

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

RECEIVED
ATTORNEY GENERAL'S OFFICE
HEALTH, EDUCATION &
FINANCES SECTION

JOHN W. FODERICK, M.D.,

CASE 89CV 07 5277

Appellant,

JUDGE THOMPSON

vs.

FINAL APPEALABLE ORDER

STATE MEDICAL BOARD OF OHIO,

Appellee.

TERMINATION NO. 8
BY TCT

D E C I S I O N

Rendered this ____ day of April 1990

THOMPSON, J.

This case comes before the Court on Appellee State Medical Board's Motion for judgment on the record. As that Motion is legally correct (this is an administrative appeal under R.C. Section 119.12, and not a matter for trial de novo) and unopposed by Appellant, the Motion is SUSTAINED.

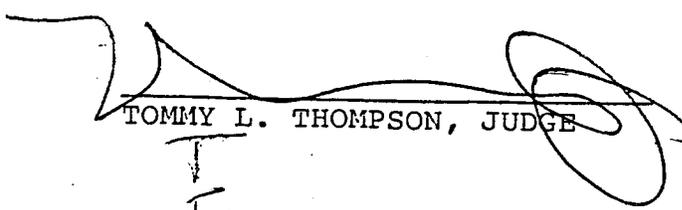
As Appellant has already filed his "Memorandum Brief" and the record from the Board has been filed, the Court will decide the case at this time. Based on the record below, the Court finds that the decision to revoke Appellant's Ohio license to practice medicine based on the surrender of his Minnesota license is supported by reliable, probative, and substantial evidence and is in accordance with law.

The Decision of the State Medical Board is AFFIRMED.

Counsel for the Board shall prepare an appropriate judgment

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO
90 APR 10 AM 9:21
THOMAS J. CLARK, CLERK

entry.


TOMMY L. THOMPSON, JUDGE

cc:

JOHN W. FODERICK, M.D.
Appellant, pro se

JOHN C. DOWLING, AAG
Counsel for Appellee

STATE OF OHIO

Filed
JUL 27 1989

7127189
959
62

IN COURT OF APPEALS

89C 075277

John W. Foderick, MD)
Relator)
vs.)
President of the Board)
of Medical Examiners,)
Respondent)

PETITION FOR WRIT OF
CERTIORARI
COURT OF APPEALS NO.
DATE OF ORDER : July 14, 1989
Objection to Recommendation : June 23, 1989
Denial of Objections and
Final Amended Order : July 14, 1989
Order Received : July 20, 1989

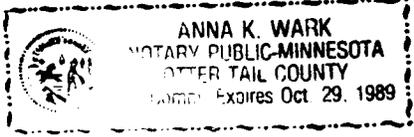
TO : THE COURT OF APPEALS OF THE STATE OF OHIO

The above-named relator hereby petitions the Court of Appeals of the State of Ohio for a Writ of Certiorari to review an Order of the President of the Board of Medical Examiners affirming its May 16, 1989 to revoke my Ohio licensure, and to review the Final Amended Order of July 14, 1989 (approving the recommendation of Joan Fishel, attorney hearing examiner) and to review my written Objection of June 23, 1989. Review of the final Order of the Board, filed and mailed on the date noted above, is requested upon the grounds that the Order is not in conformity with the provisions of Ohio Statutes as providing due legal process; the Order is based on unlawful procedure; and the Order contains errors of law as well as errors of findings of fact. The Order is also in violation of multiple constitutional provisions as well as the established principles of the American medical society.

DATED : July 21, 1989

John W. Foderick, MD
John W. Foderick, MD
John W. Foderick, MD
Acting in self-Contention
B ox 110
Parkers Prairie, Mn. 56361
218- 338 4678

Anna K. Wark



STATE OF OHIO

JUL 27 1989

IN COURT OF APPEALS

John W. Foderick, M.D.,
Relator

vs.

PRESIDENT OF THE BOARD
OF MEDICAL EXAMINERS,
Respondent

WRIT OF CERTIORARI
COURT OF APPEALS NO.

BOARD OF MEDICAL
EXAMINERS NO.

DATE OF ORDER : MAY 16, 1989

Objection to Order and Recommendation :
June 23, 1989

DATE OF FINAL AMENDED ORDER : JULY 14, 1989

TO : BOARD OF MEDICAL EXAMINERS

YOU ARE HEREBY ORDERED to return to the Court of APPEALS within 30 days from this date the record, exhibits and proceedings in the above - entitled matter so that this Court may review the decision of the President of the Board of Medical Examiners filed and mailed on the date noted above.

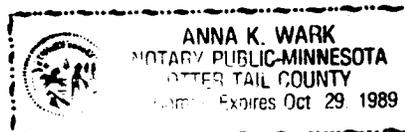
Copies of this writ and accompanying petition shall be served forthwith either personally or by mail upon the President of the Board of Medical Examiners and upon the Relator at :

John W. Foderick, MD
Acting in self-Contention
Box 110
Parkers Prairie, Mn. 56361
218-338 4678

Proof of service shall be filed with the clerk of the appellate courts.

Clerk of Appellate Courts
Franklin County Court - Common Pleas

DATED: July 21, 1989



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

July 14, 1989

John W. Foderick, M.D.
Box 110
Parkers Prairie, Mn. 56361

Dear Doctor Foderick:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Joan Irwin Fishel, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on July 12, 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 746 514 588
RETURN RECEIPT REQUESTED

Mailed July 18, 1989

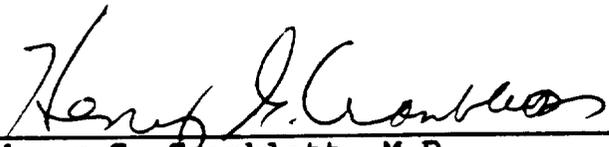
STATE OF OHIO
STATE MEDICAL BOARD

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 Joan Irwin Fishel, Attorney Hearing Examiner, State Medical Board; and attached excerpt of Minutes of the State Medical Board, meeting in regular session on July 12, 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 John W. Foderick, 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

July 14, 1989

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

JOHN W. FODERICK, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 12th day of July, 1989.

Upon the Report and Recommendation of Joan Irwin Fishel, 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 July 12, 1989, the following Order is hereby entered on the Journal of the State Medical Board for the 12th day of July, 1989.

It is hereby ORDERED:

That the certificate of John W. Foderick, M.D., to practice medicine and surgery in the State of Ohio be REVOKED.

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

(SEAL)



Henry G. Cramblett, M.D.
Secretary

July 14, 1989

Date

JUN 13 1989

REPORT AND RECOMMENDATION
IN THE MATTER OF JOHN W. FODERICK, M.D.

The Matter of John W. Foderick, M.D., came on for hearing before me, Joan Irwin Fishel, Esq., Hearing Examiner for the State Medical Board of Ohio, on May 16, 1989.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

- A. By letter of February 8, 1989 (State's Exhibit #1), the State Medical Board notified John W. Foderick, M.D., that it proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board alleged that Dr. Foderick answered "No" on his renewal application for the 1987-1988 biennium to the question "At any time since the last renewal of your certificate have you been addicted to or dependent upon alcohol or any chemical substance?" In fact, Dr. Foderick had recently relapsed and had been admitted into an alcohol treatment center. The Board further alleged that on his renewal application for the 1989-1990 biennium, Dr. Foderick responded "No" to the question "At any time since signing your last application for renewal of your certification have you surrendered or consented to limitation upon a license to practice medicine...?" In fact, Dr. Foderick had permanently surrendered his license to practice medicine and surgery in Minnesota on or about June 15, 1988, prior to the submission of his renewal application.

The Board asserted that these acts and/or omissions constituted violations of:

1. Section 4731.22(A), Ohio Revised Code, "Fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the Board;" and
2. Section 4731.22(B)(5), Ohio Revised Code, "Publishing a false, fraudulent, deceptive, or misleading statement."

The Board also alleged that the Order of the Minnesota Board of Medical Examiners and the records from The Manor, Inc. and Riverside Medical Center indicated that Dr. Foderick suffered from:

1. "Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice", as that clause is used in Section 4731.22(B)(26), Ohio Revised Code; and

2. "Inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills", as that clause is used in Section 4731.22(B)(19), Ohio Revised Code.

B. By letter received by the State Medical Board on February 21, 1989 (State's Exhibit #3), Dr. Foderick requested a hearing.

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 Respondent: Dr. Foderick did not personally appear at the hearing; however, his correspondence to the Board was admitted into evidence upon the Hearing Examiner's motion.

III. Testimony Heard

Neither party presented any witnesses in this Matter.

IV. Exhibits Examined

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

A. Presented by the State

1. State's Exhibit #2: Certified mail receipt and return card showing service of State's Exhibit #1.
2. State's Exhibit #4: February 24, 1989, letter to Dr. Foderick, from the State Medical Board advising that a hearing initially set for March 3, 1989, was postponed pursuant to Section 119.09, Ohio Revised Code.
3. State's Exhibit #5: March 8, 1989, letter to Dr. Foderick from the State Medical Board scheduling the hearing for May 16, 1989.
4. State's Exhibit #6: Copy of Dr. Foderick's renewal application card for the 1987-1988 biennium received by the State Medical Board on or about February 9, 1987 showing a negative answer to the question, "At any time since the last renewal of your certificate have you been addicted to or dependent upon alcohol or any chemical substance?"

JUN 13 1989

5. State's Exhibit #7: Copy of Dr. Foderick's renewal application card for the 1989-1990 biennium received by the State Medical Board on or about October 18, 1988 showing a negative answer to the question "At any time since signing your last application for renewal of your certification have you surrendered or consented to limitation upon a license to practice medicine...?"
6. State's Exhibit #8: Certified copy of the Stipulation and Order issued June 15, 1988, by the Minnesota Board of Medical Examiners through which Dr. Foderick permanently surrendered his license to practice medicine and surgery in Minnesota.
- * 7. State's Exhibit #9: Copy of the medical records for Dr. Foderick from The Manor, Inc. for treatment rendered December 29, 1986 through January 19, 1987.
- * 8. State's Exhibit #10: Copy of the medical records for Dr. Foderick from St. Mary's and Riverside Hospital for evaluations conducted between May 25, 1988 and June 7, 1988.
9. State's Exhibit #11: March 16, 1989, letter from Attorney Hearing Examiner Fishel to Dr. Foderick in response to Dr. Foderick's letter of March 3, 1989.
10. State's Exhibit #12: April 3, 1989, letter from Attorney Hearing Examiner Fishel to Dr. Foderick in response to Dr. Foderick's letter of March 21, 1989.
11. State's Exhibit #13: April 13, 1989, letter from Attorney Hearing Examiner Fishel to Dr. Foderick in response to Dr. Foderick's letter of April 5, 1989.
12. State's Exhibit #14: May 1, 1989, letter from Attorney Hearing Examiner Fishel to Dr. Foderick in response to Dr. Foderick's letter of April 15, 1989.

NOTE: THE ABOVE EXHIBITS MARKED WITH AN ASTERISK () HAVE BEEN SEALED PURSUANT TO FEDERAL REGULATIONS. 42 CFR PART 2.

B. Presented by the Respondent

1. Respondent's Exhibit A: Four letters from Dr. Foderick to the State Medical Board, dated March 3, 1989, March 21, 1989, April 5, 1989, and April 15, 1989, setting forth Dr. Foderick's arguments and contentions in this Matter.

JUN 13 1988

FINDINGS OF FACT

1. On December 29, 1986, Dr. Foderick entered a treatment program for alcohol dependency at The Manor, Inc. in Pine City, Minnesota. Dr. Foderick was discharged from this program on January 19, 1987.

These facts are established by State's Exhibits #9 and #10.

2. In completing his application for renewal of his Ohio certificate for the 1987-1988 biennium, Dr. Foderick answered "No" to the question, "At any time since the last renewal of your certificate have you been addicted to or dependent upon alcohol or any chemical substance?" The renewal application card was received in the Board offices on February 9, 1987.

This fact is established by State's Exhibit #6.

3. On June 15, 1988, John W. Foderick, M.D., entered into a Stipulation with the Minnesota Board of Medical Examiners (hereinafter Minnesota Board) in which he agreed to permanently surrender his license to practice medicine and surgery in Minnesota. He also agreed not to reapply for a license to practice. The Stipulation was adopted by the Minnesota Board through its Order dated June 15, 1988. The Stipulation stated that Dr. Foderick acknowledged that he had read and understood it and that he had entered into it voluntarily.

Prior to its June 15, 1988, Order, the Minnesota Board had ordered Dr. Foderick to submit to a mental and physical examination. Evaluations were conducted between May 25, 1988, and June 7, 1988. The Stipulation and Order recites the following findings of those evaluations as true facts: evidence of bilateral central nervous system disease; difficulty with coherency, concentration, attention, visual conceptualizing, and complex problem solving; congestive heart failure with symptoms of dyspnea, dyspnea on exertion, orthopnea and pedal edema; polycystic kidney disease; and a history of alcohol abuse.

It was the written opinion of the psychologist who conducted a neuropsychological assessment of Dr. Foderick on June 1, 1988, that Dr. Foderick's poor problem solving skills could impact on his medical practice. The psychologist stated that "...when the problem situation is new [Dr. Foderick] tends to rigidly attempt to apply old solutions, even in the face of clear evidence that his strategy is not working."

These facts are established by State's Exhibits #8 and #10.

JUN 13 1989

4. Approximately four months after the Minnesota Order, Dr. Foderick completed his application for renewal of his Ohio certificate for the 1989-1990 biennium. On the application, Dr. Foderick answered "No" to the question, "At any time since signing your last application for renewal of your certification have you surrendered or consented to the limitation upon a license to practice medicine...?" The application was received by the Board on October 18, 1988.

This fact is established by State's Exhibit #7.

5. In his letters to the Ohio Board and during his June, 1988 evaluations, Dr. Foderick admitted to two D.W.I. convictions that occurred in approximately 1975. In his February 17, 1989, letter, Dr. Foderick describes these convictions as "civil matters not related to the practice of medicine."

These facts are established by State's Exhibits #3 and #10.

6. During the mental and physical evaluations conducted in May and June of 1988, Dr. Foderick denied having an alcohol problem and denied ever experiencing certain symptoms of alcoholism. However, during his previous treatment at The Manor, Inc. in December, 1986 and January, 1987, Dr. Foderick had admitted that he was an alcoholic and that he had experienced 21 of 31 listed symptoms of alcoholism.

These facts are established by State's Exhibits #9 and #10.

7. In his written statements to the Board, Dr. Foderick contended that he had entered into the Stipulation with the Minnesota Board as a "nolo contendere matter to avoid legal costs". He stated that since he had not intended to stay in Minnesota it had been quicker to simply settle the matter. Dr. Foderick claimed that his attorney had advised him that this Stipulation was not a disciplinary action and would have no effect on his licensure status elsewhere.

In his written contentions he described his stay at The Manor, Inc. in 1986-87 as a successful completion of a treatment program for a drinking "episode" of short duration. He stated that his condition could not be construed as alcoholism. He had voluntarily entered The Manor for "more or less a personal inventory of life's goals."

Dr. Foderick asserted that he had answered the question on the 1987-1988 biennial license renewal application card regarding alcohol dependency in the negative because the question stated that "If you have been through an acceptable alcohol treatment program, you may answer 'No'". However, the application card for 1987-1988 license renewal does not contain such a statement. That statement first appears on the 1989-1990 biennial license renewal application cards.

JUN 18 1985

Dr. Foderick asserted that he had answered "No" to the question on his 1989-90 renewal application regarding whether he had surrendered a license since the last renewal of his certificate because he had not known the legal status of his Minnesota licensure. Dr. Foderick denied the truth of the statements in the Stipulation. He asserted that the Stipulation was not legally valid since its items were "not established legal material fact as determined by due process." He did not take action challenging the validity of the Stipulation and Order until after other states began to inquire about his Minnesota surrender.

Dr. Foderick described his physical maladies as asymptomatic and controlled. He described the 1988 neurological exam as a "hurried 2-minute 'walk through' by a glassy-eyed stranger..." Further, he described the psychological tests as indicating individual characteristics that had little to do with him clinically.

These facts are established by State's Exhibit #3 and Respondent's Exhibit A.

CONCLUSIONS OF LAW

1. The acts and/or omissions of Dr. Foderick with regard to Findings of Fact #1 through #4, above, constitute violations of:
 - a. Section 4731.22(A), Ohio Revised Code, "Fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the Board,"; and
 - b. Section 4731.22(B)(5), Ohio Revised Code, "Publishing a false, fraudulent, deceptive, or misleading statement".

In February of 1987, just one month after his discharge from treatment for alcoholism at The Manor, Inc., Dr. Foderick completed his application card for renewal of his certificate for the 1987-1988 biennium. In answering the application questions, he told this Board that since the last renewal of his certificate he had not been addicted to or dependent upon alcohol. Although he claimed that the question allowed a negative answer if the applicant had been through an acceptable alcohol treatment program, such statement is not on the 1987-1988 renewal application card (see State's Exhibit #6). The fact that such a statement is on the 1989-1990 renewal application card cannot serve as an explanation for Dr. Foderick's inaccurate answer in 1987. Further, Dr. Foderick's claim, that his treatment at The Manor was not for alcoholism, is rebutted by the medical records for that treatment. It must be concluded that Dr. Foderick intended to deceive this Board regarding his alcohol dependency problem by his false answer on his renewal card.

JUN 13 1989

An intent to deceive can also be concluded with regard to the inaccurate information Dr. Foderick provided on his 1989-1990 renewal application. Dr. Foderick denied the legal validity but never the reality of the surrender of his Minnesota license. He knew that he had surrendered his license. By signing the Stipulation he acknowledged that he had read it, understood it, and voluntarily entered into it. It was only when other states began to take action against his other licenses that Dr. Foderick took issue with the Stipulation and Order. The renewal application question is unambiguous. There is no reason to believe that the question can be answered in the negative simply because a surrender is being legally challenged. The only inference to be drawn from all the facts is that Dr. Foderick was dismayed to find other states taking action against him and in order to stem the tide of this state action, elected to deceive this Board regarding his Minnesota surrender.

2. The acts and/or omissions as set forth in Findings of Fact #1, #3, #5, and #6, above, constitute violations of:
 - a. Section 4731.22(B)(26), Ohio Revised Code, "Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice"; and
 - b. Section 4731.22(B)(19), Ohio Revised Code, "Inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills".

It is clear from the record that Dr. Foderick has a long-standing alcohol abuse problem. Though Dr. Foderick denies current use of alcohol, he must be considered impaired and subject to the monitoring of this Board until he has demonstrated his ability to maintain sobriety for the long-term.

It must be concluded from the unrebutted findings of Dr. Foderick's neurological and psychological evaluations that he has difficulties with coherency, concentration, attention, visual conceptualizing, and complex problem solving, and is unable to practice according to acceptable and prevailing standards of care by reason of the physical deterioration of his cognitive and perceptive skills. No conclusion can be made from the record as to whether Dr. Foderick's heart, kidney, and central nervous system problems affect his ability to practice.

* * * * *

Dr. Foderick's failure to disclose his alcohol dependency treatment and his Minnesota license surrender constitute grounds for revocation under Section 4731.22(A) and this Board's disciplinary guidelines. However, the Board may want to consider the possibility that Dr. Foderick's behavior was due to his

1989

PROPOSED ORDER

It is hereby ORDERED that:

1. The certificate of John W. Foderick, M.D., to practice medicine and surgery in the State of Ohio be REVOKED. Such revocation is stayed and Dr. Foderick's certificate is hereby suspended for an indefinite period of time, but not less than one (1) year.
2. The State Medical Board shall not consider reinstatement of Dr. Foderick's certificate to practice unless and until all of the following minimum requirements are met:
 - a. Dr. Foderick shall submit an application for reinstatement accompanied by appropriate fees. Dr. Foderick shall not make such application for at least one (1) year from the effective date of this Order.
 - b. Dr. Foderick shall demonstrate, by documentary evidence acceptable to the State Medical Board, that he has maintained continuous abstinence from alcohol and drugs, except for those drugs (other than alcohol) available for purchase over the counter, or those prescribed, administered, or dispensed to him by another so authorized by law. Such evidence shall include, at a minimum:
 - i. Satisfactory documentation of his continuous participation in an alcohol rehabilitation program acceptable to the Board, such as AA or Caduceus, no less than twice a week;
 - ii. A minimum of two (2) psychiatric evaluations by physicians acceptable to the Board stating that Dr. Foderick is no longer alcohol dependent and that he is able to practice according to acceptable and prevailing standards of care. Each of these evaluations shall be in writing and shall state with particularity the basis for such determination.
 - c. Dr. Foderick shall submit a written report of a neuropsychological evaluation by an individual or individuals approved by the Board, stating whether or not Dr. Foderick currently has difficulties with coherency, concentration, attention, visual conceptualization, and complex problem solving and whether or not these or any other difficulties identified interfere with his ability to practice medicine according to acceptable and prevailing standards of care. This report shall be prepared by the individual(s) conducting such evaluation and shall state with particularity the basis for such determinations.

JUN 13 1984

- d. Dr. Foderick 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. Foderick's activities will be directly supervised and overseen by another physician approved by the Board.
 - e. Dr. Foderick shall take and pass the SPEX examination or any similar written examination which the Board may deem appropriate to assess his clinical competency.
 - f. Dr. Foderick shall provide documentation to the Board of successful completion of an ethics course. The exact number of hours and the specific content of the program shall be approved in advance by the Board or its designee and shall not total less than ten (10) hours. This program is in addition to the Continuing Medical Education requirements for relicensure.
 - g. In the event that Dr. Foderick has not been engaged in the active practice of medicine or surgery for a period in excess of two (2) years prior to the reinstatement of his certificate, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Foderick's fitness to resume practice.
3. Upon reinstatement, Dr. Foderick'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. Foderick's activities will be directly supervised and overseen by another physician approved by the Board.
 4. Further, upon reinstatement and his commencement of practice in Ohio, Dr. Foderick's certificate shall be subject to the following probationary terms, conditions, and limitations for a period of five (5) years:
 - a. Dr. Foderick shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
 - b. Dr. Foderick shall submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the conditions of probation.
 - c. Dr. Foderick 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.

JUN 13 1994

- d. Dr. Foderick shall maintain participation in an alcohol rehabilitation program acceptable to the Board, such as AA or Caduceus, no less than twice a week. Dr. Foderick shall submit documentary evidence of his continuing compliance with such program thirty (30) days in advance of each personal appearance before the Board, or as otherwise directed by the Board.
 - e. Dr. Foderick shall abstain completely from the use of alcohol.
 - f. Dr. Foderick shall obtain the Board's prior approval for any alteration to the practice plan which was approved by the Board prior to the reinstatement of his certificate to practice. In the event that Dr. Foderick's supervising physician under this practice plan becomes unable or unwilling to so serve, Dr. Foderick shall immediately inform the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as applicable. Dr. Foderick shall refrain from practicing unless and until such supervision is in place, unless otherwise determined by the Board.
 - g. Dr. Foderick shall submit blood specimens for analysis without prior notice at such times as the Board may require.
 - h. In the event that Dr. Foderick should leave Ohio for three (3) consecutive months, or reside or practice outside the state, Dr. Foderick 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.
5. If Dr. Foderick violates the terms of this Order in any respect, the Board, after giving Dr. Foderick notice and an opportunity to be heard, may set aside the stay Order and impose the revocation of his certificate.
 6. Upon successful completion of probation, Dr. Foderick'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.



Joan Irwin Fisher
Attorney Hearing Examiner

EXCERPT FROM THE MINUTES OF JULY 12, 1989

REPORTS AND RECOMMENDATIONS

Dr. O'Day advised that the findings and orders appearing on the Board's agenda are those in the matters of Dr. Leonard M. Kaplan, Dr. John W. Foderick, Dr. Robert L. Tomsak, Ms. Clare M. Logan, and Dr. Glenn M. Roberts.

Dr. Rauch 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 Dr. Leonard M. Kaplan, Dr. John W. Foderick, Dr. Robert L. Tomsak, Ms. Clare M. Logan, and Dr. Glenn M. Roberts. A roll call was taken:

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

The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.

.....

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

.....

REPORT AND RECOMMENDATION IN THE MATTER OF JOHN W. FODERICK, 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.

DR. STEPHENS MOVED TO APPROVE AND CONFIRM MS. FISHEL'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JOHN W. FODERICK, M.D. DR. KAPLANSKY SECONDED THE MOTION.

Dr. O'Day asked if there were any questions concerning the proposed findings of fact, conclusions, and order in the above matter.

MS. ROLFES MOVED THAT THE PROPOSED ORDER IN THE MATTER OF JOHN W. FODERICK, M.D., BE AMENDED TO READ AS FOLLOWS:

It is hereby ORDERED that the certificate of John W. Foderick, M.D., to practice medicine and surgery in the State of Ohio be REVOKED.

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

MR. ALBERT SECONDED THE MOTION.

Ms. Rolfes stated that impairment was not the sole issue in this case. Dr. Foderick was also charged with "publishing a false, fraudulent, deceptive, or misleading statement" in applying for renewal of his certificate to practice medicine. Ms. Rolfes continued that Dr. Foderick permanently surrendered his Minnesota license, and she reminded the Board that it may take action against a licensee based on action taken in other states. Ms. Rolfes stated that when she reviewed the transcript, she was bothered by the evaluations presented at the hearing, as well as by Dr. Foderick's review of the situation as he perceived it. Ms. Rolfes stated that she does not think that allowing Dr. Foderick to continue to practice in Ohio is fulfilling the Board's obligation to protect the public, nor does she feel that Dr. Foderick is an enhancement to medical practice in Ohio.

Mr. Albert stated that Dr. Foderick has one of the worst kinds of addictions, i.e., alcoholism, and yet won't admit it.

Dr. Gretter expressed concern that Dr. Foderick left a treatment program against medical advice.

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

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

The motion carried.

DR. AGRESTA MOVED TO APPROVE AND CONFIRM MS. FISHEL'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JOHN W. FODERICK, 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. Daniels	- aye
	Dr. Stephens	- aye
	Dr. Agresta	- aye
	Dr. Rauch	- abstain
	Dr. Kaplansky	- aye
	Mr. Albert	- aye
	Ms. Rolfes	- aye

The motion carried.

STATE OF OHIO
THE STATE MEDICAL BOARD
77 South High Street
17th Floor
Columbus, Ohio 43266-0315

(614)466-3934

February 8, 1989

John W. Foderick, M.D.
21 - 5th Avenue, North
Salk Rapids, Minnesota 56379

Dear Doctor Foderick:

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 February 9, 1987, you submitted your application for biennial license renewal in Ohio. On that application in response to the question "At any time since the last renewal of your certificate have you been addicted to or dependent upon alcohol or any chemical substance?" you stated "No." In fact, on or about December 29, 1986, you were admitted into a drug and alcohol treatment center for treatment of your alcoholism and recent relapse.
2. On or about October 18, 1988, you submitted your application for biennial license renewal in Ohio. On that application, in response to the question "At any time since signing your last application for renewal of your certification have you surrendered or consented to limitation upon a license to practice medicine . . . ?" you stated "No." In fact, on or about June 15, 1988, you entered into an agreed stipulation and Order with the Minnesota Board of Medical Examiners in which you permanently surrendered your license to practice medicine and surgery in Minnesota.

STATE OF OHIO
THE STATE MEDICAL BOARD

Page Two
John W. Foderick, M.D.

February 8, 1989

The acts and/or omissions as alleged in paragraphs (1), and (2) above, individually and/or collectively, constitute "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code.

Further, such acts and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute "publishing a false, fraudulent, deceptive, or misleading statement", as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

3. You suffer from "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice" as that clause is used in Section 4731.22(B)(26), Ohio Revised Code, and/or "inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including but not limited to, physical deterioration that adversely affects cognitive, motor, or preceptive skills", as that clause is used in Section 4731.22(B)(19), Ohio Revised Code. Evidence indicating your impairment and/or inability to practice includes, but is not limited to, your alcohol dependency problem and physical problems as detailed in the June 15, 1988 Order of the Minnesota Board of Medical Examiners and in the records from The Manor, Inc., Pine City, MN and Riverside Medical Center, Minneapolis, MN.

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.

STATE OF OHIO
THE STATE MEDICAL BOARD

Page Three
John W. Foderick, M.D.

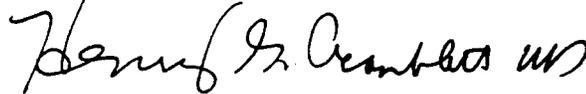
February 8, 1989

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Henry G. Cramblett, M.D.
Secretary

HGC:caa

enclosures

CERTIFIED MAIL RECEIPT NO. P 026 073 545
RETURN RECEIPT REQUESTED