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CLERK OF COURTS
MAHONING COUNTY, OH
FILED

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ANTHONY VIVO, CLERK

IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

EDWARD L. McIVER M.D.,

:

Appellant,

:

Case No. 86-CV-1346

vs.

:

THE STATE MEDICAL BOARD,
STATE OF OHIO,

:

Appellee.

:

MOTION TO DISMISS

Appellee, the State Medical Board, State of Ohio, respectfully moves this Court to dismiss this appeal for the reason that Appellant has failed to timely file a notice of appeal.

Respectfully submitted,

ANTHONY J. CELEBREZZE, JR.
Attorney General

Mary Joseph Maxwell

MARY JOSEPH MAXWELL
Assistant Attorney General
30 East Broad Street
State Office Tower, 10th Floor
Columbus, Ohio 43266-0410
(614) 466-2980

RECEIVED
ATTORNEY GENERAL'S OFFICE
AUG 07 1985
ADMINISTRATIVE AGENCIES SECTION

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

This cause came to the attention of the State Medical Board (Board) when the Appellant filed notice of appeal from an order of the Board which revoked Appellant's license to practice medicine in Ohio. The Board's order was mailed to Appellant on June 25, 1986. (See Letter, Order and time stamp on receipt for certified mail, attached as Exhibit 1).

The Notice of Appeal was filed with the Court of Common Pleas of Mahoning County on July 10, 1986, fifteen (15) days after the Board's order was mailed. (See copy attached as Exhibit 2.) The Notice of Appeal was filed with the Medical Board on July 14, 1986, nineteen (19) days after the order was mailed. (See copy attached as Exhibit 2.)

Revised Code Section 119.12 sets forth the procedure to be followed in appealing adverse orders of administrative agencies:

Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and the grounds of his appeal. A copy of such notice of appeal shall also be filed by appellant with the court. Unless otherwise provided by law relating to a particular agency, such notices of appeal shall be filed within fifteen days after the mailing of the notice of the agency's order as provided in this section. (Emphasis added).

Failure to file within the time limits allowed under R.C. 119.12 is a jurisdictional defect which requires the Court to dismiss the action without consideration of its merits.

In Zier v. Bureau of Unemployment Compensation (1969), 151 Ohio St. 123 the first paragraph of the syllabus states:

An appeal, the right to which is conferred by statute, can be perfected only in the mode prescribed by statute. The exercise of the right conferred is conditioned upon compliance with the accompanying mandatory requirements.

The Court held that compliance with requirements pertaining to the filing of a notice of appeal, such as the time of filing, are "conditions precedent to jurisdiction." Id. at 127.

In Hart, d.b.a. Green Acres v. Bd. of Liquor Control (1953), 96 Ohio App. 128, the Court held that filing of a notice of appeal within fifteen days of the mailing of the Board's Order is a mandatory requirement. The Court reasoned:

[S]tatutes fixing the time within which certain procedural steps shall be taken have been without exception strictly construed. Manifestly so, because there is no basis for varying a specific time provision of a statute.

Id. at 131.

In Arndt v. Scott, State Fire Marshall, 72 Ohio Law Abs. 189 (Franklin App. 1955), a court of appeals case involving R.C. 119.12, the court stated:

The time provisions of the statute relating to the time for the filing of a notice of appeal are mandatory, and if the notice of appeal is not filed within the time fixed by law, the appeal will be dismissed.

The Court of Appeals for Hamilton County has also decided this question. In the case of Knoll v. Dudley, 20 Ohio App. 2d 339 (Hamilton Co., 1969), the court held:

The right to an appeal is statutory and the time limit provision of the statute is mandatory. Zier v. Bureau of Unemployment Compensation, 151 Ohio St. 123.

In Ahrns v. Board of Tax Appeals, 22 Ohio App. 2d 179 (Henry Co., 1970), the Appellant filed his appeal with the Common Pleas Court within the required time period but did not file with the agency within the same required time. In finding that the appeal was not timely filed, the Court, in the second paragraph of the syllabus, stated:

Failure to file a notice of appeal with the Board of Tax Appeal within such thirty-day period, even though notice is filed within the thirty-day period in the court to which appeal is taken, is a failure to comply with a mandatory jurisdictional requirement essential to the perfecting of the appeal. (Emphasis added).

See also Hickey v. Ohio State Medical Board (Jun. 12, 1986), Cuyahoga App. 50520, unreported; Wilson v. Ohio State Racing Commission (Jul. 25, 1986), Pickaway C.P. 85-CI-321, unreported.

Thus, numerous courts have held that filing a notice of appeal with an agency or Board, within the time prescribed by statute, is mandatory to vest a court with jurisdiction to hear the case on its merits.

To be considered "filed", a paper must be received by the addressee, and not merely deposited in the mail. In Fulton v. State ex rel. General Motors Corp. (1936), 130 Ohio St. 494, a claimant deposited his claim in the mail the day before the filing deadline, but the claim reached the addressee on the day

following the filing deadline. The claimant argued that it had filed its claim by depositing it in the mail before the filing deadline. The Supreme Court stated in its syllabus:

1. The term "filed" employed in Section 710-98a, General Code, requires actual delivery . . .
2. The depositing of a preference claim in the mail properly addressed . . . mailed before but delivered after the expiration of the time limit prescribed by Section 710-98a, General Code, does not constitute a filing under the statute.

The United States Supreme Court has also interpreted "filing" as receipt of a document , and not merely mailing of the document. "A paper is filed when it is delivered to the proper official and by him received and filed." United States v. Lombardo (1916), 241 U.S. 73.

The Summit County Court of Appeals has held that depositing of a notice of appeal in the U.S. mail is not the equivalent of filing the notice of appeal with the agency whose order is being appealed. Townsend v. Bd. of Building Appeals (1976), 49 Ohio App. 402.

Failure to file within the time limits specified by R.C. 119.12 is a jurisdictional defect which requires the Court to dismiss the action without consideration of its merits. Appellant failed to perfect his appeal as required by the statute because he filed his notice of appeal with the State Medical Board nineteen days after the board's order was mailed. Appellant's failure to properly perfect his appeal is a jurisdictional defect that requires this Court to dismiss this appeal without consideration of its merits.

CONCLUSION

The appellate procedure of R.C. 119.12 is clear and unambiguous. The courts have spelled out in detail what constitutes timely filing of a notice of appeal. It is Appellee's contention that, pursuant to the statute and case law, Appellant herein failed to perfect his appeal within fifteen days of the mailing of the order by the State Medical Board of Ohio as required by R.C. 119.12, that such failure is a jurisdictional defect, and that such defect requires this Court to dismiss this action without any consideration of its merits. Therefore, Appellee respectfully requests this court to dismiss Appellant's appeal without any consideration of its merits.

Respectfully submitted,

ANTHONY J. CELEBREZZE, JR.
Attorney General

Mary Joseph Maxwell
MARY JOSEPH MAXWELL
Assistant Attorney General
State Office Tower, 10th Floor
Columbus, Ohio 43266-0410
(614) 466-2980

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion to Dismiss has been sent by regular U.S. mail this 31st day of July to: E. Winther McCroom, 402 Legal Arts Centre Youngstown, Ohio 44503.

Mary Joseph Maxwell
MARY JOSEPH MAXWELL
Assistant Attorney General

MD

STATE OF OHIO
MAHONING COUNTY, }

SS:

IN THE COURT OF COMMON PLEAS

SEP 2 9 55 AM '86
CASE NO. 86-CV-1346

ANTIDOTE VIVANT
SEPTEMBER 3, 1986

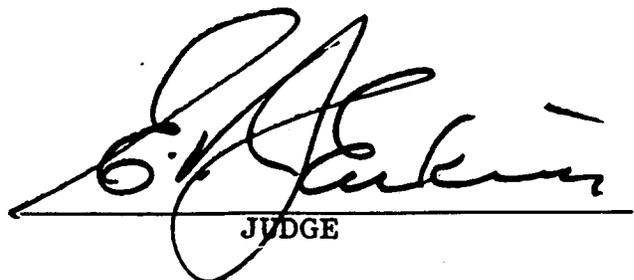
EDWARD L. MC IVER M.D.
PLAINTIFF
VS
THE STATE OF OHIO,
THE STATE MEDICAL BOARD
DEFENDANT

JUDGMENT ENTRY

THIS DAY CAME ON FOR CONSIDERATION, THE MATTER OF PLAINTIFF
APPELLANT MC IVER'S MOTION FOR RECONSIDERATION OF REQUEST FOR STAY
OF EXECUTION. THE COURT BEING FULLY ADVISED IN THE PREMISES, FINDS;
1. THERE IS NO UNUSUAL HARDSHIP TO PLAINTIFF APPELLANT IN ITS
ORDER AND
2. THAT THE HEALTH, WELFARE, AND SAFETY OF THE STATE OF OHIO
ARE THREATENED BY SUSPENSIONS OF THE ORDER OF THE BOARD.
MOTION IS THEREFORE OVERRULED.

Clerk: Copy to all counsel or unrepresented party. (9/3 Done cc)

ATTORNEY GENERAL'S OFFICE
SEP 08 1986
ADMINISTRATIVE AGENCIES SECTION


JUDGE

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ANTHONY J. ...

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FILED
CLERK OF COURT

IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

Case No. _____

DR. EDWARD L. McIVER
Appellant
vs.
STATE OF OHIO
THE STATE MEDICAL BOARD
Appellee

No 86 CV 1346

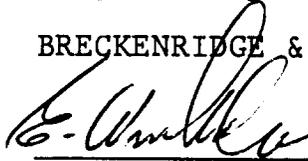
NOTICE OF APPEAL
(O.R.C. 119.12)
FROM THE OHIO STATE
MEDICAL BOARD

1. Now comes DR. EDWARD L. McIVER, M.D., by and through his attorney, E. Winther McCroom, and gives notice of his appeal from the Order of the Ohio State Medical Board June 11, 1986, adopting and approving the Report and Recommendation of the Hearing Member, Dr. Leonard Lovshin, to the Common Pleas Court of Mahoning County. Said order was mailed to Appellant on June 25, 1986.
2. Said Order is against the manifest weight of the evidence.
3. Said Order is contrary to law in that it is not based upon reliable, probative and substantial evidence.

4. Said Order was the result of a hearing which constituted selective and discriminatory enforcement of applicable section of the Ohio Revised Code.
5. The final Order constituted a denial of Appellant's constitutional rights to due process of law and the equal protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution.

Respectfully submitted,

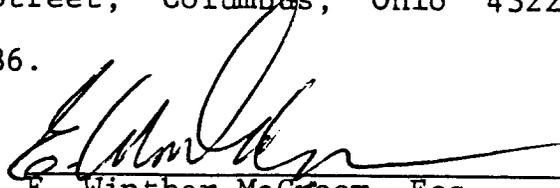
BRECKENRIDGE & McCROOM



E. Winther McCroom, Esq.
402 Legal Arts Centre
Youngstown, Ohio 44503
(216) 747-1163

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal has been mailed to the State of Ohio, The State Medical Board, Suite 510, 65 South Front Street, Columbus, Ohio 43226-0315, this 10th day of July, 1986.



E. Winther McCroom, Esq.

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STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43226-0315

June 25, 1986

Edward L. McIver, M.D.
8649 Hunters Trail, S.E.
Warren, Ohio 44484

Dear Doctor McIver:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Leonard L. Lovshin, M.D., Hearing Member, State Medical Board of Ohio; a certified copy of the Motion by the State Medical Board, meeting in regular session on June 11, 1986, approving and confirming said Report and Recommendation as the Findings and Order of the State Medical Board.

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

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

THE STATE MEDICAL BOARD OF OHIO

Henry G. Cramblett

Henry G. Cramblett, M.D.
Secretary

HGC:em

Enclosures

CERTIFIED MAIL NO. P 569 364 869
RETURN RECEIPT REQUESTED

cc: E. Winther McCroom, Esq.
Suite 402, Legal Arts Centre
Youngstown, OH. 44503

CERTIFIED MAIL NO. P 569 364 870
RETURN RECEIPT REQUESTED

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43226-0315

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Leonard L. Lovshin, M.D., Hearing Member, State Medical Board of Ohio; and the attached copy of the Motions by the State Medical Board, meeting in regular session on June 11, 1986, approving and confirming said Report and Recommendation as the Findings and Order of the State Medical Board, constitutes a true and complete copy of the Findings and Order of the State Medical Board in the matter of Edward L. McIver, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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

(SEAL)

Henry G. Cramblett by WWS
Henry G. Cramblett, M.D.
Secretary

June 25, 1986
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *
*
EDWARD L. MCIVER, M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 11th day of June, 1986.

Upon the Report and Recommendation of Leonard L. Lovshin, M.D., Hearing Member, in this matter designated by R.C. 119.09, a true copy of which is attached hereto and incorporated herein, which Report and Recommendation was approved and confirmed 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 11th day of June, 1986.

It is hereby ORDERED:

That the license of Edward L. McIver, M.D., be REVOKED, effective immediately, for each of the six violations determined, as well as for all of them collectively.

(SEAL)

Henry G. Cramblett, M.D.
Henry G. Cramblett, M.D.
Secretary

June 25, 1986
Date

STATE OF OHIO
THE STATE MEDICAL BOARD

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MAY -9

REPORT AND RECOMMENDATION
IN THE MATTER OF EDWARD L. MCIVER, M.D.

The matter of Edward L. McIver, M.D., came before me, Leonard L. Lovshin, M.D., Member of the State Medical Board of Ohio, on December 13, 1984, May 15, 1985, and May 16, 1985.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. DATES OF HEARING

December 13, 1984; May 15 & 16, 1985. Deposition of witness Sgt. John Rinko, who did not appear in person at the hearings, was taken on June 4, 1985, upon agreement of the State and the Respondent.

II. BASIS FOR HEARING

- A. By letter of December 7, 1983, the State Medical Board of Ohio notified Dr. Edward L. McIver, M.D., that it proposed to take disciplinary action against his license to practice medicine and surgery in the State of Ohio.
- B. In response, Dr. McIver petitioned the Board for a hearing concerning the charges outlined in the December 7, 1983 letter.
- C. Prior to the hearing, allegations 5, 6, 9 and 10 were dismissed. Therefore, this case came to be heard and was limited to the seven remaining allegations outlined in the December 7, 1983 citation letter.

III. APPEARANCE OF COUNSEL

- A. On behalf of the State of Ohio: Anthony J. Celebreeze, Attorney General, by Mary Joseph Maxwell, Assistant Attorney General.
- B. On behalf of the Respondent: E. Winther McCroom, Esq.

IV. TESTIMONY HEARD:

A. Presented by the State:

1. Leon Baker, Bureau of Criminal Identification
2. Robert Patton, Youngstown Police Department
3. Beverly Yale, Esq., State Medical Board of Ohio
4. John Rohal, Administrative Assistant, State Medical Board of Ohio
5. Timothy J. Benedict, Pharmacy Consultant, Ohio State Board of Pharmacy
6. William Walker, Mahoning County Sheriff's Department
7. Dean Worsencroft, Pharmacist, Oak Hill Pharmacy
8. Stephen Greene, Bureau of Criminal Identification
9. James E. Tudor, Chief Investigator, State Board of Pharmacy
10. Juanita Davis, Secretary, Mahoning County Prosecutor's Office
11. Robin Lees, Youngstown Police Department
12. George Pavlich, Youngstown Police Department
13. William Machuga, Clerk of Courts' Office, Mahoning County
14. Thomas Shane, Investigator, State Medical Board of Ohio
15. Robert Jones, Youngstown Police Department
16. Jay Hunter, Investigator, State Medical Board of Ohio
17. Edward L. McIver, M.D.
18. John C. Albert, Assistant Attorney General

B. Presented by the Respondent:

1. James E. Tudor, Chief Investigator, Ohio State Board of Pharmacy

V. REFUSAL OF RESPONDENT TO TESTIFY

The Respondent, who was present during the hearings, was called as on cross-examination by the State on May 16, 1985. In response to each inquiry, the Respondent refused to give oral testimony, citing his rights under the Fifth Admendment to the Constitution of the United States.

VI. EXHIBITS EXAMINED

A. Presented by the State:

Exhibit 1: Subpoena Duces Tecum issued by the Medical Board to Dr. McIver in January, 1983

Exhibit 2: Investigatory Supboena Duces Tecum issued by the Medical Board to Dr. McIver in January, 1983, requesting patient records for 296 named individuals (SEALED TO PREVENT PUBLIC DISCLOSURE OF PATIENT NAMES)

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- Exhibit 3: Letter from Dr. McIver to the State Medical Board dated January 24, 1983, in response to the subpoenas
- Exhibit 4: December 7, 1983 citation letter from the State Medical Board of Ohio to Edward L. McIver, M.D., and receipt for certified mail
- Exhibit 5: January 3, 1984 letter from Dr. McIver's attorney, E. Winther McCroom, requesting a hearing
- Exhibit 6: January 10, 1984 letter from the Medical Board setting a hearing in this matter and then postponing that hearing pursuant to Section 119.09, Ohio Revised Code
- Exhibit 7: May 25, 1984 letter from the Medical Board scheduling Dr. McIver's hearing for July 25, 1984
- Exhibit 8: Motion for Pretrial Conference and Continuance and Memorandum in Support filed on behalf of the State on June 29, 1984
- Exhibit 9: July 19, 1984 Order and Entry of the Hearing Officer granting the State's motion for pretrial conference
- Exhibit 10: October 23, 1984 Order and Entry of the Hearing Officer scheduling Dr. McIver's hearing for December 13, 1984 and December 14, 1984
- Exhibit 11: October 26, 1984 letter from the State Medical Board scheduling Dr. McIver's hearing for December 13, 1984 and December 14, 1984
- Exhibit 12: Exhibit envelope containing a Diet Plan Guidesheet, one prescription for Preludin (State's Exhibit 12B) and a paid receipt (State's Exhibit 12C)
- Exhibit 13: Exhibit envelope containing one prescription for Preludin (State's Exhibit 13A)
- Exhibit 14: Sheet of paper disclosing evidence handling sequence
- Exhibit 15: Photocopies of seventy (70) prescriptions

Exhibit 15A: Large manila envelope containing prescriptions

Exhibit 16: Blue and white box containing prescription pads (SEALED TO PREVENT PUBLIC DISCLOSURE OF PATIENT NAMES)

Exhibit 17A: Prescriptions (SEALED TO PREVENT PUBLIC DISCLOSURE OF PATIENT NAMES)

Exhibit 17B: Prescriptions (SEALED TO PREVENT PUBLIC DISCLOSURE OF PATIENT NAMES)

Exhibit 18: Subpoena for John Rinko

Exhibit 19: May 13, 1985 letter from Sgt. John Rinko requesting that his testimony be taken by deposition due to his health problems

Exhibit 20: Computer printouts (SEALED TO PREVENT PUBLIC DISCLOSURE OF PATIENT NAMES)

Exhibit 21: Computer printouts (SEALED TO PREVENT PUBLIC DISCLOSURE OF PATIENT NAMES)

B. Presented by the Respondent:

Exhibits A & B: Photographs of an elevator (photocopy substituted for original photographs)

Exhibit C: Photocopy of a prescription

Exhibit D: Copy of a January 17, 1984 letter from Dr. Lawrence Pass, Chairman of the Department of Medicine, Youngstown Hospital Association, to Dr. McIver

Exhibit E: Copy of March 20, 1984 letter from Dr. William Bunn to Dr. McIver

Exhibit F: Copy of March 9, 1984 letter from Dr. McIver to Dr. Pass

Exhibit G: Copy of medical report prepared by Dr. Nagpaul concerning his physical examination of Dr. McIver

Exhibit H: Official records of Mahoning County Prosecutor's Office documenting evidence handling

Exhibit I: Curriculum vitae of Dr. Edward L. McIver

Exhibit J: Partial transcript of testimony given by Timothy Benedict

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C. Presented Jointly by the Parties:

Joint Exhibit 1: May 15, 1985 subpoena issued to James Tudor,
Chief Investigator, State Pharmacy Board

VII. CLOSING BRIEFS

- A. Although the record was held open for a specified period of time to allow for the submission of written closing arguments, closing briefs were not filed by either party.

FINDINGS OF FACT

1. On or about February 18, 1982, Mr. Hureara L. Baker, an employee of the Bureau of Criminal Identification, did secure at the office of Edward L. McIver, M.D., a prescription for 30 Preludin 75 mg. endurets under the assumed name of William Trumbull.
2. Before acquiring said prescription, Agent Baker, while at the office of Edward L. McIver, M.D., was required to sign in and prepay a fee of about \$35. Agent Baker was seen by an office assistant who measured his height, weight, and blood pressure. He was then seen by Dr. McIver, who checked his throat and inquired as to existence of any ailments. Upon receiving a negative response from Agent Baker, Dr. McIver recommended a diet plan and told him he could return in 30 days.
3. At the time of his visit Agent Baker weighed about 152 pounds and was 6'2" tall.
4. At the time of his visit Agent Baker observed presigned prescriptions being typed. Said prescriptions were then collected and distributed to various individuals in the office whose names were called.
5. On or about March 17, 1982, Agent Baker did secure at the office of Edward L. McIver, M.D., a prescription for 30 Preludin 75 mg. endurets under the assumed name of William Trumbull.
6. Before acquiring said prescription, while at the office of Edward L. McIver, M.D., Agent Baker was required to sign in, prepay a fee of about \$30, and fill out a medical background questionnaire. Agent Baker was seen by an office assistant who measured his height, weight, and blood pressure. He was then seen by Dr. McIver who checked his throat, reviewed the medical questionnaire and inquired as to the existence of any ailments. Upon receiving a negative response from Agent Baker, Dr. McIver led him to the reception area where he was provided with a pretyped prescription. Dr. McIver did not inquire about the diet plan or any weight loss.

Findings of Fact #1 through #6 are established through the testimony of Mr. Hureara L. Baker (Transcript 1, Pages 15 to 64) and Exhibits 12, 12B, 12C, 13, and 13A. Mr. Baker's testimony went uncontradicted by Dr. McIver.

7. On or about January 22, 1982, Mr. William Walker, a deputy Mahoning County Sheriff, did secure at the office of Edward L. McIver, M.D., a prescription for a Schedule II controlled substance under the assumed name of William Trumbull.
8. Before acquiring said prescription, Deputy Walker, while at the office of Edward L. McIver, M.D., was required to sign in. When his number was called, Deputy Walker paid a fee of about \$35 and, in turn, received the prescription.
9. At the time of his visit Deputy Walker did not see Dr. McIver and was not otherwise examined.
10. Deputy Walker had not previously visited Dr. McIver's office and did not have an appointment.
11. In February 1982, Deputy Walker did secure at the office of Edward L. McIver, M.D., a prescription for Preludin.
12. Before acquiring said prescription, Deputy Walker, while at Dr. McIver's office, was required to sign in. When his number was called, Deputy Walker paid a fee of about \$35 and received the prescription for Preludin.
13. At the time of his visit Deputy Walker did not see Dr. McIver and was not otherwise examined.
14. Deputy Walker did not have an appointment.

Findings of Fact #7 through #14 are established through the testimony of Mr. William Walker (Transcript 2, Pages 6 through 30). Although cross-examination revealed some loss of recollection with respect to the exact dates involved, Mr. Walker's testimony was unrebutted as to his having made two distinct visits to Dr. McIver's office wherein the same basic procedures were followed. Mr. Walker's testimony as to Findings of Fact #10, #11, #13, and #14 was unchallenged.

15. On or about April 13, 1982, one Timothy Smith did present 50 prescriptions for Quaalude, 30 tablets each, and 20 prescriptions for Ritalin, 60 mg. tablets each, to the Oak Hill Pharmacy, Youngstown, Ohio. Said prescriptions were imprinted with the name of, and signed by, Edward L. McIver, M.D.
16. Prior to presentation of said 70 prescriptions, Mr. Smith on April 12, 1982, had contacted the Oak Hill Pharmacy and requested some 7,000 pills.

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17. Dr. McIver maintained no patient records for the 70 patients whose names appeared on said 70 prescriptions for Quaalude or Ritalin.

Findings of Fact #15 and #16 are established through the testimony of Mr. Tim Benedict (Transcript 1, pages 100 through 135), Mr. Dean Worsencroft (Transcript 2, Pages 31 through 82), and Mr. John Rinko (June 4, 1985 Deposition).

Although custody of the prescriptions involved was questioned by Dr. McIver, testimony established a reasonable chain from April 13, 1982 to the time of hearing, said prescriptions (or copies) being maintained within the control of the Youngstown Police Department, the State Board of Pharmacy, the Mahoning County Prosecutor's Office, the Bureau of Criminal Investigation, and the State Medical Board. No allegation was made that the evidence had been altered. (Exhibits 15 and 15A)

Although no individual testified as to having seen Dr. McIver actually sign the prescriptions involved, Mr. Worsencroft's testimony as to his familiarity with Dr. McIver's signature established to the satisfaction of this hearing officer that they had, in fact, been signed by Dr. McIver.

Finding of Fact #17 was established through the testimony of Mr. John Rinko (June 4, 1985 Deposition) and was admitted to by Dr. McIver. (Exhibit 3)

18. On or about December 10, 1982, Strike Force Officers of the Youngstown Police Department seized approximately 2,900 prescription blanks printed with the name of Edward L. McIver, M.D., at the offices of Mr. Tim O'Neill, said offices being in a separate building from those of Dr. McIver. Some 2,000 of said prescription blanks had been presigned in the name of Edward L. McIver, M.D. At the time said prescriptions were seized, Alice O'Neill, the wife of Mr. Tim O'Neill, was completing pre-signed prescriptions on a typewriter.

Finding of Fact #18 was established through the testimony of Mr. Robin Lees (Transcript 2, Pages 127 through 157), Mr. Robert Jones (Transcript 3, Pages 5 through 14) and Mr. Robert Patton (Transcript 1, Pages 64 through 74), as well as Exhibit 16.

19. In response to a State Medical Board Subpoena of January 11, 1983, Edward L. McIver, M.D., did admit to a failure to maintain patient records for some patients.

Finding of Fact #19 is established by Exhibit #3.

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20. Edward L. McIver did issue or cause to be issued 13,314 prescriptions for controlled substances in the names of 6,753 patients for a total of 390,177 dosage units on the dates and in the amounts enumerated in Exhibits 4 and 21.

Finding of Fact #20 is established by the testimony of Mr. Thomas Shane (Transcript 2, Pages 175 through 196) and Mr. John Albert (Transcript 3, Pages 40 through 102). Exhibit 21 establishes a patient by patient breakdown as well as control totals for the prescriptions admitted as Exhibits 17A and 17B.

21. Edward L. McIver, M.D., did issue or cause to be issued prescriptions for a total of 390,177 dosage units of controlled substances within an approximate 2 year period, including:

Percodan	80,779 dosage units
Preludin 75 mg.	159,483 dosage units
Quaalude 300 mg.	64,744 dosage units
Ritalin 20 mg.	13,020 dosage units
Talwin 50 mg.	43,916 dosage units

Finding of Fact #21 is established by the testimony of Mr. Thomas Shane (Transcript 2, Pages 175 through 196) and Mr. John Albert (Transcript 3, Pages 40 through 102). The computer generated list of drug totals incorporated in allegation 13 of the December 7, 1983 citation letter (Exhibit 4) establishes a breakdown of the number of dosage units by drug for the prescriptions admitted as Exhibits 17A and 17B.

CONCLUSIONS

Findings of Fact #1 through #14, above, dramatically illustrate an office operation maintained by Dr. Edward L. McIver which would permit virtually anyone to walk in off the street and obtain Schedule II controlled substances with little or no medical examination. The cursory or non-existent medical examination, the lack of lab tests, the failure to inquire about adherence to even a skimpy diet plan, and the willingness to provide diet drugs to a thin person having no patient complaint bring home the transparency of the situation. In the case of Deputy Walker's two visits to Dr. McIver's office even the pretense of legitimacy is lacking.

Violation 1

Dr. McIver's acts or omissions as set forth in Findings of Fact #1 through #6 above constitute a violation of divisions (B)(2), (B)(6), and (B)(17) of Section 4731.22, Revised Code.

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Violation 2

Dr. McIver's acts or omissions as set forth in Findings of Fact #7 through #14 above constitute a violation of divisions (B)(1), (B)(2), (B)(6), (B)(8) and (B)(17) of Section 4731.22, Revised Code.

*

Findings of Facts #15, #16 and #17, above, outline a situation that goes completely beyond the ordinary practice of medicine.

The initial contact to first ascertain the number of pills available, the presentation of prescriptions by one person for 70 alleged patients, and the non-existence of records for those patients cannot be explained in any legitimate fashion. Although the complete depth of Dr. McIver's premeditated participation is not ascertainable by this hearing officer, his culpability is obvious. Each of the seventy prescriptions (totaling 2700 dosage units of Schedule II controlled substances) was found to bear his signature. Both upon subpoena and warrant, no corresponding patient records could be produced to explain the situation.

Violation 3

Dr. McIver's acts or omissions in Findings of Fact #15, #16, and #17 constitute a violation of divisions (B)(2), (B)(6), and (B)(17) of Section 4731.22, Revised Code.

*

Finding of Fact #18, above, describes nothing more than a "boiler room operation" to generate phony prescriptions for profit. Once again, the extent of Dr. McIver's involvement is unclear; yet based upon the evidence, Dr. McIver must be held responsible when thousands of prescriptions bearing at least a facsimile of his signature are found to be available for an illicit operation of such magnitude.

Violation 4

Dr. McIver's acts or omissions in Finding of Fact #18 constitute a violation of divisions (B)(1), (B)(2), (B)(3), (B)(6) and (B)(16) (now (B)(17)) of Section 4731.22, Revised Code.

*

Finding of Fact #19, above, concerning the lack of patient records constitute an outright admission by Dr. McIver of his failure to maintain minimal standards of practice.

Violation 5

Dr. McIver's acts or omissions in Finding of Fact #19 constitute a violation of divisions (B)(2), (B)(3), (B)(6), (B)(16) (now (B)(17)), and (B)(17) of Section 4731.22, Revised Code.

*

EXCERPT FROM THE MINUTES OF JUNE 11, 1986

REPORT AND RECOMMENDATION IN THE MATTER OF EDWARD L. MCIVER, M.D.

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

ROLL CALL:	Dr. Cramblett	- aye
	Dr. Lancione	- aye
	Dr. Buchan	- aye
	Dr. Lovshin	- aye
	Ms. Rolfes	- aye
	Dr. Rothman	- nay
	Dr. O'Day	- aye
	Dr. Stephens	- aye
	Mr. Johnston	- aye

.....

DR. BUCHAN MOVED TO APPROVE AND CONFIRM DR. LOVSHIN'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER IN THE MATTER OF EDWARD L. MCIVER, M.D. DR. O'DAY SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Lancione	- aye
	Dr. Buchan	- aye
	Dr. Lovshin	- abstain
	Ms. Rolfes	- aye
	Dr. Rothman	- abstain
	Dr. O'Day	- aye
	Dr. Stephens	- aye
	Mr. Johnston	- abstain
	Dr. Rauch	- aye

The motion carried.

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

December 7, 1983

Edward L McIver, M.D.
2023 Belmont Avenue
Youngstown, OH 44502

Dear Doctor McIver:

In accordance with Chapter 119., Ohio Revised Code, and under authority of Section 4731.22, Ohio Revised Code, this is to advise you that the State Medical Board of Ohio hereby proposes to limit, reprimand, revoke, suspend, place on probation, refuse to register or refuse to reinstate your certificate to practice medicine and surgery in the State of Ohio for one or more of the following reasons:

1. On or about February 18, 1982, BCI Agent Hureara L. Baker entered your office located at 420 Oak Hill Avenue, Room 305, Youngstown, Ohio. Your receptionist asked Agent Baker for his name and address to which he replied William Trumbull, 157 South Harris. Agent Baker paid the receptionist thirty-five dollars (\$35) for the doctor's fee. After a short time, Agent Baker was taken into the doctor's examination room by an unidentified white female who proceeded to take and record Agent Baker's weight and height at 152 pounds and 74". She then took Agent Baker's blood pressure and advised him that the doctor would be in.

Shortly you entered, identifying yourself as Dr. McIver. You listened to Agent Baker's heart with a stethoscope and felt his throat, asking him if the pressure you applied to his throat hurt. Agent Baker replied affirmatively. You then stated you were putting him on a diet plan and gave him a sheet of instructions, telling him he could get his prescription out front at the receptionist's desk. You told him to return in one month.

Agent Baker went to the receptionist's desk and was given one prescription in the name of William Trumbull for thirty (30) Preludin 75 mg. Endurets. The prescription was issued under your license to practice medicine in Ohio, bearing your name and signature.

2. On or about March 17, 1982, Agent Baker returned to your office located at 420 Oak Hill Avenue, Room 305, Youngstown, Ohio. Agent Baker signed in at the receptionist's window as William Trumbull. When called to the window, Agent Baker stated that he had been at the doctor's office before. The receptionist asked Agent Baker for thirty dollars (\$30) for the doctor's fee. Agent Baker paid the receptionist and was asked to fill out a personal history questionnaire.

STATE OF OHIO
THE STATE MEDICAL BOARD

December 7, 1983

Edward L. McIver, M.D.
Page Two

An unidentified black female took Agent Baker to an examination room where he was weighed and his blood pressure was taken. You then entered, began to question Agent Baker about his history questionnaire and proceeded to check his throat. Agent Baker stated his throat was not sore. You agreed and asked Agent Baker to follow you to the receptionist desk where Agent Baker was handed a prescription for thirty (30) unit doses of Preludin 75 mg. Endurets in the name of William Trumbull, 157 South Harris. After receiving the prescription, Agent Baker left. The prescription was issued under your license to practice medicine in Ohio, bearing your name and signature.

3. On or about January 22, 1982, Deputy William Walker of the Mahoning County Sheriff's Department entered your office located at 420 Oak Hill Avenue, Room 305, Youngstown, Ohio. Deputy Walker signed his name in the book at the receptionist's desk for an appointment at which time he was asked for his name and address by the receptionist, Shelah McDaniels. The receptionist proceeded to type William Walker, 416 Dignum, on a prescription and asked Deputy Walker for thirty-five dollars (\$35), which he paid. Miss McDaniels then handed Deputy Walker the prescription for thirty (30) Preludin 75 mg. Endurets. Deputy Walker then left the office. The prescription was issued under your license to practice medicine in Ohio, bearing your name and signature.
4. On or about February 4, 1982, Deputy William Walker of the Mahoning County Sheriff's Department again entered your office located at 420 Oak Hill Avenue, Room 305, Youngstown, Ohio. He proceeded to the receptionist's desk where he was asked if he had ever been there before. Deputy Walker replied affirmatively and gave his name and address as William Tremble, 157 South Ayers, Youngstown, Ohio. The receptionist, Shelah McDaniels then asked Deputy Walker for thirty-five dollars (\$35) which he gave her. She then handed him a prescription in the name of William Tremble, 157 South Ayers for thirty (30) Preludin 75 mg. Endurets. Deputy Walker left after receiving the prescription. The prescription was issued under your license to practice medicine in Ohio, bearing your name and signature.
5. On or about February 18, 1982, Police Informant 1 entered your office located at 420 Oak Hill Avenue, Room 305, Youngstown, Ohio. You proceeded to check his blood pressure and weight. An unidentified male then gave Police Informant 1 a prescription for thirty (30) Preludin 75 mg. Endurets. The prescription was issued under your license to practice medicine in Ohio, bearing your name and signature.
6. On or about February 24, 1982, Deputy Bill Kuzniak of the Mahoning County Sheriff's Department accompanied Police Informant 2 to your offices located at 420 Oak Hill Avenue, Youngstown, Ohio. Police Informant 2 was given one hundred and seventy-five dollars (\$175) in marked U.S. currency to use to purchase prescriptions in the names of five (5) fictitious persons.

STATE OF OHIO
THE STATE MEDICAL BOARD

Edward L. McIver, M.D.
Page Three

December 7, 1983

Police Informant 2 entered your offices and returned approximately fifteen (15) minutes later with four (4) prescriptions, each for thirty (30) Preludin 75 mg. Endurets. Police Informant 2 also handed Deputy Kuzniak a bottle containing 30 Preludin 75 mg. Endurets for Marian Oliver, one of the fictitious names, which he received from the pharmacy when having that prescription filled. The other four (4) fictitious names were: Leotha Ellis, Clara Jackson, Beatrice Pearlman and Roseann Patterson. These prescriptions were issued under your license to practice medicine in Ohio, bearing your name and signature.

7. On or about April 13, 1982, at approximately 9:45 a.m., Timothy Smith of 918 Fountain Avenue, Troy, Ohio, entered your offices at 420 Oak Hill Avenue, Room 305, Youngstown, Ohio. At approximately 11:00 a.m., he left your offices with a total of seventy (70) prescriptions which were under your signature and for the controlled substances Quaalude 300 mg and/or Ritalin 20 mg. These prescriptions were issued under your license to practice medicine in Ohio, bearing your name and signature.

On or about April 22, 1982, the Youngstown Police Department executed a search warrant on your office located at 420 Oak Hill Avenue, Room 305, Youngstown, Ohio, for the medical and/or patient records for the persons listed in the seventy (70) prescriptions given to Timothy Smith. The search produced no medical and/or patient records relating to the persons named on said seventy (70) prescriptions.

8. On or about December 10, 1982, Strike Force Officers of the Youngstown Police Department served a search warrant at 2023 Belmont Avenue, Room 10, Youngstown, Ohio. The officers seized approximately two thousand nine hundred (2,900) of your prescriptions. Approximately two thousand (2,000) of these prescriptions were pre-signed in your name. The officers found Alice Marie O'Neill typing a prescription in the name of James Bohannon, dated December 10, 1982, on one of your prescription blanks, bearing your name and signature. Also found were nine (9) prescriptions on Alice O'Neill's desk, typed in various names, all signed in your name. On a separate sheet of paper there was a list of names and addresses corresponding to these prescriptions. Also seized was a ledger book containing the names of various people buying prescriptions, the dates they were sold, the names they were sold under and the drugs and amounts involved. These people had been sold or issued prescriptions under your license to practice medicine in Ohio, bearing your name and signature.
9. For approximately a year and one-half, Police Informant 3 came to your offices, located at 420 Oak Hill Avenue, Room 305, Youngstown, Ohio, and 318 Fifth Avenue, Youngstown, Ohio, for various treatments. At no time during any of these visits

STATE OF OHIO
THE STATE MEDICAL BOARD

Edward L. McIver, M.D.
Page Four

December 7, 1983

was Police Informant 3 seen by you, Dr. McIver. He was seen by an unidentified black male who represented himself as Dr. McIver. Police Informant 3 was given prescriptions signed by you or caused to be signed by you and paid a doctor's fee for these visits. These prescriptions were issued under your license to practice medicine in Ohio, bearing your name and signature.

10. On or about January 19, 1983, Officers Patton and Sylvester of the Youngstown Police Department were at Oak Hill Pharmacy. The officers observed five (5) subjects enter the pharmacy to have prescriptions for controlled substances filled in their names, from you. The subjects were Willard Scott, Bennie W. Macon, Gerald L. Bankhead, Charles Lee Carter and John H. Miller. When these subjects were asked if they had seen you or Clifford Thomas when they received their prescriptions, all but John Miller stated they had seen only Clifford Thomas, not you. John Miller stated that he did see you to get his prescription. These prescriptions were issued under your license to practice medicine in Ohio, bearing your name and signature.
11. In response to an Ohio State Medical Board Investigatory Subpoena Duces Tecum, issued January 11, 1983, you admitted that some seventy-odd patient records which were requested in the subpoena were not in your possession and did not exist. These were some of the same patient records which were the subject of the search warrant executed by the Youngstown Police Department on or about April 22, 1982. You have signed and/or caused to be signed in your name prescriptions for controlled substances for these patients and have now admitted that their medical records are not in your possession and do not exist. All the prescriptions were issued under your license to practice medicine in Ohio, bearing your name and signature.

The medical records of a sample of approximately two hundred and ninety-seven (297) of the persons to whom these prescriptions were issued were subpoenaed on January 11, 1983. In your reply you admitted that some of the records do not exist and refused to produce the remaining records or verify their existence.

Such acts and/or events listed in paragraphs 1 through 11 above are hereby alleged to constitute grounds to limit, revoke, suspend, refuse to register, refuse to reinstate, reprimand or place on probation your certificate to practice medicine in Ohio under authority of Ohio Revised Code, Section 4731.22.

Such acts and/or events listed in paragraphs 3, 4, 6, 7, 8, 9, 10 and 11 constitute a violation of Ohio Revised Code Section 4731.22(B)(1) to wit: permitting one's name or one's certificate of registration to be used by a person, group or corporation when the individual concerned is not actually directing the treatment given.

STATE OF OHIO
THE STATE MEDICAL BOARD

Edward L. McIver, M.D.
Page Five

December 7, 1983

Such acts and/or events listed in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 constitute violations of Ohio Revised Code Section 4731.22(B)(2) to wit: failure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease.

Such acts and/or events listed in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 constitute violations of Ohio Revised Code Section 4731.22(B)(3) to wit: selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes or conviction of a violation of any federal or state law regulating the possession, distribution, or use of any drug.

Such acts and/or events listed in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 constitute violations of Ohio Revised Code Section 4731.22(B)(6) to wit: a departure from, or the failure to conform to, minimal standards of care of similiar practitioners under the same or similiar circumstances, whether or not actual injury to a patient is established.

Such acts and/or events listed in paragraphs 1, 2, 3, 4, 5, 6, 7, 9 and 11 constitute violations of Ohio Revised Code Section 4731.22(B)(8), effective prior to August 27, 1982, to wit: knowingly maintaining a professional connection or association with a person who is in violation of this chapter or rules of the board or with a person who knowingly aids, assists, procures, or advises an unlicensed person to practice medicine contrary to this chapter or rules of the board.

Such acts and/or events listed in paragraphs 8, 9, 10 and 11 constitute violations of Ohio Revised Code Section 4731.22(B)(8), effective August 27, 1982, to wit: the obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice.

Such acts and/or events listed in paragraphs 1, 2, 3, 4, 5, 6, 7, 9 and 11 constitute violations of Ohio Revised Code Section 4731.22(B)(9), effective prior to August 27, 1982, to wit: the obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of treatment.

Such acts and/or events listed in paragraphs 8, 9, 10 and 11 constitute violations of Ohio Revised Code Section 4731.22(B)(16), effective August 27, 1982, to wit: violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any rule promulgated by the board.

Such acts and/or events listed in paragraphs 1, 2, 3, 4, 5, 6, 7, 9 and 11 constitute violations of Ohio Revised Code Section 4731.22(B)(17), effective prior to August 27, 1982, to wit: 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.

STATE OF OHIO
THE STATE MEDICAL BOARD

December 7, 1983

Edward L. McIver, M.D.
Page Six

12. You did prescribe or cause to be prescribed, sign or cause to be signed in your name or issue or cause to be issued under your name and license to practice medicine and surgery in Ohio the controlled substances listed in the attached "Prescription List by Patient Number", on the dates and in the amounts indicated, to the patients or persons who are named in the attached Patient Key (Key to be withheld from public disclosure).

As concerns each of the patients listed in the "Prescription List by Patient Number", the above described acts, in Paragraph 12, individually and/or collectively, constitute "failure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code.

Further, such acts in Paragraph 12 concerning the patients listed in the "Prescription List by Patient Number", and the medical care rendered to such patients, individually and/or collectively, constitute "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.

Further, such acts in Paragraph 12 concerning the patients listed in the "Prescription List by Patient Number" who received during the same time frame more than one schedule II controlled substance, or during the same time frame a central nervous system stimulant and depressant or during the same time frame a narcotic controlled substance and a central nervous system stimulant, constitute "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.

13. During the years indicated you did prescribe or cause to be prescribed, sign or cause to be signed in your name or issue or cause to be issued under your name and license to practice medicine and surgery in Ohio the drugs indicated in the attached listing of "Total Drug Amounts by Drug, Year, and Month," in the total dosage units per month and year indicated therein. Figures presented for substances distributed in liquid oral form indicate total ounces prescribed. Figures presented for substances distributed in injectible form indicate total number of vials, ampules, or other packaging units prescribed.

Your prescribing of the amounts and in the manner alleged in the above Paragraph 13 to the various persons listed in the previously mentioned "Prescription List by Patient Number" constitutes "failure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease," as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code.

Further, such prescribing and manner alleged in the above Paragraph 13, constitutes "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.

STATE OF OHIO
THE STATE MEDICAL BOARD

Edward L. McIver, M.D.
Page Seven

December 7, 1983

Further, such prescribing and manner alleged in the above Paragraph 13, constitutes "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.

Furthermore, under Ohio Revised Code Section 4731.22(D)(2), effective August 27, 1982, if any individual licensed or certified to practice believes that a violation of any provision of Chapter 4731. or 4730., Ohio Revised Code, has occurred, he shall report to the board the information upon which the belief is based. Your acts or the acts you caused listed in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 above, indicate you were and are aware that violations of Chapter 4731. or 4730., Ohio Revised Code, have occurred.

Such belief constitutes a violation of Ohio Revised Code Section 4731.22(B)(17), effective prior to August 27, 1982, (Ohio Revised Code Section 4731.22(B)(16), effective August 27, 1982) to wit: violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter or any rule promulgated by the board.

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

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

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

Please find enclosed applicable Sections of the Ohio Revised Code for your reference.

Very truly yours,

Leonard L. Lovshin M.D.
Leonard L. Lovshin, M.D.
Acting-Secretary

LLL:ls

Enclosures

CERTIFIED MAIL NO. P 354 447 744
RETURN RECEIPT REQUESTED