

STATE OF OHIO
THE STATE MEDICAL BOARD

In The Matter Of :
:
Samson D. Reyes, Jr., M.D. :

ENTRY NUNC PRO TUNC

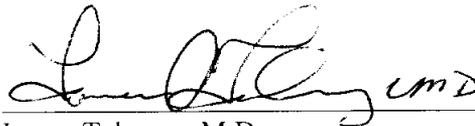
On November 12, 1997, the members of the State Medical Board of Ohio considered a Report and Recommendation in the Matter of Samson Reyes, Jr., M.D., and voted to permanently revoke Dr. Reyes' certificate to practice medicine and surgery in the State of Ohio. That action by the Board was documented in an Entry of Order issued by the Medical Board on that same date, which Entry was subsequently the subject of an unsuccessful appeal by Dr. Reyes.

It has since come to the attention of the undersigned that the November 12, 1997 Entry of Order incorrectly identified the certificate that was the subject of the Medical Board's action as a certificate to practice podiatry rather than as the certificate to practice medicine and surgery (#35-037648) that was originally granted to Dr. Reyes by the Medical Board on August 12, 1974. Dr. Reyes has never held a certificate authorizing him to practice podiatry in the State of Ohio, and it is evident that this mischaracterization was solely the result of a clerical error. Notably, there was never any factual dispute as to the type of license that was the subject of the Medical Board's action when this matter was considered by the Common Pleas Court on appeal, and the Court's September 10, 1999 Final Judgment Entry affirms the Medical Board's permanent revocation of Dr. Reyes' "certificate to practice medicine and surgery." Any concern in this regard was presumably addressed by the parties at the appellate level or was waived by Dr. Reyes.

Wherefore, it is hereby ORDERED that the Entry of Order in the Matter of Samson D. Reyes, Jr., M.D., issued by the State Medical Board of Ohio on November 12, 1997 be and is hereby corrected to read as follows:

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

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



Lance Talmage, M.D.
Secretary

10/22/03
Date

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

SAMSON P. REYES, M.D.

Appellant,

vs.

STATE MEDICAL BOARD OF OHIO

Appellee.

Albers
: **FINAL APPEALABLE ORDER**

: CaseNo. 97CVF-12-10585

: Judge Daniel T. Hogan

:
: **TERMINATION NO. 10**
: *Murphy*
: *9-10-99*

FINAL JUDGMENT ENTRY

On August 30, 1999, this Court rendered a Decision in favor of the Appellee, Ohio State Medical Board. In accordance with that decision, it is hereby ORDERED:

1. The Court finds that the Order of the State Medical Board of Ohio permanently revoking Samson P. Reyes' certificate to practice medicine and surgery in the state of Ohio is supported by reliable probative, and substantial evidence and is in accordance with law. Therefore, the Board's Order is hereby AFFIRMED;
2. The costs of this action shall be assessed to Appellant.

APPROVED:

Daniel T. Hogan, Judge

Douglas E. Graff
Douglas E. Graff, Esq.
Robins, Preston, Beckett
Graff & Gugle
1328 Dublin Road
Columbus, Ohio 43215
614-486-3631

Attorney for Appellant

Rebecca J. Albers
Rebecca J. Albers (0059209)
Assistant Attorney General
Health and Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215
614-466-8600

Attorney for Appellee

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CLERK OF COURTS

HEALTH & HUMAN

SEP 01 1999

SERVICES SECTION

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

SAMSON P. REYES, M.D.]	
]	CASE NO. 97CVF-12-10585
Appellant,]	
]	JUDGE DANIEL T. HOGAN
vs.]	
STATE MEDICAL BOARD OF OHIO,]	
]	
Appellee.]	

OHIO STATE MEDICAL BOARD
SEP 07 1999

DECISION ON ADMINISTRATIVE APPEAL

Rendered this ____ day of August, 1999

DANIEL T. HOGAN, JUDGE

On March 12, 1997, the State Medical Board sent Samson D. Reyes, M.D. ("Appellant") a Notice of Immediate Suspension and Opportunity for Hearing. Upon receipt of that notice, Appellant made a timely request for a hearing. The first date set for the hearing was April 14, 1997. That date was continued at Appellant's request, due to a conflict in scheduling. The second date, May 13, 1997, was continued at Appellee's request, due to the unavailability of the State's witness on that date.

The hearing was then set for July 21, 1997. That date was set on June 1, 1997, after the second continuance was granted. On July 10, 1997, Appellant requested a continuance, because Appellant was scheduled to appear in Belmont County Common Pleas Court. On July 17, 1997, the hearing examiner noted that Appellant had failed to provide a reasonable ground for continuance. She noted that Appellant had

retained counsel who could represent his interests at the hearing. In addition, the hearing examiner presented to Appellant and his counsel the opportunity to keep the record open for Appellant's live testimony, "provided the Belmont County Court releases [Appellant] from confinement, July 21, 1997."¹ Based on the foregoing, the hearing examiner did not grant a continuance.

Appellant moved for reconsideration of that decision in a motion sent July 18th. The hearing examiner noted that Ohio Administrative Code ("OAC") Chapter 4731 holds that a respondent is not personally required to appear, citing OAC 4731-13-01. Further, she noted that a personal appearance is not required where a respondent has authorized counsel to represent him at the hearing, pursuant to the same section. Based on those points, the hearing examiner denied the reconsideration motion.

The hearing went forward on July 21, 1997, although counsel for Appellant again objected to the failure to continue the hearing. The State presented one witness and numerous exhibits. Appellant presented no evidence, and proffered none. Late in the day, counsel for Appellant noted that he wished to call Appellant to the stand to testify. The following discussion then took place:

Mr. Beatty: (counsel for the State): Well, when is he going to appear?

¹ See State's Exhibit 34, second paragraph.

Mr. Graff: (counsel for Appellant): I'll have to check his availability. I cannot give you accurate information on that at this time...I will have to look at the opportunity for him to appear in the future.

Mr. Beatty: How long in the future? Should we give a date certain?

Mr. Graff: I do not have a calendar with me.

Hearing Examiner Early: Well, I'll keep the record open through the rest of the week for you to provide us with—

Mr. Beatty: Some kind of time line.

Hearing Examiner Early: --a time line.

Mr. Graff: I shall do that before the end of the week.

...

Hearing Examiner Early: So by July 25 you will—

Mr. Graff: I'll notify both you and Patrick [Beatty] of the reasonable availability of Dr. Reyes as to dates and times.

Hearing Examiner Early: Okay. If I don't hear anything from you the record will close on Friday, the 25th.

(T. 168-169)
(Emphasis added)

Board Exhibit A, signed by the hearing examiner and dated July 29, 1997, indicated that counsel for Appellant failed to respond by close of business on Friday, July 25th. She held that Appellant had waived the right to present his case in chief.

The evidence presented at the hearing was adequately summarized by the hearing examiner in her Report and Recommendation. She

concluded that Appellant's pleas of guilty to the first three counts of the indictment constituted a judicial finding of guilt of a violation of state law regulating possession, use, or distribution of any drug, as set forth in R.C. 4731.22(B)(3). Combined with the attempted bribery conviction, Appellant was clearly found guilty of a felony, as set forth in R.C. 4731.22(B)(9).

However, the hearing examiner also found that the State failed to present sufficient evidence to support the remaining charges, including the charge that Appellant knowingly gave false testimony with purpose to mislead the Board in the performance of its official function; that he intended to deceive or mislead the Board when he renewed his license for the 1996-1998 biennial registration period, and that his acts, conduct and/or omissions constituted "publishing a false, fraudulent, deceptive, or misleading statement", in violation of R.C.4731.22(B)(5).

The four felony convictions, however, were sufficient to cause the hearing examiner to recommend revocation of Appellant's medical license.

The Board itself met on November 12, 1997. On that date, it voted overwhelmingly to adopt the Report and Recommendation of the Hearing Examiner, and revoked Appellant's license. It is from this Order that Appellant brings the instant appeal.

The standard of review in administrative appeals was recently and succinctly stated by the Ohio Supreme Court in VFW Post 8586 v. Ohio Liquor Control Commission (1998), 83 Ohio St. 3d 79:

In reviewing the...order pursuant to an R.C. 119.12 appeal, a common pleas court is required to affirm if the commission's order is supported by "reliable, probative and substantial evidence and is in accordance with law." In connection with this standard of review, this court has stated that "an agency's findings of fact are presumed to be correct and must be deferred to by a reviewing court unless that court determines that the agency's findings are internally inconsistent, impeached by evidence of a prior inconsistent statement, rest on improper inferences, or are otherwise unsupportable. Ohio Historical Soc. v. State Emp. Relations Bd. (1993), 66 Ohio St. 3d 466, 471...With respect to purely legal questions, however, the court is to exercise independent judgment. Id., at 471...

Id., at 81-82.

Appellant's sole assignment of error is that in denying the requested continuance, the Board deprived Appellant of his due process rights. This Court disagrees, and affirms the Board's Order.

There are, in essence, two parts to this analysis. First, was due process violated because Appellant was not present to hear the evidence presented against him? Second, were Appellant's due process rights violated because Appellant did not testify?

The second question is easily answered. Appellant was given notice and opportunity to be heard, and simply failed to provide the hearing examiner of any date or time in which he could have testified.

This failure, after the hearing examiner left the record open, clearly falls on Appellant's own shoulders and no one else's. Accordingly, Appellant's claim that he was "denied the opportunity to participate in the defense of the charges against him"² is demonstrably false.

The first question raises the question of what due process requires when a respondent in an administrative hearing cannot attend that hearing. The parties agree that due process requires the right to notice and an opportunity to be heard, and that these rights must be granted in a meaningful way where a protected liberty interest is sought to be infringed by the state. State v. Hochhausler (1996), 76 Ohio St. 3d 455. The parties also agree that the concept of due process is such that courts must examine, based on the circumstances of a particular case, whether or not a deprivation has occurred.³

When reduced to its essentials, Appellant is arguing that he had a constitutional right to be personally present at the hearing, notwithstanding that he had counsel present, and notwithstanding that the hearing was left open for counsel to contact the hearing officer, something he never did.⁴ This Court disagrees.

² Brief of Appellant, at 1.

³ Appellant's brief, at 6-7; Appellee's brief, at 8.

⁴ This Court notes that counsel was to contact the hearing examiner by July 25th to set a time line for Appellant's testimony. Nothing in the hearing examiner's statement precluded Appellant from setting a date beyond July 25th to give his testimony. Further, nothing precluded Appellant from presenting a written statement, or, for that matter, a videotaped one. Thus, in failing to contact the hearing examiner within the requisite amount of time, Appellant waived any right he had to testify.

Both parties cite Mathews v. Eldridge (1976), 424 U.S. 319 as being the seminal case. In Eldridge, the issue before the court was whether the Fifth Amendment's Due Process clause required that, before termination of Social Security disability benefits, the recipient be afforded an evidentiary hearing.

The Court noted that procedural due process imposes constraints on government decisions that deprive persons of "liberty" or "property", either under the Fifth Amendment or the Fourteenth Amendment. Id., at 332. After reviewing numerous decisions, including Armstrong v. Mazzo (1965), 380 U.S. 545, where the Court noted the "fundamental requirement of due process", which requires the opportunity to be heard "at a meaningful time and in a meaningful manner", the Court concluded its analysis by noting that due process is not a static technical concept "unrelated to time, place and circumstances" Id., at 334, and adopted a three-prong test to determine if due process was given regarding an incarcerated parent's interest in child custody cases. The three factors to be balanced are: (1) the private interest affected by the official action; (2) the risk of erroneous deprivation of such interest through procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the fiscal and administrative burdens that an additional or substitute requirement would entail. Id., at 335.

In Eldridge, the Court reversed the decisions of the lower federal courts on the issue. Those courts held that the administrative procedures were constitutionally inadequate. The Supreme Court disagreed, holding that an evidentiary hearing was not constitutionally guaranteed, except in those cases, such as Goldberg v. Kelly (1970), 397 U.S. 254, where emphasis was given to the fact that the welfare recipients of Goldberg were “on the very margin of subsistence.” Eldridge, supra, at 340. Thus, Eldridge’s argument that termination of his disability benefits “would damage him in a way not recompensable through retroactive payments”, Id., at 331, was insufficient to constitutionally require a pre-termination evidentiary hearing.

Appellant herein makes a very logical argument concerning the loss of his license as being entitled to significant weight in considering the private interest affected, which is the first factor advanced in Eldridge. However, in terms of that decision itself, as the above analysis shows, Appellant’s argument is clearly misplaced. Appellant is not “on the very margin of subsistence”, as that phrase is used in Eldridge. Appellant’s arguments regarding the remaining two factors are without merit.

This Court also notes that the precise issue Appellant raises was considered in Arnett v. Kitzman (1996), 49 Cal. App. 4th 332, 1996 Cal. App. Lexis 862. The facts in Arnett are that Dr. Kitzman was licensed to practice medicine in California in 1976. He was charged and convicted in

Oregon of numerous felony offenses. His convictions were ultimately brought to the attention of the Medical Board of California, which filed a disciplinary action against him. At the time, Dr. Kitzman was in an Oregon prison. His attorney argued that Dr. Kitzman had a constitutional right to be physically present at the administrative hearing. The California appeals court disagreed.

That court noted that the first potential source of that right involved the federal and state constitutions. Neither conferred such a right. The closest approximation involved the Sixth Amendment to the United States Constitution, as interpreted by Illinois v. Allen (1970), 397 U.S. 337, which does guarantee the right to be physically present. However, and as the California court noted, the Sixth Amendment is expressly limited to “criminal prosecutions”.⁵ However, insofar as civil proceedings are concerned, the only requirement is that “due process” be afforded the respondent.

In California, it is well established that due process does not confer an absolute right to be physically present at a civil proceeding. See, e.g. Yarbrough v. Superior Court (1985), 39 Cal.3d 197, 203-204. This even applies to indigent prisoners facing a “bona fide [civil] lawsuit”, Payne v. Superior Court (1976), 17 Cal.3d 908, 913.

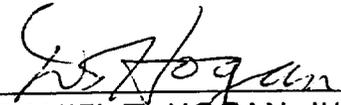
⁵ The Ohio Constitution makes the same guarantee. Article I, Sec. 10 states that “...the party accused shall be allowed to appear and defend in person and with counsel...” (emphasis added). There is no corresponding provision for civil cases

The California court in Arnett also noted that prospective legislation in California created an Administrative Adjudication Bill of Rights, and, although this legislation guarantees an opportunity to be heard, including the right to present and rebut evidence, it still did not guarantee an absolute right to personal presence. Id., at 340.

Ohio law is similar to California's. In Reed v. Ohio State Medical Board (1988), 40 Ohio App. 3d 124, the Franklin County Court of Appeals held that due process only required that the respondent be given notice of the hearing. There was no constitutional violation in proceeding in his absence.

Further, although not constitutionally significant for purposes of Appellant's argument, this Court again notes that Appellant was given the opportunity to keep the record open, and simply failed to do so. But even if that had not occurred, there still would have been no constitutional violation, based on the preceding analysis.

Based on the foregoing, Appellant's assignment of error is without merit, and the decision of the Board is AFFIRMED. Counsel for Appellee shall prepare the appropriate entry, pursuant to Local Rule 25.

 8-27-99
DANIEL T. HOGAN, JUDGE

Copies to:

Douglas D. Graff, Esq.
Counsel for Appellant

Christopher E. Wasson, Esq.
Counsel for Appellee

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

SAMSON D. REYES, Jr., M.D.
c/o East Ohio Correctional Center
P.O. Box 2400
Wintersville, Ohio 43953

Appellant

vs.

STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th floor
Columbus, Ohio 43266-0315

Appellee

Case No.

Judge

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 FRANKLIN COUNTY, OHIO

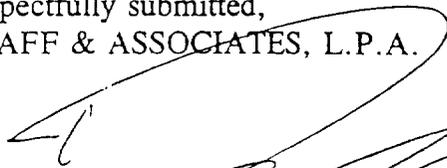
NOTICE OF APPEAL
PURSUANT TO O.R.C. § 119.12

Appellant Samson D. Reyes, Jr., M.D., by and through his attorney hereby gives Notice of Appeal to the Common Pleas Court of Franklin County, Ohio from the Entry of Order of the Sate Medical Board of Ohio attached hereto as Exhibit A, In the Matter of Samson D. Reyes, Jr., M.D. a copy of which Entry of Order was mailed to the Appellant on the 12th day of November, 1997. Appellant contends that the Entry of Order is not supported by reliable probative, and substantial evidence and is not otherwise in accordance with the law.

Further, and without limiting the generality of the foregoing, Appellant contends that the Entry of Order and the related investigation and hearing conducted by the Board violated the protection afforded to the Appellant pursuant to the Constitution of the State of Ohio and

the Constitution of the United States including, without limitation, the due process protection thereof.

Respectfully submitted,
GRAFF & ASSOCIATES, L.P.A.

By 
Douglas E. Graff (0013222)
604 East Rich Street, Suite 2100
Columbus, Ohio 43215
(614) 228-5800
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Notice of Appeal Pursuant to O.R.C. § 119.12 was personally delivered to the State Medical Board of Ohio, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0315, this 1st day of December, 1997.


Douglas E. Graff (0013222)
604 East Rich Street, Suite 2100
Columbus, Ohio 43215
(614) 228-5800
Attorney for Appellant



STATE MEDICAL BOARD OF OHIO

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

November 12, 1997

Samson D. Reyes, Jr., M.D.
C/O East Ohio Correctional Center
P. O. Box 2400
Wintersville, OH 43953

Dear Doctor Reyes:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Melinda R. Early, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 12, 1997, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO

Thomas E. Gretter, M.D.
Secretary

TEG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. Z 395 591 400
RETURN RECEIPT REQUESTED

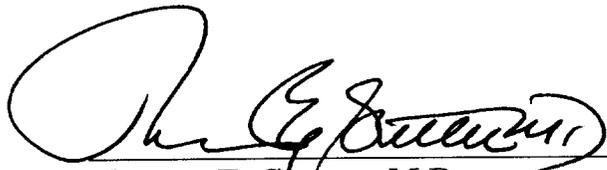
cc: Douglas E. Graff, Esq.
CERTIFIED MAIL RECEIPT NO. Z 395 591 401
RETURN RECEIPT REQUESTED

Mailed 11/30/97

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Melinda R. Early, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 12, 1997, 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 Samson D. Reyes, Jr., M.D., as it appears in the Journal of the State Medical Board of Ohio.

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



Thomas E. Gretter, M.D.
Secretary

(SEAL)

11/12/97

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

SAMSON D. REYES, JR., M.D.

*

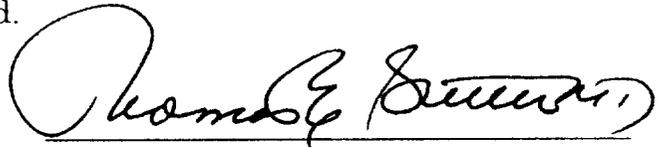
ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on November 12, 1997.

Upon the Report and Recommendation of Melinda R. Early, 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.

PROPOSED ORDER

It is hereby ORDERED that the certificate of Samson D. Reyes, Jr., M.D., to practice podiatry in the State of Ohio, is permanently REVOKED. This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board.



Thomas E. Gretter, M.D.
Secretary

(SEAL)

11/12/97

Date

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**REPORT AND RECOMMENDATION
IN THE MATTER OF SAMSON D. REYES, JR., M.D.**

The Matter of Samson D. Reyes, Jr., M.D., was heard by Melinda R. Early, Attorney Hearing Examiner for the State Medical Board of Ohio, on July 21, 1997.

INTRODUCTION

I. Basis for Hearing

- A. The State Medical Board of Ohio notified Samson D. Reyes, Jr., M.D., by letter dated March 12, 1997, that his license to practice medicine and surgery in the State of Ohio was immediately suspended pursuant to Section 3719.121(C), Ohio Revised Code. The Board's action in immediately suspending Dr. Reyes' certificate was the result of the Board having received notice that on or about February 19, 1997, in the Belmont County Court of Common Pleas, Dr. Reyes pleaded guilty to one felony count of Trafficking in drugs in violation of Section 2925.03(A), Ohio Revised Code, and two felony counts of Illegal processing of drug documents in violation of Section 2925.23(B)(1), Ohio Revised Code.

Additionally, the Board notified Dr. Reyes that it intended to determine whether to take further disciplinary action against his certificate for one or more of the following reasons:

- 1) Dr. Reyes pleaded guilty to one felony count of Trafficking in drugs in violation of Section 2925.03, Ohio Revised code, and two felony counts of Illegal processing of drug documents in violation of Section 2925.23, Ohio Revised Code, on or about February 19, 1997, in the Belmont County Court of Common Pleas;
- 2) On or about February 19, 1997, in the Belmont County Court of Common Pleas, Dr. Reyes pleaded guilty to one felony count of Attempted bribery in violation of Section 2923.02 and 2921.02(C), Ohio Revised Code;
- 3) Dr. Reyes signed an application to renew his certificate to practice medicine and surgery in the State of Ohio on or about March 11, 1996. In signing the licensure renewal application, Dr. Reyes certified that the information he provided thereon was true and correct in every respect. Dr. Reyes completed the application by

responding "no" to the question, "At any time since signing your last application for renewal of your certificate have you * * * 6) Surrendered, or consented to limitation upon: a) A license to practice medicine; OR b) State or federal privileges to prescribe controlled substances?"

The Board asserted, however, that on or about December 9, 1994, Dr. Reyes entered into an Agreement with the West Virginia Board of Medicine consenting to the imposition of certain conditions and limitations on his West Virginia license to practice medicine and surgery. The Board further asserted that the Agreement contained a specific provision which stated, "Dr. Reyes understands that this signed Agreement and order is an action of the Board limiting his license."

- 4) On or about October 4, 1996, in an investigatory deposition conducted by the Board pursuant to Section 4731.22(C)(1), Ohio Revised Code, Dr. Reyes provided sworn testimony in which he stated that his West Virginia medical license was in good standing. The Board asserted, however, that the West Virginia Board of Medicine suspended Dr. Reyes' license to practice medicine and surgery, on or about July 1, 1995, for failure to provide documentation of the requisite continuing medical education hours, and that Dr. Reyes had not held a license to practice medicine and surgery in West Virginia since that date.

The Board asserted that Dr. Reyes' "acts, conduct, and/or omissions" in pleading guilty to the drug trafficking felony and two, illegal processing of drug document felonies, "individually and/or collectively, constitute[d] '(s)elling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, or a judicial finding of guilt of, a violation of any federal or state law regulating the possession, distribution, or use of any drug,' as that clause is used in Section 4731.22(B)(3), Ohio Revised Code."

Moreover, the Board alleged that Dr. Reyes' "acts, conduct, and/or omissions" in pleading guilty to all the felony counts outlined above, "individually and/or collectively, constitute[d] '(a) plea of guilty to, or a judicial finding of guilt of, a felony,' as that clause is used in Section 4731.22(B)(9), Ohio Revised Code."

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Further, the Board alleged that Dr. Reyes' "acts, conduct, and/or omissions" in providing false information on his licensure renewal application "individually and/or collectively, constitute[d] 'publishing a false, fraudulent, deceptive or misleading statement,' as that clause is used in Section 4731.22(B)(5), Ohio Revised Code," and "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board,' as that clause is used in Section 4731.22(A), Ohio Revised Code."

Finally, the Board alleged that Dr. Reyes' "acts, conduct, and/or omissions" in providing false sworn testimony during the Board's October 4, 1996, investigatory deposition "individually and/or collectively, constitute[d] 'publishing a false, fraudulent, deceptive or misleading statement,' as that clause is used in Section 4731.22(B)(5), Ohio Revised Code," and "(c)ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act involves moral turpitude,' as that clause is used in Section 4731.22(B)(14), Ohio Revised Code, to wit: Section 2921.13(A), Ohio Revised Code, Falsification."

The Board advised Dr. Reyes of his right to request a hearing in this matter. (State's Exhibit [St. Ex.] 1).

- B. Douglas E. Graff, Esq., in behalf of Dr. Reyes submitted a written hearing request on April 2, 1997. (St. Ex. 3).

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Patrick W. Beatty, Assistant Attorney General.
- B. On behalf of the Respondent: Douglas E. Graff, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

- A. Presented by the State
 - 1. Olen Martin

B. Presented by the Respondent:

No witnesses were presented.

II. Exhibits Examined

In addition to State's Exhibits 1 and 3 noted above, the following exhibits were identified and admitted into evidence:

A. Presented by the State

1. State's Exhibit 2: Mr. Graff's Notice of Appearance of Counsel. (2 pp.)
2. State's Exhibit 4: Respondent's Request for List of Witnesses and Documents.
3. State's Exhibit 5: April 1, 1997, letter to Dr. Reyes from the Board advising that a hearing was initially set for April 14, 1997, and further advising that the hearing had been postponed pursuant to Section 119.09, Ohio Revised Code.
4. State's Exhibit 6: April 1, 1997, letter to Dr. Reyes from the Board scheduling the hearing for May 13, 1997.
5. State's Exhibit 7: Respondent's April 10, 1997, motion for continuance of the hearing due to a conflict with counsel's schedule.
6. State's Exhibit 8: State's April 11, 1997, Notice of Appearance of Counsel. (2 pp.)
7. State's Exhibit 9: State's April 11, 1997, Request for List of Witnesses and Documents. (2 pp.)
8. State's Exhibit 10: State's April 11, 1997, List of Witnesses and Documents. (2 pp.)
9. State's Exhibit 12: April 28, 1997, Entry denying Respondent's motion for continuance.
10. State's Exhibit 13: April 30, 1997, Entry granting Respondent's motion to continue.

97 SEP 30 PM 2:53

11. State's Exhibit 14: State's May 8, 1997, Motion for Continuance. (2 pp.)
12. State's Exhibit 15: June 1, 1997, Entry granting the State's motion for continuance.
13. State's Exhibit 16: Copy of Prosecutor's Reporting Form notifying the Board that Dr. Reyes had pleaded guilty to, and, been found guilty of, criminal drug charges as specified in the certified copy of the Belmont County Court of Common Pleas' February 21, 1997, Judgment Entry. (4 pp.)
14. State's Exhibit 17: February 21, 1997, Belmont County Court of Common Pleas Judgment Entry in which the Court found Dr. Reyes guilty of: a) one, fifth degree felony count for the sale of a controlled substance, Phentermine HCL, in violation of Section 2925.103, Ohio Revised Code; b) one, fourth degree felony count for intentionally uttering a false prescription for Hydrocodone Bitartrate in violation of Section 2925.23, Ohio Revised Code; c) intentionally uttering a false or forged prescription, Phentermine HCL, in violation of Section 2925.23(B)(1), Ohio Revised Code, a fifth degree felony; and d) attempting, with purpose to corrupt a witness with a specification for forfeiture of three hundred dollars (\$300.00), a violation of Sections 2923.01 and 2921.02(C), Ohio Revised Code, a fourth degree felony. (2 pp.)
15. State's Exhibit 18: May 6, 1997, Belmont County, Ohio, Court of Common Pleas Special Judgment of Sentencing. (6 pp.)
16. State's Exhibit 19: Copy of February 5, 1997, Indictment from the Court of Common Pleas, Belmont County, Ohio, indicting Dr. Reyes on : a) one fifth degree felony for "knowingly sell[ing] or offer[ing] to sell a controlled substance, when said conduct was not in accordance with Chapters 3719 and 4731 of the Revised Code, to-wit: Phentermine HCL" in violation of Section 2925.03, Ohio Revised Code; b) a fourth degree felony for "intentionally mak[ing], utter[ing], or sell[ing], or knowingly possess[ing] a false or forged prescription, to-wit: Hydrocodone Bitartrate (Schedule III)," a violation of Section 2925.23, Ohio Revised Code; and c) a fifth degree felony for "intentionally mak[ing], utter[ing], or sell[ing], or knowingly possess[ing] a false or forged prescription, to-wit:

Phentermine HCL (Schedule IV),” in violation of Section 2925.23 (B)(1), Ohio Revised Code.

17. State’s Exhibit 20: Belmont County, Ohio, Docket and Journal Entry in State of Ohio v. Samson D. Reyes, Case No. 97-CR-010.
18. State’s Exhibit 21: Certified Copy of Sentence in State of Ohio v. Samson D. Reyes, Case No. 97-CR-010.
19. State’s Exhibit 22: Copy of Revco Pharmacy documents including copy of Fastin prescription written for Eve Hartman, and Revco Pharmacy’s documentation regarding Dr. Reyes procuring the prescriptions for Ms. Hartman. (3 pp.)
20. State’s Exhibit 23: Copy of Vicodin prescription Dr. Reyes wrote for RoseMary Rugaro on May 21, 1996.
21. State’s Exhibit 26: Copy of Dr. Reyes’ 1996 licensure renewal application.
22. State’s Exhibit 27: Certified Copy of the Agreement Dr. Reyes entered into with the West Virginia Board of Medicine on December 9, 1994. (9 pp.) (Note: This document will be sealed to protect patient confidentiality.)
23. State’s Exhibit 29: Pages 10 (from line 20 to end) and 11 of the transcript of the Board’s October 4, 1996, investigative interview of Dr. Reyes.
24. State’s Exhibit 30: Copy of birthday card Dr. Reyes gave to Patient 1 on or about September 13, 1996.
25. State’s Exhibit 31: Copy of Phentermine prescription label Revco Pharmacy dispensed in the name of Eve Hartman as prescribed by Dr. Reyes. (5 pp.)
26. State’s Exhibit 32: Copy of Respondent’s July 10, 1997, Motion for Continuance. (2 pp.)
27. State’s Exhibit 33: Copy of State’s July 15, 1997, Memorandum in Opposition to Respondent’s Motion for Continuance. (2 pp.)

97 SEP 30 PM 2:53

28. State's Exhibit 34: Copy of July 17, 1997, Entry denying Respondent's motion for continuance.
29. State's Exhibit 35: Respondent's July 23, 1997, Motion for Reconsideration of Dr. Reyes' Motion for Continuance. (3 pp.)
30. State's Exhibit 36: July 18, 1997, Entry denying Respondent's motion to reconsider.

B. Presented by the Respondent

Respondent did not proffer any evidence.

III. Post Hearing Admissions

1. At hearing, Respondent's counsel objected to the admission of State's Exhibit 24, a transcript of the interview the Belmont County Sheriff's Office conducted with complainant, Patient 1, on October 4, 1996. Respondent's counsel objected to this exhibit, in part, because the transcript did not contain the complete interview. In comparing the transcript copy Chief Martin used in testifying, with the original transcript, the State learned that one page was deleted from the copies proffered at hearing, apparently due to an oversight in copying the document. Accordingly, the State supplemented this exhibit with the deleted page. Nevertheless, the Attorney Hearing Examiner stated that she would review the transcript in conjunction with a tape of the interview to ensure that the transcript was complete. After reviewing the taped interview and the transcript which the State originally proffered at hearing, the Attorney Hearing Examiner concluded that only one page was deleted from the copies. Accordingly, the complete transcript, marked as State's Exhibit 24, will be admitted to the hearing record. Moreover, this document will be sealed to protect patient confidentiality. Further, a tape recording of the interview will be held in the Board's office.
2. Additionally at hearing, Respondent's counsel objected to the admission of State's Exhibit 25, the transcript of a recorded interview the Belmont County Sheriff's Office conducted of Dr. Reyes on October 31, 1996. After reviewing the transcript of the interview with a tape recording of the interview, the Attorney Hearing Examiner determined that the interview contained a significant amount of irrelevant information. Moreover, the Attorney Hearing Examiner determined that the prejudicial nature of the

information contained in the taped interview outweighed any benefit that would be derived from its admission. Accordingly, State's Exhibit 25 will not be admitted to the hearing record. This document, together with a tape recording of this interview, will be held in the Board's offices as a proffer.

3. Further, after Respondent's counsel objected to Chief Martin testifying about an interview the Belmont County Sheriff's office conducted with a confidential informant on October 15, 1996, the State proffered a tape recording of this interview. The relevance of this interview is that the information this witness provided to the Belmont County Sheriff led to Dr. Reyes being indicted on the charge of intentionally "mak[ing], utter[ing], or sell[ing], or knowingly possess[ing] a false or forged prescription, to-wit: Phentermine HCL (Schedule IV)," in violation of Section 2925.23(B)(1), Ohio Revised Code. Although the State's representative did not include the tape recording on the list of witnesses and documents he filed pursuant to Rule 4731-13-18, Ohio Revised Code, the tape recording is admitted to the hearing record as State's Exhibit 37. This exhibit will be held in the Board's offices for the Board's review.
4. Respondent's counsel objected at hearing to the admission of State's Exhibit 28 on the basis that Respondent had never received this document from the West Virginia Board of Medicine. The Attorney Hearing Examiner deferred ruling on the admissibility of this evidence until after Respondent had presented his case in chief. Inasmuch as Respondent failed to present any evidence in his case in chief, State's Exhibit 28 is admitted to the hearing record.
5. Upon the Attorney Hearing Examiner's own motion, the following exhibits are admitted to the hearing record:
 - a. Board Exhibit A: July 29, 1997, Entry noting for the record that Respondent had failed to timely advise the Attorney Hearing Examiner when he would be available to present his case in chief, and further noting for the record that there had been a delay in the Belmont County Sheriff's Office submitting copies of the relevant taped investigative interviews.
 - b. Board Exhibit B: August 11, 1997, Entry closing the hearing record.
 - c. Board Exhibit C: Confidential Patient Key. (Note: This document will be sealed to protect patient confidentiality.)

97 SEP 30 PM 2:53

PROCEDURAL MATTERS

In reviewing the exhibits proffered at hearing, the Attorney Hearing Examiner learned that the complainant whose allegations led to Dr. Reyes being indicted on one count of Illegal processing of drug documents involving, phentermine HCL, in violation of Section 2925.03, Ohio Revised Code, was a patient of Dr. Reyes. Accordingly, for purposes of this Report and Recommendation, this patient will be designated, Patient 1, in Board Exhibit C, a sealed confidential patient key. Moreover, any documents which refer to Patient 1 by name will be sealed to protect her confidentiality.

SUMMARY OF EVIDENCE

All transcripts and exhibits, whether or not specifically referred to herein, were thoroughly reviewed and considered by the Hearing Examiner prior to the preparation of this Report and Recommendation.

1. On or about February 5, 1997, in Belmont County, Ohio, Dr. Reyes was indicted on the following charges:
 - a. Count I, a fifth degree felony: On or about September 13, 1996, in Richland Township, Belmont County, Ohio, Dr. Reyes did "knowingly sell or offer to sell a controlled substance, when said conduct was not in accordance with Chapters 3719 and 4731 of the Revised Code, to wit: Phentermine HCL (Schedule IV), in amount less than bulk amount" in violation of Section 2925.03, Ohio Revised Code;
 - b. Count II, a fourth degree felony: On or about May 21, 1996, in Belmont County, Richland Township, Ohio, Dr. Reyes "did intentionally make, utter, or sell, or knowingly possess a false or forged prescription, to-wit: Hydrocodone Bitartrate (Schedule III)," in violation of Section 2925.23, Ohio Revised Code;
 - c. Count III, a fifth a degree felony: On or about October 15, 1996, in Belmont County, Richland Township, Ohio, Dr. Reyes "did intentionally make, utter, or sell, or knowingly possess a false or forged prescription, to-wit: Phentermine HCL (Schedule IV)," in violation of Section 2925.23 (B)(1), Ohio Revised Code; and

- d. Count IV, a fourth degree felony: On or about January 25, 1997, in Belmont County, Richland Township, Ohio, Dr. Reyes "did attempt with purpose to corrupt a witness or improperly to influence her with respect to her testimony in an official proceeding, either before or after she is subpoenaed or sworn, promise, offer, or give her or another person any valuable thing or valuable benefit, to-wit: Three Hundred Dollars and 00/100, (\$300.00)," in violation of Sections 2923.02 and 2921.02(C), Ohio Revised Code. Additionally, the State indicated in the indictment that the \$300 in cash was subject to forfeiture pursuant to Section 2925.42, Ohio Revised Code.

(St. Ex. 19).

2. Olen Martin, Chief of the Belmont County Sheriff's Office [Sheriff] testified in behalf of the State regarding the circumstances which led to Dr. Reyes being indicted on four felony charges. Chief Martin testified that the Sheriff's department initiated an investigation of Dr. Reyes on or about April 16, 1996, when Dr. Reyes contacted the Sheriff with concerns that a particular patient was "doctor shopping." Subsequently, Patient 1 contacted the Sheriff and submitted a statement stating that Dr. Reyes presented her with Vicodin and Fastin, unsolicited, on September 13, 1996. In providing information to the Sheriff's department, Patient 1 expressed concern to Chief Martin that Dr. Reyes had made inappropriate advances towards her when she saw him for medical treatment. Moreover, on September 13, 1996, against her wishes, Dr. Reyes had telephoned her home and knew that she was going to be at Riesbeck's store later that day. Dr. Reyes met Patient 1 in Reisbeck's parking lot and presented her with the Fastin and Vicodin, together with a birthday card. Patient 1 advised the Sheriff's department that Dr. Reyes intended the drugs to be a birthday gift to her. Patient 1 additionally advised the Sheriff's office that the prescription labels reflected that the prescriptions had not been written in her name. (St. Exs. 30, 31, 24; Transcript [Tr.] 21, 43-45, 103).

After obtaining the Vicodin and Fastin from Patient 1, the Sheriff's detectives contacted the dispensing pharmacy, and learned that Dr. Reyes called the St. Clairsville, Ohio, Revco Pharmacy on September 13, 1996, and ordered two prescriptions in the name of Eve Hartman. One prescription was for twenty, Vicodin tablets, and the other for fourteen, Fastin 30 mg. caplets. Additionally, the Sheriff's detectives learned that Dr. Reyes presented to the pharmacy later in the day, September 13, 1996, and picked-up the prescriptions. When he picked up the prescriptions, Dr. Reyes advised the pharmacist that the Vicodin and Fastin were birthday presents for his friend.

97 SEP 30 PM 2: 54

Dr. Reyes, however, was unable to complete the pharmacy's records with the friend's address and phone number. (St. Exs. 22, 23, 31; Tr. 33, 43).

3. Chief Martin additionally explained the circumstances surrounding the events which supported Count II of the indictment. Chief Martin testified that the Sheriff's department monitored a May 21, 1996, meeting between a Sheriff's confidential informant and Dr. Reyes. The Sheriff's detectives monitored the meeting through a body wire the confidential informant was wearing. During this meeting, Dr. Reyes wrote the confidential informant a prescription for Vicodin in the name of Rosemary Rugaro. Subsequently, the Sheriff's detectives met the confidential informant and obtained the prescription Dr. Reyes had written. (St. Ex. 22; Tr. 48-51).
4. With respect to Count III of the indictment, a Sheriff's confidential informant placed a monitored telephone call to Dr. Reyes, on October 15, 1996. During this call, the confidential informant asked Dr. Reyes to prescribe Fastin to help her control weight gain. Additionally, the confidential informant asked Dr. Reyes to write the prescription in another woman's name so that the other woman could use her welfare card to pay for the prescription. Dr. Reyes agreed to prescribe the confidential informant Fastin in the other woman's name. (St. Ex. 37; Tr. 59-60).
5. Chief Martin further stated that on January 23, 1997, Dr. Reyes contacted a confidential informant of the Sheriff and attempted to bribe her. Consequently, the Sheriff's department arranged for the confidential informant to wear a body wire when she met with Dr. Reyes on January 25, 1997. During this meeting, Dr. Reyes presented the confidential informant with \$300.00 in cash. (Tr. 70-71).
6. On or about February 19, 1997, the Belmont County Court of Common Pleas accepted Dr. Reyes' guilty plea and found him guilty of:
 - a. Count I: Sale of a controlled substance, Phentermine HCL, in violation of Section 2925.03, Ohio Revised Code, a fifth degree felony;
 - b. Count II: Intentionally uttering a false prescription, Hydrocodone Bitartrate, in violation of Section 2925.23, Ohio Revised Code, a fourth degree felony;
 - c. Count III: Intentionally uttering a false or forged prescription for Phentermine HCL, in violation of Section 2925.23(B)(1), Ohio Revised Code, a fifth degree felony; and

- d. **Count IV: Attempting, with purpose to corrupt a witness and to influence her testimony, with a specification for forfeiture of \$300, in violation of Sections 2923.02 and 2921.02(C), Ohio Revised Code, a fourth degree felony.**

Additionally, the Court ordered Dr. Reyes to provide a \$20,000 blanket bond which was subject to the following conditions, among others:

- a. **Dr. Reyes was to enter a residential treatment facility for drug and alcohol abuse immediately upon being released;**
- b. **Dr. Reyes was to advise the court of the address of the residential facility; and**
- c. **Dr. Reyes was not to have any contact with the victim referenced in Count IV of the indictment. Moreover, Dr. Reyes was ordered to encourage others he knew to refrain from contacting the victim.**

(St. Ex. 17).

7. **On May 6, 1997, the Belmont County Court of Common Pleas sentenced Dr. Reyes to six month terms for Count I, II, and III, each. The Court ordered Dr. Reyes to serve these terms concurrently in the Correctional Reception Center, Orient, Ohio. Additionally, the Court sentenced Dr. Reyes to a twelve month consecutive term in the Correctional Reception Center, Orient, Ohio, for Count IV.**

In sentencing Dr. Reyes, the Court found a significant factor to be the fact that Dr. Reyes committed the bribery offense, Count IV, while he was on bail. Further, the Court found that Dr. Reyes had used his reputation and occupation to facilitate the bribery offense. Accordingly, the Court noted in the Special Judgment of Sentencing that "consecutive service [was] necessary to protect the public from future crime or to punish offender and consecutive sentences are not disproportionate to the seriousness of offender's conduct and the danger the offender poses to public, and the offender committed the offense designated as Count IV while awaiting trial and offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by offender." (St. Ex. 18).

8. **In August 1994, Dr. Reyes notified the West Virginia Board of Medicine [West Virginia Board] that he had been treated for chemical dependency at Shepherd**

97 SEP 30 PM 2:54

Hill Hospital in Newark, Ohio. Accordingly, based on information the West Virginia Board reviewed, it believed it was in the public's best interest to allow Dr. Reyes to continue to practice medicine, but with appropriate conditions and limitations. Thus, on December 9, 1994, Dr. Reyes entered into an Agreement with the West Virginia Board for a three year period from December 15, 1994, to December 15, 1997, which included conditions and limitations relating to substance abuse. This Agreement, however, was not considered disciplinary in nature. Nevertheless, the Agreement stipulated that Dr. Reyes understood that the "Agreement and order is an action of the West Virginia Board limiting his license and will accordingly be reported to the National Practitioner Data Bank, as required by law." (St. Ex. 27).

9. Dr. Reyes submitted a licensure renewal application to the Board for the 1996-1998 biennial registration period on which he certified that the information provided on the application was true and correct in every respect. In completing the application questions, Dr. Reyes responded, "no," to all the application questions including question number 6 which asked: "At any time since signing your last application for renewal of your certificate have you * * * 6) Surrendered, or consented to limitation upon: a) A license to practice medicine, OR b) State or federal privileges to prescribe controlled substances?"

(St. Ex. 26).

10. The West Virginia Board advised the Board on March 6, 1997, that Dr. Reyes continued to be subject to the conditions and limitations of the 1994 Agreement; Dr. Reyes, however, was not in compliance with the Agreement. Moreover, the West Virginia Board advised the Board that Dr. Reyes had failed to submit required continuing medical education for the period July 1, 1993, to June 30, 1995. Accordingly, the West Virginia Board suspended Dr. Reyes' license, effective July 1, 1995. Further, Dr. Reyes' license remains suspended because he has failed to provide the West Virginia Board appropriate certification and supporting written documentation of continuing medical education. (St. Ex. 28).

11. The Board conducted an investigational deposition of Dr. Reyes on October 4, 1996, pursuant to Section 4731.22(C)(1), Ohio Revised Code. Dr. Reyes provided sworn testimony that his West Virginia medical license was in good standing and was not subject to any limitations. (St. Ex. 29, p. 10-11).

FINDINGS OF FACT

1. On or about February 19, 1997, in the Belmont County Court of Common Pleas, Dr. Reyes pleaded guilty to, and was found guilty of:
 - a. Count I: Sale of a controlled substance, Phentermine HCL, in violation of Section 2925.03, Trafficking in drugs, Ohio Revised Code, a fifth degree felony;
 - b. Count II: Intentionally uttering a false prescription, Hydrocodone Bitartrate, in violation of Section 2925.23, Illegal processing of drug documents, Ohio Revised Code, a fourth degree felony; and
 - c. Count III: Intentionally uttering a false or forged prescription for Phentermine HCL, in violation of Section 2925.23(B)(1), Illegal processing of drug documents, Ohio Revised Code, a fifth degree felony.
2. On or about February 19, 1997, in the Belmont County Court of Common Pleas, Dr. Reyes pleaded guilty to Attempted bribery with a specification for forfeiture of \$300, in violation of Sections 2923.02 and 2921.02(C), Ohio Revised Code, a fourth degree felony.
3. Dr. Reyes signed an application to renew his certificate to practice medicine and surgery in the State of Ohio for the 1996-1998 biennial registration period. In signing the licensure renewal application, Dr. Reyes certified that the information he had provided on the application was true and correct in every respect. Dr. Reyes completed the application by responding "no" to the question, "At any time since signing your last application for renewal of your certificate have you * * * 6) Surrendered, or consented to limitation upon: a) A license to practice medicine; OR b) State or federal privileges to prescribe controlled substances?"

Dr. Reyes, however, had entered into an Agreement with the West Virginia Board of Medicine on or about December 9, 1994, consenting to the imposition of certain conditions and limitation on his license to practice medicine in West Virginia. Moreover, this Agreement specifically contained a provision which stated that the signed Agreement and order was an action of the West Virginia Board of Medicine limiting Dr. Reyes' license.
4. The West Virginia Board of Medicine suspended Dr. Reyes' license to practice medicine and surgery, on or about July 1, 1995, for failure to provide documentation of required continuing medical education hours. Further,

97 SEP 30 PM 2:57

Dr. Reyes has not held a license to practice medicine and surgery in West Virginia since that date. Nevertheless, during an investigative deposition conducted by the Board pursuant to Section 4731.22(C)(1), Ohio Revised Code, on October 4, 1996, Dr. Reyes provided sworn testimony that his West Virginia medical license was in good standing.

CONCLUSIONS OF LAW

1. Finding of Fact 1, above, supports a conclusion that Dr. Reyes' acts, conduct, and/or omissions, individually and/or collectively, constitute "a judicial finding of guilt of, a violation of any federal or state law regulating the possession, distribution, or use of any drug," as set forth in Section 4731.22(B)(3), Ohio Revised Code.
2. Findings of Fact 1 and 2, above, support a conclusion that Dr. Reyes' acts, conduct, and/or omissions, individually and/or collectively, constitute "[a] plea of guilty to, or a judicial finding of guilt of, a felony," as set forth in Section 4731.22(B)(9), Ohio Revised Code.
3. Inasmuch as the State failed to demonstrate that Dr. Reyes knowingly gave false testimony during the Board's October 4, 1996, investigational deposition "with purpose to mislead" the Board in the performance of its official function, there is insufficient evidence to support a conclusion that Dr. Reyes' acts, conduct, and/or omissions, individually and/or collectively, constitute "[c]ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act involves moral turpitude," as set forth in Section 4731.22(B)(14), Ohio Revised Code, to wit: Section 2921.13(A), Ohio Revised Code, Falsification.
4. Inasmuch as the Board failed to demonstrate that Dr. Reyes intended to deceive or mislead the Board when he renewed his license for the 1996-1998 biennial registration period, there is insufficient evidence to support a conclusion that Dr. Reyes' acts, conduct, and/or omissions, individually and/or collectively, constitute:
 - a) "publishing a false, fraudulent, deceptive, or misleading statement," as set forth in Section 4731.22(B)(5), Ohio Revised Code; and
 - b) "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board," as set forth in Section 4731.22(A), Ohio Revised Code.

5. Further, in that the State failed to demonstrate that Dr. Reyes intended to deceive or mislead the Board by providing false information during the October 4, 1996, investigative deposition, there is insufficient evidence to support a conclusion that Dr. Reyes' acts, conduct, and/or omissions, individually and/or collectively, constitute "publishing a false, fraudulent, deceptive, or misleading statement," as set forth in Section 4731.22(B)(5), Ohio Revised Code.

PROPOSED ORDER

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



Melinda R. Early
Attorney Hearing Examiner



STATE MEDICAL BOARD OF OHIO

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

EXCERPT FROM THE DRAFT MINUTES OF NOVEMBER 12, 1997

REPORTS AND RECOMMENDATIONS

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

Ms. Noble asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: William B. Beuchat, D.O.; Stephen J. Buday, M.D.; Ronald A. Landefeld, M.D.; Hillard M. Lazarus, M.D., et al., University Physicians, Inc.; Myron B. Renner, D.O.; Samson P. Reyes, Jr., M.D.; Howard E. Rissover, M.D.; and Semur P. Rajan, M.D.; and the report and recommendation upon remand in the matter of Brent E. Woodfield, M.D.

A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Gretter	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Dr. Buchan	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Ms. Noble	- aye

Mr. Sinnott indicated that he did not read the materials in the matter of Ronald A. Landefeld, M.D.

Ms. Noble 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. Bhati	- aye
	Dr. Gretter	- aye
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Dr. Buchan	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Ms. Noble	- aye

In accordance with the provision in Section 4731.22(C)(1), 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.

Ms. Noble stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

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

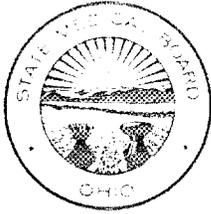
.....
REPORT AND RECOMMENDATION IN THE MATTER OF SAMSON P. REYES, JR., M.D.
.....

DR. GARG MOVED TO APPROVE AND CONFIRM MS. EARLY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF SAMSON P. REYES, JR., M.D. DR. STEINBERGH SECONDED THE MOTION.

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

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Gretter	- abstain
	Dr. Egner	- aye
	Mr. Sinnott	- aye
	Dr. Buchan	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.



STATE MEDICAL BOARD OF OHIO

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

NOTICE OF IMMEDIATE SUSPENSION

AND

OPPORTUNITY FOR HEARING

March 12, 1997

Samson D. Reyes, Jr., M.D.
51710 National Road
St. Clairsville, OH 43950

Dear Doctor Reyes:

In accordance with Sections 2929.24 and 3719.12(B), Ohio Revised Code, the Office of the Prosecuting Attorney of Belmont County, reported that on or about February 19, 1997, in the Belmont County Court of Common Pleas, you pleaded guilty to one (1) felony count of Trafficking in Drugs in violation of Section 2925.03(A), Ohio Revised Code, and two (2) felony counts of Illegal Processing of Drug Documents in violation of Section 2925.23(B)(1), Ohio Revised Code.

Therefore, pursuant to Section 3719.121(C), Ohio 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 intends to determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about February 19, 1997, in the Belmont County Court of Common Pleas, you pleaded guilty to one (1) felony count of Trafficking in Drugs in violation of Section 2925.03(A), Ohio Revised Code, and two (2) felony counts of Illegal Processing of Drug Documents in violation of Section 2925.23(B)(1), Ohio Revised Code.
- (2) On or about February 19, 1997, in the Belmont County Court of Common Pleas, you pleaded guilty to one (1) felony count of Attempted Bribery in violation of Sections 2923.02 and 2921.02(C), Ohio Revised Code.
- (3) On or about March 11, 1996, you signed the application for renewal of your certificate to practice medicine and surgery in Ohio, certifying that the information provided on the application was true and correct in every respect.

MAILED 3/14/97

In response to the question, "At any time since signing your last application for renewal of your certificate have you: . . .6) Surrendered, or consented to limitation upon: a) A license to practice medicine; OR b) State or federal privileges to prescribe controlled substances?" you responded, "No."

In fact, on or about December 9, 1994, you entered into an Agreement with the West Virginia Board of Medicine consenting to the imposition of certain conditions and limitations upon your license to practice medicine and surgery in West Virginia. Such Agreement contains a provision specifically stating that "Dr. Reyes understands that this signed Agreement and order is an action of the Board limiting his license."

- (4) On or about October 4, 1996, you provided sworn testimony during an investigatory deposition taken upon order of the State Medical Board of Ohio pursuant to Section 4731.22(C)(1), Ohio Revised Code. During such deposition, you were asked "Do you hold any licenses in other states?" and you replied "West Virginia." You were then asked "What is the status of that license?" and you replied "Good standing."

In fact, on or about July 1, 1995, the West Virginia Board of Medicine suspended your license to practice medicine and surgery in West Virginia for failure to provide documentation of the requisite continuing medical education hours. You have not held a license to practice medicine and surgery in West Virginia since that time.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "(s)elling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, or a judicial finding of guilt 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.

Further, your guilty pleas, as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute "(a) plea of guilty to, or a judicial finding of guilt of, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (3) above, individually and/or collectively, constitute "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (3) and (4) above, individually and/or collectively, constitute "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (4) above, individually and/or collectively, constitute "(c)ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act involves moral turpitude," as that clause is used in Section 4731.22(B)(14), Ohio Revised Code, to wit: Section 2921.13(A), Ohio Revised Code, Falsification.

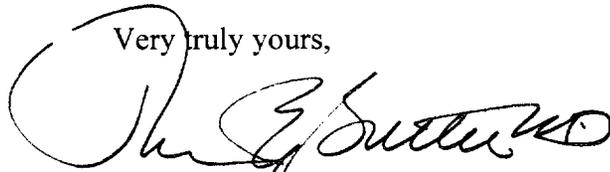
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing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

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Thomas E. Gretter, M.D.
Secretary

TEG/bjs
Enclosures
CERTIFIED MAIL #P 152 984 526
RETURN RECEIPT REQUESTED

cc: Douglas E. Graff, Esq.
CERTIFIED MAIL #P 152 984 527
RETURN RECEIPT REQUESTED

5. (1993) There was insufficient evidence for a conviction of tampering with evidence by throwing away the gun used to fire at an officer where there were many possible explanations for what happened to it: *State v. Wooden*, 86 OApp3d 23, 619 NE2d 1132.

6. (1992) Plaintiff produced no evidence that she was prevented from pursuing a products liability action by defendants' tearing down and selling her car: *Tomas v. Nationwide Mut. Ins. Co.*, 79 OApp3d 624, 607 NE2d 944.

7. (1988) The filing of a daily duty report by a police officer, who knows that the contents of the report are inaccurate and that the report would be relied upon in a probable investigation, may constitute an offense under either RC § 2921.12, tampering with evidence, or RC § 2913.42, tampering with records. The fact that the inaccuracy of the report was caused by the knowing omission of certain matters rather than by affirmative misrepresentation does not relieve the accused of criminal liability: *State v. McNeeley*, 48 OApp3d 73, 548 NE2d 961.

8. (1988) Where the criminal activity with which a defendant is charged stems from a single filing of a false duty report, the defendant cannot be sentenced for both tampering with evidence (RC § 2921.12) and tampering with records (RC § 2913.42), as these crimes are allied offenses of similar import: *State v. McNeeley*, 48 OApp3d 73, 548 NE2d 961.

Publisher's Note

The amendments made by SB 269 (146 v —) and HB 644 (146 v —) have been combined. Please see provisions of RC § 1.52.

§ 2921.13 Falsification; in theft offense; to purchase firearm.

(A) No person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, when any of the following applies:

(1) The statement is made in any official proceeding.
(2) The statement is made with purpose to incriminate another.

(3) The statement is made with purpose to mislead a public official in performing the public official's official function.

(4) The statement is made with purpose to secure the payment of unemployment compensation, aid to dependent children, disability assistance, retirement benefits, economic development assistance, as defined in section 9.66 of the Revised Code, or other benefits administered by a governmental agency or paid out of a public treasury.

(5) The statement is made with purpose to secure the issuance by a governmental agency of a license, permit, authorization, certificate, registration, release, or provider agreement.

(6) The statement is sworn or affirmed before a notary public or another person empowered to administer oaths.

(7) The statement is in writing on or in connection with a report or return that is required or authorized by law.

(8) The statement is in writing and is made with purpose to induce another to extend credit to or employ the offender, to confer any degree, diploma, certificate

of attainment, award of excellence, or honor on the offender, or to extend to or bestow upon the offender any other valuable benefit or distinction, when the person to whom the statement is directed relies upon it to that person's detriment.

(9) The statement is made with purpose to commit or facilitate the commission of a theft offense.

(10) The statement is knowingly made to a probate court in connection with any action, proceeding, or other matter within its jurisdiction, either orally or in a written document, including, but not limited to, an application, petition, complaint, or other pleading, or an inventory, account, or report.

(11) The statement is made on an account, record, stamp, label, or other writing that is required by law.

(12) The statement is made in connection with the purchase of a firearm, as defined in section 2923.11 of the Revised Code, and in conjunction with the furnishing to the seller of the firearm of a fictitious or altered driver's or commercial driver's license or permit, a fictitious or altered identification card, or any other document that contains false information about the purchaser's identity.

(20) The statement is made in a document or instrument of writing that purports to be a judgment, lien, or claim of indebtedness and is filed or recorded with the secretary of state, a county recorder, or the clerk of a court of record.†

(B) No person, in connection with the purchase of a firearm, as defined in section 2923.11 of the Revised Code, shall knowingly furnish to the seller of the firearm a fictitious or altered driver's or commercial driver's license or permit, a fictitious or altered identification card, or any other document that contains false information about the purchaser's identity.

(C) It is no defense to a charge under division (A)(4) of this section that the oath or affirmation was administered or taken in an irregular manner.

(D) If contradictory statements relating to the same fact are made by the offender within the period of the statute of limitations for falsification, it is not necessary for the prosecution to prove which statement was false but only that one or the other was false.

(E)(1) Whoever violates division (A)(1), (2), (3), (4), (5), (6), (7), (8), (10), or (11) of this section is guilty of falsification, a misdemeanor of the first degree.

(2) Whoever violates division (A)(9) of this section is guilty of falsification in a theft offense. Except as otherwise provided in this division, falsification in a theft offense is a misdemeanor of the first degree. If the value of the property or services stolen is five hundred dollars or more and is less than five thousand dollars, falsification in a theft offense is a felony of the fifth degree. If the value of the property or services stolen is five thousand dollars or more and is less than one hundred thousand dollars, falsification in a theft offense is a felony of the fourth degree. If the value of the property or services stolen is one hundred thousand dollars or more, falsification in a theft offense is a felony of the third degree.

(3) Whoever violates division (A)(12) or (B) of this

section is guilty of falsification in a theft offense, a felony of the fifth degree.

(F) A person who is injured in a civil action to any person by injury, death, or loss, as a result of the commission of a reasonable attorney's fees incurred as a result of a civil action commenced under this division is not liable to the person who incurs injury, death, or loss as a result of a violation of this section.

HISTORY: 134 v H 577; 140 v H 632 (Eff 3-2-77); H 708 (Eff 4-19-88); 143 v S 3 (Eff 4-1-89); H 152 (Eff 7-1-93); 145 v H 7-17-95; 146 v H 4 (Eff 7-1-96); 146 v S 2 (Eff 7-1-96); 146 v S 6-96.

† The numbering is the same as the numbering made by SB 269.

The provisions of § 2921.13 read as follows:

Section 2921.13 of the Revised Code is amended to read as follows: "Section 2921.13 of the Revised Code, as amended by S.B. 2, Sub. H.B. 4, and H.B. 644, and as amended by the General Assembly, with the new text in capital letters. * * * The amendments stated in division (B) of this section are retroactively irreconcilable and the versions of those sections in effect prior to the effective date of this act shall remain in effect prior to the effective date of this act."

See provisions, § 3701.2913.02.

The provisions of § 5

SECTION 5. No action shall be brought under section 2921.13, 5101.02 of the Revised Code against any person until the date of this act.

1974 Committee Com

This section defines the offense of perjury, and includes a list of situations. The offense is a misdemeanor. Formerly, this section was designated as RC 2921.13.

The section covers falsification in a theft offense, and it covers falsification in a theft offense to perjury under the Revised Code. Examples of offenses under this section include falsification in a theft offense to be falsely suspended, to mislead a policeman, to obtain welfare payments or a license, to obtain a permit, to obtain a license, or in acknowledging a document before a notary; and falsification in a theft offense to obtain employment, or a diploma or distinction.

Falsification is a m

section is guilty of falsification to purchase a firearm, a felony of the fifth degree.

(F) A person who violates this section is liable in a civil action to any person harmed by the violation for injury, death, or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney's fees, court costs, and other expenses incurred as a result of prosecuting the civil action commenced under this division. A civil action under this division is not the exclusive remedy of a person who incurs injury, death, or loss to person or property as a result of a violation of this section.

HISTORY: 134 v H 511 (Eff 1-1-74); 136 v S 545 (Eff 1-17-77); 140 v H 632 (Eff 3-28-85); 141 v H 340 (Eff 5-20-86); 142 v H 708 (Eff 4-19-88); 143 v S 46 (Eff 1-1-90); 143 v H 347 (Eff 7-18-90); 143 v S 3 (Eff 4-11-91); 144 v H 298 (Eff 7-26-91); 145 v H 152 (Eff 7-1-93); 145 v H 107 (Eff 10-20-93); 146 v H 249 (Eff 7-17-95); 146 v H 4 (Eff 11-9-95); 146 v S 46 (Eff 11-15-95); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 644. Eff 11-6-96.

† The numbering is the result of combining the amendments made by SB 269 (146 v —) and HB 644 (146 v —).

The provisions of § 6 of S 269 (146 v —) read in part as follows:

Section 2921.13 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. S.B. 2, Sub. H.B. 4, and Am. Sub. S.B. 46 of the 121st General Assembly, with the new language of none of the acts shown in capital letters. * * * This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that the versions of those sections as so presented are the resulting versions in effect prior to the effective date of this act.

See provisions, § 3 of HB 4 (146 v —) following RC § 2913.02.

The provisions of § 5 of HB 249 (146 v —) read as follows:

SECTION 5. No action that may be taken under sections 329.091, 2921.13, 5101.181, 5101.182, 5101.184, and 5747.122 of the Revised Code against a former General Assistance recipient shall be initiated later than two years after the effective date of this act.

1974 Committee Comment to H 511

This section defines an offense similar in some respects to perjury, and includes falsehoods made in a wide variety of situations. The offense is graded as a serious misdemeanor. Formerly, much of the conduct covered by this section was designated as perjury, a serious felony.

The section covers false statements made in official proceedings, and it thus may constitute a lesser included offense to perjury under section 2921.11 of the Revised Code. Examples of other types of violations under the section include false statements: intended to cause another to be falsely suspected or accused of a crime; made to mislead a policeman, building inspector, or other public official in an investigation or inspection; made to receive welfare payments or other payments from a public treasury; made to obtain a building permit, driver's license, or other permit, license, or release; made in an affidavit, or in acknowledging a deed, or in another document sworn before a notary; and made in writing to secure a loan, or employment, or a diploma, honor, award, or other benefit or distinction.

Falsification is a misdemeanor of the first degree.

Cross-References to Related Sections

Penalties, RC § 2929.21, 5728.99.

Application for certificate of title for watercraft or outboard motor, RC § 1548.06.

Application for license to practice dietetics to include notice of offense of falsification, RC § 4759.05.

Application for residential facility linked deposit loan, RC § 5126.54.

Claim forms for livestock killed or injured by coyote, RC § 955.53.

Confidentiality and use of information; false reports prohibited, RC § 1155.16.

Dog and kennel fund compensation claims, statements re subject to falsification penalties, RC § 955.36.

False statement on license application form for counselor or social worker; penalty, RC § 4757.06.

False statements in certificate of limited partnership, RC § 1782.11.

Falsification of loan application, RC § 135.85.

Falsification of loan application by agricultural business for reduced rate loan, RC § 135.73.

By small business, RC § 135.64.

Forfeiture of property in connection with felony drug abuse offense or act, RC § 2925.42.

Immunity of witness, RC § 2945.44.

Individual granted immunity may be subjected to criminal penalty, RC § 3734.43.

Information and documents to be submitted by affidavit; falsification or deception, RC § 3746.20.

Joint committee on agency rule review, penalty for filing false statement, RC §§ 101.78, 121.68.

Knowingly defined, RC § 2901.22.

Liability of owners, licensees, or operators of radio and television stations, RC § 2739.03.

Liquor control investigators, RC § 5502.61.

Lobbyist registration statement, RC §§ 101.78, 101.79.

Marriage license application; penalties for misrepresentation, RC § 3101.99.

Medicaid fraud offense defined, RC § 2933.71.

Motor vehicles—

False data on inspection certificate not also criminal falsification, RC § 3704.05.

False statement in affidavit related to district of registration or in leased vehicle certificate as criminal falsification, RC § 4503.10.

Oath, affirmation, RC §§ 3.20, 3.21.

Offenses that preclude serving on board of directors of bank, RC § 1115.02.1.

Official proceeding defined, RC § 2921.01.

Prohibitions, RC § 3750.17.

Provisions applicable to societies for savings, RC § 1123.14.

Public official defined, RC § 2921.01.

Qualifications for sheriff; basic training course; continuing education, RC § 311.01.

Reciprocity certificates, RC § 4503.37.

Records and accounts, RC § 926.11.

Records of inventory and sales; purchaser to complete form, RC §§ 3743.07, 3743.20.

Registration of facilities capable of withdrawing more than 100,000 gallons a day; ground water stress areas, RC § 1521.16.

Restrictions on purchasers, RC § 3743.63.

Sales of Class C fireworks to residents; transportation out of state, RC § 3743.45.

Sales to nonresidents; purchaser's form, RC § 3743.44.

Statements by defendant in re proof of financial responsibility