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OCT 4 1985
ADMINISTRATIVE AGENCIES SECTION

IN THE COURT OF COMMON PLEAS OF DEFIANCE COUNTY, OHIO

IN RE: APPEAL OF:

Alan E. Zimmer, M.D.

Appellant

-vs-

The State of Ohio
State Medical Board

Appellee

: Case No.27459

: JUDGMENT ENTRY

FILED
IN COURT OF COMMON PLEAS
DEFIANCE COUNTY OHIO
OCT 02 1985
Josephine A. Leach
CLERK

This cause came on to be heard on the 11th day of September, 1985, and upon consideration of the record, the briefs and oral arguments of counsel and the consent of Alan E. Zimmer, M.D., Appellant for a confirmation of the decision of the Ohio Medical Board should the stay of execution be lifted by the Court of Appeals at Cincinnati, Ohio and the confirmation by Appellant's attorney that said stay had been lifted by the Sixth District Circuit Court of Appeals in Cincinnati, a copy of which is filed herewith;

It is therefore ORDERED, ADJUDGED and DECREED by the Court that the decision of the Ohio Medical Board be and the same is hereby confirmed and this cause is remanded to said Board for further proceedings.

Costs assessed to Appellant Allan E. Zimmer, M.D.

Charles A. Bakle, Sr
JUDGE

cc: Mary Joseph Maxwell
Assistant Attorney General
30 East Broad Street
Columbus, Ohio 43215
Attorney for Ohio Medical Board

Harland M. Britz
Suite 100; 414 North Erie Street
Toledo, Ohio 43624
Attorney for Alan E. Zimmer, M.D.

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

Please contact the Franklin County Court of Common Pleas to obtain a copy of this document. The Franklin County Court of Common Pleas can be reached at (614) 462-3621, or by mail at 369 S. High Street, Columbus, OH 43215.

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

March 20, 1985

Alan E. Zimmer, M.D.
100 Calvin Street
Defiance, OH. 43512

Dear Doctor Zimmer:

Please find enclosed a certified copy of the Entry of Order, the Report and Recommendation of Lucy O. Oxley, M.D., Member, State Medical Board of Ohio; and a certified copy of the Motions by the State Medical Board, meeting in regular session on March 14, 1985, amending said Report and Recommendation as the Findings and Order of the State Medical Board.

You are hereby notified that you may appeal this Order to the Court of Common Pleas of the county in which your place of business is located, or the county in which you reside. If you are not a resident and have no place of business in this state, you may appeal to the Court of Common Pleas of Franklin County, Ohio.

To appeal as stated above, you must file a notice of appeal with the Board setting forth the Order appealed from, and the grounds of the appeal. You must also file a copy of such notice with the Court. Such notices of appeal shall be filed within fifteen (15) days after the date of mailing of this letter and in accordance with Section 119.12, Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Henry G. Cramblett, M.D.
Secretary

HCG:em

Enclosures

CERTIFIED MAIL NO. P 569 457 872
RETURN RECEIPT REQUESTED

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

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Lucy O. Oxley, M.D., Member, State Medical Board of Ohio; and the attached copy of the Motions approved by the State Medical Board, meeting in regular session on March 14, 1985, amending, approving and confirming said Report and Recommendation as the Findings and Order of the State Medical Board constitutes a true and complete copy of the Findings and Order of the State Medical Board in the matter of Alan E. Zimmer, M.D., as it appears in the Journal of the State Medical Board of Ohio.

(SEAL)

Henry G. Cramblett, M.D.
Secretary

3-20-85
Date

STATE OF OHIO
THE STATE MEDICAL BOARD

REPORT AND RECOMMENDATION
IN THE MATTER OF ALAN E. ZIMMER, M.D.

The matter of Alan E. Zimmer, M.D., came before me, Lucy O. Oxley, M.D., Member of the State Medical Board of Ohio, on October 10, 1984.

INTRODUCTION AND SUMMARY OF EVIDENCE

1. The Respondent, Alan E. Zimmer, M.D., is a practicing physician in Defiance, Ohio. On May 21, 1984, Dr. Zimmer was convicted in United States District Court of one count of conspiracy to commit offense or to defraud the United States; one count of attempt to evade or defeat tax; and one count of giving false information. Each of these counts constitutes a felony. Dr. Zimmer was found guilty despite his declarations of innocence.

2. A citation was issued by the State Medical Board of Ohio against Dr. Zimmer as a result of the District Court's decision. The Board contended that the convictions presented grounds for taking disciplinary action against the doctor's medical license, pursuant to Section 4731.22(B)(9), Ohio Revised Code.

3. Dr. Zimmer appeared at the October 10, 1984, Medical Board hearing on his own behalf, having been duly advised of his right to counsel and of his right to present evidence and cross-examine witnesses.

4. The State was represented by Assistant Attorney General Mary Joseph Maxwell.

5. In a brief opening statement, Ms. Maxwell reiterated the State's contention that the felony convictions entered against Dr. Zimmer gave the Board grounds for taking disciplinary action.

6. In his opening remarks, Dr. Zimmer explained that, although he had been found guilty of the allegations against him, the case was currently under appeal. He stated that he feels he is completely innocent of the charges and the conviction.

7. Ms. Maxwell proceeded by calling Dr. Zimmer as a witness as on cross-examination. After being duly sworn, Dr. Zimmer identified the following State's Exhibits:

   A. State's Exhibit #1 is a letter sent to Dr. Zimmer from the State Medical Board informing the doctor of his conviction and informing him of the Board's grounds for taking disciplinary action against him pursuant to Section 4731.22(B)(9), Ohio Revised Code. The letter informed Dr. Zimmer of his right to a hearing in this matter.

B. State's Exhibit #2 is a letter to the Board from Dr. Zimmer requesting a hearing and stating that his conviction was being appealed.

C. State's Exhibit #3 is a copy of the notice of appeal filed on behalf of Dr. Zimmer by his attorney, David C. Greer.

D. State's Exhibit #4 is a letter to Dr. Zimmer from William J. Lee, Administrator of the State Medical Board, stating that a hearing had been scheduled for July 23, 1984, but would be postponed until further notice pursuant to Section 119.09, Ohio Revised Code.

E. State's Exhibit #5 is a letter to Dr. Zimmer from Mr. Lee stating that the hearing would be held on October 10, 1984 at the Ohio Medical Board offices.

8. The above identified exhibits were admitted to the record to show the jurisdiction of the Board to hear this case. Ms. Maxwell also moved to admit State's Exhibits #6, #7, and #8, which she identified as follows:

A. State's Exhibit #6 is a certified copy of an indictment that was issued against Dr. Zimmer in the United States District Court for the Northern District of Ohio.

B. State's Exhibit #7 is a certified copy of the judgment entry finding Dr. Zimmer guilty of the three felony counts listed in the indictment.

C. State's Exhibit #8 is a copy of the federal statutes concerning the violations contained in the indictment and in the judgment entry.

9. All of the previously identified exhibits were admitted into evidence and made part of the record. Ms. Maxwell rested the State's case.

10. The Respondent proceeded with his case by summarizing the background of his legal problems from the outset. He testified:

A. That at 16 he went to Harvard. After one year he enlisted in the Navy, while World War II was going on. When his mother became ill, he returned to Cleveland and attended school at Baldwin-Wallace. He went back to Harvard, where he played football and got a full scholarship to Ohio State University. He followed in his father's footsteps by going to dental school and law school before switching to medicine, where he found "more integrity."

B. That after graduation from Wayne State Medical School, he interned in Palm Beach and then took and passed the Michigan and Florida medical board examinations. He practiced general medicine in Florida for eight years. In 1964, he returned to Ohio to take a psychiatric residency at Ohio State University. He obtained Ohio medical licensure that same year. After working for two years at Columbus State Hospital, he moved to California and obtained licensure there. He worked in the Santa Clara area for a year treating patients in an alcoholism program. He next went to Missouri, where he served as Director of Alcoholic Research for the State of Missouri. In that capacity, he created the first federal grant from the National Institute of Mental Health, obtaining $2.5 million for a comprehensive narcotic addiction treatment program in St. Louis.

C. That after a year in St. Louis, the government asked him to go to Philadelphia to serve as Clinical Director for Philadelphia General Hospital's narcotic addiction treatment program. He obtained a Pennsylvania license and remained in the state from 1969 to 1970. In 1970, he returned to Ohio at the request of the governor to create the Bureau of Drug Abuse. Within nine months, he established six comprehensive drug treatment programs throughout the state, treating 2250 narcotics addicts each day.

D. That during his first six months in Ohio, he made $75,000 working approximately 18 hours per week as a stockbroker. He made only $5,000 practicing medicine, although he worked 88 hours per week. He had maintained his own brokerage office in medical school, which his son has been running successfully since 1980. He is a licensed stockbroker in California. He has been practicing clinctal psychiatry in Defiance, Ohio for twelve years.

E. That his original indictment came in 1978 for failure to file his IRS tax in 1973 and 1974. He claimed that he was not given 1099 forms from the two agencies he worked for at that time, the Bureau of Drug Abuse in Dayton and the Toledo Mental Health Program.

F. That he was jailed for four days for failing to appear in federal court in Covington, Kentucky on July 31, 1978. He testified that he had been unable to appear because he was in the intensive care unit in Defiance Hospital under treatment for acute myocardial infarction. He advised the judge of his hospitalization by telegram and there was a change of venue to Toledo, where he won the case with a jury trial on the two counts of failure to file for 1973 and 1974.

G. That in May, 1983, he had a six bypass coronary surgery at the Cleveland Clinic. He had a ruptured appendix with a hernia that same year. His hospitalization was very costly. A cardiac catheterization in May, 1984 showed that his right coronary artery was reblocked. He testified that further surgery will be required to put the left internal mammary artery into the left anterior descending coronary artery to allow for adequate blood supply to the right heart.

H. That the conviction for which the Respondent has been cited by the Board is based on his failure to pay income taxes for 1978 and 1979. This conviction is currently under appeal to the federal appellate court in Cincinnati, Sixth District. The appeal was filed on May 29, 1984, and a brief was filed by the Respondent's attorneys on October 3, 1984.

11. In her closing statement on behalf of the State, Ms. Maxwell pointed out that under the statutes governing the State Medical Board, the Board has the power to take disciplinary action against any license holder who has been convicted of a felony. She noted that the State has presented evidence that the Respondent has, in fact, been convicted of three felonies by a federal district court. Ms. Maxwell explained that although the conviction is being appealed, Ohio law dictates that the appeal does not affect the finality of the conviction itself. Ms. Maxwell also clarified that the indictment against Dr. Zimmer on which the conviction was based concerned not what was listed on his tax return, but rather the property he had failed to list. She urged the Board to consider taking disciplinary action against Dr. Zimmer based upon his felony conviction, as it is permitted to do under the law.

12. In his summation, Dr. Zimmer indicated that he is completely innocent of the charges of which he had been convicted. He pointed out that he is appealing the court's decision, although he does not know how soon the case will be reviewed. Dr. Zimmer stressed that he would like to continue practicing medicine, and stated that his legal problems have had no effect on his medical practice at all.

13. The following exhibits were admitted to the record on behalf of the Respondent:

A. Respondent's Exhibit A is an exerpt of testimony taken at Dr. Zimmer's December 28, 1983 trial.

B. Respondent's Exhibit B is a copy of the appellate brief filed on behalf of Dr. Zimmer contesting his May, 1984 conviction.

FINDINGS OF FACT

1. Alan E. Zimmer, M.D., of Defiance, Ohio, was formally cited by the State Medical Board of Ohio on June 12, 1984. Said citation was based on his conviction of one count of violating Title 18 by conspiring to commit an offense against or defraud the United States; one count of attempting to evade or defeat tax; and one count of giving false information. Each of these counts constitutes a felony.

2. By his own admission, Dr. Zimmer has been under constant investigation for tax problems since 1964 and has never stopped practicing medicine during that time.

3. Dr. Zimmer has filed an appeal of his conviction with the United States District Court for the Sixth District.

CONCLUSIONS

After hearing all of the testimony and reading all of the evidence presented in the case of Alan E. Zimmer, M.D., I have come to the following conclusions:

1. Dr. Zimmer's conviction of three felony counts in the United States District Court presents sufficient ground for taking disciplinary action against Dr. Zimmer, pursuant to 4731.22(B)(9), Ohio Revised Code.

2. Although Dr. Zimmer's conviction is currently under appeal, the decision of the District Court is considered final for purposes of the Medical Board's imposition of sanctions.

3. Dr. Alan E. Zimmer is neither physically nor emotionally capable of practicing medicine as a psychiatrist in the State of Ohio with his past and future needed cardiac surgery and extensive Internal Revenue Service obligations.

PROPOSED ORDER

It is hereby ORDERED:

1. That Dr. Alan E. Zimmer's license to practice medicine and surgery in the State of Ohio be indefinitely suspended.

2. Further, that the State Medical Board of Ohio not consider reinstatement of Dr. Zimmer's license unless the following minimum requirements are met:

   A. Dr. Zimmer shall submit a written application for restoration to the State Medical Board of Ohio and shall pay all applicable fees;

   B. Dr. Zimmer shall not make such application for at least three (3) years from the effective date of this Order;

   C. Prior to reinstatement, Dr. Zimmer shall appear before the Board to facilitate consideration of his moral background and activities during the period of suspension, pursuant to Section 4731.222, Ohio Revised Code. At that time, the Board shall determine if any further terms or restrictions should be imposed as a condition of reinstatement, pursuant to the above section.

This ORDER shall become effective as determined by the State Medical Board of Ohio.

Respectfully submitted,

Lucy O. Oxley, M.D.

Lucy O. Oxley, M.D., Member
State Medical Board of Ohio

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

ALAN E. ZIMMER, M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 14th day of March, 1985.

Upon the Report and Recommendation, a true copy of which is attached hereto and incorporated herein, of Lucy O. Oxley, M.D., Hearing Member, in this matter designated pursuant to R.C. 4731.23, which Report and Recommendation was amended, and approving and confirming by vote of the Board on the above date, the following order is hereby entered on the Journal of the State Medical Board for the 14th day of March, 1985, and made part of the Board's proceedings:

It is hereby ORDERED:

1. That Dr. Alan E. Zimmer's license to practice medicine and surgery in the State of Ohio be indefinitely suspended.
2. Further, that the State Medical Board of Ohio not consider reinstatement of Dr. Zimmer's license unless the following minimum requirements are met:

   A. Dr. Zimmer shall submit a written application for restoration to the State Medical Board of Ohio and shall pay all applicable fees;

   B. Dr. Zimmer shall not make such application for at least three (3) years from the effective date of this Order;

   C. Prior to reinstatement, Dr. Zimmer shall appear before the Board to facilitate consideration of his moral background and activities during the period of suspension, pursuant to Section 4731.222, Ohio Revised Code. At that time, the Board shall determine if any further terms or restrictions should be imposed as a condition of reinstatement, pursuant to the above section.

This ORDER shall become effective May 1, 1985.

(SEAL)

Henry G. Cramblett, M.D.
Secretary

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

EXCERPT FROM THE MINUTES OF FEBRUARY 20, 1985

REPORT AND RECOMMENDATION IN THE MATTER OF ALAN E. ZIMMER, M.D.

Mr. Bumgarner, Ms. Yale and Mr. Prunte left the meeting at this time.

Dr. Rauch asked if each member of the Board received, read and considered the hearing record, the proposed findings and order, and any objections filed to the proposed findings and order in the matter of Alan E. Zimmer, M.D. A roll call was taken:

ROLL CALL:	Dr. Cramblett	- aye
	Dr. Lancione	- aye
	Dr. O'Connor	- aye
	Dr. Buchan	- aye
	Mr. Johnston	- aye
	Dr. Yut	- aye
	Dr. Oxley	- aye
	Ms. Rolfes	- aye
	Dr. Stephens	- aye

.....

DR. YUT MOVED TO APPROVE AND CONFIRM THE FINDINGS OF FACT, CONCLUSIONS AND PROPOSED ORDER OF LUCY O. OXLEY, M.D. IN THE MATTER OF ALAN E. ZIMMER, M.D. DR. CRAMBLETT SECONDED THE MOTION. A discussion followed.

DR. YUT MOVED TO MODIFY DR. OXLEY'S CONCLUSIONS IN THE ABOVE MATTER TO DELETE PARAGRAPH NUMBER 3 ON THE BASIS THAT THERE IS NOT EVIDENCE IN THE TRANSCRIPT TO SUPPORT THIS STATEMENT, AND THE BOARD HAS BEEN SUPPLIED STATEMENTS FROM TWO PSYCHIATRISTS WHICH CONTRADICT THE STATEMENT. DR. LANCIONE SECONDED THE MOTION. A discussion followed.

.....

A roll call vote was taken on Dr. Yut's motion to modify:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Lancione	- aye
	Dr. O'Connor	- aye
	Dr. Buchan	- aye
	Mr. Johnston	- aye
	Dr. Yut	- aye
	Dr. Oxley	- abstain
	Ms. Rolfes	- aye
	Dr. Stephens	- aye

The motion carried.

A roll call vote was taken on Dr. Yut's motion, as modified, to approve and con-

firm the findings of fact, conclusions and proposed order:

ROLL CALL VOTE:

Dr. Cramblett	- aye
Dr. Lancione	- aye
Dr. O'Connor	- aye
Dr. Buchan	- aye
Mr. Johnston	- aye
Dr. Yut	- aye
Dr. Oxley	- abstain
Ms. Rolfes	- aye
Dr. Stephens	- aye

The motion carried.

DR. BUCHAN MOVED THAT AN EFFECTIVE DATE OF MAY 1, 1985 BE PLACED ON THE ORDER. DR. YUT SECONDED THE MOTION. All members voted aye. The motion carried.

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

June 12, 1984

Alan E. Zimmer, M.D.
847 South Clinton Street
Defiance, OH 43512

Dear Doctor Zimmer:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine under the provisions of Section 4731.22, Ohio Revised Code, whether or not to limit, revoke, suspend or refuse to reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation, for one or more of the following reasons:

> On or about May 21, 1984, you were convicted in the United States District Court for the Northern District of Ohio, Case number CR 83-87, of one count of violating Title 18 United States Code Section 371, conspiracy to commit offense or to defraud the United States; one count of violating Title 26 United States Code Section 7201, attempt to evade or defeat tax; and one count of violating Title 18 United States Code Section 1001, giving false information. Each said count is a felony.

Conviction of a felony constitutes grounds for discipline pursuant to Section 4731.22(B)(9), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, please be advised that you are entitled to a hearing on this matter. If you wish to request such a hearing, that request must be made within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such a hearing in person, or by your attorney, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event there is no request for such a hearing made within thirty (30) days of the time of mailing of this notice, the State Medical Board of Ohio 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 or surgery in the State of Ohio, or to reprimand or place you on probation.

A copy of Section 4731.22, Ohio Revised Code is enclosed for your review.

Very truly yours,

Joseph P. Yut, M.D.
Secretary

JPY:ls

Enclosures

CERTIFIED MAIL NO. P 347 350 321
RETURN RECEIPT REQUESTED

colleges, institutions, or individuals giving instruction in such limited branches, the applicant for such certificate shall, as a condition of admission to the examination, produce a diploma or certificate from such a school, college, institution, or individual in good standing as determined by the board, showing the completion of the required courses of instruction.

The entrance examiner of the board shall determine the sufficiency of the preliminary education of applicants for such limited certificate as is provided in section 4731.09 of the Revised Code. The board may adopt rules defining and establishing for any limited branch of medicine or surgery such preliminary educational requirements, less exacting than those prescribed by such section, as the nature of the case may require.

Sec. 4731.20 Powers and duties of board.

Sections 4731.07, 4731.08, and 4731.14 to 4731.26 of the Revised Code shall govern the state medical board, all of the officers mentioned therein, and the applicants for and recipients of limited certificates to practice a limited branch of medicine or surgery. In addition to the power of the board to revoke and suspend certificates provided for in section 4731.22 of the Revised Code it may also revoke or suspend the certificate of any one to whom a limited certificate has been issued upon proof of violation of the rules established by the board governing such limited practice.

Sec. 4731.21 Limitations prescribed.

Sections 4731.15 to 4731.20, inclusive, of the Revised Code do not amend sections 4731.34, 4731.36, and 4731.41 of the Revised Code or limit their application unless otherwise specifically provided.

Sec. 4731.22 Grounds for discipline.

(A) The state medical board, by a vote of not less than six of its members, may revoke or may refuse to grant a certificate to a person found by the board to have committed fraud in passing the examination, or to have committed fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board.

(B) The board, by a vote of not less than six members, shall, to the extent permitted by law, limit, revoke, or suspend a certificate, refuse to register or refuse to reinstate an applicant, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

(1) Permitting one's name or one's certificate of registration to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given;

(2) 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;

(3) Selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes or conviction of violation of any federal or state law regulating the possession, distribution, or use of any drug;

(4) Wilfully betraying a professional confidence or engaging in the division of fees for referral of patients, or the receiving of a thing of value in return for a specific referral of a patient to utilize a particular service or business;

(5) Soliciting patients or publishing a false, fraudulent, deceptive, or misleading statement.

As used in this division, "false, fraudulent, deceptive, or misleading statement" means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be decieved.

(6) 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;

(7) Representing, with the purpose of obtaining

compensation or other advantage for himself or for any other person, that an incurable disease or injury, or other incurable condition, can be permanently cured;

(8) The obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice;

(9) Conviction of a felony whether or not committed in the course of his practice;

(10) Conviction of a misdemeanor committed in the course of his practice;

(11) Violation of the conditions of limitation placed by the board upon a certificate to practice or violation of the conditions of limitation upon which a limited or temporary registration or certificate to practice is issued;

(12) Failure to pay license renewal fees specified in this chapter;

(13) Any division of fees or charges, or any agreement or arrangement to share fees or charges, made by any person licensed to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery with any other person so licensed, or with any other person;

(14) The violation of any provision of a code of ethics of a national professional organization as specified in this division. "National professional organization" means the American medical association, the American osteopathic association, the American podiatry association, and such other national professional organizations as are determined, by rule, by the state medical board. The state medical board shall obtain and keep on file current copies of the codes of ethics of the various national professional organizations. The practitioner whose certificate is being suspended or revoked shall not be found to have violated any provision of a code of ethics of an organization not appropriate to his profession;

(15) Inability to practice according to acceptable and prevailing standards of care by reason of illness, excessive use of alcohol, excessive use of controlled substances, drugs, or chemicals, or as a result of a

mental or physical condition. In enforcing this division, the board upon a showing of a possible violation, may compel any individual licensed or certified to practice by this chapter or who has applied for licensure or certification pursuant to this chapter to submit to a mental or physical examination, or both, as required by and at the expense of the board. Failure of any individual to submit to a mental or physical examination when directed constitutes an admission of the allegations against him unless the failure is due to circumstances beyond his control, and a default and final order may be entered without the taking of testimony or presentation of evidence. If the board finds a physician unable to practice because of the reasons set forth in this division, the board shall require such physician to submit to care, counseling, or treatment by physicians approved or designated by the board, as a condition for initial, continued, reinstated, or renewed licensure to practice. An individual licensed by this chapter affected under this section shall be afforded an opportunity to demonstrate to the board that he can resume his practice in compliance with acceptable and prevailing standards under the provisions of his certificate. For the purpose of this section, any individual licensed or certified to practice by this chapter accepts the privilege of practicing in this state, and by so doing or by the making and filing of a registration or application to practice in this state, shall be deemed to have given his consent to submit to a mental or physical examination when directed to do so in writing by the board, and to have waived all objections to the admissibility of testimony or examination reports that constitute a privileged communication;

(16) 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;

(17) The violation of any abortion rule adopted by the public health council pursuant to section 3701.341 of the Revised Code;

(18) The revocation or suspension by another state of a license or certificate to practice issued by the

proper licensing authority of that state for an action that would also have been a violation of this chapter except for nonpayment of fees.

(C) The clerk of each common pleas, municipal, or county court, or any other court of record in this state shall, on forms prescribed and furnished by the medical board, promptly notify the medical board of each conviction in such court of any person holding a valid certificate issued pursuant to Chapter 4731. of the Revised Code, who is convicted of a violation of Chapter 2907., 2925., or 3719. of the Revised Code in connection with his practice.

(D) (1) The board shall investigate evidence which appears to show that any person has violated any provision of this chapter, Chapter 4730. of the Revised Code, or rule of the board. For the purpose of investigation on matters concerning a possible violation of division (B) (3), (9), (10), (11), or (12) of section 4731.22 of the Revised Code, the board may administer oaths, order taking of depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents, and testimony. The hearings and investigations of the board shall be considered civil actions for purposes of section 2305.251 of the Revised Code. In case of disobedience of any person with respect to an order or subpoena issued by the board, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, a judge of the court of common pleas of the county in which the person resides, on application of the board, may compel obedience by attachment proceedings as for contempt, as in the case of disobedience with respect to the requirements of a subpoena issued from such court or a refusal to testify in such court. Each officer who serves such subpoena shall receive the same fees as a sheriff, and each witness who appears, in obedience to a subpoena, before the board, shall receive the fees and mileage provided for witnesses in civil cases in courts of common pleas. Any person may report to the board under oath any information such person may have appearing to show a violation of any provision of this chapter, Chapter 4730. of the Revised Code, or rule of the board. In the absence of bad faith, any

person who reports such information or who testifies before the board in any adjudication hearing conducted under Chapter 119. of the Revised Code shall not be liable for civil damages as a result thereof.

Each complaint or allegation of a violation received by the board shall be assigned a case number and shall be recorded by the board. Investigations of alleged violations of this chapter, Chapter 4730. of the Revised Code, or any rule of the board shall be supervised by a board member selected on a rotating basis by the board. No member of the board who supervises the investigation of a case shall participate in further adjudication of the case.

The board shall conduct all investigations and proceedings in such a manner as to protect patient confidentially. The board shall obtain the consent of the patient in the form of a written release signed by the patient or by an authorized representative of the patient before seeking access to medical record information concerning a patient for the purpose of any investigation or hearing, except that no such consent is required if there is reason to believe that there has been a violation of division (B) (3) of section 4731.22 of the Revised Code. The board shall not make public names or other identifying information about patients unless proper consent is given or a waiver of the patient privilege exists under division (B) of section 2317.02 of the Revised Code, except that no such consent or waiver is required if the board possesses reliable and substantial evidence that no bona fide physician-patient relationship exists.

(2) If any individual licensed or certified to practice or any association or society or individuals licensed or certified under this chapter believes that a violation of any provision of this chapter, or Chapter 4730. of the Revised Code has occurred, he shall report to the board the information upon which the belief is based. Any person or society who reports under this division and provides such information in good faith shall not be subject to suit for civil damages as a result thereof.

(3) In absence of fraud or bad faith, neither the board or any member, agent, representative, or employee thereof shall be held liable in damages to any

person by reason of investigating or acting upon information presented to it pursuant to this chapter.

(4) On a quarterly basis the board shall prepare a report that documents the disposition of all cases during the preceding three months. The report shall contain the following information for each case with which the board has completed its activities:

(A) The case number assigned for the complaint or alleged violation pursuant to division (D) (1) of section 4731.22 of the Revised Code;

(B) The type of license or certificate to practice, if any, held by the individual against whom the complaint is directed;

(C) A description of the allegations contained in the complaint;

(D) The disposition of the case.

The report shall state how many cases are still pending, and shall be prepared in such a manner as to protect the identity of each person involved in each case. The report shall be a public record under section 149.43 of the Revised Code.

(E) Irrespective of administrative remedies, the board may petition a court of common pleas for a temporary restraining order to suspend a physician's license. The court shall issue such an order if the board demonstrates that immediate and irreparable injury or loss to the public would result from the physician's continued practice of medicine.

(F) Any action taken by the board under division (B) of this section resulting in a suspension from practice shall be accompanied by a written statement of the conditions under which the certificate holder may be reinstated to practice. The board shall adopt rules governing conditions to be imposed for reinstatement. Reinstatement of a certificate suspended pursuant to division (B) of this section or surrendered to the board by its holder requires an affirmative vote of not less than six members of the board.

Sec. 4731.221 Suspension of certificate of mentally ill or mentally incompetent practitioner.

If the state medical board has reason to believe that any person who has been granted a certificate under Chapter 4731. of the Revised Code is mentally ill or mentally incompetent, it may file in the probate court of the county in which such person has a legal residence an affidavit in the form prescribed in section 5122.11 of the Revised Code and signed by the board secretary or a member of his staff, whereupon the same proceedings shall be had as provided in Chapter 5122. of the Revised Code. The attorney general may represent the board in any proceeding commenced under this section.

If any person who has been granted a certificate is adjudged by a probate court to be mentally ill or mentally incompetent, his certificate shall be automatically suspended until such person has filed with the state medical board a certified copy of an adjudication by a probate court of his subsequent restoration to competency or has submitted to such board proof, satisfactory to the board, that he has been discharged as having a restoration to competency in the manner and form provided in section 5122.38 of the Revised Code. The judge of such court shall forthwith notify the state medical board of an adjudication of incompetence, and shall note any suspension of a certificate in the margin of the court's record of such certificate. In the absence of fraud or bad faith, neither the state medical board nor any member, agent, representative, or employee thereof shall be held liable in damages by any person by reason of the filing of the affidavit referred to in this section.

Sec. 4731.222 Conditions for restoration of inactive certificate.

Before restoring to good standing a certificate issued under Chapter 4731. of the Revised Code which has been in a suspended or inactive state for any cause for more than two years, the state medical board may require the applicant to pass an oral or written examination, or both, to determine his present fitness to resume practice.