



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

January 14, 1994

Emmanuel E. Sacay, M.D.
3916 Glenway, Suite 205
Cincinnati, Ohio 45205

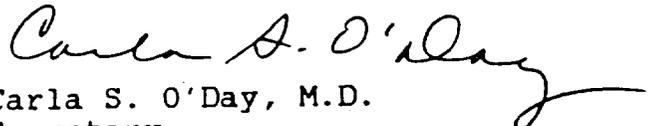
Dear Doctor Sacay:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on January 12, 1994, including a Motion approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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


Carla S. O'Day, M.D.
Secretary

CSO:em

Enclosures

CERTIFIED MAIL RECEIPT NO. P 741 123 962
RETURN RECEIPT REQUESTED

cc: Kevin P. Byers, Esq.

CERTIFIED MAIL RECEIPT NO. P 741 123 963
RETURN RECEIPT REQUESTED

Mailed 2/1/94



STATE MEDICAL BOARD OF OHIO

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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 R. Gregory Porter, Attorney Hearing Examiner, State Medical Board; and an excerpt of Minutes of the State Medical Board, meeting in regular session on January 12, 1994, including a Motion approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Emmanuel E. Sacay, 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)

Carla S. O'Day
Carla S. O'Day, M.D.
Secretary

1/13/94
Date



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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★

EMMANUEL E. SACAY, M.D.

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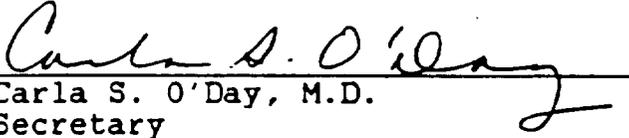
ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 12th day of January, 1994.

Upon the Report and Recommendation of R. Gregory Porter, Hearing Examiner, Medical Board, in this matter designated pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that the certificate of Emmanuel E. Sacay, M.D., to practice medicine and surgery in the State of Ohio shall be permanently REVOKED. This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.

(SEAL)


Carla S. O'Day, M.D.
Secretary

1/13/94
Date

REPORT AND RECOMMENDATION
IN THE MATTER OF EMMANUEL E. SACAY, M.D.

The Matter of Emmanuel E. Sacay, M.D., came on for hearing before me, R. Gregory Porter, Esq., Hearing Examiner for the State Medical Board of Ohio, on October 6, 1993.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

- A. By letter of May 12, 1993 (State's Exhibit #1), the State Medical Board notified Emmanuel E. Sacay, M.D., that it proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board alleged that, on or about April 6, 1993, in the Franklin County Court of Common Pleas, Dr. Sacay pleaded guilty to one count of violation of Section 2913.40(B), Ohio Revised Code, Medicaid fraud, a felony of the fourth degree. The Board alleged that such acts, conduct, and/or omissions 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; "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code; and/or "obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice," as that clause is used in Section 4731.22(B)(8), Ohio Revised Code.

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

- B. By letter received by the State Medical Board on June 10, 1993 (State's Exhibit #2), Kevin P. Byers, Esq., requested a hearing on behalf of Dr. Sacay.

II. Appearances

- A. On behalf of the State of Ohio: Lee I. Fisher, Attorney General, by Lili C. Kaczmarek, Assistant Attorney General.
- B. On behalf of the Respondent: Kevin P. Byers, Esq.

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III. Testimony Heard

- A. Presented by the State
No witnesses were presented.
- B. Presented by the Respondent
Emmanuel E. Sacay, M.D.

IV. Exhibits Examined

In addition to State's Exhibits #1 and #2, noted above, the following exhibits were identified and admitted into evidence in this Matter:

- A. Presented by the State
1. State's Exhibit #3: June 11, 1993 letter to Kevin P. Byers, Esq., from the State Medical Board, advising that a hearing initially set for June 24, 1993 was postponed pursuant to Section 119.09, Ohio Revised Code.
 2. State's Exhibit #4: June 29, 1993 letter to Attorney Byers from the State Medical Board, scheduling the hearing for August 4, 1993.
 3. State's Exhibit #5: July 16, 1993 Entry granting the Respondent's motion for continuance and rescheduling the hearing to October 6, 1993.
 4. State's Exhibit #6: Certified copy of indictment, Case No. 92CR-11-5975, State of Ohio v. Emmanuel E. Sacay, filed in the Common Pleas Court of Franklin County, Ohio, on November 17, 1992. (3 pp.)
 5. State's Exhibit #7: Certified copy of April 6, 1993 Entry of Guilty Plea setting forth Dr. Sacay's plea of guilty to count two of the indictment.
 6. State's Exhibit #8: Certified copy of April 6, 1993 Criminal Disposition Sheet in State v. Sacay.
 7. State's Exhibit #9: Copy of July 3, 1993 Entry in State v. Sacay, setting forth the sentencing of Dr. Sacay to one and one-half years of incarceration, which was suspended on the condition that Dr. Sacay comply with the terms of a five-year probation and serve 60 days in the Franklin County Correction Center. (2 pp.)

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8. State's Exhibit #10: Section 2913.40, Ohio Revised Code, entitled "Medicaid fraud." (2 pp.)
9. State's Exhibit #11: Respondent's July 14, 1993 motion for continuance of the August 4, 1993 hearing. (3 pp.)

B. Presented by the Respondent

1. Respondent's Exhibit A: Curriculum vitae of Emmanuel E. Sacay, M.D.

V. Post-Hearing Admissions to the Record

Upon the Hearing Examiner's own motion, the following additional document is hereby admitted to the record in this Matter:

Board Exhibit A: October 18, 1993 joint notice of the State and the Respondent to hold the hearing record open for 30 days for purposes of settlement negotiations, pursuant to Rule 4731-13-17(A), Ohio Administrative Code.

VI. Other Matters

On October 18, 1993, the hearing record in this Matter was reopened for a period of 30 days to allow the parties to continue settlement negotiations pursuant to Rule 4731-13-17(A), Ohio Administrative Code. Because the Hearing Examiner did not receive notice of settlement, the hearing record closed again on November 17, 1993.

FINDINGS OF FACT

1. On or about November 17, 1992, Emmanuel E. Sacay, M.D., was charged by indictment with four counts of violating Section 2913.40(B), Ohio Revised Code, Medicaid fraud. Count two of the indictment charged that between September 13, 1991, and October 21, 1992, Dr. Sacay knowingly made or caused to be made false and misleading statements and representations to the Ohio Department of Human Services, Medicaid Division, for use in obtaining reimbursement from the State of Ohio Medical Assistance Program.

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

2. On or about April 6, 1993, Dr. Sacay pled guilty as charged to count two of the indictment, a felony of the fourth degree. Dr. Sacay's guilty plea was accepted by the court. Counts one, three, and four of the indictment were dismissed at the request of the State.

These facts are established by State's Exhibits #7 and #8.

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3. On or about June 3, 1993, Dr. Sacay was sentenced to one and one-half years of incarceration, which was suspended on the condition that Dr. Sacay comply with the terms of a five-year probation. Among other things, the probationary terms required Dr. Sacay to pay a fine of \$2,500.00, pay restitution in the amount of \$34,825.00, and serve 60 days in the Franklin County Correction Center.

These facts are established by State's Exhibit #9.

4. Dr. Sacay testified at the present hearing that he had a general practice in Cincinnati since 1981, and had worked as an emergency room physician for the 12 years previous. Dr. Sacay closed his practice on March 19, 1993, based upon his physician's advice that he quit for awhile because of his health problems, elevated blood pressure and ulcer.

Dr. Sacay admitted that he is a convicted felon, and stated that he accepts responsibility for the acts that led to his conviction. Although staff members at his office prepared the billings, Dr. Sacay testified that he put the wrong codes in patient charts, and that the incorrect Medicaid billings were solely his responsibility. Dr. Sacay stated that when a certain patient came to him seeking treatment for depression, and later complained of obesity, his office billed Medicaid for treating the depression, while Dr. Sacay actually treated the patient for obesity. Dr. Sacay knew that a physician was not allowed to bill Medicaid for treatment of obesity, but he had thought that this patient's obesity problem was in part secondary to depression. Dr. Sacay indicated that improper service codes were used on several patient charts, the precise number of which he could not recall. Each involved the same situation.

These facts are established by the testimony of Dr. Sacay (Tr. at 11-26).

CONCLUSIONS

1. As set forth in Findings of Fact #1 and #2, above, on April 6, 1993, Dr. Sacay pled guilty to Medicaid fraud, a felony of the fourth degree. This 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, to wit: Medicaid fraud, in violation of Section 2913.40(B), Ohio Revised Code.
2. The acts, conduct, and/or omissions of Dr. Sacay that led to his conviction, as set forth in Findings of Fact #1 and #4, above, constitute "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio

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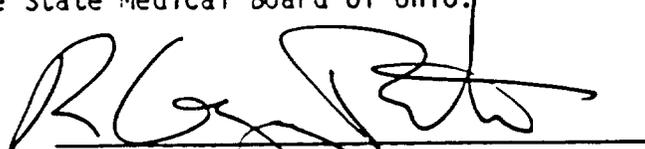
Revised Code, and/or "the obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice," as that clause is used in Section 4731.22(B)(8), Ohio Revised Code.

* * * * *

This Board is responsible for enforcing standards for those individuals holding licensure as physicians in Ohio. Requiring licensees to meet high standards of conduct promotes public confidence in the medical profession. Requiring physicians to eschew felonious conduct does not set a standard that is beyond the reach of anyone who deserves the trust granted to physicians by society. Physicians who commit felony offenses merit the severest sanction.

PROPOSED ORDER

It is hereby ORDERED that the certificate of Emmanuel E. Sacay, M.D., to practice medicine and surgery in the State of Ohio shall be permanently REVOKED. This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.



R. Gregory Porter
Attorney Hearing Examiner



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EXCERPT FROM THE MINUTES OF JANUARY 12, 1994

REPORTS AND RECOMMENDATIONS

Dr. Heidt announced that the Board would now consider the findings and orders appearing on the Board's agenda.

Dr. Heidt asked whether 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: Arbie B. Hinton, M.D.; Divaker R. Kattar, M.D.; Robert P. paunovich, D.O.; Emmanuel E. Sacay, M.D.; and Oliver K. Williams, M.D. A roll call was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Dr. O'Day | - aye |
| | Mr. Albert | - aye |
| | Dr. Stienecker | - aye |
| | Dr. Gretter | - aye |
| | Dr. Stephens | - aye |
| | Dr. Agresta | - aye |
| | Dr. Buchan | - aye |
| | Ms. Noble | - aye |
| | Mr. Sinnott | - aye |
| | Dr. Garg | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Heidt | - aye |

Dr. Steinbergh indicated that she did not read the materials in the matter of Dr. Sacay and would be abstaining in that matter since she acted as consultant to the Department of Human Services in Dr. Sacay's case.

Dr. Heidt asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

| | | |
|------------|----------------|-------|
| ROLL CALL: | Dr. O'Day | - aye |
| | Mr. Albert | - aye |
| | Dr. Stienecker | - aye |
| | Dr. Gretter | - aye |
| | Dr. Stephens | - aye |
| | Dr. Agresta | - aye |
| | Dr. Buchan | - aye |
| | Ms. Noble | - aye |



STATE MEDICAL BOARD OF OHIO

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May 12, 1993

Emmanuel E. Sacay, M.D.
3916 Glenway, Suite 205
Cincinnati, OH 45205

Dear Doctor Sacay:

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 April 6, 1993, in the Franklin County Court of Common Pleas, you pleaded guilty to one count of Medicaid Fraud, a felony of the fourth degree.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, 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, to wit: Revised Code Section 2913.40(B), Medicaid Fraud.

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

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "obtaining of, or attempting to obtain money or anything of value by fraudulent misrepresentations in the course of practice," as that clause is used in Section 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, the request must be made in writing and 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 this 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.

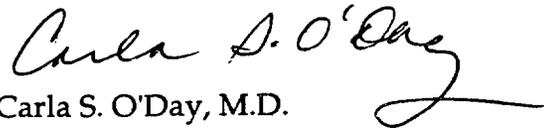
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May 12, 1993

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,



Carla S. O'Day, M.D.
Secretary

CSO:jmb

Enclosures:

CERTIFIED MAIL #P 348 885 229
RETURN RECEIPT REQUESTED