

The Supreme Court of Ohio

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Attorney General's Office
JUN 27 1994
Health & Human
Services Section

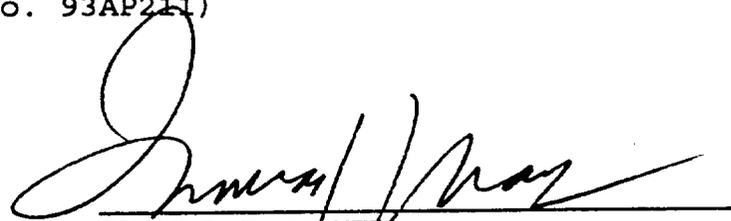
1994 TERM

To wit: June 22, 1994

In the Matter of: Victor J.	:	
Stegall, M.D.,	:	Case No. 94-244
Appellant,	:	
v.	:	REHEARING ENTRY
State Medical Board of Ohio,	:	(Franklin County)
Appellee.	:	

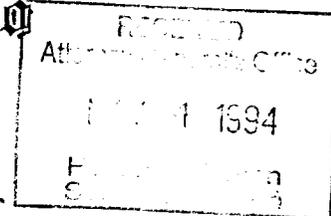
IT IS ORDERED by the Court that rehearing in this case be,
and the same is hereby, denied.

(Court of Appeals No. 93AP211)



THOMAS J. MOYER
Chief Justice

The Supreme Court of Ohio



1994 TERM

To wit: May 4, 1994

In the Matter of: Victor J. :
Stegall, M.D., :
Appellant, :

Case No. 94-244

v. :

E N T R Y

State Medical Board of Ohio, :
Appellee. :

Upon consideration of the motion for an order directing the Court of Appeals for Franklin County to certify its record, it is ordered by the Court that said motion is overruled.

COSTS:

Motion Fee, \$40.00, paid by Squire, Sanders & Dempsey.

(Court of Appeals No. 93AP211)

A handwritten signature in cursive script, appearing to read "Thomas J. Moyer".

THOMAS J. MOYER
Chief Justice

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

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT
1993 DEC -7 PM 4:51

4
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DEC 13 1993
94 JAN -5 PM 2:07
Health & Human
Services Section

In the matter of: THOMAS J. ENRIGHT
Victor J. Stegall, M.D. CLERK OF COURTS

(Appellant,
State Medical Board of Ohio,
Appellee).

:
:
:
:
:

No. 93AP-211
(REGULAR CALENDAR)

JOURNAL ENTRY OF JUDGMENT

For the reasons stated in the opinion of this court rendered herein on December 2, 1993, appellant's assignments of error are overruled, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed.

BRYANT, P.J., PETREE and STRAUSBAUGH, JJ.

By Dean Strausbaugh
Judge Dean Strausbaugh, retired, of the Tenth Appellate District, assigned to active duty under authority of Section 6(C), Article IV, Ohio Constitution.

cc: Mr. David J. Young
Mr. C. Craig Woods
Ms. Terri-Lynne Smiles
Ms. Anne C. Berry, AAG

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

STATE MEDICAL BOARD
OF OHIO

93 JAN -6 PM 2:59
SR DC

In the matter of:
Victor J. Stegall, M.D.,

:

:

(Appellant,

:

State Medical Board of Ohio,

:

No. 93AP-211

Appellee).

:

(REGULAR CALENDAR)

O P I N I O N

Rendered on December 2, 1993

*Squire, Sanders & Dempsey, David J. Young, C. Craig Woods
and Terri-Lynne Smiles, for appellant.*

*Lee Fisher, Attorney General, and Anne C. Berry, for
appellee.*

APPEAL from the Franklin County Court of Common Pleas.

STRAUSBAUGH, J.

Appellant, Victor J. Stegall, M.D., appeals the decision of the Franklin County Court of Common Pleas upholding the order of the State Medical Board ("board") to indefinitely suspend Dr. Stegall's medical license. Appellant raises the following three assignments of error:

"1. O.A.C. 4731-11-04 is unreasonable and without basis in medical science; the common pleas court thus abused its discretion in upholding a license suspension based on an alleged violation of the rule.

"2. The common pleas court abused its discretion in upholding the order of the medical board in the complete

absence of reliable, probative and substantial evidence in support of the board's conclusions and order.

"3. The lower court abused its discretion in affirming the medical board's order since the board improperly placed the burden of proof upon Dr. Stegall."

The board commenced action against appellant by citation letter dated May 8, 1991. In the letter, the board notified appellant that it proposed to take disciplinary action against his license on the grounds that his prescribing of controlled substances for weight loss to ten patients violated the board rule concerning the utilization of such substances. Ohio Adm.Code 4731-11-04. Specifically, the board charged that in his prescribing of controlled substances for weight loss to these ten patients, appellant failed to use the controlled substances as an adjunct in the treatment of obesity, failed to prescribe the drugs for a period limited to fourteen days, failed to weigh the patients every fourteen days, failed to discontinue the controlled substances when the patients did not lose weight and failed to follow the Food and Drug Administration ("FDA") approved labeling for these drugs. Therefore, the board charged that Dr. Stegall was in violation of Ohio Adm.Code 4731-11-04, and so was in violation of R.C. 4731.22(B)(20), which allows the board to take disciplinary action against a licensee for directly or indirectly violating, attempting to violate, or assisting in the violation of a rule duly adopted by the board. Further, the citation letter notified appellant that the board proposed to deem this same conduct to constitute violations of R.C. 4731.22(B)(2) ("[f]ailure to use reasonable care discrimination in the administration of drugs ***"); R.C. 4731.22(B)(3) ("[s]elling, prescribing, giving away or administering drugs for other than legal and legitimate therapeutic purposes ***"); and R.C. 4731.22(B)(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") in accordance with Ohio Adm.Code 4731-11-04(C).

Appellant received a hearing before an attorney hearing examiner. The hearing examiner's report concluded that appellant had violated the following: (1) R.C. 4731.22(B)(2); failure to use reasonable care discrimination in the administration of drugs; (2) R.C. 4731.22(B)(3); selling, prescribing, giving away or administering drugs for other than legal and legitimate therapeutic purposes; (3) R.C. 4731.22(B)(6); departure from, or 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; and (4) R.C. 4731.22(B)(20); failure to comply with a rule of the board. Appellant filed objections to the report. However, the board voted to approve and confirm the hearing examiner's proposed findings of fact and conclusions of law, and to adopt the recommended order.

Appellant filed an appeal to the Franklin County Court of Common Pleas. The referee issued his report on September 23, 1992, finding that the board's order was supported by reliable, probative and substantial evidence. The referee further found that Ohio Adm.Code Chapter 4731-11 was properly promulgated and adopted by the board pursuant to R.C. Chapter 119, and that pursuant to the Supreme Court's decision in *In re Williams* (1991), 60 Ohio St.3d 85, the board was not required to provide expert testimony in support of its charges that appellant had violated specific provisions of the administrative rules. Therefore, the referee recommended that the decision of the board be affirmed. The

common pleas court agreed with the referee's conclusions, and adopted the report. Appellant now appeals to this court.

It should be noted initially that the court of common pleas has the duty to affirm an order of the board where the order is supported by reliable, probative and substantial evidence. R.C. 119.12; *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108. Consequently, this court is limited to determining whether there was an abuse of discretion by the common pleas court. *Asad v. Ohio State Med. Bd.* (1992), 79 Ohio App.3d 143.

By his first assignment of error, appellant contends that Ohio Adm.Code 4731-11-04 is unreasonable and without basis in medical science and, therefore, the lower court abused its discretion in upholding his license suspension in violation of this rule. Further, appellant argues that the requirements and restrictions set forth in Ohio Adm.Code 4731-11-04 bear no rational relationship to the clinical practice of medicine and that the promulgation of such rule is outside the medical board's legal authority.

The rule itself is clear and unambiguous. Physicians are instructed that they shall not utilize a Schedule III or Schedule IV controlled substance for the purposes of weight reduction unless the drug has an FDA approved indication for this purpose and then only in accordance with all of the other provisions of the rule. The specific requirements are then set forth in subdivision (B) of the rule. That subdivision states that a physician may utilize a Schedule III or IV controlled substance for the purpose of weight reduction in the treatment of obesity only as an adjunct, in accordance with the FDA approved labeling for the product, and in a regimen of weight reduction which is based on caloric

restriction. Additionally, the rule provides that the following five conditions be met:

"(1) Before initiating treatment utilizing a schedule III or IV controlled substance, the physician determines through review of his own records of prior treatment, or through review of the records of prior treatment which another treating physician or weight-loss program has provided to the physician, that the patient has made a substantial good-faith effort to lose weight in a treatment program utilizing a regimen of weight reduction based on caloric restriction, nutritional counseling, behavior modification, and exercise, without the utilization of controlled substances, and that said treatment has been ineffective.

"(2) Before initiating treatment utilizing a schedule III or IV controlled substance, the physician obtains a thorough history, performs a thorough physical examination of the patient, and rules out the existence of any recognized contraindications to the use of the controlled substance to be utilized.

"(3) The physician shall not utilize any schedule III or IV controlled substance when he knows or has reason to believe that a recognized contraindication to its use exists.

"(4) The physician shall not utilize any schedule III or IV controlled substance in the treatment of a patient who he knows or should know is pregnant.

"(5) The physician shall not initiate or shall discontinue utilizing all schedule III or IV controlled substances immediately upon ascertaining or having reason to believe:

"(a) That the patient has failed to lose weight while under treatment with a controlled substance or controlled substances over a period of fourteen days, which determination shall be made by weighing the patient at least every fourteenth day, except that a patient who has never before received treatment for obesity utilizing any controlled substance who fails to lose weight during his first such treatment attempt may be treated with a different controlled substance for an additional fourteen days, or

"(b) That the patient has developed tolerance (a decreasing contribution of the drug toward further weight loss) to the

anorectic effects of the controlled substance being utilized, or

"(c) That the patient has a history of or shows a propensity for alcohol or drug abuse, or

"(d) That the patient has consumed or disposed of any controlled substance other than in strict compliance with the treating physician's directions."

The Supreme Court has specifically recognized and respected the expertise of the medical board in medical matters. *Arlen v. State* (1980), 61 Ohio St.2d 168. There can be no question that the board has the ability to adopt rules setting specific minimum standards of care by adopting administrative regulations. See R.C. 4731.05. Further, the Supreme Court plainly stated in the *Williams* case that the board may adopt rules prohibiting a practice even when there exists a body of expert opinion in disagreement with the rule.

The record indicates that there was medical evidence presented at the public hearing in support of the rule, and the board was entitled to adopt such a rule based upon the medical testimony and its own expertise. Therefore, appellant's first assignment of error is overruled.

In his second assignment of error, appellant contends that the common pleas court abused its discretion in upholding the order of the medical board in the complete absence of reliable, probative and substantial evidence in support of the board's conclusions and order. Appellant argues that the board presented no expert testimony whatsoever to establish any violations of R.C. 4731.22(B) or the applicable standard of care.

The record indicates that the board's order finding appellant in violation of Ohio Adm.Code 4731-11-04 was based on appellant's own patient records.

Appellant made no contention that these records were incomplete nor did he argue that they were incorrect.

Appellant argues that the hearing examiners are not properly trained to interpret such medical records. However, the types of violations charged did not require such expertise.

Appellant also argues that an expert witness was required in this case. However, in *Williams, supra*, at 87, the court stated "*** that where the General Assembly has prohibited a particular medical practice by statute, or where the board has done so through its rule-making authority, the existence of a body of expert opinion supporting that practice would not excuse a violation. ***" The court also stated that the existence of a minority view supporting the use of weight control substances would not provide a physician with a defense. In essence, the Supreme Court ruled that in a situation where a physician was charged with violations of the weight control rule after the effective date of the rule, no expert testimony would be required to sustain the charges.

In light of appellant's own records and the *Williams* case, this court finds that there was no abuse of discretion by the trial court in finding that the order of the board was supported by reliable, probative and substantial evidence. Therefore, appellant's second assignment of error is overruled.

Appellant's third assignment of error contends that the board improperly placed the burden of proof upon appellant. Appellant bases this contention on the hearing examiner's assertion that his patient records were silent as to one fact or another. Appellant argues that rather than placing the burden on the state to establish facts in support of the allegations, or at least

calling upon the state to explain the perceived silences, the hearing examiner improperly filled the gaps with presumptions against appellant. However, appellant's contention is not well-taken.

Ohio Adm.Code 4731-11-02(D) requires the following when controlled substances are prescribed:

"A physician shall complete and maintain accurate medical records reflecting his examination, evaluation, and treatment of all his patients. Patient medical records shall accurately reflect the utilization of any controlled substances in the treatment of a patient and shall indicate the diagnosis and purpose for which the controlled substance is utilized, and any additional information upon which the diagnosis is based."

As keeping proper medical records is required, appellant cannot escape a disciplinary violation by keeping poor records. Therefore, appellant's third assignment of error is also overruled.

For the foregoing reasons, appellant's assignments of error are overrule, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BRYANT, P.J., and PETREE, J., concur.

STRAUSBAUGH, J., retired, of the Tenth Appellate District, assigned to active duty under authority of Section 6(C), Article IV, Ohio Constitution.

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

VICTOR J. STEGALL, M.D.,
Appellant,
v.
STATE MEDICAL BOARD OF OHIO,
Appellee.

Case No. 91CVF12-9897
Judge Thompson

93 AP 211

NOTICE OF APPEAL

FEB 24 1993
CLERK OF COURT
SERVICES SECTION

PLEASE TAKE NOTICE that Appellant Victor J. Stegall, M.D. hereby appeals to the Court of Appeals of Franklin County, Ohio, Tenth Appellate District, from the final judgment entered in this action on the 21st day of January, 1993.



David J. Young (0019251)
C. Craig Woods (0010732)
SQUIRE, SANDERS & DEMPSEY
1300 Huntington Center
41 South High Street
Columbus, Ohio 43215
(614) 365-2700

Attorneys for Appellant
Victor J. Stegall, M.D.

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COURT OF APPEALS
FRANKLIN CO. OHIO
1993 FEB 22 PM 2:40
THOMAS J. LEANING
CLERK OF COURTS

93-1-211-05
APPELLATE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing notice of appeal was served by regular U.S. mail, postage prepaid, on the following parties and/or counsel of record this 22nd day of February, 1993:

Anne C. Berry
Assistant Attorney General
30 East Broad St., 15th Floor
Columbus, Ohio 43266-0410
Attorney for Appellee



C. Craig Woods

COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

VICTOR J. STEGALL, M.D., :
 Plaintiff(s), :
 vs. : Case No. 91CVF12-9897
 STATE MEDICAL BOARD OF OHIO, :
 Defendant(s). :

STATE MEDICAL BOARD
 OF OHIO
 93 JAN -8 JAN 1: 35 1993
 HEALTH & HUMAN SERVICES SECT.

DECISION

Rendered this _____ day of January, 1993.

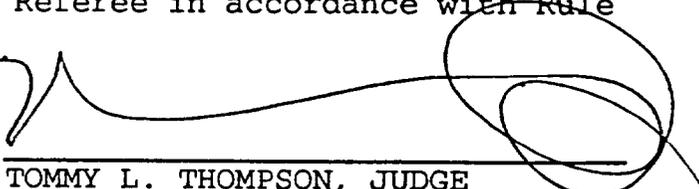
THOMPSON, J.

This matter came on for determination of objections to Report of Referee. The Court finds the objections not well taken and OVERRULES the same.

This Court will not substitute its judgment for that of the Referee on issues of fact since the credibility and weight of testimony is within the province of the trier of fact.

The Court further finds that the findings, conclusions and recommendations of the Referee are supported by reliable, probative and substantial evidence and are in accordance with law. The Report shall, therefore, be approved.

Appellee shall submit a Judgment Entry reflecting these findings and the findings of the Referee in accordance with Rule 39.01 of the Rules of this Court.


 TOMMY L. THOMPSON, JUDGE

Copies to:

Referee Craig Mayton

David J. Young
 Counsel for Plaintiff(s)

Anne Clifton Berry
 Counsel for Defendant(s)

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 COMMON PLEAS COURT
 93 JAN -4 PM 3:02
 FRANKLIN COUNTY, OHIO
 THOMAS J. ENRIE, CLERK OF COURT

3

APPROVED:

David J. Young, Lee, Quirk & Bernard

DAVID J. YOUNG
DAVID W. GRAUER
Squire, Sanders & Dempsey
41 South High Street
Suite 1300
Columbus, Ohio 43215

[Handwritten signature]

ANNE C. BERRY
Assistant Attorney General
30 East Broad Street
15th Floor
Columbus, Ohio 43266-0410
(614) 466-8600

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IN THE COURT OF COMMON PLEAS
OF FRANKLIN COUNTY, OHIO

VICTOR J. STEGALL, M.D., :
Plaintiff, :
vs. :
STATE MEDICAL BOARD OF OHIO, :
Defendant :

CASE NO. 91CVF12-9897
Judge Thompson

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
93 JAN 21 PM 3:43
THOMAS J. ENRIGHT
CLERK OF COURTS

ORDER STAYING JUDGMENT

This cause is before the Court, pursuant to Rule 62 of the Ohio Rules of Civil Procedure and Rule 7(A) of the Ohio Rules of Appellate Procedure and by agreement of the parties. For the reasons stated in this Court's Order Suspending Agency Decision, entered herein on December 12, 1991, which are still applicable, it is hereby

ORDERED, ADJUDGED AND DECREED:

(1) that the Board Order suspending Dr. Stegall's certificate to practice medicine and surgery is hereby suspended until the earlier of (a) further order of this court; (b) the period for filing a notice of appeal of this judgment has expired without Dr. Stegall having filed such a notice; or (c) final decision is rendered by the Court of Appeals on any appeal taken by Dr. Stegall;

(ii) that Dr. Stegall shall comply with Rule 4731-11-04
of the Ohio Administrative Code.

Dated: January __, 1993

TOMMY L. THOMPSON, JUDGE

APPROVED:

David J. Young by Janice M. Demard
DAVID J. YOUNG
DAVID W. GRAUER
Squire, Sanders & Dempsey
1300 Huntington Center
41 South High Street
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ANNE C. BERRY
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STATE MEDICAL BOARD
OF OHIO

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IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

IN THE MATTER OF:

VICTOR J. STEGALL, M.D.

CASE NO. **91-CVF-12-9897**

NOTICE OF APPEAL OF AGENCY DECISION

1. Victor J. Stegall (Stegall) is a medical doctor licensed to practice in the State of Ohio.
2. State Medical Board of Ohio (Board) is an agency created by State Statute Ohio Rev. Code §4731.01 et seq.
3. On or about December 4, 1991, the Board at a duly called meeting issued an order revoking the license of Dr. Stegall and staying said revocation subject to a suspension and other conditions.

COUNT I

4. The decision of the Board is improper for the following reasons:
 - a. There is insufficient, reliable, probative and substantial evidence to support the Board's finding that the appellant violated the rule.
 - b. The Board abused its discretion in sanctioning Dr. Stegall as it did for the acts it found he committed.
 - c. Dr. Stegall was denied a fair hearing when the attorney hearing examiner was allowed to interject post hearing medical opinion evidence.
 - d. The procedure and hearing of the Board was

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COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
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constitutionally flawed in that Dr. Stegall had the burden of proof, Dr. Stegall was not allowed to confront his accusers, and Dr. Stegall was denied the right to cross examine key state witnesses.

e. The penalty was unduly harsh.

f. The Rule was promulgated without sufficient basis in fact.

g. The Rule is promulgated otherwise than properly according to law.

h. The Rule denies Dr. Stegall the right to cross examine witnesses.

i. The Board did not have the power to promulgate Ohio Adm. Rule 4731-11-4.

WHEREFORE Dr. Stegall demands that this Court reverse the decision of the Board, find Ohio Administrative Code Rule 4731-11-4 is void, award costs and attorneys fees, and award such other relief as appropriate in the circumstances.

Respectfully submitted,

SQUIRE, SANDERS AND DEMPSEY

By David A. Young
David Young
Reg. No. 0019251
Huntington Banking Center
41 South High Street
Suite 1300
Columbus OH 43215
614-365-2700

GALL, YALE & HOY

By [Signature]

BENJAMIN F. YALE
Reg. No. 0024730
317 West Spring Street
P.O. Box 86
St. Marys, Ohio 45885
419-394-7481

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

91 DEC 23 PM 3:36
STATE MEDICAL BOARD OF OHIO
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO

IN THE MATTER OF:

VICTOR J. STEGALL, M.D.
(Appellant)

CASE NO. 91CVF12-9897

JUDGE THOMPSON

STATE MEDICAL BOARD
OF OHIO
(Appellee)

ORDER SUSPENDING AGENCY DECISION

This matter came before the Court upon Appellant's motion for an order suspending the order of the State Medical Board of Ohio. After review of the Notice of Appeal, Motion, Affidavits, and Order of the State Medical Board, and after hearing the arguments of counsel, this Court finds that Dr. Stegall and the hospital and patients in his community will incur unusual hardship if the Board's action is not suspended during the pendency of this case and that suspension of the Board order will not threaten the health, safety, and welfare of the public. The Court also finds other appropriate factors for consideration upon such motion weigh in favor of suspension.

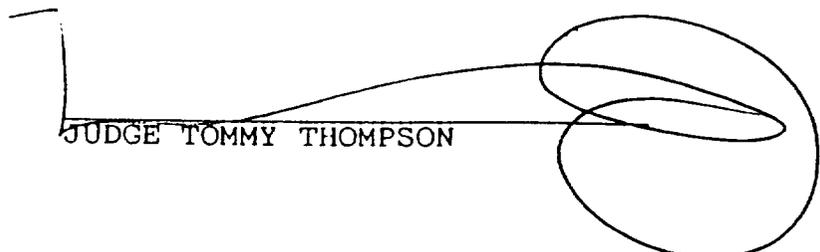
IT IS THEREFORE ORDERED THAT:

1. Until further order of this Court and pursuant to R.C. 119.12, the December 4, 1991 order of the State Medical Board suspending Dr. Stegall's certificate to practice medicine and surgery is

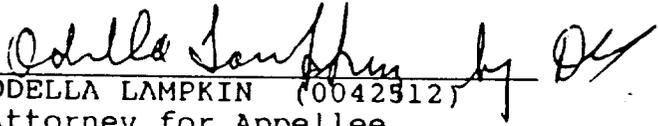
hereby suspended.

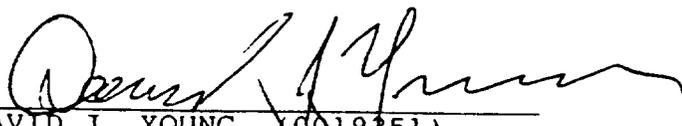
2. Dr. Stegall shall comply with Rule 4731-11-04, Ohio Administrative Code during the pendency of this appeal.

The Appellee, State Medical Board of Ohio, may file a written response to the Appellant's Motion for Suspension on or before December 24, 1991 and Appellant may thereafter file a reply within rule. The Court will hear brief arguments from the parties if requested on or before January 6, 1992. Thereafter the Court will reconsider its suspension order if such is deemed appropriate.


JUDGE TOMMY THOMPSON

APPROVED BY:


ODELLA LAMPKIN (0042912)
Attorney for Appellee


DAVID J. YOUNG (0019251)
Attorney for Appellant



STATE MEDICAL BOARD OF OHIO

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

December 6, 1991

Victor J. Stegall, M.D.
SR 66 @ Southland Road
P. O. Box 127
New Bremen, Ohio 45869

Dear Doctor Stegall:

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 December 4, 1991, including Motions 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


Henry G. Cramblett, M.D.
Secretary

HGC:em
Enclosures

CERTIFIED MAIL RECEIPT NO. P 055 325 364
RETURN RECEIPT REQUESTED

cc: Benjamin F. Yale, Esq.

CERTIFIED MAIL NO. P 055 325 365
RETURN RECEIPT REQUESTED

1/12/91



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

★

★

VICTOR J. STEGALL, M.D.

★

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 4th day of December, 1991.

Upon the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, Medical Board, in this matter designated pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the 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 for the above date.

It is hereby ORDERED that:

1. The certificate of Victor J. Stegall, M.D., to practice medicine and surgery in the State of Ohio, shall be REVOKED. Such revocation is stayed, and Dr. Stegall's certificate is hereby SUSPENDED for an indefinite period of time, but not less than ninety (90) days. The State Medical Board shall not consider reinstatement of Dr. Stegall's certificate to practice medicine and surgery in Ohio, unless and until all of the following minimum requirements are met:
 - a. Dr. Stegall shall submit an application for reinstatement, accompanied by appropriate fees. The Board shall not act upon such application until the suspension period of ninety (90) days has expired.
 - b. Dr. Stegall shall provide documentation of successful completion of an acceptable course in pharmacology and a minimum of fifteen (15) hours of Category I Continuing Medical Education in medical recordkeeping. Such courses are to be approved in advance by the State Medical Board, and are in addition to the regular Category I Continuing Medical Education requirements to maintain a practice in this State, pursuant to Section 4731.281, Ohio Revised Code.



STATE MEDICAL BOARD OF OHIO

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

Page 2

Victor J. Stegall, M.D.

- c. In the event that Dr. Stegall has not been engaged in the active practice of medicine and surgery for a period in excess of two (2) years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Stegall's fitness to resume practice.
2. Upon reinstatement, Dr. Stegall's certificate shall be subject to the following probationary terms, conditions, and limitations for a period of five (5) years:
 - a. Dr. Stegall shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
 - b. Dr. Stegall shall submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the provisions of probation.
 - c. Dr. Stegall shall appear in person for interviews before the full Board or its designated representative at six (6) month intervals, or as otherwise requested by the Board.
 - d. Dr. Stegall shall not treat any patients for weight control problems, and shall not prescribe any controlled substance anorectics or appetite suppressants.
 - e. In the event that Dr. Stegall should leave Ohio for three (3) consecutive months, or reside or practice outside the state, Dr. Stegall must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period.
3. If Dr. Stegall violates probation in any respect, the Board, after giving Dr. Stegall notice and the opportunity to be heard, may set aside the stay order and impose the revocation of Dr. Stegall's certificate.
4. Upon successful completion of probation, Dr. Stegall's certificate will be fully restored, except that he may not treat any patients for weight control problems or prescribe any controlled substance anorectics or appetite suppressants without prior approval by the State Medical Board.



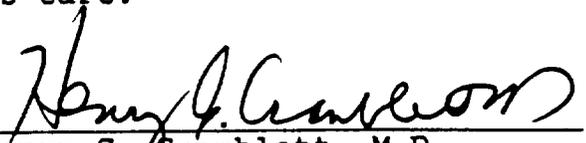
STATE MEDICAL BOARD OF OHIO

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

Page 3

Victor J. Stegall, M.D.

This Order shall become effective thirty (30) days from the date of mailing of notification of approval by the State Medical Board of Ohio. In the thirty (30) day interim, Dr. Stegall shall not undertake the care of any patient not already under his care.


Henry G. Cramblett, M.D.
Secretary

(SEAL)

12/06/91
Date

REPORT AND RECOMMENDATION
IN THE MATTER OF VICTOR J. STEGALL, M.D.

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The Matter of Victor J. Stegall, M.D., came on for hearing before me, Wanita J. Sage, Esq., Hearing Examiner for the State Medical Board of Ohio, on September 4, September 5 and September 18, 1991.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

- A. By letter of May 8, 1991 (State's Exhibit #1), the State Medical Board notified Victor J. Stegall, M.D., that it proposed to take disciplinary action against his license to practice medicine and surgery in Ohio. The Board alleged that Dr. Stegall, in his prescribing of controlled substances for weight loss to Patients 1 through 10 (identified on a Patient Key, sealed to protect patient confidentiality), failed to use the controlled substances as an adjunct in the treatment of obesity, failed to prescribe for a period limited to 14 days, failed to weigh the patients every 14 days, failed to discontinue the controlled substances when patients did not lose weight, and/or failed to follow the F.D.A. approved labeling for the product. Such conduct was alleged to constitute "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", as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-04(B) and (B)(5)(a), Ohio Administrative Code. Pursuant to Rule 4731-11-04(C), Ohio Administrative Code, violations of Rule 4731-11-04(B) also violate Sections 4731.22(B)(2), (B)(3), and (B)(6), Ohio Revised Code. Dr. Stegall was advised of his right to request a hearing.
- B. By letter received by the State Medical Board on May 22, 1991 (State's Exhibit #2), Benjamin F. Yale, Esq., requested a hearing on behalf of Dr. Stegall.

II. Appearance of Counsel

- A. On behalf of the State of Ohio: Lee I. Fisher, Attorney General, by Odella Lampkin, Assistant Attorney General
- B. On behalf of the Respondent: Benjamin F. Yale, Esq., and David W. Grauer, Esq.

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III. Testimony Heard

A. Presented by the State

1. Lauren Lubow, Case Control Officer, State Medical Board
2. Charles A. Eley, Investigator, State Medical Board

B. Presented by the Respondent

1. Bashar Hamdi, M.D.
2. Dale Manbeck, Board of Trustees, Joint Township District Memorial Hospital, St. Mary's
3. Victor J. Stegall, M.D.
4. Walter Bruce Kane, II, D.O.
5. David Schwieterman, Pharmacist
6. Emmett Hoy, D.O.
7. Nancy J. Comradie, School Nurse, New Bremen Schools
8. James R. Chick, President and Chief Executive Officer, Joint Township District Memorial Hospital
9. George Gibson, Manager of Safety and Hygiene, Goodyear Tire and Rubber Co., St. Mary's
10. Puttagunta Ranga, M.D.
11. Peter Hanley, M.D.
12. Alan Peterson, M.D.
13. Joann McDorman, Day Charge Nurse, Transitional Care Unit, Joint Township District Memorial Hospital
14. John P. Morgan, 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:

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A. Presented by the State

1. State's Exhibit #3: May 23, 1991, letter to Benjamin F. Yale, Esq., from the State Medical Board advising that a hearing initially set for June 3, 1991, was postponed pursuant to Section 119.09, Ohio Revised Code.
2. State's Exhibit #4: May 23, 1991, letter to Attorney Yale from the State Medical Board scheduling the hearing for July 18, 1991.
3. State's Exhibit #5: May 24, 1991, letter to Attorney Yale from the State Medical Board scheduling the hearing for July 18, 1991, and noting a corrected time.
4. State's Exhibit #6: Respondent's June 27, 1991, request for continuance of the hearing.
5. State's Exhibit #7: July 9, 1991, Entry denying Respondent's request for continuance.
6. State's Exhibit #8: Respondent's July 12, 1991, motion for reconsideration of the denial of continuance.
7. State's Exhibit #9: July 15, 1991, Entry granting continuance and rescheduling the hearing for September 4 and September 5, 1991.
8. State's Exhibit #10: Respondent's August 23, 1991, request for the continuance of the hearing.
9. State's Exhibit #11: August 26, 1991, Entry denying Respondent's motion for continuance.
10. State's Exhibit #12: Copy of Chapter 4731-11, Ohio Administrative Code.
11. State's Exhibit #13: Copy of newsletter entitled "Your Report" from the State Medical Board of Ohio.
12. State's Exhibit #14: Excerpts from the Physicians' Desk Reference (45th Ed., 1991) with regard to Fastin, Ionamin, Adipex-P, and Tenuate.
- * 13. State's Exhibits #16A-1 through #16A-10: Dr. Stegall's medical records with regard to Patients 1 through 10, respectively.

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- * 14. State's Exhibit #17: Investigative subpoena dated March 25, 1991, directing Dr. Stegall to deliver to the State Medical Board the complete, original patient records for specified patients.

B. Presented by the Respondent

1. Respondent's Exhibit A: Forward to the 45th Edition of the Physicians' Desk Reference (1991).
2. Respondent's Exhibit B: Excerpt from the Product Category Index of the Physicians' Desk Reference, submitted with reference to the heading "Appetite Suppressants."
3. Respondent's Exhibit C: Key to Controlled Substances Categories from the Physicians' Desk Reference.
4. Respondent's Exhibit D: Excerpt from the USPDI (8th Ed., 1988) with regard to appetite suppressants.
5. Respondent's Exhibit E: Excerpt from Facts and Comparisons (March, 1989) with regard to anorexiant.
6. Respondent's Exhibit F: Article by Catherine J. Campbell, I.P. Bhalla, M.D., Judith M. Steel, and L. J. P. Duncan, entitled "A Controlled Trial of Phentermine in Obese Diabetic Patients" from The Practitioner (Vol. 218, 1977).
7. Respondent's Exhibit G: Excerpt from Drug Evaluations (AMA, 6th Ed.), consisting of Chapter 51 (pp. 927-936) entitled "Agents Used in Obesity".
8. Respondent's Exhibit H: Article by W. Harding leRiche, M.D., and G. E. van Belle, entitled "A Long-Term Study on the Use of Appetite Suppressants" from The Canadian Medical Association Journal (Vol. 85, No. 12, 1961).
9. Respondent's Exhibit I: Article by Kenneth J. Langlois, M.D., James A. Forbes, George W. Bell, and George F. Grant, Jr., entitled "A Double-Blind Clinical Evaluation of the Safety and Efficacy of Phentermine Hydrochloride (Fastin) in the Treatment of Exogenous Obesity" from Current Therapeutic Research (Vol. 16, No. 4, 1974).
10. Respondent's Exhibit J: Article by J. F. Munro, A. C. MacCuish, Elizabeth M. Wilson, and L. J. P. Duncan, entitled "Comparison of Continuous and Intermittent Anorectic Therapy in Obesity" from the British Medical Journal (Vol. 1, 1958).

11. Respondent's Exhibit K: Article by George A. Gray and Frank L. Greenway, entitled "Pharmacological Approaches to Treating the Obese Patient" from Clinics in Endocrinology and Metabolism (Vol. 5, No. 2, 1976). 67-05-5410:22
12. Respondent's Exhibit L: Reprint of an article originally appearing in the American Journal of Bariatric Medicine (date unspecified) by G. Michael Steelman, M.D., entitled "Appetite Suppressants" from The Bariatrician (Winter, 1991).
13. Respondent's Exhibit M: Article by J. T. Silverstone and Terence Solomon, entitled "The Long-Term Management of Obesity in General Practice" from the British Journal of Clinical Practice (Vol. 19, 1965).
14. Respondent's Exhibit N: Article by Joseph B. Rudnick, M.D., entitled "Prolonged Comprehensive Anti-Obesity Therapy: Results in 198 Hypertensive Patients" from Medical Times (Vol. 92, 1964).
15. Respondent's Exhibit O: Article by R. H. G. McKay, entitled "Long-Term Use of Diethylpropion in Obesity" from Current Medical Research and Opinion (Vol. 1, No. 8, 1973).
16. Respondent's Exhibit P: Article by Barbara W. Richard and Louis Lasagna, M.D., entitled "Anorectic Drugs: Drug Policy Making at the State Level" from the Journal of Clinical Pharmacology (Vol. 28, 1988).
17. Respondent's Exhibit Q: Article by J. F. Munro, entitled "Clinical Aspects of the Treatment of Obesity by Drugs: A Review" from the International Journal of Obesity (Vol. 3, 1979).
18. Respondent's Exhibit R: Article by John F. Moe, M.D., entitled "Phentermine Hydrochloride Therapy for Exogenous Obesity: An Evaluation of Interrupted Therapy" from Current Therapeutic Research (Vol. 22, No. 5, 1977).
19. Respondent's Exhibit T: Article by Peter J. Wise, M.D., entitled "Clinical Experience with a New Dosage Form of Phentermine Hydrochloride" from Obesity and Bariatric Medicine (Vol. 4, No. 3, 1975).
20. Respondent's Exhibit V: Curriculum vitae of John P. Morgan, M.D.

- * NOTE: THOSE EXHIBITS MARKED WITH AN ASTERISK (*) ABOVE HAVE BEEN SEALED TO PROTECT PATIENT CONFIDENTIALITY. 22
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V. Post-Hearing Admissions to the Record

- A. Upon the Respondent's motion of October 15, 1991, documents indicating Dr. Stegall's successful completion of the recertification exams of the American Board of Family Practice, as well as the motion, were admitted as Respondent's Exhibit X.
- B. Upon the Hearing Examiner's own motion, an Entry dated October 16, 1991, is hereby admitted as Board Exhibit #1.

VI. Other Matters

- A. Respondent's Exhibit W was proffered, but not admitted. Supplemental materials were submitted on October 21, 1991, pursuant to agreement at hearing. (NOTE: THESE MATERIALS CONSIST OF THE TRANSCRIPTS OF TESTIMONY AND EXHIBITS RECEIVED AT THE PUBLIC HEARING RELATED TO THE PROMULGATION OF THE RULES INCLUDED IN CHAPTER 4731-11, OHIO ADMINISTRATIVE CODE. ALTHOUGH THESE MATERIALS WERE NOT ADMITTED DUE TO THE PURPOSES FOR WHICH THEY WERE OFFERED, THE BOARD MEMBERS MAY REVIEW THEM IF THEY SO DESIRE, AS THESE DOCUMENTS ARE ALL PUBLIC RECORDS.)
- B. Pursuant to the Hearing Examiner's Entry of October 16, 1991, the hearing record was reopened from October 15 through October 21, 1991, to permit the Respondent to supplement certain incomplete exhibits. Prior to that time, Respondent's Exhibits J and K were supplemented, post-hearing, at the Hearing Examiner's request.
- C. All transcripts of testimony and exhibits, whether or not specifically referred to hereinafter, were thoroughly reviewed and considered by the Hearing Examiner prior to her findings, conclusions, and recommendations in this Matter.

FINDINGS OF FACT

1. Chapter 4731-11, Ohio Administrative Code, became effective as of November 17, 1986. This Chapter contains rules promulgated by the State Medical Board with regard to the utilization of controlled substances. Rule 4731-11-04 specifically addresses the utilization of controlled substances for weight reduction.

These facts are established by State's Exhibit #12.

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2. Around the time that these rules were promulgated, the State Medical Board issued a newsletter entitled "Your Report", announcing the Board's adoption of controlled substances rules and summarizing the provisions of each rule. Under a front-page caption, "Use of Schedule III and IV Substances for Weight Control", the provisions of Rule 4731-11-04 were summarized.

In early 1987, all physicians renewing their certificates to practice medicine and surgery in Ohio for the 1987-1988 biennium were mailed new wallet cards. A copy of the Board's newsletter was mailed along with the wallet cards. Victor J. Stegall, M.D., was among the physicians renewing his medical license for the 1987-1988 biennial registration period.

These facts are established by State's Exhibit #13 and the testimony of Lauren Lubow, Esq. (Tr. at 24-31).

3. In addition, Charles A. Eley, a State Medical Board Investigator, met with Dr. Stegall in early 1988 to discuss Dr. Stegall's dispensing records. During the course of their conversation, Mr. Eley made reference to "Your Report" and specifically mentioned the Board's new rule banning the use of Schedule II controlled substances for weight control.

These facts are established by the testimony of Mr. Eley (Tr. at 31-33).

4. Dr. Stegall could not recall having seen "Your Report" prior to hearing. He also could not recall precisely when he had become aware of the Board's rules regarding the use of controlled substances for weight loss. He was unsure whether or not Mr. Eley had ever mentioned anything other than Schedule II drugs, which, by 1988, Dr. Stegall no longer prescribed for weight loss purposes. Dr. Stegall's patient records, however, suggest that Dr. Stegall became aware of the Board's rules prior to Mr. Eley's visit. Paragraph (B)(5)(a) of Rule 4731-11-04 requires a physician to determine whether or not a patient has failed to lose weight while under treatment with a controlled substance over a period of 14 days by weighing the patient at least every fourteenth day. As early as August, 1987, Dr. Stegall began noting occasionally on his prescriptions for Schedule IV anorectics, "weight every two weeks" or "weight in two weeks" (see, e.g., 8/3/87 prescription for Patient 6 included in State's Exhibit #16A-6). His records do not indicate that bi-weekly weight check were actually done when such notations were made.

Dr. Stegall admitted that he had received 12 to 18 visits from four different investigators from two or three different governmental agencies, including the State Medical Board, all indicating that he was deviating from the State Medical Board's

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rule regarding the use of controlled substances for weight control. Not until July, 1990, however, did he "voluntarily elect" to limit his prescriptions for Schedule IV anorectics to 14 pills at a time. Dr. Stegall stated that, at that time, he felt under such intense scrutiny that he could no longer follow what he considered to be proper medical practice. He felt that Rule 4731-11-04 eliminated the flexibility needed for proper medical practice. In Dr. Stegall's opinion, he was in substantial compliance with the Board's rule, as of July, 1990. Dr. Stegall's comments indicated, however, that he believed his limiting his prescriptions to 14 dosage units at a time constituted substantial compliance.

These facts are established by the testimony of Dr. Stegall (Tr. at 138-142, 172-175) and State's Exhibits #16A-1 through #16A-10.

5. Dr. Stegall prescribed the controlled substances for weight loss, as reflected in the "Prescription List By Patient Number" attached to State's Exhibit #1, for Patients 1 through 10, with the following exceptions:
- a. Patient 1 - Dr. Stegall also authorized a telephone prescription for 30 Adipex-P on 3/15/89. The prescription listed as having been issued on March 19, 1989, was actually issued on March 19, 1990. In addition, Dr. Stegall issued a prescription for 14 Adipex-P on September 13, 1990. Although another prescription for 14 Adipex-P was issued on September 28, 1990, it was signed by Dr. Stegall's partner, Dr. James Luedeke.
 - b. Patient 3 - In addition to the prescriptions listed, Dr. Stegall issued the following prescriptions: 12/8/86, 30 Adipex-P, with six refills; 6/22/87, 50 Adipex-P, with six refills; and 9/21/87, 30 Adipex-P, with six refills.
 - c. Patient 4 - There is no evidence that a prescription was issued on 4/16/87, as listed.
 - d. Patient 6 - The 11/11/86 prescription was issued prior to the effective date of Rule 4731-11-04, Ohio Administrative Code. In addition to the listed prescriptions, a prescription for 90 Tenuate Tabs 25 mg. was issued on 2/11/87. Also, Dr. Stegall authorized a telephone prescription for 21 Adipex-P on 5/2/88. The prescription listed as having been issued on 6/21/88 was actually issued on 6/27/88.
 - e. Patient 7 - There is no evidence that a prescription for Adipex-P was issued on 1/14/89. However, a prescription for 30 Adipex-P was issued on 1/14/88, apparently in relation to a notation on the copy of the 1/13/88 prescription which had been written for 30 Adipex-P with two refills, "Drug store won't refill per patient."

- f. Patient 10 - The prescription listed as having been issued on 9/19/88 was actually issued on 9/14/88. The prescription listed as having been issued on 1/7/91 was actually issued on 1/9/91. In addition to those listed, the following additional prescriptions were issued: 7/28/89, 30 Adipex-P; 7/3/90, 30 Ionamin-30; 8/8/90, 14 Adipex-P; and 8/22/90, 14 Adipex-P.

These facts are established by State's Exhibits #1 and #16A-1 through #16A-10. See, also, transcript at 12-14.

6. In the "Prescription List by Patient Number", question marks sometimes appear in the column captioned "Refills". Each of these question marks refers to prescriptions on which Dr. Stegall had placed a check mark in the refill space. Dr. Stegall testified that either a check mark or a "no" written in the refill space meant that the prescription was not to be refilled. He had intended only to fill in the space so that no one could add a number.

These facts are established by State's Exhibits #1 and #16A-1 through #16A-10 and the testimony of Dr. Stegall (Tr. at 68-69).

7. In most cases, Dr. Stegall had utilized controlled substance anorectics in his treatment of Patients 1 through 10 for obesity or overweight prior to the time period reflected on the "Prescription List by Patient Number". Dr. Stegall's records of prior treatment indicated that he had generally prescribed controlled substance anorectics as a primary treatment modality. In the few cases where diets had been prescribed before controlled substances had been utilized, Dr. Stegall had failed to document the patient's progress with such diet. None of Dr. Stegall's records of prior treatment provided a basis for determining that the patient had made a "substantial good-faith effort to lose weight in a treatment program utilizing a regimen of weight reduction based on caloric restriction, nutritional counseling, behavior modification, and exercise, without utilization of controlled substances, and that said treatment had been ineffective." In addition, Dr. Stegall failed to document a thorough history and thorough physical examination to rule out any recognized contraindications with regard to any of these patients before initiating treatment with controlled substance anorectics. All of these patients were long-term, established patients of Dr. Stegall. In most cases, the only thorough histories and physicals in the patient records were those Dr. Stegall had documented in connection with hospital admissions or insurance reports.

These facts are established by State's Exhibits #16A-1 through #16A-10.

8. During the time periods encompassed by the "Prescription List AN 10: 23 by Patient Number", Dr. Stegall's patient records provide little support for his claim that he used controlled substance anorectics as an adjunct in the treatment of obesity. Dr. Stegall generally prescribed Schedule IV anorectics as the primary modality for weight control. Sometimes he utilized them in conjunction with diuretics, synthetic thyroid hormone, and/or antidepressant medications. Often, only after such medications proved ineffective in inducing further weight loss did Dr. Stegall place the patient on a calorie restrictive diet and/or suggest an exercise program. He generally continued to prescribe the controlled substance anorectics along with such diet and/or exercise plan.

These facts are established by State's Exhibits #16A-1 through #16A-10.

9. With a few exceptions, Dr. Stegall failed to prescribe Schedule IV anorectics for a period limited to 14 days, failed to weigh Patients 1 through 10 every 14 days, failed to discontinue the controlled substances when these patients did not lose weight, and/or failed to follow the F.D.A. approved labeling for the products that he prescribed.

These facts are established by State's Exhibits #14 and #16A-1 through #16A-10.

10. In January, 1989, Patient 1, a 6' 7" male, was 36 years old, had been a patient of Dr. Stegall for over 17 years, and had been treated with controlled substances for weight control by Dr. Stegall off and on over the past 11 years. Dr. Stegall's records of prior treatment did not establish that Patient 1 was unable to lose weight without the use of controlled substance anorectics. Dr. Stegall had prescribed medications for weight loss since March, 1978, but had documented no mention of diet or exercise prior to May, 1988. He had not documented Patient 1's progress with any diet or exercise program at any time.

Further, Dr. Stegall failed to appropriately rule out recognized contraindications to the use of Adipex-P, the Schedule IV anorectic he initiated as treatment for Patient 1's obesity in January, 1989. In October, 1980, Dr. Stegall had discontinued controlled substance stimulant anorectics for Patient 1, and had commenced prescribing a tricyclic antidepressant (Elavil 10 mg.), when this patient had developed psychiatric symptoms. In April, 1983, Dr. Stegall had prescribed Tenuate Dospan 75 mg. for Patient 1, but had discontinued it after 12 days because Patient 1 had developed "bad nerve problems secondary to Tenuate." In addition, Patient 1 had a history of hypertension dating back to at least 1974, when he had been hospitalized for hypertensive evaluation. In March, 1988, Dr. Stegall had treated Patient 1

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for hypertension and anxiety. According to the F.D.A. labeling, Adipex-P is contraindicated in the presence of moderate to severe hypertension and/or hypersensitivity or idiosyncrasy. Despite Patient 1's history of hypertension and idiosyncratic reaction to other controlled substance anorectics, Dr. Stegall failed to document that he had performed a thorough physical examination to rule out those or other contraindications to the use of Adipex-P.

As of January 23, 1989, Patient 1 weighed 305.5 lbs., and his blood pressure was 152/92. Dr. Stegall prescribed for him 21 Adipex-P, a Schedule IV controlled substance stimulant anorectic, without mention of diet, exercise, or other modalities for weight control. According to the F.D.A. labeling, Adipex-P is indicated for use in the management of obesity only as a short-term (a few weeks) adjunct in a regimen of weight reduction based on caloric restriction. Dr. Stegall prescribed Adipex-P as a primary modality for Patient 1, on the dates and in the amounts indicated on the "Prescription List by Patient Number" as amended in Finding of Fact #5, above. There is no indication that Dr. Stegall initiated any diet, exercise, nutritional counseling, or behavior modification programs for Patient 1 during this entire period.

While so prescribing, Dr. Stegall failed to weigh Patient 1 every fourteenth day. On March 15, 1989, upon Patient 1's request for medication refills, Dr. Stegall authorized a telephone prescription for 30 Adipex-P for Patient 1, without first examining him, weighing him, or checking his blood pressure. Except for this occasion, Dr. Stegall weighed Patient 1 approximately every four weeks.

Patient 1 did consistently lose weight while on Adipex-P from January through July, 1989. However, he regained most of his weight between July, 1989, and March, 1990, when he received no diet medications. Patient 1 again successfully lost weight on Adipex-P from March through June, 1990. Although he continued to lose weight without diet medications between June and September, 1990, Dr. Stegall prescribed 14 Adipex-P for him on September 13, 1990. By September 28, 1990, Patient 1's weight was down to 254 lbs.

These facts are established by State's Exhibits #14 and #16A-1.

11. In February, 1987, Patient 2, a 5' 2" female, was 65 years old and had been a patient of Dr. Stegall for over 15 years, during approximately 10 of which Dr. Stegall had prescribed diet medications for her as treatment for obesity. Dr. Stegall's records of prior treatment did not indicate that Patient 2 was unable to lose weight without the utilization of controlled substances. Although Dr. Stegall had on several occasions prescribed calorie restrictive diets for this patient, he had

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generally prescribed diet medications at the same time. In July, 1974, Dr. Stegall had advised Patient 2 that she needed surgery, but first needed to lose some weight. By August, 1974, Patient 2 had successfully lost almost 20 lbs., without the help of diet medications. In August, 1975, Dr. Stegall had prescribed a 1,000 calorie diet with exercise for Patient 2, but had prescribed controlled substance anorectics for her the next month when she had exhibited a two-pound weight gain, without documenting whether or not she had followed the diet and exercise program. Subsequent courses of treatment through October, 1986, had been with diet medications, though sometimes diets had also been prescribed.

On February 10, 1987, when Patient 2 weighed 174 lbs., Dr. Stegall initiated treatment for her obesity by prescribing 50 Fastin, a Schedule IV controlled substance anorectic, with six refills, instructing her to return in three months. He failed to prescribe a calorie restrictive diet either then or throughout the remainder of the period encompassed by the "Prescription List by Patient Number". F.D.A. labeling for the products Dr. Stegall prescribed indicate that they are to be used only as short-term adjuncts in a regimen of weight reduction based on caloric restriction. Further, Dr. Stegall generally weighed this patient every two to three months, rather than every 14 days. On one occasion, April 28, 1987, Dr. Stegall prescribed 30 Fastin 30 mg. for Patient 2 without seeing her, weighing her, or taking her blood pressure.

Although Patient 2 demonstrated weight gains on the majority of her return visits, Dr. Stegall failed to discontinue utilizing Schedule IV anorectics. By virtue of the prescriptions he issued in February and April, 1987, Dr. Stegall made available to Patient 2 a 12-month supply of Fastin (380 dosage units). She returned in November, 1987, however, 14 lbs. above her February weight. Although Patient 2 had received previous treatment with controlled substances for obesity, Dr. Stegall initiated treatment with a different controlled substance, Adipex-P, in November, 1987, prescribing for a period of eight months (120 dosage units, q.o.d.). Patient 2 returned two months later with a quarter of a pound weight gain, and Dr. Stegall prescribed an additional six-month supply of Adipex-P (90 dosage units, q.o.d.). Subsequently, Dr. Stegall attempted treatment with alternate courses of Tenuate Dospan 75 mg., Fastin, Ionamin-30, and Adipex-P, with similar lack of success, prescribing through August, 1990, without regard to whether Patient 2 lost or gained weight. In February, 1987, Patient 2 had weighed 174 lbs. In August, 1990, she weighed 208 lbs.

It is noted that Patient 2 was treated with allergy medications for bee sting in October, 1989, and had a cast on her left wrist from November 4 to December 28, 1989. According to Dr. Stegall's

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testimony at hearing, these factors could have accounted for the 4.25 lb. weight gain that Patient 2 showed at the time of her December 12, 1989, visit.

These facts are established by State's Exhibits #14 and #16A-2 and the testimony of Dr. Stegall (Tr. at 88-94).

12. In December, 1986, Patient 3, a 5' 3" female, was 64 years old. She had been a patient of Dr. Stegall for approximately 10 years, during approximately five of which Dr. Stegall had treated her for obesity by prescribing various Schedule IV controlled substance anorectics. Dr. Stegall's records of prior treatment failed to establish that Patient 3 had been unable to lose weight without the utilization of controlled substance anorectics. In October, 1977, Dr. Stegall had placed Patient 3 on a 1,000 calorie diet, but failed to document her compliance or progress with it. In December, 1980, he had begun prescribing Schedule IV anorectics for this patient, without reference to caloric restriction or other treatment modalities. In April, 1982, and May, 1984, Dr. Stegall had prescribed calorie restrictive diets as adjuncts to the diet medications Patient 3 had been taking with little success at weight loss.

In December, 1986, Patient 3 weighed 172.5 lbs., and Dr. Stegall again initiated a course of therapy utilizing Adipex-P, a Schedule IV controlled substance anorectic, prescribing a three-and-one-half-month supply (210 dosage units, b.i.d.) for her. Dr. Stegall failed to document a thorough history or perform a thorough physical examination to rule out the existence of any recognized contraindications to the use of Adipex-P. According to hospital records contained in Dr. Stegall's patient chart, Patient 3 had a history of hypertension and congestive heart failure with probable labyrinthitis. She was hospitalized twice in October, 1987, for treatment of symptomatic cardiovascular disease. According to the F.D.A. labeling, symptomatic cardiovascular disease and moderate to severe hypertension are recognized contraindications to the use of Adipex-P.

In 1986 and 1987, Dr. Stegall failed to utilize Adipex-P (which he prescribed for Patient 3 as reflected on the "Prescription List by Patient Number" as amended in Finding of Fact #5, above) as an adjunct in a regimen of weight reduction based on caloric restriction. He also failed to weigh Patient 3 every 14 days to determine whether she had lost weight while under treatment with Adipex-P. Dr. Stegall apparently discontinued the Adipex-P after Patient 3's October, 1987, hospitalizations, when she complained that the medications were making her "very hyper."

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In January, 1989, Dr. Stegall prescribed a low cholesterol diet for Patient 3. In February, 1989, he prescribed for her a one-month supply of Adipex-P which, according to the F.D.A. labeling, was contraindicated by her symptomatic cardiovascular disease. He continued to prescribe Adipex-P for her through September, 1990. During this period, he generally weighed her at four to eight week intervals, rather than every 14 days. On October 30, 1989, Dr. Stegall apparently prescribed 30 Adipex-P for Patient 2 without seeing or weighing her. On January 13, 1990, Dr. Stegall failed to record Patient 3's weight in his progress notes. In February, 1989, Patient 3 weighed 166 lbs. In September, 1990, she weighed 165. Dr. Stegall had prescribed a total of 420 dosage units of Adipex-P for her during this 19-month interval. On September 13, 1990, Dr. Stegall prescribed 14 Adipex-P for Patient 2, instructing her to return in four weeks and noting, "Must follow diet. Not very happy with me. Today last prescription for Adipex." Thereafter, Dr. Stegall continued her on a diet and placed her on an exercise program, but Patient 3 complained that she was "hungry all the time" and consistently gained weight.

These facts are established by State's Exhibits #14 and #16A-3.

13. In September, 1988, Patient 4, a 5' 3" female, was 30 years old and had been a patient of Dr. Stegall for over 16 years. Dr. Stegall's records of prior treatment failed to establish that Patient 4 was unable to lose weight without controlled substances. Although Dr. Stegall had treated her for obesity upon occasion from January, 1979, through July, 1987, he had always utilized controlled substance anorectics in such treatment, sometimes in conjunction with a calorie restrictive diet, diuretics, and synthetic thyroid hormone.

In September, 1988, six weeks after the birth of her second child, Patient 4 weighed 173.5 lbs. Dr. Stegall prescribed 14 Adipex-P for her, with no mention of diet, exercise, or other modalities for weight loss. Dr. Stegall also prescribed 15 Adipex-P for Patient 4 on December 15, 1988, although his progress notes do not indicate that he saw, examined, or weighed Patient 4 on that date. Dr. Stegall next saw Patient 4 on May 6, 1989, at which time she complained of a headache and stated that she was depressed about her weight. Dr. Stegall prescribed for her 15 Adipex-P, along with a diuretic, synthetic thyroid hormone, and an antidepressant medication (Elavil), instructing her to return in two weeks. She did so, and showed a weight loss of 3 lbs. Dr. Stegall continued to prescribe those medications for her through June 13, 1990. During that time, he failed to weigh Patient 4 every two weeks, prescribed Adipex-P for periods of three to eight weeks at a time, and failed to discontinue the Adipex-P when Patient 4 exhibited weight gains on 8/13/89, 9/13/89, 12/14/89, 1/31/90, 3/28/90, and 6/13/90. Patient 4

weighed 169 lbs. as of May 6, 1989. As of June 13, 1990, after approximately 52 weeks on Adipex-P, she weighed 168.5 lbs. Dr. Stegall further prescribed 14 Adipex-P for Patient 4 on September 6, 1990, though his progress notes do not indicate that he saw, examined, or weighed her on that date.

These facts are established by State's Exhibits #14 and #16A-4.

14. In November 1989, Patient 5, a 5' 3" female, was 31 years old and had been a patient of Dr. Stegall for approximately 18 years. Before November, 1989, Dr. Stegall had not prescribed controlled substance anorectics for this patient. In February, 1984, when she had weighed 125 lbs., he had prescribed an 800 calorie diet for her, but had not documented any follow-up regarding her weight or her diet.

According to F.D.A. labeling, Adipex-P is indicated for use as a short-term adjunct in the management of exogenous obesity in a regimen of weight reduction based on caloric restriction. Although Dr. Stegall prescribed Adipex-P for Patient 5 on three occasions, his patient record does not establish that she was obese. Further, Dr. Stegall failed to utilize Adipex-P as an adjunct in a regimen of weight reduction based on caloric restriction. In November, 1989, when he first prescribed Adipex-P for her, Patient 5 weighed only 134 lbs. Dr. Stegall prescribed 30 Adipex-P, with three refills, for her, without mentioning diet, exercise, or other modalities for weight control. Although he prescribed a four-month supply of Adipex-P, he did instruct Patient 5 to return in two weeks. She showed a 3 lb. weight loss at her two-week weigh-in. On December 5, 1989, Patient 5 weighed 130.5 lbs., and Dr. Stegall prescribed an additional 42 Adipex-P for her, this time instructing her to return in six weeks. On June 12, 1990, Dr. Stegall authorized a prescription for 14 Adipex-P for Patient 5, without seeing, examining, or weighing her.

These facts are established by State's Exhibits #14 and #16A-5.

15. In December, 1986, Patient 6, a 5' 7" female, was 56 years old and had been a patient of Dr. Stegall for approximately 14 years, during the last nine of which Dr. Stegall had treated her almost constantly for obesity, utilizing various controlled substance anorectics, diuretics, and synthetic thyroid hormone. Dr. Stegall's records of prior treatment failed to establish that Patient 6 was unable to lose weight without the utilization of controlled substance anorectics. He had initiated therapy with controlled substance anorectics in 1977, not mentioning a diet or other modalities to her until April, 1982. It was not until January, 1984, however, that Dr. Stegall prescribed a calorie restrictive diet for Patient 6 without also prescribing diet medications. Between January and February, 1984, Patient 6, who

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had consistently gained weight on medications during 1985, managed to lose 2.5 lbs. without the help of medications. Nevertheless, Dr. Stegall prescribed a controlled substance anorectic for her in February, 1984, and intermittently thereafter through April, 1986.

In November, 1986, Patient 6 weighed 236 lbs. Dr. Stegall started her on a Schedule IV anorectic, as well as a diuretic and synthetic thyroid hormone. From December, 1986, through June, 1990, Dr. Stegall prescribed Schedule IV anorectics for Patient 6, as indicated on the "Prescription List by Patient Number" as amended in Finding of Fact #5. Before initiating such treatment, Dr. Stegall failed to obtain a thorough history and perform a thorough physical examination to rule out the existence of any recognized contraindications to the use of such medications, even though the patient chart indicated that Patient 6 had a history of hypertension. Further, Dr. Stegall failed to utilize these controlled substances as an adjunct in a regimen of weight reduction based on caloric restriction, failed to prescribe them for a period limited to 14 days, and failed to weigh Patient 6 every fourteenth day. He also failed to discontinue Adipex-P when Patient 6 showed a weight gain on 1/14/88, and failed to record her weight when he prescribed Adipex-P for her on 3/28/88 and 5/2/88.

These facts are established by State's Exhibits #14 and #16A-6.

16. In April, 1987, Patient 7, a 5' 3" female, was 54 years old and had been a patient of Dr. Stegall for over three years, during which he had treated her for obesity and hypertension, among other things. Although Dr. Stegall had prescribed controlled substance anorectics and other medications for Patient 7 as treatment for obesity from November, 1983, through October, 1986, his treatment records did not reflect that he had utilized calorie restrictive diets, nutritional counseling, behavior modification, or exercise programs.

From April 23, 1987, through April 3, 1991, Dr. Stegall prescribed Schedule IV controlled substance anorectics for Patient 7 as reflected on the "Prescription List by Patient Number" as amended in Finding of Fact #5. Dr. Stegall failed to utilize these controlled substance anorectics as adjuncts in a regimen of weight reduction based upon caloric restriction. In fact, diet was not mentioned until January, 1990, when Dr. Stegall placed Patient 7 on a low cholesterol diet and prescribed Adipex-P for her. In January, 1991, Dr. Stegall prescribed a diet and exercise plan, along with 14 Tenuate Dospan 75 mg., for Patient 7. In April, 1991, he prescribed 14 Adipex-P and referred her to a weight loss center.

While Patient 7 was under treatment with controlled substance anorectics, Dr. Stegall generally weighed her every four to eight weeks, rather than every fourteenth day. On one occasion, February 4, 1988, Dr. Stegall's prescription for 15 Adipex-P was apparently mailed to Patient 7. On February 14, 1989, Dr. Stegall issued a prescription for 50 Adipex-P, though his patient record does not indicate that he saw, examined, or weighed Patient 7 on that date. On another occasion, January 2, 1990, Dr. Stegall prescribed 42 Adipex-P for Patient 7 when she refused to be weighed.

Dr. Stegall failed to discontinue prescribing controlled substance anorectics for Patient 7 when she exhibited weight gains on 10/14/87, 1/13/88, 4/6/88, 10/19/88, 6/8/89, 8/24/89, 10/10/89, 11/21/89, 2/20/90, 6/11/90, and 7/9/90. On April 23, 1987, Patient 7 weighed 167.5 lbs. On April 3, 1991, after having received controlled substance anorectics for almost four years, she weighed 174 lbs., a 6.5 lb. increase from her April, 1987, weight of 167.5 lbs.

These facts are established by State's Exhibits #14 and #16A-7.

17. In January, 1987, Patient 8, a 5' 4" female, was 57 years old and had been a patient of Dr. Stegall for over 14 years, during the last 11 of which Dr. Stegall had prescribed controlled substance anorectics for her as treatment for obesity. Dr. Stegall's records of prior treatment did not indicate that Patient 8 was unable to lose weight without the utilization of controlled substances. In fact, an October, 1986, note in the patient record indicated that Patient 8 had lost 9.5 lbs. on Weight Watchers. In March and May, 1978, respectively, Dr. Stegall had started Patient 8 on a 1,000 calorie diet and had instructed her to increase her activities, but had also prescribed controlled substance anorectics for her.

Dr. Stegall's records of prior treatment also contained a note, dated 12/9/82: "No more Tenuate Dospan refills per VJS (drug store contacted). Initially Schwieterman's called and patient is taking approximately twice as many as prescribed and they would not refill for her." Further, Dr. Stegall's records indicated that, in January, 1984, he had discontinued medications for Patient 8 for several months because of increased blood pressure. According to the F.D.A. labeling, moderate to severe hypertension and/or drug abuse are contraindications for the use of Adipex-P. Dr. Stegall failed to document a thorough history or perform a thorough physical examination to rule out recognized contraindications prior to initiating treatment of Patient 8 with Adipex-P in January, 1987.

From January 12, 1987, through December 12, 1990, Dr. Stegall prescribed Adipex-P for Patient 8, as reflected on the "Prescription List by Patient Number". He failed to use these controlled substance anorectics as an adjunct in a regimen of weight reduction based upon caloric restriction, making no mention of a diet until May, 1990. Except for the prescriptions issued on 2/9/88, 11/16/90, and 12/12/90, he also failed to prescribe for a period limited to 14 days. Except for November 17, 1987, and February 24, 1988, he failed to weigh Patient 8 every fourteenth day while she was under treatment with a Schedule IV anorectic. On 10/12/87, 12/30/87, 5/14/88, and 5/8/90, Dr. Stegall prescribed Adipex-P for Patient 8 without seeing, examining, or weighing her. On January 16, 1989, he failed to record Patient 8's weight in the patient record when he prescribed 30 Adipex-P, authorizing three refills. Dr. Stegall failed to discontinue prescribing Adipex-P for Patient 8 when she exhibited a weight gain on February 11, 1988.

These facts are established by State's Exhibits #14 and #16A-8.

18. In September, 1989, Patient 9, a 6' 4" male, was 27 years old and had been a patient of Dr. Stegall for approximately 15 years. Dr. Stegall had never treated Patient 9 with controlled substance anorectics prior to September, 1989. Dr. Stegall's records of prior treatment did not establish that Patient 9 was unable to lose weight without the utilization of controlled substances. In September, 1987, Dr. Stegall had placed Patient 9 on a 1,200 calorie diet, but had failed to document his compliance or progress with that diet. In February, 1989, Dr. Stegall's office had sent Patient 9 a diet sheet for a low cholesterol diet; caloric restriction had not been mentioned.

On September 20, 1989, however, when Patient 9 weighed 261.5 lbs., Dr. Stegall prescribed 15 Adipex-P and a 1,200 calorie diet for him, instructing him to return in two weeks. On October 4, 1989, two weeks later, Dr. Stegall weighed Patient 9, determined that he had lost 11 lbs., and again prescribed 15 Ionamin-15 for him. He again appropriately instructed Patient 9 to return in two weeks. Patient 9's therapy was interrupted due to a possible reaction to the medication, so he did not return until October 25, 1989. That time, after determining that Patient 9 had achieved an additional 5 lb. weight loss, Dr. Stegall prescribed 42 Fastin for him, instructing him to return in six weeks. On December 6, 1989, although Patient 9 showed a weight gain of 1/2 lb., Dr. Stegall prescribed 60 Adipex-P for him, instructing him to return in eight weeks. On January 31, 1990, Patient 9 showed a 2 lb. weight loss, and Dr. Stegall prescribed 60 Adipex-P for him, instructing him to return in eight weeks. Patient 9 returned on April 10, 1991, with a weight gain of 20.5 lbs. Dr. Stegall did

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not prescribe a controlled substance anorectic on that occasion. At no time did Dr. Stegall document Patient 9's compliance or progress with the calorie restrictive diet.

These facts are established by State's Exhibit #16A-9.

19. In December, 1986, Patient 10, a 5' 4" female, was 67 years old and had been a patient of Dr. Stegall for approximately 15 years, during the last eight of which Dr. Stegall had prescribed controlled substance anorectics for her as treatment for obesity. Dr. Stegall's records of prior treatment failed to establish that Patient 10 was unable to lose weight without the utilization of controlled substances. Although Dr. Stegall's discharge instructions for a July, 1978, hospital admission had included a 1,000 calorie, low-salt diet, Dr. Stegall had begun prescribing controlled substance anorectics for Patient 10 in August, 1978, without documenting her compliance or progress with the diet. In fact, no further reference had been made to diet until March, 1984, at which time Dr. Stegall had placed Patient 10 on an 800 calorie diet, continuing her diet medications.

Between December 3, 1986, and March 20, 1991, Dr. Stegall prescribed Schedule IV anorectics for Patient 10 as reflected on the "Prescription List by Patient Number" as amended in Finding of Fact #5, above. Dr. Stegall's prescriptions during this over-four-year period made available to Patient 10 a total of 2,295 dosage units of Schedule IV controlled substance anorectics. Dr. Stegall failed to utilize these controlled substances as an adjunct in a regimen of weight reduction based upon caloric restriction, failed to prescribe for periods limited to 14 days until August, 1990, failed to weigh Patient 10 every 14 days, and failed to discontinue the controlled substances when Patient 10 did not lose weight. On the majority of Patient 10's office visits, she exhibited weight gains. She weighed 214 lbs. on December 3, 1986, and 235 lbs. on March 20, 1991. Although Dr. Stegall began limiting his prescriptions to 14 dosage units as of August, 1990, he still did not consistently weigh Patient 10 every fourteenth day to determine whether she had achieved weight loss while under treatment with a controlled substance anorectic. On February 6, 1991, though the patient record had made no previous mention of a diet, Dr. Stegall noted as part of his treatment plan, "Continue diet, meds, exercise." On April 3, 1991, Dr. Stegall noted that he had instructed Patient 10 in weight reduction, that she was to follow up with a weight loss center and continue her diet, and that she had finally agreed to go off diet pills for a time.

These facts are established by State's Exhibits #14 and #16A-10.

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20. After approximately 1982, Dr. Stegall quit noting his prescriptions in his patient progress notes and, instead, put copies of the actual prescriptions in the patient chart. Thus, to determine the patients' treatment accurately, it was necessary to review both the progress notes and the prescription copies. Although Dr. Stegall sometimes entered the symbol "Rx" in his progress notes to indicate that a prescription had been issued, he did not do so consistently.

These facts are established by State's Exhibits #16A-1 and #16A-10.

21. Dr. Stegall's patient records gave no indication that he utilized the "multi-modal total weight control program", which he claimed to have developed over his 21 years of practice, based upon review of literature and current scientific medical findings. According to Dr. Stegall, his "multi-modal" program utilized "instruction and caloric restriction by dietary modification" as a primary modality in the treatment of obesity. With this program, Dr. Stegall also encouraged non-sedentary life style with an exercise prescription, behavior modification, and nutritional counseling. Both he and his office staff provided instruction in these areas. In addition, he performed on-going examinations and histories, and reviewed his therapy periodically.

These facts are established by the testimony of Dr. Stegall (Tr. at 62-66) and State's Exhibits #16A-1 through #16A-10.

22. Dr. Stegall stated that the treatment of obesity, a chronic disease, constituted a very small percentage of his practice. He considered it a very important disease to treat, however, because of its affect on patients' overall health.

These facts are established by the testimony of Dr. Stegall (Tr. at 62).

23. Dr. Stegall presented various medical articles and the testimony of John P. Morgan, M.D., in support of his view that the Schedule IV anorectics he utilized, known generically as phentermine and diethylpropion, were safe and effective agents for the treatment of obesity. Dr. Morgan had been involved with studies which had indicated that these substances were rarely the subjects of drug abuse or misuse. Both Dr. Stegall and Dr. Morgan espoused the view that Schedule IV anorectics were not only safe for long-term use, but also were potentially useful as maintenance agents to keep patients from gaining further weight or from regaining lost weight. Dr. Stegall stated, however, that he would not normally use such drugs continuously for two or three years; he normally utilized intermittent therapy, with

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repetitive courses of therapy. Both Dr. Stegall and Dr. Morgan acknowledged that Schedule IV anorectics were properly used as adjunctive therapy in the treatment of obesity. Dr. Stegall claimed that he had utilized these medications only as adjuncts, and only for select patients.

These facts are established by the testimony of Dr. Stegall (Tr. at 69-119, 135-138), the testimony of Dr. Morgan (Tr. at 223-275), and Respondent's Exhibits F through R, T, and V.

24. Puttagunta Ranga, M.D., who is Board certified in both cardiology and internal medicine, testified that he had reviewed Dr. Stegall's records with regard to Patients 1 through 10, and the pharmacology involved. Dr. Ranga had not noted any cardiac or other contraindications for the prescribing of Schedule IV anorectics with regard to any of these patients.

These facts are established by the testimony of Dr. Ranga (Tr. at 198-201).

25. Many of Dr. Stegall's colleagues and friends testified on his behalf. Their testimony indicated that Dr. Stegall is held in high regard in his community, where he conducts a family practice. His competency is considered above average, and his diagnostic skills are considered excellent. Dr. Stegall provides services and support to both the hospital (Joint Township District Memorial Hospital) and the community it serves.

These facts are established by the testimony of: Bashar Hamdi, M.D. (Tr. at 45-49), Dale Manbeck (Tr. at 50-57), Walter Bruce Kane, II, D.O. (Tr. at 121-124), David Schwieterman (Tr. at 125-128), Emmett Hoy, D.O. (Tr. at 176-178), Nancy J. Comradie (Tr. at 179-183), James R. Chick (Tr. at 190-194), George Gibson (Tr. at 195-198), Peter Hanley, M.D. (Tr. at 202-205), Alan Peterson, M.D. (Tr. at 207-212), and Joann McDorman (Tr. at 213-216).

26. Dr. Stegall recently took and successfully completed the recertification examination of the American Board of Family Practice.

These facts are established by Respondent's Exhibit X.

CONCLUSIONS

As set forth in Findings of Fact #1 through #19, above, the evidence substantially supports a conclusion that the acts, conduct, and/or omissions of Victor J. Stegall, M.D., constitute multiple violations of Rule 4731-11-04(B), Ohio Administrative Code. Dr. Stegall prescribed Schedule IV controlled substance anorectics as reflected on the "Prescription List by Patient Number" as amended in Finding of

Fact #5, above. With the possible exception of Patient 9, Dr. Stegall failed to utilize these controlled substances as an adjunct in a regimen of weight reduction based upon caloric restriction. In the case of Patient 5, he apparently utilized controlled substance anorectics in the treatment of overweight, rather than as an adjunct in the management of exogenous obesity in accordance with F.D.A.-approved indications. Further, with several of these patients, Dr. Stegall utilized Schedule IV anorectics for periods of time that clearly exceeded the F.D.A.-approved indication for short-term (a few weeks) use. Such acts violate Rule 4731-11-04(B).

In addition, Dr. Stegall failed to comply with the provisions of Rule 4731-11-04(B)(1), which require that: "Before initiating treatment utilizing a Schedule III or IV controlled substance, the physician determines through review of his own records of prior treatment...that the patient has made a substantial good-faith effort to lose weight in a treatment program utilizing a regimen of weight reduction based on caloric restriction, nutritional counseling, behavior modification, and exercise, without the utilization of controlled substances, and that said treatment has been ineffective." Dr. Stegall's records of prior treatment simply do not indicate that substantial treatment efforts had been made without the utilization of controlled substances. In fact, the records of Patients 2 and 6 indicated that they had on at least one occasion been able to lose weight without the help of diet medications, and the records of Patient 8 indicated that she had successfully lost weight in a Weight Watchers program.

Dr. Stegall's patient records also do not indicate that he complied with Rule 4731-11-04(B)(2), which requires that: "Before initiating treatment utilizing a Schedule III or IV controlled substance, the physician obtains a thorough history, performs a thorough physical examination of the patient, and rules out the existence of any recognized contraindications to the use of the controlled substance to be utilized." Dr. Stegall failed to document such histories and physical examinations. The records of Patients 1, 6, and 7 reflect prior treatment for conditions which may have contraindicated the use of Schedule IV controlled substance anorectics. In the case of Patient 3, Dr. Stegall continued prescribing Schedule IV anorectics after this patient had been hospitalized twice for treatment of symptomatic cardiovascular disease, which is a recognized contraindication to the use of Schedule IV anorectics. The records of Patient 8 indicate that this patient had in the past abused controlled substance anorectics by taking them in excess of dosage instructions; drug abuse is a recognized contraindication to the use of Schedule IV anorectics.

Further, Dr. Stegall clearly failed to comply with the requirements of Rule 4731-11-04(B)(5)(a), in that he failed to discontinue utilizing Schedule IV controlled substances immediately upon ascertaining that these patients had failed to lose weight while under treatment with a controlled substance, and by failing to determine whether or not these patients had failed to lose weight while under treatment with a controlled substance by weighing them at least every fourteenth day.

Consequently, Dr. Stegall's acts and omissions constituted "violating or attempting to violate, directly or indirectly, ...any provisions of this chapter or any rule promulgated by the Board", as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-04(B), Ohio Administrative Code, with regard to the provisions referenced above. Pursuant to Rule 4731-11-04(C), Ohio Administrative Code, such violations also constitute "failure to use reasonable care discrimination in the administration of drugs", as that clause is used in Section 4731.22(B)(2), Ohio Revised Code; "selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes", as that clause is used in Section 4731.22(B)(3), Ohio Revised Code; and "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", as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

* * * * *

It is disturbing to find a physician who is apparently held in high regard in his community, yet who refuses to comply with the rules of his regulatory Board until convinced that his noncompliance will no longer be tolerated. Dr. Stegall was admittedly aware of the Board's rules regarding the use of controlled substances in the treatment of obesity for a significant period of time before he "elected" to comply with them. Even then, he did not fully comply, though he did begin limiting his prescriptions for Schedule IV anorectics to 14 dosage units. The rules promulgated by this Board have the force of law in this state. Compliance with the law is not a matter of individual discretion. Dr. Stegall may not agree with the law, but noncompliance is not an acceptable way of attacking it.

While there is no evidence that Dr. Stegall's treatment of Patients 1 through 10 resulted in harm to those patients, review of his records does not provide evidence of the effectiveness or superiority of the treatment he provided without regard to the requirements of Rule 4731-11-04, Ohio Administrative Code. Among other things, Dr. Stegall continued to prescribe controlled substance anorectics for patients who gained weight on them. Granted, some gained weight when they were taken off medications. Nevertheless, this Board has apparently deemed caloric restriction, behavior modification, and other modalities of weight control to be a more appropriate approach to the treatment of obesity than the long-term use of controlled substances with dependency potential and other risks. If Dr. Stegall cannot accept this view, he must refrain from treating patients for obesity unless and until a change in the law is effected. He is free to pursue such change in an appropriate forum.

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PROPOSED ORDER

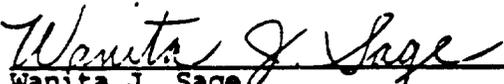
It is hereby ORDERED that:

1. The certificate of Victor J. Stegall, M.D., to practice medicine and surgery in the State of Ohio, shall be REVOKED. Such revocation is stayed, and Dr. Stegall's certificate is hereby SUSPENDED for an indefinite period of time, but not less than ninety (90) days. The State Medical Board shall not consider reinstatement of Dr. Stegall's certificate to practice medicine and surgery in Ohio, unless and until all of the following minimum requirements are met:
 - a. Dr. Stegall shall submit an application for reinstatement, accompanied by appropriate fees. The Board shall not act upon such application until the suspension period of ninety (90) days has expired.
 - b. Dr. Stegall shall provide documentation of successful completion of an acceptable course in pharmacology and a minimum of fifteen (15) hours of Category I Continuing Medical Education in medical recordkeeping. Such courses are to be approved in advance by the State Medical Board, and are in addition to the regular Category I Continuing Medical Education requirements to maintain a practice in this State, pursuant to Section 4731.281, Ohio Revised Code.
 - c. In the event that Dr. Stegall has not been engaged in the active practice of medicine and surgery for a period in excess of two (2) years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Stegall's fitness to resume practice.
2. Upon reinstatement, Dr. Stegall's certificate shall be subject to the following probationary terms, conditions, and limitations for a period of five (5) years:
 - a. Dr. Stegall shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
 - b. Dr. Stegall shall submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the provisions of probation.

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- c. Dr. Stegall shall appear in person for interviews before the full Board or its designated representative at six (6) month intervals, or as otherwise requested by the Board.
 - d. Dr. Stegall shall not treat any patients for weight control problems, and shall not prescribe any controlled substance anorectics or appetite suppressants.
 - e. In the event that Dr. Stegall should leave Ohio for three (3) consecutive months, or reside or practice outside the state, Dr. Stegall must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period.
3. If Dr. Stegall violates probation in any respect, the Board, after giving Dr. Stegall notice and the opportunity to be heard, may set aside the stay order and impose the revocation of Dr. Stegall's certificate.
 4. Upon successful completion of probation, Dr. Stegall's certificate will be fully restored, except that he may not treat any patients for weight control problems or prescribe any controlled substance anorectics or appetite suppressants without prior approval by the State Medical Board.

This Order shall become effective thirty (30) days from the date of mailing of notification of approval by the State Medical Board of Ohio. In the thirty (30) day interim, Dr. Stegall shall not undertake the care of any patient not already under his care.



Wanita J. Sage
Attorney Hearing Examiner



STATE MEDICAL BOARD OF OHIO

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

EXCERPT FROM THE MINUTES OF DECEMBER 4, 1991

REPORTS AND RECOMMENDATIONS

Mr. Albert asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and order, and any objections filed in the matters of William G. Conrad, M.D.; Richard F. Gehring, M.D.; Donald W. Laney, M.D.; Rafael Rodriguez-Diaz, M.D.; Victor J. Stegall, M.D.; Frederick P. Wurlitzer, M.D.; and Robert Gutierrez, M.D. A roll call was taken:

ROLL CALL:	Dr. O'Day	- aye
	Dr. Gretter	- aye
	Dr. Garg	- aye
	Dr. Kaplansky	- aye
	Dr. Heid:	- aye
	Dr. Hom	- aye
	Ms. Rolfes	- aye
	Dr. Agresta	- aye
	Mr. Albert	- aye

Ms. Rolfes indicated that she would abstain on Dr. Stegall because she had not had an opportunity to read the entire transcript in that matter.

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

REPORT AND RECOMMENDATION IN THE MATTER OF VICTOR J. STEGALL M.D.

DR. HOM MOVED TO APPROVE AND CONFIRM MS. SAGES' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF VICTOR J. STEGALL, M.D. DR. GRETTNER SECONDED THE MOTION.

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

ROLL CALL VOTE:	Dr. O'Day	- aye
	Dr. Gretter	- aye
	Dr. Garg	- aye
	Dr. Kaplansky	- aye
	Dr. Heidt	- nay
	Dr. Hom	- aye
	Ms. Rolfes	- abstain
	Dr. Agresta	- aye

The motion carried.



STATE MEDICAL BOARD OF OHIO

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

May 8, 1991

Victor J. Stegall, M.D.
SR 66 at Southland Road
PO Box 127
New Bremen, OH 45869



Dear Doctor Stegall:

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) In your prescribing of controlled substances for weight loss, as reflected in the attached Prescription List, to Patients 1-10, as identified in the attached Patient Key (Key confidential--not for public disclosure), you failed to use the controlled substances as an adjunct in the treatment of obesity, failed to prescribe for a period limited to fourteen (14) days, failed to weigh the patients every fourteen (14) days, failed to discontinue the controlled substances when patients did not lose weight and/or failed to follow the F.D.A. approved labeling for the product.

Such acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively constitute "(v)iolating 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," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-04(B) and (B)(5)(a), Ohio Administrative Code. Pursuant to Rule 4731-11-04(C), Ohio Administrative Code, a violation of Rule 4731-11-04(B) also violates Sections 4731.22(B)(2), (3) and (6), 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.

Marked 5/9/91

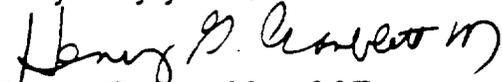
Victor J. Stegall, M.D.
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May 8, 1991

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Henry G. Cramblett, M.D.
Secretary

HGC:jmb
Enclosures:

CERTIFIED MAIL #P 055 328 509
RETURN RECEIPT REQUESTED

PRESCRIPTION LIST BY PATIENT NUMBER

Victor J. Stegall, M.D.

<u>Patient Number</u>	<u>Date</u>	<u>Controlled Substance</u>	<u>Amount</u>	<u>Refills</u>
1	01/23/89	Adipex-P	21	-
	02/13/89	Adipex-P	30 B.I.D.	-
	04/03/89	Adipex-P	30 B.I.D.	-
	05/15/89	Adipex-P	30 B.I.D.	-
	07/12/89	Adipex-P	30	-
	03/19/89	Adipex-P	30	-
	04/16/90	Adipex-P	30	-
	05/16/90	Adipex-P	30	-
	06/13/90	Adipex-P	42	-
2	02/10/87	Fastin	50	6
	04/28/87	Fastin 30 mg.	30	-
	11/24/87	Adipex-P	30 q.o.d.	3
	01/26/88	Adipex-P	30 q.o.d.	2
	08/02/88	Adipex-P	30	?
	10/04/88	Tenuate Dospan 75 mg.	30	-
	12/06/88	Tenuate Dospan 75 mg.	30	-
	02/07/89	Tenuate Dospan 75 mg.	30	-
	04/04/89	Fastin	60	-
	06/06/89	Fastin	60	-
	08/01/89	Fastin	60	-
	10/10/89	Fastin	60	3
	12/12/89	Ionamin-30	30	-
	01/25/90	Adipex-P	21	-
	08/14/90	Adipex-P	14	-
	02/13/90	Adipex-P	21	-
3	02/16/89	Adipex-P	30 B.I.D.	-
	03/16/89	Adipex-P	30	2
	10/02/89	Adipex-P	30	-
	10/30/89	Adipex-P	30	-
	12/12/89	Adipex-P	30	-
	01/13/90	Adipex-P	30	6
	09/13/90	Adipex-P	14	-
4	04/16/87	Adipex-P	28 B.I.D.	-
	09/14/88	Adipex-P	14	-
	12/15/88	Adipex-P	15	-
	05/06/89	Adipex-P	15	-
	05/22/89	Adipex-P	21	-
	06/12/89	Adipex-P	21	-

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 Victor J. Stegall, M.D.
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<u>Patient Number</u>	<u>Date</u>	<u>Controlled Substance</u>	<u>Amount</u>	<u>Refills</u>
4 (Cont)	07/05/89	Adipex-P	21	-
	07/24/89	Adipex-P	21	-
	08/13/89	Adipex-P	28	-
	09/13/89	Adipex-P	30	-
	11/08/89	Adipex-P	30	-
	12/14/89	Adipex-P	42	-
	01/31/90	Adipex-P	42	-
	03/28/90	Adipex-P	56	-
	06/13/90	Adipex-P	14	-
	09/06/90	Adipex-P	14	-
5	11/08/89	Adipex-P	30	3
	12/05/89	Adipex-P	42	-
	06/12/90	Adipex-P	14	-
6	11/11/86	Tenuate Tabs 25 mg.	90	-
	12/10/86	Tenuate Tabs 25 mg.	90	2
	08/03/87	Fastin	20	3
	11/09/87	Adipex-P	15	4
	01/11/88	Adipex-P	15	4
	03/28/88	Adipex-P	21	?
	06/21/88	Adipex-P	21	?
	10/29/88	Adipex-P	15	-
	12/05/88	Adipex-P	30 B.I.D.	-
	02/06/89	Fastin	30 B.I.D.	-
	09/28/89	Adipex-P	15	-
	12/18/89	Adipex-P	90	3
	03/12/90	Adipex-P	90	3
	06/11/90	Ionamin-15	30	-
7	04/23/87	Ionamin-30	30	2
	06/25/87	Fastin	30	2
	10/14/87	Fastin	30	2
	01/13/88	Adipex-P	30	2
	02/04/88	Adipex-P	15	-
	04/06/88	Adipex-P	30	?
	06/08/88	Adipex-P	30	?
	07/13/88	Adipex-P	30	?
	08/10/88	Adipex-P	30	-
	09/07/88	Adipex-P	30	-

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<u>Patient Number</u>	<u>Date</u>	<u>Controlled Substance</u>	<u>Amount</u>	<u>Refills</u>	
7 (Cont)	10/18/88	Adipex-P	30	-	
	11/16/88	Adipex-P	30	-	
	01/14/89	Adipex-P	30	-	
	02/14/89	Adipex-P	50	-	
	04/15/89	Adipex-P	50	-	
	06/08/89	Adipex-P	50	-	
	08/24/89	Adipex-P	50	-	
	10/10/89	Adipex-P	50	3	
	11/21/89	Fastin	42	?	
	01/02/90	Adipex-P	42	?	
	02/20/90	Fastin	30	-	
	03/20/90	Fastin	30	-	
	04/09/90	Fastin	30	?	
	05/07/90	Fastin	30	?	
	06/11/90	Ionamin-30	30	-	
	07/09/90	Fastin	30	-	
	10/17/90	Adipex-P	14	-	
	01/28/91	Tenuate Dospan 75	14	-	
	02/27/91	Adipex-P	14	-	
	03/21/91	Adipex-P	14	-	
	04/03/91	Adipex-P	14	-	
	8	01/12/87	Adipex-P	30	3
		07/28/87	Adipex-P	30	?
		09/08/87	Adipex-P	30	?
		10/12/87	Adipex-P	30	-
		11/16/87	Adipex-P	30	-
12/30/87		Adipex-P	?	-	
02/09/88		Adipex-P	14	-	
02/24/88		Adipex-P	30	-	
04/14/88		Adipex-P	30	-	
05/14/88		Adipex-P	30	-	
10/13/88		Tenuate	30	?	
01/16/89		Adipex-P	30	3	
10/24/89		Adipex-P	30	-	
01/02/90		Adipex-P	45	?	
05/08/90		Adipex-P	45	-	
11/16/90		Adipex-P	14	-	
12/12/90		Adipex-P	14	-	

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<u>Patient Number</u>	<u>Date</u>	<u>Controlled Substance</u>	<u>Amount</u>	<u>Refills</u>
9	09/20/89	Adipex-P	15	-
	10/04/89	Ionamin	15	-
	10/25/89	Fastin	42	-
	12/06/89	Adipex-P	60	-
	01/31/90	Adipex-P	60	-
10	12/03/86	Tenuate Tabs 25 mg.	90	6
	06/24/87	Tenuate Tabs 25 mg.	90	?
	08/19/87	Tenuate Tabs 25 mg.	90	?
	10/21/87	Tenuate Tabs 25 mg.	90	?
	01/12/88	Tenuate Tabs 25 mg.	90	3
	02/10/88	Fastin	30	-
	03/09/88	Fastin	30	-
	04/06/88	Fastin	30	?
	05/04/88	Fastin	30	-
	06/08/88	Fastin	30	?
	07/05/88	Fastin	30	-
	08/03/88	Fastin	30	?
	09/19/88	Tenuate Dospan 75 mg.	15	?
	10/19/88	Fastin	30	-
	11/16/88	Adipex-P	30	-
	01/11/89	Tenuate Dospan 75 mg.	30	-
	02/08/89	Adipex-P	30	-
	03/08/89	Adipex-P	30	-
	04/05/89	Adipex-P	30	-
	05/05/89	Adipex-P	30	-
	05/31/89	Fastin	30	-
	06/28/89	Adipex-P	30	-
	08/30/89	Fastin	30	-
	09/27/89	Adipex-P	30	-
	10/25/89	Adipex-P	30	?
	11/22/89	Adipex-P	42	-
	01/03/90	Tenuate Dospan 75 mg.	30	?
	01/31/90	Tenuate Dospan 75 mg.	30	?
	03/01/90	Fastin	30	-
	04/04/90	Adipex-P	30	?
	05/02/90	Adipex-P	30	-
	06/06/90	Adipex-P	30	-
09/10/90	Adipex-P	14	-	
09/29/90	Adipex-P	14	-	
10/10/90	Adipex-P	14	-	

Prescription List
Victor J. Stegall, M.D.
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<u>Patient Number</u>	<u>Date</u>	<u>Controlled Substance</u>	<u>Amount</u>	<u>Refills</u>
10 (Cont)	11/07/90	Ionamir-30	14	-
	12/05/90	Ionamin-30	14	-
	12/17/90	Ionamin-30	14	-
	01/07/91	Ionamin-30	14	-
	02/06/91	Ionamin-30	14	-
	03/06/91	Fastin	14	-
	03/20/91	Fastin	14	-

P 055 325 365

RECEIPT FOR CERTIFIED MAIL

Sent to Benjamin F Yabl Eog
317 W Spring St
St Marys Oh 45885
 144
 1.00
 TOTAL Postage and Fees 344

P 055 325 364

RECEIPT FOR CERTIFIED MAIL

Sent to Victor J Stegall MD
SR 66 at Southland Rd
New Bremen Oh 45869
 144
 1.00
 TOTAL Postage and Fees 344

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. (Extra charge) 2. Restricted Delivery (Extra charge)

3. Article Addressed to:
Victor J Stegall, MD
SR 66 at Southland
P.O. Box 127
New Bremen, Oh 45869

4. Article Number
P 055 325 364

Type of Service:
 Registered Insured
 Certified COD
 Express Mail Return Receipt for Merchandise

5. Signature - Addressee
 Cheryl Kuch

6. Signature - Agent

7. Date of Delivery

8. Addressee's Address (ONLY if requested and fee paid)
SL

PS Form 3811, Mar. 1988 * U.S.G.P.O. 1988-212-885 DOMESTIC RETURN RECEIPT

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. (Extra charge) 2. Restricted Delivery (Extra charge)

3. Article Addressed to:
Benjamin F. Yabl, Eog
317 W Spring St.
P.O. Box 86
St Marys Oh 45885

4. Article Number
P055325365

Type of Service:
 Registered Insured
 Certified COD
 Express Mail Return Receipt for Merchandise

5. Signature - Addressee

6. Signature - Agent

7. Date of Delivery
12-9-91

8. Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, Apr. 1989 * U.S.G.P.O. 1988-238-815 DOMESTIC RETURN RECEIPT

PS Form 3800, June 1985

PS Form 3800, June 1985