

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

April 14, 1989

Eric A. Baum, M.D.
6400 South Washington Blvd., Suite 101
Sarasota, Florida 33577

Dear Doctor Baum:

Please find enclosed a certified copy of the Findings, Order, and Journal Entry approved and confirmed by the State Medical Board meeting in regular session on April 12, 1989.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal may be taken to the Franklin 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.

Very truly yours,



Henry G. Cramblett, M.D.
Secretary

HGC:em

Enclosures

CERTIFIED MAIL NO. P 746 514 676
RETURN RECEIPT REQUESTED

Mailed 4/17/89

STATE MEDICAL BOARD OF OHIO

CERTIFICATION

I hereby certify that the attached copy of the Findings, Order, and Journal Entry, approved by the State Medical Board, meeting in regular session on April 12, 1989, constitutes a true and complete copy of the Findings, Order, and Journal Entry in the matter of Eric A. Baum, M.D., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made under the authority of the State Medical Board of Ohio acting in its behalf.

(SEAL)



Henry G. Cramblett, M.D.
Secretary

4/17/89

Date

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

February 8, 1989

Eric A. Baum, M.D.
640 South Washington Blvd Suite 101
Sarasota, FL 33577

Dear Doctor Baum:

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 December 3, 1988, the Board of Medicine for the Florida Department of Professional Regulation revoked your license to practice medicine in the State of Florida based upon a Final Order containing Findings of Fact and Conclusions of Law which is attached hereto and fully incorporated by reference herein.

The revocation of your Florida license, as alleged in the above paragraph (1), constitutes "the limitation, revocation, or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that would also have been a violation of this chapter, except for nonpayment of fees," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, to wit: Sections 4731.22(B)(2), 4731.22(B)(3), 4731.22(B)(5), 4731.22(B)(6) and 4731.22(B)(8), Ohio Revised Code.

Pursuant to Chapter 119, Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, that request must be 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.

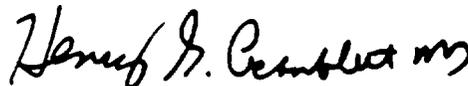
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February 8, 1989

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 #569 363 931
RETURN RECEIPT REQUESTED

BEFORE THE BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL
REGULATION,

Petitioner,

vs.

ERIC A. BAUM, M.D.,

Respondent.

JAN 18 1989

DPR CASE NO. 0067978
DOAH CASE NO. 87-2451
LICENSE NO. ME 0027880

FILED
12-13-88

FINAL ORDER

This cause came before the Board of Medicine (Board) pursuant to Section 120.57(1)(b)9., Florida Statutes, on December 3, 1988, in Miami, Florida, for the purpose of considering the Hearing Officer's Recommended Order (a copy of which is attached hereto) in the above-styled cause. Petitioner, Department of Professional Regulation, was represented by Stephanie A. Daniel, Attorney at Law. Respondent was duly notified of the hearing and was not present.

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Board makes the following findings and conclusions.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein.

2. There is competent substantial evidence to support the findings of fact.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 458, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein.

3. There is competent substantial evidence to support the conclusions of law.

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Hearing Officer be ACCEPTED and ADOPTED. WHEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that

Respondent's license to practice medicine in the State of Florida is REVOKED.

This order takes effect upon filing with the Clerk of the Department of Professional Regulation.

DONE AND ORDERED this 3rd day of December, 1988.

BOARD OF MEDICINE

Emilio D. Echevarria
EMILIO D. ECHEVARRIA, M.D.
CHAIRMAN

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF PROFESSIONAL REGULATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing FINAL ORDER has been provided by certified mail to Eric A. Baum, M.D., 640 South Washington Boulevard, Sarasota, Florida 33577; by U. S. Mail to K.N. Ayers, Hearing Officer, Division of Administrative Hearings, 2009 Apalachee Parkway, Tallahassee, Florida 32302; and by interoffice delivery to Stephanie A. Daniel, Attorney at Law, Department of Professional Regulation, 130 North Monroe Street, Tallahassee, Florida 32399-0750 at or before 5:00 p.m., this 15th day of December, 1988.

Stephanie A. Daniel

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF PROFESSIONAL)
REGULATION, BOARD OF MEDICINE,)
)
Petitioner,)
)
vs.) CASE NO. 87-2451
)
ERIC A. BAUM, M.D.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, K. N. Ayers, held a public hearing in the above-styled cause on August 16, 1988, at Sarasota, Florida.

APPEARANCES

For Petitioner: Julie Gallagher, Esquire
204-B South Monroe Street
Tallahassee, FL 32301

For Respondent: Not present or represented.

By Administrative Complaint filed May 11, 1987, the Department of Professional Regulation (DPR), Petitioner, seeks to revoke, suspend or otherwise discipline the license of Eric A. Baum, Respondent, as a medical doctor. As grounds therefor, it is alleged that Respondent, in prescribing medication for his pregnant wife, Teresa Baum, was guilty of malpractice or failure to practice medicine with that level of care, skill and treatment recognized as being acceptable; that he prescribed those medications not in the course of his professional practice; that in writing prescriptions in the name of his daughter Pam and in

the names of fictitious persons Respondent made deceptive, untrue or fraudulent representations in the practice of medicine; that he failed to keep adequate medical records to justify the treatment of Teresa or Pam Baum; and that he pleaded nolo contendere to a charge of obtaining drugs by fraud.

At the commencement of the hearing, efforts to contact Respondent by telephone were made, but to no avail. That Respondent had notice and was aware of the date and time scheduled for this hearing is confirmed by Respondent's Motion to Stay dated June 30, 1988.

At the hearing, Petitioner called three witnesses, and 16 exhibits were admitted into evidence.

Proposed findings submitted by Petitioner and not included herein were deemed unnecessary to support the conclusions reached.

FINDINGS OF FACT

1. At all times relevant hereto, Eric A. Baum was a licensed physician in the State of Florida having been issued License No. ME 0027880. He is board certified as a psychiatrist and board eligible in internal medicine (Exhibit 3).
2. Respondent has never established an active practice in Florida, although in the latter part of 1985 he maintained an office at his residence and later, for approximately 2 months, in a downtown office building in Sarasota.
3. Between August 19, 1985 and December 30, 1985, Respondent prescribed Bentyl, Ritalin, Fiorinal, Cylert, Urecholine and Laradopa to "Terri Leigh", generally in quantities

of 100 for Ritalin (10 mg.) and Fiorinal (Tab). During this period, 1250 10 mg. of Ritalin and 1550 tabs of Fiorinal were prescribed (Exhibit 14). Terri Leigh is an alias used by Respondent for his wife, Terri Baum (Exhibit 7). Ritalin is a Class II controlled substance, Fiorinal is a Class III controlled substance and Cylert is a Class IV controlled substance.

4. During part of this time until delivery on October 21, 1985, Terri Baum was pregnant. Medical records prepared by Respondent for Terri Baum would indicate the medication was prescribed for headaches and depression.

5. Both Ritalin and Fiorinal are contraindicated during pregnancy.

6. Between July 30, 1985 and December 30, 1985, Respondent wrote prescriptions for "Pam Leigh" for 200 Fiorinal, 600 Cylert (37.5 mg.) and 500 Ritalin (10 mg.), (Exhibit 10). Pam Leigh is an alias for Respondent's then 16 year old daughter, Pam Baum.

7. Respondent contends that Pam is hyperkinetic and suffered from migraine headaches, and the medication was prescribed for those diagnoses. However, Pam denies ever taking any drugs or having any illness requiring such medication. Mark Baum, Pam's twin brother, denies that Pam is or was hyperkinetic or that he ever saw her take any medication. This latter evidence is deemed to be more credible than Respondent's testimony (Exhibit 3).

8. The quantity of controlled substances prescribed for Terri and Pam by Respondent during the periods above-noted

are greater than should be prescribed for the symptoms noted and were inappropriate.

9. On April 15, 1987, Respondent pleaded nolo contendere to the offense of obtaining drugs by fraud in the Circuit Court of Sarasota County, Florida, adjudication of guilt was withheld, and he was placed on probation for one year with certain terms (Exhibit 11).

10. At the time Respondent's residence (and office) were searched by police pursuant to a search warrant seeking patient's records for Terri and Pam Baum, those records could not be found, and Respondent denied knowledge of their whereabouts. The records (Exhibits 6 and 7) were subsequently produced by Respondent. It is likely that Respondent prepared Exhibits 6 and 7 subsequent to the arrest of Terri Baum shortly before the search was conducted.

11. Subsequent to the arrest, Terri Baum and Pam Baum on February 26, 1986 had an appointment with Dr. Sayers Brenner, M.D., a psychiatrist, at which Terri requested Ritalin, Cylert and Fiorinal for herself and Ritalin and Cylert for Pam. Dr. Brenner, at the time unaware of Terri's arrest, prescribed a 10-day supply of these drugs and told Terri that he would not continue to supply drugs to her and that he did not treat adolescent patients. Although an appointment was made for a subsequent visit in two weeks, neither Terri nor Pam returned.

12. Although no charges were made in this regard, evidence was presented in Exhibit 8 that Respondent wrote prescriptions for himself for Lasix, Lanoxin and Urecholine. No

evidence was submitted from which a determination can be made that Respondent has a drug dependency problem, although the evidence is clear that if Respondent does not have a drug dependency problem, his wife does, and that prescriptions were written by Respondent to several fictitious persons to support this dependency.

CONCLUSIONS OF LAW

The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings.

In a license disciplinary proceeding, Petitioner has the burden of proving the allegations made by clear and convincing evidence. Ferris v. Turlington, 510 So.2d 292 (Fla. 1988).

Respondent is here charged with violating Sections 458.331(), (l), (n), (q) and (t), Florida Statutes (1985), which provides the following acts shall constitute grounds for which disciplinary action against a licensee may be taken:

(c) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of medicine or the ability to practice medicine. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter.

(l) Making deceptive, untrue, fraudulent representations in the practice of medicine or employing a trick or scheme in the practice of medicine when such scheme or trick fails to confirm to the generally prevailing standards of treatment in the medical community.

(n) Failing to keep written medical records justifying the course of treatment of the patient, including, but not limited to, patient histories, examination results and test results.

(q) Prescribing, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in a course of the physician's professional practice. For the purposes of this paragraph, it shall be legally presumed that prescribing, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the physician's professional practice, without regard to his intent.

(t) Gross or repeated malpractice or the failure to practice medicine with that level of care, skill, and treatment which is recognized by a reasonable prudent similar physician as being acceptable under similar conditions and circumstances

Writing prescriptions in the name of fictitious persons constitutes deceptive, untrue and fraudulent representations proscribed by s. 458.331(1)(1).

Pleading nolo contendere to the charge of obtaining drugs by fraud constitutes a violation of s. 458.331(1)(c) since this offense related directly to the practice of medicine.

The medical records presented in Exhibits 6 and 7 are inadequate to justify the drug prescriptions written in the name of Terri Lee, Terri Baum, Pam Leigh or Pam Baum. That these records were prepared for the singular purpose of providing written support for the issuance of the prescriptions for controlled substances is clearly shown by the evidence that Pam

Baum, at the time the prescriptions were written for her, was not suffering from hyperkinesis or migraine headaches; nor did she take the drugs prescribed.

By writing prescriptions in the name of Pam Leigh supposedly intended for Pam Baum, who neither needed nor ingested the medication, constitutes prescribing a controlled substance other than in the course of Respondent's professional practice. It also constitutes the making of deceptive, untrue or fraudulent representations in the practice of medicine as well as malpractice in failing to practice medicine with that level of care, skill and treatment which is recognized by a reasonable prudent similar physician as being acceptable under similar conditions and circumstances.

From the foregoing, it is concluded that Petitioner has proved by clear and convincing evidence that Respondent violated Sections 458.331(1)(1), (n), (q) and (t), Florida Statutes (1985), as alleged. It is

RECOMMENDED that the license of Eric A. Baum to practice medicine in Florida be revoked.

ENTERED this 7th day of October, 1988, in Tallahassee, Florida.


K. N. AYERS
Hearing Officer
Division of Administrative Hearings
The Oakland Building
2009 Apalachee Parkway
Tallahassee, FL 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of October, 1988.

Copies furnished to:

Julie Gallagher, Esquire
204-B South Monroe Street
Tallahassee, FL 32301

Eric A. Baum, M.D.
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