patient D refused.

   During Patient D's labor at her home on December 1, 1977, an argument ensued between you and Patient D, and you slapped her because she would not cooperate with you.

Such acts in Paragraph 4 above, individually and/or collectively, constitute "a departure from, or 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.

Further, such acts in Paragraph 4 above, individually and/or collectively, constitute a violation of the American Medical Association Principles of Medical Ethics, specifically Sections One and Four, pursuant to Section 4731.22(B)(15), Ohio Revised Code.

5. On or about September, 1977 to May, 1978 you provided prenatal care to one Patient E, who was experiencing her sixth pregnancy. During this time, you would test her blood pressure only if she demanded it, and at no time did you perform a urinalysis or blood test even though she is Rh-.

   On or about May 14, 1978, Patient E's due date, you insisted on stripping her membranes, which she refused.

   During Patient E's delivery at her home, two weeks after her due date, you threatened to leave when she refused to have her bag of water ruptured. After the family relented and the membranes were ruptured, you continuously applied hard fundal pressure until the baby was delivered.

   The umbilical cord was tied with a shoelace, and the baby was never examined.

Such acts in Paragraph 5 above, individually and/or collectively, constitute "a departure from, or 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.

6. On or about February 26, 1977, you delivered Patient F's baby at her home. As the placenta did not spontaneously deliver, you attempted to manually remove the placenta against Patient F's protests. You insisted that you had to get back to your office and could not wait for the placenta to be delivered. You proceeded to give Patient F's husband, whose training was unknown to you, a syringe of Pitocin and instructed him to inject Patient F intramuscularly with the Pitocin if the placenta did not deliver within two (2) hours. You then left Patient F's home.

   After approximately two and one-half (2½) hours, Patient F was given the injection of Pitocin by her husband. When Patient F stood up shortly thereafter, the placenta fell to the floor.

   On or about March 1, 1977, Patient F brought her baby to your office in accordance with your instructions. You took two (2) hemostats and attached them to the baby's foreskin, and manually ripped back the baby's foreskin, causing the baby to scream and bleed.

Such acts, in Paragraph 2 above, 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.

Further, such acts, in Paragraph 2 above, individually and/or collectively, constitute "a departure from, or 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.

In order to best assure protection of any privileges which may exist, the names of the above-mentioned patients are enclosed on a separate form, included with this letter.

You are advised that you are entitled to a hearing in this matter if you request such hearing 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 positions, 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, reprimand, revoke, suspend, place on probation, refuse to register or reinstate your certificate to practice medicine and surgery.

Enclosed is a copy of the Medical Practice Act and a copy of the Code of Ethics of the American Medical Association.

Very truly yours,

Anthony Ruppersberg Jr., M.D.
Secretary

AR:es
Enclosures

CERTIFIED MAIL #507041
RETURN RECEIPT REQUESTED