

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

June 17, 1988

Robert L. Gerber, M.D.
126 South Broadway
Sugar Creek, Ohio 44681

Dear Doctor Gerber:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on June 15-16, 1988, including Motions approving the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO



Henry G. Cramblett, M.D.
Secretary

HGC:em

Enclosures

CERTIFIED MAIL NO. P 746 510 398
RETURN RECEIPT REQUESTED

cc: Arthur B. Cunningham, Esq.

CERTIFIED MAIL NO. P 746 510 500
RETURN RECEIPT REQUESTED

RETURN RECEIPT REQUESTED

Mailed 6/24/88

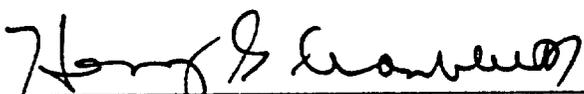
STATE OF OHIO
THE STATE MEDICAL BOARD OF OHIO
65 SOUTH FRONT STREET
SUITE 510
COLUMBUS, OHIO 43266-0315

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board; and attached excerpt of Minutes of the State Medical Board, meeting in regular session on June 15-16, 1988, including Motions approving the Findings of Fact and the 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 Robert L. Gerber, M.D., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.

(SEAL)



Henry G. Cramblett, M.D.
Secretary

June 17, 1988

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *
 *
ROBERT L. GERBER, M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 15th and 16th day of June, 1988.

Upon the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board, in this matter designated pursuant to 4731.23, a true copy of which is attached hereto and incorporated herein, and upon modification, approval and confirmation by vote of the Board on June 15-16, 1988, the following Order is hereby entered on the Journal of the State Medical Board for the 16th day of June, 1988.

It is hereby ORDERED:

That the certificate of Robert L. Gerber, M.D., to practice medicine or surgery in the State of Ohio be REVOKED. Such revocation is stayed, and Dr. Gerber's certificate is hereby SUSPENDED for a period of thirty (30) days, to be followed by a probationary term of five years, on the following terms and conditions:

1. Dr. Gerber shall obey all federal, state, and local laws, and all rules governing the practice of medicine or surgery in Ohio.
2. Dr. Gerber shall submit annually to the Board, a report from an independent certified public accountant consisting of a financial statement and tax return for that particular year, for a period of five (5) years.
3. In the event that Dr. Gerber should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Gerber must notify the State Medical Board of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of these periods of suspension or probation.

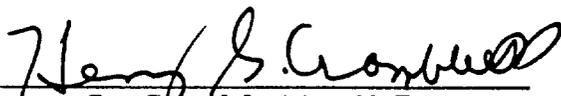
Page 2

Robert L. Gerber, M.D.

4. If Dr. Gerber violates this Order in any respect, the Board, after giving him notice and an opportunity to be heard, may set aside the stay order and impose the revocation of Dr. Gerber's license.
5. Upon successful completion of probation, Dr. Gerber's license shall be fully restored.

This Order shall become effective thirty (30) days following approval by the State Medical Board of Ohio.

(SEAL)


Henry G. Cramblett, M.D.
Secretary

June 17, 1988
Date

REPORT AND RECOMMENDATION
IN THE MATTER OF ROBERT L. GERBER, M.D.

The Matter of Robert L. Gerber, M.D., came on for hearing before me, Wanita J. Sage, Esq., Hearing Examiner for the State Medical Board of Ohio, on April 28, 1988.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

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- A. By letter of October 14, 1987 (State's Exhibit #1), the State Medical Board notified Robert L. Gerber, M.D., that it proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio based upon his conviction on or about September 15, 1987, in the United States District Court for the Northern District of Ohio of one felony count of evading income tax in violation of Title 26, Section 7201, U.S. Code, as set forth in the indictment filed on or about April 22, 1987. Dr. Gerber was advised that these alleged acts constituted "a plea of guilty to, or a judicial finding of guilt of, a felony", as that clause is used in Section 4731.22(B)(9), Ohio Revised Code. Dr. Gerber was further advised of his right to request a hearing in this matter.
- B. By letter received by the State Medical Board on November 9, 1987 (State's Exhibit #2), Dr. Gerber requested a hearing in this matter.

II. Appearances

- A. On behalf of the State of Ohio: Anthony J. Celebrezze, Jr., Attorney General, by Christopher J. Costantini, Assistant Attorney General.
- B. Dr. Gerber, having been duly advised of his right to representation, appeared on his own behalf without counsel.

III. Testimony Heard

Dr. Gerber was the sole witness at hearing.

IV. Exhibits Examined

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

- A. State's Exhibit #3: November 10, 1987, letter to Dr. Gerber from the State Medical Board advising that a hearing initially set for November 18, 1987, was postponed pursuant to Section 119.09, Ohio Revised Code.

- B. State's Exhibit #4: February 19, 1988, letter to Dr. Gerber from the State Medical Board scheduling the hearing for April 28, 1988.
- C. State's Exhibit #5: Judgment and Probation/Commitment Order filed in the United States District Court for the Northern District of Ohio on September 18, 1987, in Case No. CR87-93, United States v. Gerber.
- D. State's Exhibit #6: Three-count indictment filed in the United States District Court for the Northern District of Ohio, Eastern Division, on April 22, 1987, in Case No. CR87-093 A, United States v. Gerber.

FINDINGS OF FACT

1. On or about September 15, 1987, Robert L. Gerber, M.D., pled guilty to Count II of a three-count indictment which had been filed against him in the United States District Court for the Northern District of Ohio, Eastern Division, in Case No. CR87-093 A, United States v. Gerber. Said Count II had charged Dr. Gerber with willfully attempting to evade and defeat a large part of the Federal income tax due and owing by him and his wife for the calendar year 1981, "by preparing and causing to be prepared, and by signing and causing to be signed, a false and fraudulent joint U.S. Individual Income Tax Return, Form 1040, on behalf of himself and his wife, which was filed with the Internal Revenue Service, wherein it was stated that their joint taxable income for said calendar year was \$2,151.00 and that the amount of income tax due and owing thereon was \$1,331.00, whereas, as the defendant then and there well knew and believed, their joint taxable income for the said calendar year was approximately \$38,051.37, upon which said income there was an income tax due and owing to the United States of America of approximately \$10,665.32", in violation of Title 26, Section 7201, U.S. Code.
2. As a result of his guilty plea, Dr. Gerber was convicted of evading income tax, as charged in Count II of the indictment, in violation of Title 26, Section 7201, U.S. Code, a felony offense. As a result of this conviction, Dr. Gerber was sentenced to two years' imprisonment and a \$5,000.00 fine, with subsequent suspension of the term of imprisonment and imposition of a two-year probation. The remaining counts of the indictment were dismissed.

These facts are established by State's Exhibits #5 and #6.

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CONCLUSIONS

Dr. Gerber's felony conviction, pursuant to his plea of guilty, constitutes "a plea of guilty to, or a judicial finding of guilt of, a felony", as that clause is used in Section 4731.22(B)(9), Ohio Revised Code. Violation of this Section provides grounds for disciplinary action by this Board, regardless of whether or not the felony was committed in the course of practice. This Board has in the past taken the position that the conviction of a licensed physician for a felony, even though not committed in the course of his practice, seriously violates the public trust and cannot be tolerated in the profession. This position is reflected in the Board's disciplinary guidelines, which indicate revocation as the appropriate penalty for conviction of a felony.

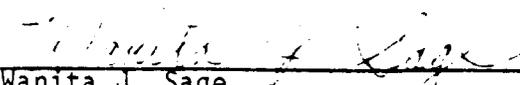
Dr. Gerber failed to present any legitimate mitigating factors. Indeed, Dr. Gerber's testimony seemed to indicate that the reason for his failure to report nearly \$36,000.00 of taxable income for tax year 1981 was his "carelessness" in keeping track of the amounts he charged for medications he dispensed outside of office hours (Tr. at 12-13). Dr. Gerber's unsupported statement, that he probably could have proven in court that the amounts the Internal Revenue Service had alleged as his unreported income for 1981 were excessive, cannot be considered as a mitigating factor. By this statement, Dr. Gerber admitted his culpability, in part. Furthermore, he chose to plead guilty to certain of the allegations against him. At the time he entered his guilty plea, he was represented by counsel; therefore, it must be presumed that he made an informed decision.

Every citizen of this country knows that he or she has a legal obligation to pay income taxes. Evasion of this duty of citizenship must be seen as an act of moral turpitude. The tax-evader not only reaps benefits from the governmental system he thwarts, but also potentially increases the tax burdens of, among others, the very individuals from whom he derives his hidden income. Yet, Dr. Gerber stated, "I am not harmful to my community. And I am not harmful to my patients." (Tr. at 15). While Dr. Gerber was, of course, referring to direct harm, he cannot be permitted to perpetrate a pervasive indirect harm with impunity.

PROPOSED ORDER

It is hereby ORDERED that the certificate of Robert L. Gerber, M.D., to practice medicine and surgery in the State of Ohio be REVOKED.

This Order shall become effective thirty (30) days from the date of the mailing of notification of approval by the State Medical Board of Ohio.



Wanita J. Sage
Attorney Hearing Examiner

EXCERPT FROM THE MINUTES OF JUNE 15 & 16, 1988

REPORTS AND RECOMMENDATIONS

Mr. Culley, Mr. Costantini, Ms. Belenker, and Ms. Thompson left the meeting at this time.

Dr. Stephens advised that the Findings and Orders appearing on this day's agenda are those in the matters of Dr. Shukri W. David, Dr. Gregory A. George, Dr. William F. Clayton, Jr., Dr. Michael Henry Frankel, Dr. Steven M. Kordis, Dr. Stuart M. Berger, and Dr. Robert L. Gerber.

Lauren Lubow, Case Control Officer, and Elayne Biddlestone, Cleveland Academy of Medicine, joined the meeting at this time.

Dr. Stephens continued that since distribution of the agenda materials, objections had been filed in the matter of Dr. Robert L. Gerber, and appear in the table file. Mr. Bumgarner advised that these objections had earlier been forwarded to the Board by Federal Express. Dr. Stephens gave the Board Members time to review these objections before proceeding.

Dr. Stephens asked if each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of Shukri W. David, M.D., Gregory A. George, M.D., Michael Henry Frankel, M.D., Steven M. Kordis, M.D., Stuart M. Berger, M.D., and Robert L. Gerber, M.D. A roll call was taken:

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

.....
REPORT AND RECOMMENDATION IN THE MATTER OF ROBERT L. GERBER, M.D.

Dr. Stephens 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 advised that a motion to orally address the Board concerning the above-captioned Report and Recommendation has been submitted by Dr. Gerber's Attorney, Arthur B. Cunningham. Three affirmative votes are necessary to grant this motion.

MR. ALBERT MOVED THAT MR. CUNNINGHAM BE PERMITTED TO ADDRESS THE BOARD. DR. KAPLANSKY SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- aye
	Dr. Gretter	- aye
	Dr. Kaplansky	- aye
	Dr. Agresta	- aye
	Dr. Rothman	- aye
	Dr. Rauch	- aye
	Mr. Albert	- aye
	Mr. Jost	- aye

The motion carried.

Dr. Stephens advised Mr. Cunningham that there was not a court reporter present, but instead the Board's minutes serve as the Board's official record of the meeting. Mr. Cunningham indicated that he understood and did not have any objection to the absence of a court reporter.

Mr. Cunningham stated that Mr. Costantini has filed a motion to strike materials contained in the objections previously sent to the Board Members. He continued that it is not his intent to dispute the fundamental findings of the hearing examiner. Dr. Gerber was involved with the U.S. Government regarding income tax. The purpose of his objections was simply to elaborate on the matter placed before the hearing examiner.

Mr. Cunningham stated that Dr. Gerber was not represented by counsel at the time of the hearing, and therefore he thought it would be helpful to lay before the Board the difficulties that led to the tax case. Mr. Cunningham stated that in his objections he attempted to be as careful and factual as he could be. Many of the exhibits contained in the objections were obtained from Internal Revenue Service files.

Mr. Cunningham again stated that he does not object to the hearing examiner's findings that Dr. Gerber had tax difficulties, but does object on behalf of Dr. Gerber to the severity of the proposed sanction. Mr. Cunningham stated that a careful examination of the facts behind the tax case, what was done by the Federal Government and is on record, will show that Dr. Gerber is a good doctor, highly recommended, who practices good medicine. Dr. Gerber does not minimize the difficulty in which he finds himself, but Mr. Cunningham stated that it is important that the Board consider this as well as the nature of the tax case when considering the appropriate punishment. The Federal District Court fined Dr. Gerber \$5,000. Dr. Gerber is requesting that the Board fashion a disciplinary action, without minimizing Dr. Gerber's difficulties, that would permit him to continue practice. Mr. Cunningham noted that nothing in the tax case impacts on Dr. Gerber's ability to practice or the treatment and care he gives his patients.

Mr. Cunningham explained that Dr. Gerber has a medical practice in a rural community, which is populated substantially by Amish people. His practice is essentially a family practice. When a patient was billed or paid his bill, the office employee would enter the payment on what would be characterized as a "one write" system. The entry printed through to a receipt to the patient and the charge went on the patient's account and then to a monthly report or sales journal, which was compiled for the tax return. Dr. Gerber got himself into what was a very bad

accounting practice. When a patient came to him on off hours, or not to see him but to purchase medication, the charge didn't get recorded on the one write system, and didn't hit the sales journal or get reported on the financial reports. Dr. Gerber's practice of dispensing medications was not unusual. The precedent was set by the physician who preceded Dr. Gerber in the community. Mr. Cunningham stated that it was noted in his objections that although Dr. Gerber had difficulty with accounting, he was a good doctor in that his charting on his patients and the medications dispensed were in order.

Dr. Gerber's practice was audited by the I.R.S. because of large charitable contributions listed on his tax return. Copies of the original tax return were attached to the objections forwarded to Board Members. The I.R.S. looked at the deductions and found that they were correct, but once they compared the returns to the assets and networth analysis, they were able to determine that there was unrecorded and unreported income, and therefore charges were filed against Dr. Gerber. The case went to the U.S. District Court in Cleveland, and three charges were filed against Dr. Gerber for 1980, 1981, and 1982 tax returns.

Mr. Cunningham continued that, as is the case in many Federal cases, extensive negotiations were held with the attorney representing the I.R.S., and a plea agreement was reached. Ultimately, the plea agreement was based on several facts. Dr. Gerber plead guilty to Count II of the charges and the other charges were dismissed. Mr. Cunningham contended that the reason the Government was willing to reach a plea agreement, and the reason Dr. Gerber agreed to it was because the case against Dr. Gerber was not an aggravated case. The U.S. didn't seek anything beyond a fine.

After the case was started, an independent accounting firm was retained to see if the Government was correct about the unrecorded income, and it was learned that it was. However, there was nothing to indicate that Dr. Gerber's actions were aggravated. It was found through the independent investigation that all unrecorded income was not concealed. That income went into one of Dr. Gerber's two checking accounts. This was persuasive not only to the Attorney representing the I.R.S., but to the Judge hearing the case. There were no false entries listed in Dr. Gerber's books. Therefore there was nothing that would tend to indicate the case was an aggravated one or a case of substantial fraud.

Mr. Cunningham stated that Dr. Gerber did plead guilty, and the Judge, after considering the nature of the tax case and Dr. Gerber's standing in the community, fined Dr. Gerber \$5,000 and placed him on two years probation.

Mr. Cunningham continued that he feels Dr. Gerber has dealt with the problem in a forthright manner. In August 1987, he filed amended returns, which have been accepted by the Government. He has paid his taxes and has paid \$15,000 of the \$18,000 in interest owed. The documents provided to the Board will indicate that Dr. Gerber was surprised at the amount of unrecorded income, and therein lies the reason for the plea agreement.

Mr. Cunningham stated that a full assessment of the record will demonstrate that, while guilty of this income tax situation, Dr. Gerber has dealt with it in a forthright manner. He again noted that it was not an aggravated case. Dr. Gerber has seriously attempted to resolve the difficulties to his and the U.S. Government's satisfaction. Dr. Gerber enjoys a good probation with the U.S. Government and he is working hard to get the matter behind him. Mr. Cunningham stated that it is safe to

say that Dr. Gerber is remorseful that he involved himself in this and created difficulties for himself, his family and the profession, and he extends his regrets to the Board. He does not ask that the Board not punish him, but thought it was important that the Board understand the tax difficulties, which do not in any way impact upon the quality of medical care furnished to the community or his ability to practice medicine. With respect to the authority of the Board and its responsibilities, Dr. Gerber asks that the Board fashion a disciplinary sanction that will allow him to continue practicing medicine.

Dr. Stephens asked Mr. Costantini if he wished to respond to Mr. Cunningham's statements.

Mr. Costantini stated that he wished to focus his remarks on his motion to strike materials contained in the objections. He stated that the penalty imposed in this matter is up to the Board. Dr. Gerber has been convicted of a felony, and therefore there is enough evidence on which the Board can take action.

Mr. Costantini stated that the documents attached to the objections are not evidence that should be considered in this case. He asked that the Board adopt a per se rule that no additional evidence comes to the Board at this stage. To allow such evidence to be presented during consideration of a report and recommendation would destroy the utility of the administrative hearing. Litigants would come to the hearing and not submit evidence for cross examination. In this case, the Board heard the entire story from Dr. Gerber's advocate, and that story cannot be contested in any way. The State stands helplessly unable to question what was said.

Mr. Costantini stated that the Attorney General's office would ask that in any situation where evidence is submitted after the fact, that that evidence be stricken from the record. He is therefore asking that the Board not only strike the materials presented with Dr. Gerber's objections, but that it not consider the remarks made by Mr. Cunningham which were based upon things outside the hearing record, not only for Dr. Gerber's case, but for the integrity of the hearing process altogether.

MR. JOST MOVED THAT THE BOARD APPROVE MR. COSTANTINI'S MOTION TO STRIKE. DR. GRETTNER SECONDED THE MOTION. A roll call vote was taken:

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

The motion carried.

Mr. Jost stated that he strongly supports Mr. Costantini's statements, and asked for the Associations' help in communicating to their members that all evidence must be presented at the time of the hearing and not thereafter.

MR. JOST MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF ROBERT L. GERBER, M.D. DR. GRETTNER SECONDED

THE MOTION.

Dr. Stephens asked if there were any questions concerning the proposed findings of fact, conclusions, or order in the matter of Robert L. Gerber, M.D.

DR. GRETTER MOVED THAT THE ORDER IN THE MATTER OF ROBERT L GERBER, M.D., BE AMENDED BY SUBSTITUTING THE FOLLOWING:

It is hereby ORDERED that the certificate of Robert L. Gerber, M.D., to practice medicine or surgery in the State of Ohio be revoked. Such revocation is stayed, and Dr. Gerber is hereby placed on probation for a period of five years, provided he complies with the following terms and conditions:

1. Dr. Gerber shall obey all federal, state, and local laws, and all rules governing the practice of medicine or surgery in Ohio.
2. Dr. Gerber shall submit quarterly declarations under penalty of perjury stating whether there has been compliance with all the conditions of probation.
3. In the event that Dr. Gerber should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Gerber must notify the State Medical Board of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary term.
4. If Dr. Gerber violates this Order in any respect, the Board, after giving him notice and an opportunity to be heard, may set aside the stay order and impose the revocation of Dr. Gerber's license.
5. Upon successful completion of probation, Dr. Gerber's license shall be fully restored.

This Order shall become effective thirty (30) days following approval by the State Medical Board of Ohio.

DR. ROTHMAN SECONDED THE MOTION.

Dr. Gretter stated that he agrees entirely with Mr. Costantini concerning evidence presented outside of the hearing record. He continued that he reviewed all of the other materials of this case and had made his decision on what he would like to propose prior to filing of the objections and additional materials.

Dr. Gretter stated that Dr. Gerber was convicted of a felony. Under the Board's disciplinary guidelines, a license revocation is called for in cases of felony convictions. In reviewing past precedents of the Board, Ms. Lubow has been helpful in finding a case where the same type of felony, i.e., income tax, was the issue. The Order he is proposing is more in line with the penalty issued in that case.

MR. JOST MOVED TO AMEND DR. GRETTER'S SUBSTITUTION TO INCLUDE A SUSPENSION FOR A PERIOD OF THREE MONTHS, AFTER WHICH THE PROBATIONARY TERMS WOULD GO INTO EFFECT.

Mr. Jost stated that the reason behind this suspension is that he, too, in reading

the record came away with the impression that Dr. Gerber was basically a man of good faith who had a good practice in the community. On the other hand, Dr. Gerber was convicted of a felony. Dr. Gerber was convicted for under reporting a substantial amount of income. Mr. Jost stated that this is indicative of one of two things: a great deal of carelessness, which is not befitting a physician; or a lack of integrity, which is also not befitting a physician. The Board has a mandate to protect the public, and must take felony convictions seriously. Some sanction is appropriate in this case, although revocation is not.

Mr. Jost noted that in the Board's most recent income tax case, the sanction was a reprimand. However, in two other felony cases, the Board revoked one license, and suspended the other for three years. A three-month suspension is a minimal sanction, and he feels it is an appropriate one.

Dr. Gretter asked what the other felonies were. Mr. Jost stated that one was a conviction for Medicaid fraud and the other was a sex offense. Mr. Jost added that he feels that, ultimately, a felony is a felony.

DR. ROTHMAN SECONDED MR. JOST'S MOTION.

Dr. Rothman commented that the only reason there was no suspension on the previous tax case was because no one suggested it. The Board was given the option of revocation or something else, and suspension was not an option presented for consideration. Dr. Rothman added that he probably would have gone along with a brief suspension.

Dr. Gretter stated that this raises the question of precedence, which was talked about previously this afternoon. Mr. Jost's amendment does not follow the precedent.

Mr. Jost stated that in this case there is a disciplinary guideline, and his amendment adheres more closely to that guideline than Dr. Gretter's does.

A roll call vote was taken on Mr. Jost's motion:

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

The motion failed.

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

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

Mr. Albert - nay
Mr. Jost - nay

The motion failed.

MR. ALBERT MOVED TO TABLE THE MATTER OF ROBERT L. GERBER, M.D. DR. CRAMBLETT
SECONDED THE MOTION. A roll call vote was taken:

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

The motion carried.

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MR. JOST MOVED TO REMOVE THE MATTER OF ROBERT L. GERBER, M.D. FROM THE TABLE. DR.
ROTHMAN SECONDED THE MOTION. A roll call vote was taken:

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

The motion carried.

MR. JOST MOVED THAT THE ORDER IN THE MATTER OF ROBERT L. GERBER, M.D., BE AMENDED BY
SUBSTITUTING THE FOLLOWING:

It is hereby ORDERED that the certificate of Robert L. Gerber, M.D., to
practice medicine or surgery in the State of Ohio be revoked. Such
revocation is stayed, and Dr. Gerber's certificate is hereby suspended for
a period of thirty (30) days, to be followed by a probationary term of
five years, on the following terms and conditions:

1. Dr. Gerber shall obey all federal, state, and local laws, and all
rules governing the practice of medicine or surgery in Ohio.
2. Dr. Gerber shall submit annually to the Board a report from an
independent certified public accountant consisting of a financial
statement and tax return for that particular year, for a period of
five (5) years.
3. In the event that Dr. Gerber should leave Ohio for three consecutive
months, or reside or practice outside the State, Dr. Gerber must

notify the State Medical Board of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of these periods of suspension or probation.

4. If Dr. Gerber violates this Order in any respect, the Board, after giving him notice and an opportunity to be heard, may set aside the stay order and impose the revocation of Dr. Gerber's license.
5. Upon successful completion of probation, Dr. Gerber's license shall be fully restored.

This Order shall become effective thirty (30) days following approval by the State Medical Board of Ohio.

DR. ROTHMAN SECONDED THE MOTION.

Mr. Jost stated this motion drops the requirement for a quarterly declaration of compliance to be submitted by Dr. Gerber. He added that he feels that something more than a reprimand is needed when a felony is involved. Mr. Jost stated that he realizes that this is not a felony of violence or one committed in the course of practice, but physicians, like attorneys, are professionals. Mr. Jost stated that he feels that this means that not only do they have special privileges, they also have special responsibilities, and one of those responsibilities is to scrupulously comply with the law. There is a legal obligation to pay income taxes. Dr. Gerber was convicted of a felony for not paying income taxes, and that is the basis for his motion.

Dr. Gretter stated that in looking at some of the things happening in the practice of medicine over the last few years, he agrees that a physician's responsibilities go beyond patient care. There is a statute that says that there are things the Board can do in regard to violations of the law, particularly in cases of a felony conviction. Dr. Gretter agreed that the Board must take some action in this case, and he added that he can accept the Order Mr. Jost is proposing.

A roll call vote was taken on Mr. Jost's motion:

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

The motion carried.

DR. GRETTTER MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER AS AMENDED IN THE MATTER OF ROBERT L. GERBER, M.D. MR. JOST SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Gretter	- aye

Dr. Kaplansky	- aye
Dr. Agresta	- abstain
Dr. Rothman	- aye
Dr. Rauch	- abstain
Mr. Albert	- aye
Mr. Jost	- aye
Dr. Stephens	- aye

The motion carried.

Mr. Jost stated that he is troubled with what seems to be a pattern of physicians entering into a plea bargain and then coming in before the Board and saying that they didn't really do it. He stated that the Board's proposed rules are now clear that conviction of a crime is prima facie evidence and proof of commission of the crime. Mr. Jost stated that he would like for physicians to know that they will see this Board if they plead guilty to a felony.

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

October 14, 1987

Robert L. Gerber, M.D.
126 South Broadway
Sugar Creek, Ohio 44681

Dear Doctor Gerber:

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 September 15, 1987, you were convicted in the United States District Court for the Northern District of Ohio, Case No. CR87-93, of one (1) count of evading income tax in violation of Title 26, Section 7201, U.S. Code, as set forth in the indictment filed on or about April 22, 1987. Said conviction constitutes a felony.

Such acts, as alleged in the above paragraph (1), individually and/or collectively, constitute "a plea of guilty to, or a judicial finding of guilt of, a felony", as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

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

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

STATE OF OHIO
THE STATE MEDICAL BOARD

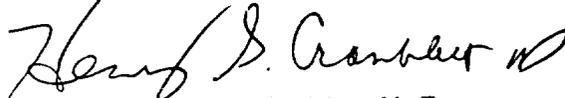
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Robert L. Gerber, M.D.

October 14, 1987

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

Copies of 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 026 073 377
RETURN RECEIPT REQUESTED