

State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

March 10, 2010

Milton Lee Brindley, M.D.
312 Elizabeth Street
Augusta, KY 41002

RE: 09-CRF-153

Dear Dr. Brindley:

Please find enclosed a certified copy of the Findings, Order and Journal Entry approved and confirmed by the State Medical Board meeting in regular session on March 10, 2010.

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

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

Very truly yours,



Lance A. Talmage, M.D. *rw*
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. 91 7108 2133 3936 3067 4004
RETURN RECEIPT REQUESTED

Mailed 3-11-10

In the matter of Milton Lee Brindley, M.D.

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DUPLICATE MAILING:

Milton Lee Brindley, M.D. (13003-032)

FCI Ashland

Federation Correctional Institution

P.O. Box 6001

Ashland, KY 41105

CERTIFIED MAIL RECEIPT NO. 91 7108 2133 3936 3067 3991

RETURN RECEIPT REQUESTED

CERTIFICATION

I hereby certify that the attached copy of the Findings, Order and Journal Entry approved by the State Medical Board, meeting in regular session on March 10, 2010, constitutes a true and complete copy of the Findings, Order and Journal Entry in the Matter of Milton Lee Brindley, M.D., Case No. 09-CRF-153, as it appears in the Journal of the State Medical Board of Ohio.

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



Lance A. Talmage, M.D. *ra*
Secretary

(SEAL)

March 10, 2010
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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CASE NO. 09-CRF-153

MILTON LEE BRINDLEY, M.D.

*

FINDINGS, ORDER AND JOURNAL ENTRY

By letter dated December 9, 2009, notice was given to Milton Lee Brindley, M.D., that the State Medical Board intended to consider disciplinary action regarding his license to practice medicine and surgery in the State of Ohio, and that he was entitled to a hearing if such hearing was requested within thirty (30) days of the mailing of said notice. In accordance with Section 119.07, Ohio Revised Code, said notice was sent via certified mail, return receipt requested, to the address of record of Dr. Brindley, that being 312 Elizabeth Street, Augusta, Kentucky 41002. A duplicate mailing of the notice was also sent to Milton Lee Brindley #13003-032, FCI Ashland, Federation Correctional Institution, P.O. Box 6001, Ashland, Kentucky 41105.

On January 5, 2010, the Board received an Acknowledgement of Receipt signed by Dr. Brindley on December 30, 2009. No hearing request has been received from Dr. Brindley and more than thirty (30) days have now elapsed since the mailing of that notice.

WHEREFORE, having reviewed the December 9, 2009, Notice of Immediate Suspension and Opportunity for Hearing, the affidavit of Mark R. Blackmer, Enforcement Attorney, the affidavit of Barbara A. Jacobs, Public Services Administrator, and the affidavit of Kay L. Rieve, Administrative Officer, which are attached hereto and incorporated herein, the Board hereby finds that:

1. Milton Lee Brindley, M.D., was issued certificate number 35-034676 on or about August 3, 1972.
2. On or about July 13, 2009, in the United States District Court for the Eastern District of Kentucky – Northern Division, Dr. Brindley entered a plea of guilty to one felony count of Conspiracy to Distribute a Controlled Substance, in the United States of America vs. Milton Brindley, Case Number 2:08-CR-90-DCR-1.
3. As part of his plea, Dr. Brindley admitted that he conspired with others to distribute schedule II, III and IV controlled substances by writing prescriptions to persons without a legitimate medical purpose and outside the usual course of medical practice. Dr. Brindley further admitted that he wrote prescriptions that resulted in the illegal distribution of approximately 45.6 grams of schedule II controlled substances, over 40,000 units of schedule III controlled substances, and over 40,000 units of schedule IV controlled substances between 2003 and June 19, 2007.

4. On October 26, 2009, the United States District Court for the Eastern District of Kentucky – Northern Division accepted Dr. Brindley's plea of guilty and he was found guilty of Conspiracy to Distribute a Controlled Substance, a felony.

Further, the Board hereby concludes that:

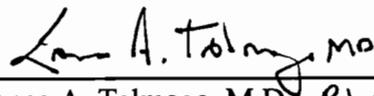
1. Section 4731.22(B)(9), Ohio Revised Code, authorizes the State Medical Board of Ohio to refuse to issue a license or to discipline a licensee based upon a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony.
2. Section 4731.22(B)(3), Ohio Revised Code, authorizes the State Medical Board of Ohio to refuse to issue a license or to discipline a licensee based upon a finding that an applicant or licensee "selling, giving, away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug.
3. Dr. Brindley was convicted on or about October 26, 2009, in the United States District Court for the Eastern District of Kentucky – Northern Division on one count of Conspiracy to Distribute a Controlled Substance, a felony.

Accordingly, the Board hereby ORDERS that:

The license of Milton Lee Brindley, M.D., to practice medicine and surgery in the State of Ohio be PERMANETLY REVOKED.

This Order shall become effective IMMEDIATELY.

This Order is hereby entered upon the Journal of the State Medical Board of Ohio for the 10th day of March 2010 and the original thereof shall be kept with said Journal.



Lance A. Talmage, M.D. RW
Secretary

(SEAL)

March 10, 2010

Date

State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

NOTICE OF IMMEDIATE SUSPENSION AND OPPORTUNITY FOR HEARING

December 9, 2009

Case number: 09-CRF- **153**

Milton Lee Brindley, M.D.
312 Elizabeth St.
Augusta, KY 41002

Dear Doctor Brindley:

In accordance with Sections 2929.42 and/or 3719.12, Ohio Revised Code, the Office of the United States Attorney, Eastern District of Kentucky, reported that on or about October 26, 2009, in the United States District Court, Eastern District of Kentucky, Northern Division, Covington, you pled guilty to and were found guilty of one felony count of Conspiracy to Distribute a Controlled Substance, arising from your activities of conspiring with other individuals to knowingly and intentionally obtain and distribute schedule II, III and IV controlled substances, in violation of 21 U.S.C. §846.

Therefore, pursuant to Section 3719.121(C), Ohio Revised Code, you are hereby notified that your license to practice medicine and surgery in the State of Ohio is immediately suspended. Continued practice after this suspension shall be considered practicing medicine without a certificate in violation of Section 4731.41, Ohio Revised Code.

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

- (1) On or about July 13, 2009, you entered and signed a Plea Agreement in the United States District Court, Eastern District of Kentucky, Northern Division, Covington, in which you pled guilty to one felony count of Conspiracy to Distribute a Controlled Substance, in violation of 21 U.S.C. §846. In your

Mailed 12-10-09

Plea Agreement, you admitted that the United States could prove certain facts beyond a reasonable doubt, and those facts included that between 2003 and June 19, 2007, you conspired with other individuals to unlawfully obtain and distribute schedule II, III and IV controlled substances; that you would write prescriptions for schedule II, III and IV controlled substances in return for cash payments and other inducements; that the prescriptions were not issued for a legitimate medical purpose and were written outside of the usual course of medical practice; that members of the conspiracy were involved in selling some of the controlled substances obtained from you through the course of the conspiracy; and that you wrote prescriptions for controlled substances as part of the conspiracy that resulted in the illegal distribution of approximately 45.6 grams of schedule II controlled substances, over 40,000 units of schedule III controlled substances, and over 40,000 units of schedule IV controlled substances.

On or about October 26, 2009, the United States District Court, Eastern District of Kentucky, Northern Division, Covington, approved your Plea Agreement, adjudicated you guilty of Conspiracy to Distribute Controlled Substance, in violation of 21 U.S.C. §846, and sentenced you to imprisonment for a term of seventy-one (71) months, to be followed by supervised release for three years.

Your plea of guilty or the judicial finding of guilt as alleged in paragraph (1) above, constitutes “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony,” as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, constitute “[s]elling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,” as those clauses are used in Section 4731.22(B)(3), 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 days of the time of mailing of this notice.

You are further advised that, if you timely request a hearing, 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,

Suspension
Milton Lee Brindley, M.D.
Page 3

or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty 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, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand you or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that “[w]hen the board refuses to grant a certificate to an applicant, revokes an individual’s certificate to practice, refuses to register an applicant, or refuses to reinstate an individual’s certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate.”

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.
Secretary

LAT/MRB/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3936 3072 2545
RETURN RECEIPT REQUESTED

Duplicate Mailing: Milton Lee Brindley, M.D. (13003-032)
FCI Ashland
Federal Correctional Institution
P.O. Box 6001
Ashland, KY 41105

CERTIFIED MAIL #91 7108 2133 3936 3072 2538
RETURN RECEIPT REQUESTED

State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

December 9, 2009

Milton Lee Brindley, M.D.
222 Main Street
Augusta, KY 41002

RE: Case No. 09-CRF-069

Dear Doctor Brindley:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Patricia A. Davidson, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on December 9, 2009, 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 must be taken to the Franklin County Court of Common Pleas.

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

THE STATE MEDICAL BOARD OF OHIO



Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

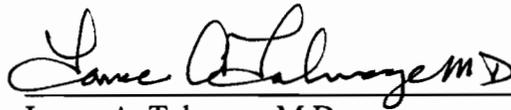
CERTIFIED MAIL NO. 91 7108 2133 3936 3068 1828
RETURN RECEIPT REQUESTED

Mailed 12-10-09

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Patricia A. Davidson, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on December 9, 2009, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Milton Lee Brindley, M.D., Case No. 09-CRF-069, as it appears in the Journal of the State Medical Board of Ohio.

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



Lance A. Talmage, M.D.
Secretary

(SEAL)

December 9, 2009
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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CASE NO. 09-CRF-069

MILTON LEE BRINDLEY, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on December 9, 2009.

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

It is hereby **ORDERED** that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Milton Lee Brindley, M.D., to practice allopathic medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Brindley's certificate to practice until all of the following conditions have been met:
 - 1. **Application for Reinstatement or Restoration:** Dr. Brindley shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
 - 2. **Evidence of Unrestricted Licensure in Other States:** At the time he submits his application for reinstatement or restoration, Dr. Brindley shall provide written documentation acceptable to the Board verifying that Dr. Brindley holds a full and unrestricted license to practice medicine and surgery in the Commonwealth of Kentucky and in all other states in which he is licensed at the time of application and/or has been in the past licensed,

and/or in which he would be entitled to be licensed but for the nonpayment of renewal fees.

3. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Brindley has not been engaged in active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Ohio Revised Code Section 4731.222 to require additional evidence of his fitness to resume practice.
- C. **PROBATION:** Upon reinstatement or restoration, Dr. Brindley's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two years:
1. **Obey the Law:** Dr. Brindley shall obey all federal, state, and local laws, and all rules governing the practice medicine and surgery in Ohio.
 2. **Declarations of Compliance:** Dr. Brindley shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which Dr. Brindley's certificate is reinstated or restored. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
 3. **Personal Appearances:** Dr. Brindley shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which his certificate is reinstated or restored. Subsequent personal appearances must occur every three months thereafter and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
 4. **Practice Plan:** Prior to Dr. Brindley's commencement of practice in Ohio, or as otherwise determined by the Board, Dr. Brindley shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Brindley's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Brindley shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Dr. Brindley submits his practice plan, he shall also submit the name and curriculum vitae of a monitoring physician for prior written

approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary or Supervising Member will give preference to a physician who practices in the same locale as Dr. Brindley and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Brindley and his medical practice, and shall review Dr. Brindley's patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Brindley and his practice, and on the review of Dr. Brindley's patient charts. Dr. Brindley shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Brindley's declaration of compliance.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Brindley must immediately so notify the Board in writing. In addition, Dr. Brindley shall make arrangements acceptable to the Board for another monitoring physician within 30 days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Brindley shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

5. **Tolling of Probationary Period while Out of Compliance:** In the event Dr. Brindley is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.
- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Brindley's certificate will be fully restored.
- E. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Brindley violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- F. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER**

1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. Brindley shall provide a copy of this Order to all employers or entities with which he is under contract to provide health-care services (including but not limited to third-party payors), or is receiving training, and the chief of staff at each hospital or health-care center where he has privileges or appointments.

In the event that Dr. Brindley provides any health-care services or health-care direction or medical oversight to any emergency medical services organization or emergency medical services provider, Dr. Brindley shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services. This requirement shall continue until Dr. Brindley receives from the Board written notification of the successful completion of the probation.

2. **Required Reporting To Other Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Brindley shall provide a copy of this Order to the proper licensing authority of any State or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate.

Dr. Brindley further shall provide a copy of this Order at the time of application to the proper licensing authority of any State or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue until Dr. Brindley receives from the Board written notification of the successful completion of the probation.

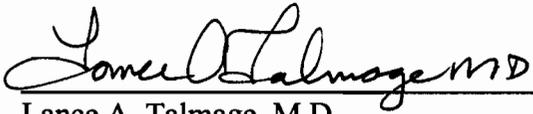
3. **Required Documentation of the Reporting Required by Paragraph F:** Dr. Brindley shall provide the Board with one of the following documents as proof of each required notification within 30 days of the date of each such notification: (1) the return receipt of certified mail within 30 days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

- G. **REQUIRED REPORTING OF CHANGE OF ADDRESS:** At all times that he holds an Ohio certificate to practice, regardless of whether suspended, under

probation or otherwise, Dr. Brindley shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.

EFFECTIVE DATE: This Order shall become effective immediately upon the mailing of the notification of approval by the Board.

(SEAL)



Lance A. Talmage, M.D.
Secretary

December 9, 2009
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

2009 NOV 12 PM 12:57

STATE MEDICAL BOARD
OF OHIO

In the Matter of

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Case No. 09-CRF-069

Milton Lee Brindley, M.D.,

*

Hearing Examiner Davidson

Respondent.

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REPORT AND RECOMMENDATION

Basis for Hearing

In a notice of opportunity for hearing dated June 10, 2009 [Notice], the State Medical Board of Ohio notified Milton Lee Brindley, M.D., that it intended to determine whether to take disciplinary action with regard to his certificate to practice allopathic medicine and surgery in Ohio. The Board set forth allegations regarding an order entered by the Kentucky Board of Medical Licensure [Kentucky Board] under which Dr. Brindley's license to practice medicine in Kentucky is restricted indefinitely. (St. Ex. 1)

The Board alleged that the order of the Kentucky Board constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery * * * in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that language is used in Ohio Revised Code Section [R.C.] 4731.22(B)(22). (St. Ex. 1)

The Board received Dr. Brindley's request for hearing on July 10, 2009. (St. Ex. 1)

Appearances

Richard Cordray, Attorney General, and Karen A. Unver, Assistant Attorney General, for the State.

The Respondent, Dr. Brindley, requested a hearing but did not appear in person at the hearing. He was not represented by counsel.

Hearing Date: August 24, 2009

SUMMARY OF THE EVIDENCE

All evidence admitted in this matter, even if not specifically mentioned, was thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

Background Information

1. According to the Ohio eLicense Center, Milton Lee Brindley, M.D., was born in Kentucky in 1943 and graduated from the University of Louisville School of Medicine in 1971. In 1972, the Board granted him a license to practice medicine in Ohio, certificate number 35.034676, which is currently active. (See <<https://license.ohio.gov/lookup/default.asp?division=78>>, accessed November 10, 2009).

Action by the Kentucky Board

2. On May 13, 2009, Dr. Brindley and the Kentucky Board entered into an Agreed Order of Indefinite Restriction, as follows:

Come now the Kentucky Board of Medical Licensure * * * and Milton L. Brindley, M.D. (“the licensee”), and * * * hereby ENTER INTO the following **AGREED ORDER OF INDEFINITE RESTRICTION:**

STIPULATIONS OF FACT

The parties stipulate the following facts, which serve as the factual bases for this Agreed Order of Indefinite Restriction:

1. At all relevant times, Milton L. Brindley, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee’s medical specialty is General Medicine.
3. On June 20, 2007, Cincinnati.com reported that the licensee had surrendered his DEA permit after a search of his home and office by law enforcement agencies. Russ Neville, Special Agent in Charge (SAC) for DEA was quoted in the article as saying that a year-long investigation indicated that the licensee was prescribing pain medication for no medical purpose. According to the article, Neville said, “There were doctor-shoppers going down there having prescriptions filled.”
4. On June 27, 2007, the Board’s investigator contacted the DEA to obtain details of the investigation and to obtain copies of the medical records seized during the search, so that a Board consultant could review them. The DEA declined that request due to the ongoing nature of the investigation. In November 2008, the federal prosecutor agreed to provide the Board with copies of the medical records seized.
5. The Board provided 26 patients records, along with the licensee’s prescribing records, to a Board consultant for review. In a report dated December 6, 2008, the consultant concluded, in part,

In most of the cases that were reviewed controlled substances were prescribed without any documentation of why the patient was giving such medication, why it was being increased and how it was related to the plan of treatment. There were often no present illness or history even to document if the patient was doing better on the medication, needed more medication, needed change in the doses or change in the medication itself. Most disturbing, I cannot find any records in well over half the patients where there was any kind of a plan at all. It was only from the Kaspers¹ that I received from your office as well as a copy of the prescription obtained in Dr. Brindley's records that I was able to tell what had been given to the patient. In summary concerning this, there was almost total lack of documentation for the plan, and the rationale for giving medications as well as many, many instances where there was no documentation of any medications that were being administered. This represents an extreme deviation from the standard of care both in the principles of general medical care as well as the violation of the guidelines of prescribing controlled substances.

Many of the patients (at least 2/3) are basically on all the same medications. These medications usually consisted of an anorectic drug such as Adipex or Didrex, Soma, Benzodiazapines, Hydrocodone, and often given for a number of years. It almost seems as if one was reviewing the same patient charts over and over as the medicines were so similar.

In instances where diet medication was used there were weight charts but unfortunately the patient did not seem to meet the general criteria for excessive weight with an elevated BMI to even be on the medication. Most of the weight charts reflected very little weight loss, in fact many patients actually gained weight while there were continuing to take Adipex, Didrex, etc. Often these extended over a period of years.

In the whole review there was not one drug screen, no mention of any Kasper Report being done by Dr. Brindley except on one occasion there was a copy of a Kasper Report in the chart that [he] had obtained on a patient. On this particular patient there was another physician also giving him a controlled substance identical to what Dr. Brindley was using and yet he continued to write prescriptions for the patient

¹The term "Kasper" is an acronym: "The Kentucky All Schedule Prescription Electronic Reporting System (KASPER) tracks controlled substance prescriptions dispensed within the state. A KASPER report shows all scheduled prescriptions for an individual over a specified time period, the prescriber and the dispenser." See Commonwealth of Kentucky, Kentucky Cabinet for Health and Family Services, Office of Inspector General, "Kentucky All Schedule Prescription Electronic Reporting System (KASPER)," at <<http://chfs.ky.gov/os/oig/KASPER.htm>>, accessed November 11, 2009).

and made no comment on the Kasper. There was certainly no pill count, no narcotic agreement in any of the records and basically no type of monitoring to see if the patient was indeed taking the medication or diverting medicine. This is a departure and fails to conform to the standards of acceptable and prevailing medical practice within the Commonwealth.

In reference to the family members there were instances of controlled substances being dispensed and in some cases documented and in other cases there was no documentation. In one such case a daughter-in-law was prescribed Hydrocodone on 2 occasions without any documentation anywhere as well as Didrex which was not documented. In addition for his daughter diet medication had been dispensed and on reviewing the weight chart there was no weight loss despite the patient taking the medication, nor was the documentation in the medical records of this being dispensed. This also includes narcotic containing medication.

In the case of his wife, the patient was given medication for weight loss which did not have any effect on her weight in the 4 times it was placed on her chart as far as her being able to consistently lose weight. Her weight at the end of a 4 month time was unchanged. In addition the patient was given Darvocet which was on her Kasper from July 2006 to June 2007. She was given a total of Darvocet 4 times a day at least on 8 different occasions. There was nothing in the records documenting this or as to why she was receiving it. His son was given diet medication sometime back with no weight documented in the chart at that time. He was also given controlled substances such as Tussionex, Didrex, and Vicodin in a period from 2004 to 2006 with no notes at all in the chart concerning this. I do not know if Dr. Brindley was aware there could possibly be abuse of these substances, but he certainly didn't follow any guidelines in prescribing them.

There were instances with patients where they were getting medications from more than one pharmacy, at times up to 4 different pharmacies. In one case a patient was getting Ambien frequently 1 or 2 weeks early and was using different pharmacies. Had a simple Kasper been done on this patient he would have seen what was happening. However the patient obviously was being given the medication from his office in order to get the prescription filled early which was suggesting that she was obviously either overdosing the medication or diverting the Ambien.

As far as specific medication, Dr. Brindley frequently used Benzodiazapines with Soma, Hydrocodone and anorectic medication in rather large amounts, such as Soma 3 times a day, Valium 40 mgs

per day, Hydrocodone 40 mgs per day. To use a stimulant such as diet medication on a chronic basis (when the patient is not even losing weight on this) certainly does not indicate good medical judgment. I do not know if the physician knew that his prescribing patterns were conducive to diversion or excessive use or abuse by his patients, but there was certainly a gross deviation from the standard of care which indicated gross negligence. He could also be in trouble with gross incompetence and even mal-practice in not even keeping records on patients.

I would have to conclude that the physician's practice constitutes a danger to the health, welfare and safety of his patients and the general public as he appears to be dispensing controlled substances without any documentation or rationale for doing so. With the exception of copies of his prescriptions, for the most part he does not even have it documented in the charts that I reviewed. (Emphasis in original)

It was also noted the prescriptions were often obtained from one pharmacy in Covington and I did not know the reason for this. There are exceptions, of course, in the majority of the cases one drug store was used and I am somewhat curious about the reason for this.

Also, controlled substances in the form of Hydrocodone, Benzodiazapines, anorectic agents, and Soma, which metabolizes to a tranquilizer, were all used together and in some cases over a period as long as 6 or 7 years and in most cases well over 2 years and in each case essentially no documentation. There were copies of prescriptions that were in the charts as well as Kaspers that were referred to that were done by the Medical Licensure Board where most of the information was obtained concerning the controlled substances.

The violations were so blatant and widespread that I did not list case by case specifically.

Once again, to summarize, there is almost uniformly deviation from the standards of acceptable and pervading medical practice within the Commonwealth of Kentucky in almost all of the records that I reviewed. There was hardly any documentation in any respect concerning the administration of controlled substances. Throughout there appears to be both gross negligence as well as some degree of mal-practice. I can only speculate about ignorance or incompetence but one can only assume that gross negligence generally prevailed. There were all sorts of opportunities for patients to both abuse and to divert the controlled substances that they received.

6. The licensee responded to the consultant's findings by letter dated January 19, 2009.

7. The Grand Jury for the United States District Court for the Eastern District of Kentucky, Northern Division, indicted the licensee and charged him with 16 counts of violating federal law. *Trial on that indictment is presently scheduled for July 2009.*² (Emphasis added)
8. As part of that indictment, the Grand Jury *charged*, in part, “His actions included, but were not limited to, issuing prescriptions for controlled substances to individuals in exchange for monetary payments to BRINDLEY and/or the performance of sexual acts at BRINDLEY’S request...” (Emphasis added)
9. The Board’s investigator contacted the federal prosecutor in an attempt to obtain additional allegations that the licensee had traded controlled substances for sexual acts and to determine whether any of these acts involved patients of the licensee. The prosecutor declined to provide any details about those allegations *in light of the pending litigation.* (Emphasis added)

STIPULATED CONCLUSIONS OF LAW

The parties stipulate the following Conclusions of Law, which serve as the legal bases for this Agreed Order of Indefinite Restriction:

1. The licensee’s Kentucky medical license is subject to regulation and discipline by the Board.
2. While the licensee denies engaging in any illegal conduct, he acknowledges that, based upon the information in the Stipulations of Fact, the Board’s Panel *could* conclude that he has engaged in conduct which violates the provisions of KRS 311.595(9), as illustrated by KRS 311.597(1)(a), (c), (d), (3) and (4). Accordingly, the parties agree that there are legal bases for this Agreed Order of Indefinite Restriction. (Emphasis added)
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve all or part of a pending investigation, without an evidentiary hearing, by entering into an informal resolution such as this Agreed Order of Indefinite Restriction. In this instance, this Agreed Order of Indefinite Restriction fully and finally resolves a portion of the pending investigation without an evidentiary hearing. The parties expressly agree that the Board reserves the legal authority to fully address the remaining portions of the investigation that may only be addressed *through the resolution of the criminal trial and the full release of information by the United States Government regarding the existing allegations against the licensee – potential violations of KRS 311.595(4), (5) and (9). The parties expressly agree that, following the completion of the pending criminal trial and full review of the Board of additional information disclosed during that trial or from the United States Government, to include the*

² The federal court subsequently vacated the trial scheduled to proceed in July 2009. (St. Ex. 3)

interviews of relevant witnesses and the examination of relevant evidentiary items, Inquiry Panel B retains the full legal authority to take any of the action authorized by KRS 311.591, 311.592 and 311.595. (Emphasis added)

AGREED ORDER OF INDEFINITE RESTRICTION

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to fully and finally resolve a portion of this pending investigation without an evidentiary hearing, the parties hereby ENTER INTO the following **AGREED ORDER OF INDEFINITE RESTRICTION**:

1. The license to practice medicine in the Commonwealth of Kentucky held by Milton L. Brindley, M.D., is RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME, effective immediately upon the filing of this Order;
2. During the effective period of this Agreed Order of Indefinite Restriction, the licensee's Kentucky medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS OF RESTRICTION/LIMITATION for an indefinite term, or until further order of the Board:
 - a. The licensee SHALL NOT prescribe, dispense, or otherwise professionally utilize controlled substances unless and until approved to do so by the Panel;
 - b. The Panel will not consider a request by the licensee to resume the professional utilization of controlled substances unless and until the following conditions have been satisfied – 1) *the criminal trial has been finally resolved and the licensee was fully acquitted of all charges*; 2) six (6) months have elapsed since the filing of this Agreed Order of Indefinite Restriction; and 3) the licensee has successfully completed the “Prescribing Controlled Drugs” course at the Center for Professional Health at Vanderbilt University Medical Center * * * or the University of South Florida * * * at his expense [emphasis added, addresses omitted];
 - c. *If the Panel should grant the licensee's request to resume the professional utilization of controlled substances*, it will do so by an Amended Agreed Order of Indefinite Restriction, which shall provide for the licensee to maintain a “controlled substances log” for all controlled substances prescribed, dispensed or otherwise utilized and shall provide for periodic review of the log and relevant records by Board agents upon request, an express prohibition against providing controlled substances to himself and/or his immediate family, and any other conditions deemed necessary by the Panel at that time;
 - d. The licensee SHALL provide written notice to the Board's staff of any continuance of his *pending criminal trial date*, within ten (10) days of any Order continuing that trial;

- e. The licensee SHALL provide written notice to the Board's staff of the *resolution of the pending criminal trial* by providing a copy of the Jury Trial Order or other similar report and, if appropriate, any Judgment of Conviction, within ten (10) days of the filing of any such document. (Emphasis added)
 - f. The licensee SHALL pay the costs of the investigation in the amount of \$1,500.00 within six (6) months from entry of this Agreed Order of Indefinite Restriction;
 - g. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. The licensee expressly agrees that if he should violate any term or condition of this Agreed Order of Indefinite Restriction, the licensee's practice will constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive information that he has violated any term or condition of this Agreed Order of Indefinite Restriction, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that a violation has occurred, after an *ex parte* presentation of the relevant facts by the Board's General Counsel or Assistant General Counsel. If the Panel Chair should issue such an Emergency Order, the parties agree and stipulate that a violation of any term or condition of this Agreed Order of Indefinite Restriction would render the licensee's practice an immediate danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Agreed Order of Indefinite Restriction.
 4. The licensee understands and agrees that any violation of the terms of this Agreed Order of Indefinite Restriction would provide a legal basis for additional disciplinary action, including revocation, pursuant to KRS 311.595(13), and may provide a legal basis for criminal prosecution.

FINDINGS OF FACT

1. On May 13, 2009, the Kentucky Board of Medical Licensure [Kentucky Board] entered an Agreed Order of Indefinite Restriction [Agreed Order], in which Dr. Brindley agreed and the Kentucky Board ordered that Dr. Brindley's license to practice medicine in the Commonwealth of Kentucky is restricted and/or limited for an indefinite period of time, including that he will not prescribe, dispense or otherwise professionally utilize controlled substances unless and until approved to do so by the Kentucky Board.

2. The Agreed Order sets forth additional terms and conditions, as well as stipulated facts and conclusions of law that serve as the factual and legal basis for the Agreed Order.

Among other things, the Agreed Order states that a criminal action against Dr. Brindley is pending in federal court, and provides that, depending on the final resolution of that criminal action and other terms and conditions, the Agreed Order may be modified and/or further action may be taken.

3. There is no evidence in the record to establish that the federal criminal charges against Dr. Brindley have been finally adjudicated and resolved.

CONCLUSION OF LAW

The Agreed Order of the Kentucky Board with regard to Milton Lee Brindley, M.D., as set forth above in Findings of Fact 1 and 2, constitutes “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery * * * in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that language is used in R.C. 4731.22(B)(22).

Discussion of Proposed Order

The nature of the Agreed Order of the Kentucky Board is such that an indefinite suspension of Dr. Brindley’s certificate to practice in Ohio is warranted. However, the Agreed Order is based in part on matters that have not yet been fully and finally resolved:

- The Agreed Order sets forth the opinion of a consultant but also states that Dr. Brindley provided his own statement in response. The Agreed Order does not state that an adjudication has been made by the Kentucky Board regarding the matters raised in the consultant’s review; that is, the Agreed Order does not find and conclude that a violation has been committed by Dr. Brindley. Rather, the Agreed Order states that the evidence could support a finding of a violation of Kentucky law, thus providing a sufficient legal basis for the agreed restrictions.
- The Agreed Order states that the federal government made charges against Dr. Brindley in an indictment, but does not state that the charges have been resolved in a final order of the federal court.

In its Agreed Order, the Kentucky Board provided protection to the public in Kentucky while leaving certain matters in an open-ended status, pending final resolution of the criminal charges. The Hearing Examiner recommends that this Board proceed on similar lines and impose an indefinite suspension. If Dr. Brindley is ultimately convicted in federal court, then the Board can decide whether to issue a notice of opportunity for hearing based on the conviction. Similarly, if the Kentucky Board should proceed to impose further restrictions or other discipline, that action may

bring about a new notice of opportunity for hearing under R.C. 4731.22(B)(22). Here, because the notice of opportunity for hearing is based on the cited action by the Kentucky Board, the proposed order provides that Dr. Brindley cannot seek reinstatement of his suspended Ohio certificate until and unless he holds an unrestricted license to practice medicine in Kentucky.

PROPOSED ORDER

It is hereby **ORDERED** that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Milton Lee Brindley, M.D., to practice allopathic medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Brindley's certificate to practice until all of the following conditions have been met:
 1. **Application for Reinstatement or Restoration:** Dr. Brindley shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
 2. **Evidence of Unrestricted Licensure in Other States:** At the time he submits his application for reinstatement or restoration, Dr. Brindley shall provide written documentation acceptable to the Board verifying that Dr. Brindley holds a full and unrestricted license to practice medicine and surgery in the Commonwealth of Kentucky and in all other states in which he is licensed at the time of application and/or has been in the past licensed, and/or in which he would be entitled to be licensed but for the nonpayment of renewal fees.
 3. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Brindley has not been engaged in active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Ohio Revised Code Section 4731.222 to require additional evidence of his fitness to resume practice.
- C. **PROBATION:** Upon reinstatement or restoration, Dr. Brindley's certificate shall be subject to the following **PROBATIONARY** terms, conditions, and limitations for a period of at least two years:
 1. **Obey the Law:** Dr. Brindley shall obey all federal, state, and local laws, and all rules governing the practice medicine and surgery in Ohio.
 2. **Declarations of Compliance:** Dr. Brindley shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first

day of the third month following the month in which Dr. Brindley's certificate is reinstated or restored. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. **Personal Appearances:** Dr. Brindley shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which his certificate is reinstated or restored. Subsequent personal appearances must occur every three months thereafter and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
4. **Practice Plan:** Prior to Dr. Brindley's commencement of practice in Ohio, or as otherwise determined by the Board, Dr. Brindley shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Brindley's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Brindley shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Dr. Brindley submits his practice plan, he shall also submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary or Supervising Member will give preference to a physician who practices in the same locale as Dr. Brindley and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Brindley and his medical practice, and shall review Dr. Brindley's patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Brindley and his practice, and on the review of Dr. Brindley's patient charts. Dr. Brindley shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Brindley's declaration of compliance.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Brindley must immediately so notify the Board in writing. In addition, Dr. Brindley shall make arrangements acceptable to the Board for another monitoring physician within 30 days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Brindley shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefor.

5. **Tolling of Probationary Period while Out of Compliance:** In the event Dr. Brindley is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Order.

- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Brindley's certificate will be fully restored.

- E. **VIOLATION OF THE TERMS OF THIS ORDER:** If Dr. Brindley violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

- F. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER**
 1. **Required Reporting to Employers and Others:** Within 30 days of the effective date of this Order, Dr. Brindley shall provide a copy of this Order to all employers or entities with which he is under contract to provide health-care services (including but not limited to third-party payors), or is receiving training, and the chief of staff at each hospital or health-care center where he has privileges or appointments.

In the event that Dr. Brindley provides any health-care services or health-care direction or medical oversight to any emergency medical services organization or emergency medical services provider, Dr. Brindley shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services. This requirement shall continue until Dr. Brindley receives from the Board written notification of the successful completion of the probation.

 2. **Required Reporting To Other Licensing Authorities:** Within 30 days of the effective date of this Order, Dr. Brindley shall provide a copy of this Order to the proper licensing authority of any State or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate.

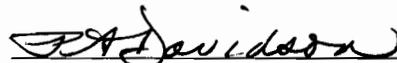
Dr. Brindley further shall provide a copy of this Order at the time of application to the proper licensing authority of any State or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue until Dr. Brindley receives from the Board written notification of the successful completion of the probation.

 3. **Required Documentation of the Reporting Required by Paragraph F:** Dr. Brindley shall provide the Board with one of the following documents as proof of

each required notification within 30 days of the date of each such notification: (1) the return receipt of certified mail within 30 days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

- G. **REQUIRED REPORTING OF CHANGE OF ADDRESS:** At all times that he holds an Ohio certificate to practice, regardless of whether suspended, under probation or otherwise, Dr. Brindley shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.

EFFECTIVE DATE: This Order shall become effective immediately upon the mailing of the notification of approval by the Board.



Patricia A. Davidson
Hearing Examiner

State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

EXCERPT FROM THE DRAFT MINUTES OF DECEMBER 9, 2009

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Madia announced that the Board would now consider the Reports and Recommendations, and the Proposed Findings And Proposed Order appearing on its agenda.

Dr. Madia asked whether each member of the Board had received, read and considered the hearing records; the Findings of Fact, Conclusions of Law and Proposed Orders, and any objections filed in the matters of: Milton Lee Brindley, M.D.; Refaat Hegazi, M.D.; Christine C. McKain, M.D.; Ana Aleyda Rychwalski, M.D.; Steven Douglas Stowell, M.D.; and Robert T. McKinney, M.T. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Ogg	- aye
	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Varyani	- aye
	Mr. Ogg	- aye
	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

Dr. Madia noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.;

Dr. Madia reminded all parties that no oral motions may be made during these proceedings.

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

MILTON LEE BRINDLEY, M.D.

.....

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. DAVIDSON'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF MILTON LEE BRINDLEY, M.D. DR. VARYANI SECONDED THE MOTION.

.....

A vote was taken on Dr. Steinbergh's motion to approve and confirm:

ROLL CALL:	Mr. Albert	- abstain
	Dr. Varyani	- aye
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Mr. Ogg	- aye
	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Madia	- aye

The motion carried.

State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

June 10, 2009

Case number: 09-CRF-069

Milton Lee Brindley, M.D.
312 Elizabeth St.
Augusta, KY 41002

Dear Doctor Brindley:

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

- (1) On or about May 13, 2009, the Commonwealth of Kentucky Board of Medical Licensure [Kentucky Board] filed an Agreed Order of Indefinite Restriction [Agreed Order] in which you agreed that your license to practice medicine in the Commonwealth of Kentucky would be restricted/limited for an indefinite period of time, including that you would not prescribe, dispense or otherwise professionally utilize controlled substances unless and until approved to do so by the Kentucky Board.

The Kentucky Board Agreed Order, a copy of which is attached hereto and incorporated herein, sets forth in additional detail the terms and conditions of the Agreed Order, as well as the stipulated facts and conclusions of law that served as the factual and legal basis for the Agreed Order.

The Kentucky Board Agreed Order, as alleged in paragraph (1) above, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

Mailed 6-11-09

Milton Lee Brindley, M.D.

Page 2

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 days of the time of mailing of this notice.

You are further advised that, if you timely request a hearing, 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.

In the event that there is no request for such hearing received within thirty 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, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand you or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.
Secretary

LAT/MRB/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3936 3071 2119
RETURN RECEIPT REQUESTED

cc: Raymond S. Bogucki, Esq., Raymond S. Bogucki, PSC, 218 Stanley Reed Ct.
Post Office Box 277, Maysville, Kentucky 41056

CERTIFIED MAIL #91 7108 2133 3936 3083 4392
RETURN RECEIPT REQUESTED



Steven L. Beshear
Governor

Preston P. Nunnelley, M.D.
President

KENTUCKY BOARD OF MEDICAL LICENSURE

Hurstbourne Office Park
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
Telephone (502) 429-7150
www.kbml.ky.gov

Date: May 21, 2009

From: Bertha L. Wallen, Open Records Custodian

Via: First Class Mail

Re: **Milton Lee Brindley, M.D.**

This record is [X] certified [] not certified

Please find attached the document(s) you requested pursuant to the Kentucky Open Records Act. The Kentucky Board of Medical Licensure is a State agency, which is responsible for maintaining the records concerning medical licensure pursuant to KRS 311.530.

Thank you for allowing us to be of assistance. If you require additional information, please do not hesitate to call our office.

CERTIFICATION

I, Bertha L. Wallen, custodian of the records for the Kentucky Board of Medical Licensure, hereby certify that the attached are true and exact copies of the documents on file with this office.

Bertha L. Wallen, Open Records Custodian

To: Fonda Brooks
State Medical Board of Ohio
30 East Broad Street, 3rd Floor
Columbus, OH 43215-6127

BOARD SEAL

STATE MEDICAL BOARD
2009 MAY 27 P 2 28

FILED OF RECORD

MAY 13 2009

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1210

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF
KENTUCKY HELD BY MILTON L. BRINDLEY, M.D., LICENSE 16208, 222
MAIN STREET, AUGUSTA, KENTUCKY 41002

AGREED ORDER OF INDEFINITE RESTRICTION

Come now the Kentucky Board of Medical Licensure (hereafter "the Board"),
acting by and through its Inquiry Panel B, and Milton L. Brindley, M.D. ("the licensee"),
and, based upon their mutual desire to finally resolve a portion of the pending Board
investigation without an evidentiary hearing, hereby ENTER INTO the following
AGREED ORDER OF INDEFINITE RESTRICTION:

STIPULATIONS OF FACT

The parties stipulate the following facts, which serve as the factual bases for this
Agreed Order of Indefinite Restriction:

1. At all relevant times, Milton L. Brindley, M.D., was licensed by the Board to
practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is General Medicine.
3. On June 20, 2007, Cincinnati.com reported that the licensee had surrendered his
DEA permit after a search of his home and office by law enforcement agencies.
Russ Neville, Special Agent in Charge (SAC) for DEA was quoted in the article
as saying that a year-long investigation indicated that the licensee was prescribing
pain medication for no medical purpose. According to the article, Neville said,
"There were doctor-shoppers going down there having prescriptions filled."

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4. On June 27, 2007, the Board's investigator contacted the DEA to obtain details of the investigation and to obtain copies of the medical records seized during the search, so that a Board consultant could review them. The DEA declined that request due to the ongoing nature of the investigation. In November 2008, the federal prosecutor agreed to provide the Board with copies of the medical records seized.
5. The Board provided 26 patients records, along with the licensee's prescribing records, to a Board consultant for review. In a report dated December 6, 2008, the consultant concluded, in part,

In most of the cases that were reviewed controlled substances were prescribed without any documentation of why the patient was given such medication, why it was being increased and how it was related to the plan of treatment. There were often no present illness or history even to document if the patient was doing better on the medication, needed more medication, needed change in the doses or change in the medication itself. Most disturbing, I cannot find any records in well over half the patients where there was any kind of a plan at all. It was only from the Kaspers that I received from your office as well as a copy of the prescription obtained in Dr. Brindley's records that I was able to tell what had been given to the patient. In summary concerning this, there was almost total lack of documentation for the plan, and the rationale for giving medications as well as many, many instances where there was no documentation of any medications that were being administered. This represents an extreme deviation from the standard of care both in the principles of general medical care as well as the violation of the guidelines of prescribing controlled substances.

Many of the patients (at least 2/3) are basically on all the same medications. These medications usually consisted of an anorectic drug such as Adipex or Didrex, Soma, Benzodiazapines, Hydrocodone, and often given for a number of years. It almost seems as if one was reviewing the same patient charts over and over as the medicines were so similar.

In instances where diet medication was used there were weight charts but unfortunately the patient did not seem to meet the general criteria for excessive weight with an elevated BMI to even be on the medication. Most of the weight charts reflected very little weight loss, in fact many patients actually gained weight while they were continuing to take Adipex, Didrex, etc. Often these extended over a period of years.

In the whole review there was not one drug screen, no mention of any Kasper Report being done by Dr. Brindley except on one occasion there was a copy of a

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Kasper Report in the chart that had obtained on a patient. On this particular patient there was another physician also giving him a controlled substance identical to what Dr. Brindley was using and yet he continued to write prescriptions for the patient and made no comment on the Kasper. There was certainly no pill count, no narcotic agreement in any of the records and basically no type of monitoring to see if the patient was indeed taking the medication or diverting medicine. This is a departure and fails to conform to the standards of acceptable and prevailing medical practice within the Commonwealth.

In reference to the family members there were instances of controlled substances being dispensed and in some cases documented and in other cases there was no documentation. In one such case a daughter-in-law was prescribed Hydrocodone on 2 occasions without any documentation anywhere as well as Didrex which was not documented. In addition for his daughter diet medication had been dispensed and on reviewing the weight chart there was no weight loss despite the patient taking the medication, nor was the documentation in the medical records of this being dispensed. This also includes narcotic containing medication.

In the case of his wife, the patient was given medication for weight loss which did not have any effect on her weight in the 4 times it was placed on her chart as far as her being able to consistently lost weight. Her weight at the end of a 4 month time was unchanged. In addition the patient was given Darvocet which was on her Kasper from July 2006 to June 2007. She was given a total of Darvocet 4 times a day at least on 8 different occasions. There was nothing in the records documenting this or as to why she was she was receiving it. His son was given diet medication sometime back with no weight documented in the chart at that time. He was also given controlled substances such as Tussionex, Didrex, and Vicodin in a period from 2004 to 2006 with no notes at all in the chart concerning this. I do not know if Dr. Brindley was aware there could possibly be abuse of these substances, but he certainly didn't follow any guidelines in prescribing them.

There were instances with patients where they were getting medications from more than one pharmacy, at times up to 4 different pharmacies. In one case a patient was getting Ambien frequently 1 or 2 weeks early and was using different pharmacies. Had a simple Kasper been done on this patient he would have seen what was happening. However the patient obviously was being given the medication from his office in order to get the prescription filled early which was suggesting that she was obviously either overdosing the medication or diverting the Ambien.

As far as specific medication, Dr. Brindley frequently used Benzodiazapines with Soma, Hydrocodone and anorectic medication in rather large amounts, such as Soma 3 times a day, Valium 40 mgs per day, Hydrocodone 40 mgs per day. To use a stimulant such as diet medication on a chronic basis (when the patient is not even losing weight on this) certainly does not indicate good medical judgment. I do not know if the physician knew that his prescribing patterns were conducive to diversion or excessive use or abuse by his patients, but there was certainly a gross deviation from the standard of care which indicated gross negligence. He

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could also be in trouble with gross incompetence and even mal-practice in not even keeping records on patients.

I would have to conclude that the physician's practice constitutes a danger to the health, welfare and safety of his patients and the general public as he appears to be dispensing controlled substances without any documentation or rationale for doing so. With the exception of copies of his prescriptions, for the most part he does not even have it documented in the charts that I reviewed.

It was also noted the prescriptions were often obtained from one pharmacy in Covington and I did not know the reason for this. There are exceptions, of course, in the majority of the cases one drug store was used and I am somewhat curious about the reason for this.

Also, controlled substances in the form of Hydrocodone, Benzodiazapines, anorectic agents, and Soma, which metabolizes to a tranquilizer, were all used together and in some cases over a period as long as 6 or 7 years and in most cases well over 2 years and in each case essentially no documentation. There were copies of prescriptions that were in the charts as well as Kaspers that were referred to that were done by the Medical Licensure Board where most of the information was obtained concerning the controlled substances.

The violations were so blatant and widespread that I did not list case by case specifically.

...

Once again, to summarize, there is almost uniformly deviation from the standards of acceptable and pervading medical practice within the Commonwealth of Kentucky in almost all the records that I reviewed. There was hardly any documentation in any respect concerning the administration of controlled substances. Throughout there appears to be both gross negligence as well as some degree of mal-practice. I can only speculate about ignorance or incompetence but one can only assume that gross negligence generally prevailed. There were all sorts of opportunities for patients to both abuse and to divert the controlled substances that they received.

6. The licensee responded to the consultant's findings by letter dated January 19, 2009.
7. The Grand Jury for the United States District Court for the Eastern District of Kentucky, Northern Division, indicted the licensee and charged him with 16 counts of violating federal law. Trial on that indictment is presently scheduled for July 2009.
8. As part of that indictment, the Grand Jury charged, in part, "His actions included, but were not limited to, issuing prescriptions for controlled substances to

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individuals in exchange for monetary payments to BRINDLEY and/or the performance of sexual acts at BRINDLEY'S request..."

9. The Board's investigator contacted the federal prosecutor in an attempt to obtain additional allegations that the licensee had traded controlled substances for sexual acts and to determine whether any of these acts involved patients of the licensee. The prosecutor declined to provide any details about those allegations in light of the pending litigation.

STIPULATED CONCLUSIONS OF LAW

The parties stipulate the following Conclusions of Law, which serve as the legal bases for this Agreed Order of Indefinite Restriction:

1. The licensee's Kentucky medical license is subject to regulation and discipline by the Board.
2. While the licensee denies engaging in any illegal conduct, he acknowledges that, based upon the information in the Stipulations of Fact, the Board's Panel could conclude that he has engaged in conduct which violates the provisions of KRS 311.595(9), as illustrated by KRS 311.597(1)(a), (c), (d), (3) and (4).

Accordingly, the parties agree that there are legal bases for this Agreed Order of Indefinite Restriction.

3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve all or part of a pending investigation, without an evidentiary hearing, by entering into an informal resolution such as this Agreed Order of Indefinite Restriction. In this instance, this Agreed Order of Indefinite Restriction fully and finally resolves a portion of the pending investigation without an

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evidentiary hearing. The parties expressly agree that the Board reserves the legal authority to fully address the remaining portions of the investigation that may only be addressed through the resolution of the criminal trial and the full release of information by the United States Government regarding the existing allegations against the licensee – potential violations of KRS 311.595(4), (5) and (9). The parties expressly agree that, following the completion of the pending criminal trial and full review of the Board of additional information disclosed during that trial or from the United States Government, to include the interviews of relevant witnesses and the examination of relevant evidentiary items, Inquiry Panel B retains the full legal authority to take any of the action authorized by KRS 311.591, 311.592 and 311.595.

AGREED ORDER OF INDEFINITE RESTRICTION

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to fully and finally resolve a portion of this pending investigation without an evidentiary hearing, the parties hereby ENTER INTO the following **AGREED ORDER OF INDEFINITE RESTRICTION:**

1. The license to practice medicine in the Commonwealth of Kentucky held by Milton L. Brindley, M.D., is **RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME**, effective immediately upon the filing of this Order;
2. During the effective period of this Agreed Order of Indefinite Restriction, the licensee's Kentucky medical license **SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS OF RESTRICTION/LIMITATION** for an indefinite term, or until further order of the Board:

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- a. The licensee SHALL NOT prescribe, dispense, or otherwise professionally utilize controlled substances unless and until approved to do so by the Panel;
- b. The Panel will not consider a request by the licensee to resume the professional utilization of controlled substances unless and until the following conditions have been satisfied – 1) the criminal trial has been finally resolved and the licensee was fully acquitted of all charges; 2) six (6) months have elapsed since the filing of this Agreed Order of Indefinite Restriction; and, 3) the licensee has successfully completed the “Prescribing Controlled Drugs” course at The Center for Professional Health at Vanderbilt University Medical Center, Nashville, TN, (615) 936-0678 or the University of South Florida, 3515 E. Fletcher Avenue, Tampa, Florida 33613 (813) 396-9217, at his expense;
- c. If the Panel should grant the licensee’s request to resume the professional utilization of controlled substances, it will do so by an Amended Agreed Order of Indefinite Restriction, which shall provide for the licensee to maintain a “controlled substances log” for all controlled substances prescribed, dispensed or otherwise utilized and shall provide for periodic review of the log and relevant records by Board agents upon request, an express prohibition against providing controlled substances to himself and/or his immediate family, and any other conditions deemed necessary by the Panel at that time;

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- d. The licensee SHALL provide written notice to the Board's staff of any continuance of his pending criminal trial date, within ten (10) days of any Order continuing that trial;
 - e. The licensee SHALL provide written notice to the Board's staff of the resolution of the pending criminal trial by providing a copy of the Jury Trial Order or other similar report and, if appropriate, any Judgment of Conviction, within ten (10) days of the filing of any such document.
 - f. The licensee SHALL pay the costs of the investigation in the amount of \$1,500.00 within six (6) months from entry of this Agreed Order of Indefinite Restriction;
 - g. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. The licensee expressly agrees that if he should violate any term or condition of this Agreed Order of Indefinite Restriction, the licensee's practice will constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive information that he has violated any term or condition of this Agreed Order of Indefinite Restriction, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that a violation has occurred, after an *ex parte* presentation of the relevant facts by the Board's General Counsel or Assistant General Counsel. If the Panel Chair should issue such an Emergency Order, the parties agree and stipulate that a violation of any term or condition of this Agreed Order of Indefinite Restriction

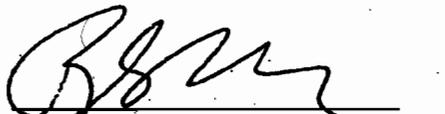
would render the licensee's practice an immediate danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Agreed Order of Indefinite Restriction.

4. The licensee understands and agrees that any violation of the terms of this Agreed Order of Indefinite Restriction would provide a legal basis for additional disciplinary action, including revocation, pursuant to KRS 311.595(13), and may provide a legal basis for criminal prosecution.

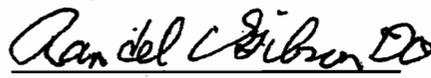
SO AGREED on this 13th day of May, 2009.

FOR THE LICENSEE:


MILTON L. BRINDLEY, M.D.


RAYMOND S. BOGUCKI, ESQ.
COUNSEL FOR THE LICENSEE

FOR THE BOARD:


RANDEL C. GIBSON, D.O.
CHAIR, INQUIRY PANEL B

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