verified/es

STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

January 13, 1995

Fernando Aymat, M.D.
50 Severance Circle
Cleveland, Ohio 44118

Dear Doctor Aymat:

Please find enclosed a certified copy of the Findings, Order and Journal Entry approved and confirmed by the State Medical Board meeting in regular session on January 11, 1995.

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

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

Very truly yours,

Thomas E. Gretter, M.D.
Secretary

TEG:em
Enclosures

CERTIFIED MAIL RECEIPT NO. P 348 885 660
RETURN RECEIPT REQUESTED

Mailed 1-24-95

STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

CERTIFICATION

I hereby certify that the attached copy of the Findings, Order and Journal Entry, approved by the State Medical Board, meeting in regular session on January 11, 1995, constitute a true and complete copy of the Findings, Order and Journal Entry in the matter of Fernando Aymat, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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

(SEAL)

Thomas E. Gretter, M.D.
Secretary

1/12/95
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

FERNANDO AYMAT, M.D. *

FINDINGS, ORDER AND JOURNAL ENTRY

This matter came on for consideration after a Notice of Automatic Suspension and a Notice of Opportunity for Hearing was mailed to Fernando Aymat, M.D., by the State Medical Board of Ohio on December 31, 1992.

By letter dated December 30, 1992, notice was given to Fernando Aymat, M.D., that the State Medical Board intended to consider disciplinary action regarding his license to practice medicine and surgery in Ohio, and that he was entitled to a hearing if such hearing was requested within thirty (30) days of the mailing of said notice. In accordance with Section 119.09, Ohio Revised Code, said notice was sent via certified mail, return receipt requested, to the last known address of Fernando Aymat, M.D., that being 50 Severance Circle, Cleveland, Ohio, 44118. The notice was returned marked as undeliverable with a notation that no forwardable address was on file. Notice was subsequently published on November 8, 1993, November 15, 1993, and November 22, 1993 in the Cleveland Plain Dealer, a newspaper of general circulation in the county of Dr. Aymat's last known place of residence. A copy of the newspaper notice with the first publication of said notice marked was then mailed to Dr. Aymat's last known address of record.

No request for hearing has been received, and more than thirty (30) days have now elapsed since the date of the last publication.

WHEREFORE, for the reasons outlined in the December 30, 1992 letter of notice, which is attached hereto and incorporated herein, it is hereby ORDERED that the license of Fernando Aymat, M.D., to practice medicine and surgery in the State of Ohio be REVOKED, and that Fernando Aymat, M.D., be ineligible for licensure in the future.

This Order shall become effective January 11, 1995.

This Order is hereby entered upon the Journal of the State Medical Board of Ohio for the 11th day of January, 1995, and the original thereof shall be kept with said Journal.

Thomas E. Gretter, M.D.
Secretary

(SEAL)

1/19/95
Date

AFFIDAVIT

I, Debra Jones, being duly cautioned and sworn, do hereby depose and say:

1) That I am employed by the State Medical Board of Ohio (hereinafter, "The Board")

2) That I serve the Board in the position of Chief, Continuing Medical Education, Records, and Renewal;

3) That in such position I am the responsible custodian of all public licensee records maintained by the Board pertaining to individuals who have received certificates issued pursuant to Chapter 4731., Ohio Revised Code;

4) That I have this day carefully examined the records of the Board pertaining to Fernando Aymat, M.D.,

5) That based on such examination, I have found the last known address of record of Fernando Aymat, M.D., to be:

50 Severance Circle
Cleveland Heights, Ohio 44118

6) Further, Affiant Sayeth Naught.

Debra L. Jones

Debra L. Jones, Chief
Continuing Medical Education,
Records and Renewal

Sworn to and signed before me, Lauren Lubow, Notary Public, this 30th day of December, 1994.

Lauren Lubow

Notary Public

LAUREN LUBOW, Attorney At Law
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

STATE MEDICAL BOARD OF OHIO

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

NOTICE OF AUTOMATIC SUSPENSION AND OPPORTUNITY FOR HEARING

December 30, 1992

Fernando Aymat, M.D.
50 Severance Circle
Cleveland, OH 44118

Dear Doctor Aymat:

Pursuant to Section 4731.22(F), Ohio Revised Code, you are hereby notified that your license to practice medicine and surgery in the State of Ohio has been automatically suspended as of December 7, 1992, by operation of law. 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 December 7, 1992, in the Cuyahoga County Court Common Pleas, you were found guilty of one felony count of rape in violation of Section 2907.02, Ohio Revised Code.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "a plea of guilty to, or a judicial finding of guilt of, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

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.

Mailed 12/31/92

December 30, 1992

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 shall, in your absence and upon consideration of this matter, enter a final order revoking your license to practice medicine and surgery.

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Carla S. O'Day, M.D./dbt

Carla S. O'Day M.D.
Secretary

CSO:jmb

Enclosures:

CERTIFIED MAIL #P 569 363 500
RETURN RECEIPT REQUESTED

4. (1978) Revised Code § 2907.01(F), which sets forth the definition of "obscenity," is neither unconstitutionally overbroad nor void for vagueness when it is authoritatively construed to incorporate the guidelines prescribed in Miller v. California, 413 US 15: State v. Burgun, 56 OS2d 354, 10 OO3d 485, 384 NE2d 285; State v. Thomas, 57 OS2d 71, 11 OO3d 242, 387 NE2d 229.

5. (1976) "Sexual contact" as defined in RC § 2907.01 does not include a situation in which the offender forces the victim to touch one of the offender's erogenous zones: State v. Baker, 50 OApp2d 68, 4 OO3d 46, 361 NE2d 519.

6. (1981) A defendant may be convicted of two counts of rape where the victim is both orally and vaginally penetrated: State v. Barnes, 68 OS2d 13, 22 OO3d 126, 427 NE2d 517.

7. (1982) Under RC § 2907.01 "as written and authoritatively construed," it is incumbent upon the prosecution to prove beyond a reasonable doubt that: (1) The material depicts conduct which is sexual; that is it depicts vaginal intercourse or any of the other explicit examples expressly set forth in the definition of sexual conduct in section 2907.01(A), or one of the two examples of such conduct as described in Miller; (2) the sexual conduct depicted is obscene, as that term is expressly defined in section 2907.01(F)(1)—(5); and (3) the material meets the three guidelines of Miller, in that (1) when taken as a whole and applying contemporary community standards, it appeals to the prurient interests of the average person; (2) it depicts or describes, in a patently offensive way, the sexual conduct specifically defined in section 2907.01(A) or in the examples of Miller; and (3) taken as a whole, it lacks literary, artistic, political, or scientific value: Turoso v. Cleveland Municipal Ct., 674 F2d 486 (6th Cir.) [affirming 531 FSupp 829].

8. (1983) An otherwise constitutional municipal obscenity ordinance incorporating the tripartite standard for permissible regulation set forth in Miller v. California is not rendered unconstitutional by inclusion of the phrase "including without limitation" before a list of ultimate sexual acts whose depiction was prohibited: Janicki v. Pizza, 722 F2d 1274 (6th Cir.).

9. (1983) In light of the first amendment, a warrant must first be obtained before books and movies are seized so as to allow an impartial magistrate to focus searchingly on the question of obscenity; however, where there are exigent circumstances, it is reasonable to permit action without prior judicial evaluation. Thus, where two police officers enter a theater posing as customers and pay the required admittance fee and, after watching the show for approximately two hours, view a live performance by the defendant where she violates RC § 2907.32(A)(4), the officers had good cause (when guided by the definition of "obscene" performance found in RC § 2907.01(F)(2) and (5)) to believe that an offense had been committed and were authorized to arrest defendant, without a warrant, pursuant to RC § 2935.03(A): Cleveland v. Mart, 10 OApp3d 210, 10 OBR 284, 461 NE2d 316.

10. (1984) In a prosecution for pandering obscenity, the jury must be instructed as to the three-prong test of Miller v. California (1973), 413 U.S. 15, and the Ohio definition of sexual conduct as stated in RC § 2907.01 (A). Failure to so instruct the jury constitutes prejudicial error: State v. Brooks, 21 OApp3d 47, 21 OBR 50, 486 NE2d 135.

[CONSTRUING FORMER ANALOGOUS RC § 2905.34]

1. (1973) Former RC §§ 2905.34 and 2905.35 may be used to determine whether the materials in question are obscene: State ex rel. Sensenbrenner v. Adult Book Store, 35 OS2d 220, 64 OO2d 368, 301 NE2d 695.

2. (1973) Former RC §§ 2905.34 and 2905.35 comport with the standards for determining obscenity enunciated by the United States Supreme Court in Miller v. California: State ex rel. Keating v. Vixen, 35 OS2d 215, 64 OO2d 366, 301 NE2d 880.

3. (1973) Former Ohio obscenity statutes (RC §§ 2905.35 and 2905.37) meet the constitutional standards enunciated by the United States supreme court in Miller v. California, 37 LEd2d 419 (1973). The definitional statute, former RC § 2905.34 is not void for vagueness or overbreadth: Hollington v. Ricco, 40 OApp2d 57, 69 OO2d 45, 318 NE2d 442.

SEXUAL ASSAULTS

§ 2907.02 Rape.

(A)(1) No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when either of the following apply:

(a) For the purpose of preventing resistance, the offender substantially impairs the other person's judgment or control by administering any drug or intoxicant to the other person, surreptitiously or by force, threat of force, or deception.

(b) The other person is less than thirteen years of age, whether or not the offender knows the age of such person.

(2) No person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force.

(B) Whoever violates this section is guilty of rape, an aggravated felony of the first degree. If the offender under division (A)(1)(b) of this section purposely compels the victim to submit by force or threat of force, whoever violates division (A)(1)(b) of this section shall be imprisoned for life.

(C) A victim need not prove physical resistance to the offender in prosecutions under this section.

(D) Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

Evidence of specific instances of the defendant's sexual activity, opinion evidence of the defendant's sexual activity, and reputation evidence of the defendant's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, the defendant's past sexual activity with the victim, or is admissible against the defendant under section 2945.59 of the Revised Code, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

(E) Prior to taking testimony or receiving evidence of any sexual activity of the victim or the defendant in a proceeding under this section, the court shall resolve the admissibility of the proposed evidence in a hearing in chambers, which shall be held at or before preliminary hearing and not less than three days before trial, or for good cause shown during the trial.

(F) Upon approval by the court, the victim may be represented by counsel in any hearing in chambers or other proceeding to resolve the admissibility of evidence. If the victim is indigent or otherwise unable to obtain the services of counsel, the court may, upon request, appoint counsel to represent the victim without cost to the victim.

(G) It is not a defense to a charge under division (A)(2) of this section that the offender and the victim were married or were cohabiting at the time of the commission of the offense.

HISTORY: 134 v H 511 (Eff 1-1-74); 136 v S 144 (Eff 8-27-75); 139 v S 199 (Eff 7-1-83); 141 v H 475. Eff 3-7-86.

Not analogous to former RC § 2907.02 (RS § 6831; S&C 406; S&S 267, 268; 33 v 33; 60 v 85; 66 v 122; 83 v 81; 86 v 3; GC § 12433; 113 v 541; Bureau of Code Revision, 10-1-53; 131 v 673), repealed 134 v H 511, § 2, eff 1-1-74.

Committee Comment to H 511

This section includes the traditional concept of rape as sexual intercourse with a female by force, but expands upon the offense in four important respects.

First, the acts contemplated include anal intercourse, cunnilingus, and fellatio in addition to vaginal intercourse, because any of such acts can result in serious physical or psychic harm to the victim when committed under circumstances amounting to rape.

Second, the section does away with distinctions of sex between offenders and victims, for the reason that homosexual and lesbian assaults can be as dangerous to victims as heterosexual assaults.

Third, the section explicitly provides for rape by purposely drugging the victim or rendering the victim intoxicated. In this context, the section does not include the situation where a person plies his intended partner with drink or drugs in the hope that lowered inhibitions might lead to a liaison, since when the alcohol or drugs are voluntarily taken in the absence of force or deception, the consent of the "victim" can fairly be inferred.

Fourth, the section designates as rape sexual conduct with a pre-puberty victim, regardless of whether force or drugs are used, and regardless of whether the offender has actual knowledge of the victim's age. The rationale for this is that the physical immaturity of a pre-puberty victim is not easily mistaken, and engaging in sexual conduct with such a person indicates vicious behavior on the part of the offender.

Rape is a felony of the first degree, except that *forcible* rape of a victim under age 13 carries a penalty of life imprisonment.

Cross-References to Related Sections

Penalties for felonies, RC § 2929.11.

Additional sentence for felonies involving a firearm, RC § 2929.71.

Admission of videotaped preliminary hearing testimony of child victim at trial, RC § 2945.49.

Certain offenders disqualified from day-care activities, RC § 5104.09.

Child victim of sex offenses, testimony—
- Juvenile Court proceedings, RC § 2151.35.11.
- List of persons experienced in questioning children, RC § 109.54.
- Other court proceedings, RC § 2907.41.
- Preliminary hearing, RC § 2937.11.

Competency of witnesses, RC § 2945.42.

Costs of medical examination of victims, RC § 2907.28.

Criteria and conditions of probation, RC § 2951.02.

Denial of bail on appeal, RC §§ 2949.02, 2953.02.

Emergency services for victims, RC § 2907.29.

Evidence of victim's sexual activity in proceeding for reparation to victims of crime, RC § 2743.62.

Failure to report a crime, RC § 2921.22.

Felony murder, RC § 2903.01.

Force defined, RC § 2901.01(A).

Habitual sex offender, RC § 2950.01.

Notification of victim of communicable disease, RC §§ 2151.14, 2907.30.

Prosecutor required to notify victim of date, time and place of trial, RC § 2937.08.1.

Purposely defined, RC § 2901.22(A).

Rape defined as offense of violence, RC § 2901.01(I).

Rules of evidence in prostitution cases, RC § 2907.27.

Sexual activity defined, RC § 2907.01(C).

Sexual conduct defined, RC § 2907.01(A).

Spouse defined, RC § 2907.01(L).

Standards for community-based corrections programs, RC § 5149.31.

Statement by victim—
- Proceeding of final disposition other than trial, RC § 2943.04.1.
- Trial, RC § 2945.07.

Suppression of information in cases involving sex offenses, RC § 2907.11.

Victim to be interviewed by peace officer who has had crisis intervention training, RC § 2907.30.

Ohio Rules

Character evidence, EvR 404.