

ON COMPUTER

# The Supreme Court of Ohio

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JUN 17 1996

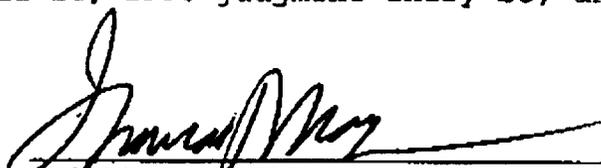
MARCIA J. MENGEL, CLERK  
SUPREME COURT OF OHIO

1996 TERM

In the Matter of Mattie L. Vaughn, M.D., Appellant,	:	
	:	Case No. 96-117
	:	
v.	:	E N T R Y
	:	
The State Medical Board of Ohio, Appellee.	:	
	:	

This cause came on for further consideration of appellant's motion for stay of execution of this Court's April 24, 1996 judgment entry. Upon consideration thereof,

IT IS ORDERED by the Court that the motion for stay of execution of this Court's April 24, 1996 judgment entry be, and hereby is, denied.

  
 \_\_\_\_\_  
 THOMAS J. MOYER  
 Chief Justice

STATE MEDICAL BOARD OF OHIO **The Supreme Court of Ohio**

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FILED

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MARCIA J. MENGEL, CLERK  
SUPREME COURT OF OHIO

1996 TERM

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Attorney General's Office  
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Health & Human  
Services Section

In the Matter of Mattie L. :  
Vaughn, M.D., :  
Appellant, :

Case No. 96-117

v. :

RECONSIDERATION ENTRY

The State Medical Board of :  
Ohio, :  
Appellee. :

(Franklin County)

IT IS ORDERED by the Court that the motion for  
reconsideration in this case be, and hereby is, denied.

(Court of Appeals No. 95APE05645)

  
THOMAS J. MOYER  
Chief Justice

# The Supreme Court of Ohio

FILED

APR 24 1996

1996 TERM

MARCIA J. MENGEL, CLERK  
SUPREME COURT OF OHIO

In the Matter of Mattie L. :  
Vaughn, M.D., :  
Appellant, :  
v. :  
The State Medical Board of :  
Ohio, :  
Appellee. :

Case No. 96-117

E N T R Y

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Health & Human  
Services Section

STATE MEDICAL BOARD  
OF OHIO  
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Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

**COSTS:**

Docket Fee, \$40.00, paid by Michael F. Colley Co., L.P.A.

(Franklin County Court of Appeals; No. 95APE05645)

  
THOMAS J. MOYER  
Chief Justice

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FILE 2

STATE MEDICAL BOARD FILED  
IN THE COURT OF APPEALS OF OHIO COURT OF APPEALS  
FRANKLIN CO. OHIO  
95 DEC 21 AM 11:44  
TENTH APPELLATE DISTRICT  
95 DEC -7 PM 1:45

In the Matter of  
Mattie L. Vaughn, M.D.,  
Appellant-Appellant,  
v.  
The State Medical Board of Ohio,  
Appellee-Appellee.

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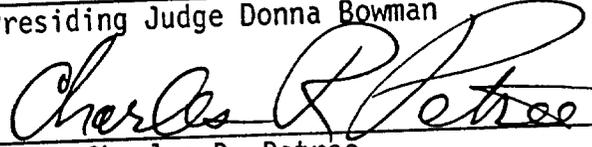
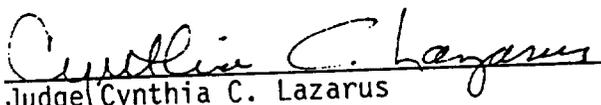
No. 95APE05-645

(REGULAR CALENDAR)

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JOURNAL ENTRY

The motion of appellant, Mattie L. Vaughn, M.D., for a stay of execution of the judgment of this court is sustained to the extent that the execution of the judgment of this court entered herein on November 30, 1995, is hereby stayed during the pendency of the appeal to the Supreme Court from said judgment.

  
Presiding Judge Donna Bowman  
  
Judge Charles R. Petree  
  
Judge Cynthia C. Lazarus

cc: Michael F. Colley, Esq.  
David K. Frank, Esq.  
Betty D. Montgomery, AG  
Anne Berry Strait, AAG

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In the Matter of  
Mattie L. Vaughn, M.D.,

Appellant-Appellant,

v.

The State Medical Board of Ohio,

Appellee-Appellee.

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No. 95APE05-645

(REGULAR CALENDAR)

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O P I N I O N

Rendered on November 30, 1995

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*Michael F. Colley Co., L.P.A., Michael F. Colley and David K. Frank, for appellant.*

*Betty D. Montgomery, Attorney General, and Anne Berry Strait, for appellee.*

---

APPEAL from the Franklin County Court of Common Pleas.

LAZARUS, J.

Appellant, Mattie L. Vaughn, M.D., appeals from a judgment of the Franklin County Court of Common Pleas affirming revocation of her medical license by appellee, State Medical Board of Ohio. We affirm for the reasons that follow.

The medical board began its investigation of appellant's medical practice in 1986. The practice largely consisted of weight-loss patients. Based on a hearing examiner's report of February 2, 1990, the board voted on March 14, 1990, to permanently revoke appellant's certificate to practice medicine.

surgery. The board found violations of six subsections of R.C. 4731.22(B): subsections (1), (2), (3), (4), and (6), and former subsection (16). Appellant appealed to the court of common pleas, which affirmed as to subsections (2), (4), (6), and (16) but reversed as to subsections (1) and (3). Both parties appealed to this court, which upheld the board's findings as to subsections (2), (3), (6), and (16) but reversed the judgment of the board and the court of common pleas as to subsection (4). The board did not appeal the court's reversal as to subsection (1). See *Vaughn v. State Medical Bd.* (Aug. 6, 1991), Franklin App. No. 90AP-1160, unreported (1991 Opinions 3735), motion to certify the record overruled, 62 Ohio St.3d 1496. The four violations that were upheld were: (1) failure to use reasonable care discrimination in the administration of drugs or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease, in violation of R.C. 4731.22(B)(2); (2) prescribing drugs for other than legitimate therapeutic purposes, in violation of R.C. 4731.22(B)(3); (3) departing from or failing to conform to minimal standards of care of similar practitioners under the same or similar circumstances, in violation of R.C. 4731.22(B)(6)(a); and (4) assisting in the unauthorized practice of medicine, in violation of former R.C. 4731.22(A)(16) and R.C. 4731.41.

On remand, the court of common pleas, on March 25, 1992, remanded the case "to the Board for a disciplinary hearing and/or a finding consistent with this Order and the Appellate Court's decision." On August 10, 1993, appellant filed a motion with the board for remand to a hearing examiner so she could present evidence in mitigation of sanction. The next day, the board unanimously

voted to deny appellant's motion for remand to a hearing examiner and voted 6-2 to revoke appellant's certificate.

Appellant filed a notice of appeal and a motion for stay of revocation with the court of common pleas. The court granted the stay on December 27, 1993, but affirmed the revocation of appellant's certificate on March 21, 1995. Appellant then filed motions for an extension of the stay of revocation and for reconsideration of the court's decision to affirm the revocation. The court denied both motions on May 11, 1995.

Appellant filed a notice of appeal with this court on May 24, 1995, and, on August 25, 1995, this court granted appellant's motion for stay of execution of revocation pending appeal. Appellant now asserts the following eight assignments of error:

1. "THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT MATTIE L. VAUGHN, M.D., IN AFFIRMING THE AUGUST 13, 1993 ORDER AND ENTRY OF THE STATE MEDICAL BOARD OF OHIO, SINCE THAT ORDER IS NOT 'IN ACCORDANCE WITH LAW' AND THE MEDICAL BOARD'S PROCEEDINGS AND ACTION OF AUGUST 1993 VIOLATED DR. VAUGHN'S RIGHT TO DUE COURSE OF LAW AND DUE PROCESS OF LAW GUARANTEED BY ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION AND BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION."

2. "THE TRIAL COURT ERRED, OR ABUSED ITS DISCRETION, TO THE PREJUDICE OF APPELLANT MATTIE L. VAUGHN, M.D., IN AFFIRMING THE AUGUST 13, 1993 ORDER AND ENTRY OF THE STATE MEDICAL BOARD, SINCE THAT ORDER IS NOT 'IN ACCORDANCE WITH LAW' AND THE PENALTY OF PERMANENT REVOCATION OF THE APPELLANT'S CERTIFICATE TO PRACTICE MEDICINE, IMPOSED BY THAT ORDER, IS IMPROPER, UNLAWFUL, EXCESSIVE AND UNCONSTITUTIONAL."

3. "THE TRIAL COURT ERRED OR ABUSED ITS DISCRETION, TO THE PREJUDICE OF APPELLANT MATTIE L. VAUGHN, M.D., IN AFFIRMING THE AUGUST 13, 1993 ORDER AND ENTRY OF THE STATE MEDICAL BOARD OF OHIO SINCE THE BOARD'S ORDER AND ENTRY OF AUGUST 13, 1993, IS NOT 'IN ACCORDANCE WITH

LAW' AND THE BOARD DID NOT COMPLY WITH THE MARCH 25, 1992 REMAND ORDER OF THE COURT OF COMMON PLEAS."

4. "THE TRIAL COURT ERRED OR ABUSED ITS DISCRETION, TO THE PREJUDICE OF APPELLANT MATTIE L. VAUGHN, M.D., IN OVERRULING HER AMENDED APPLICATION FOR AN ORDER CONTINUING THE STAY OF REVOCATION OF HER CERTIFICATE TO PRACTICE MEDICINE, SINCE THE PROVISION OF R.C. §119.12, WHICH IMPOSES A FIFTEEN MONTH LIMITATION ON A JUDICIAL STAY ORDER AND VIOLATES THE SEPARATION OF POWERS DOCTRINE RECOGNIZED IN OHIO AND IS, THEREFORE, UNCONSTITUTIONAL ON ITS FACE AND AS APPLIED TO THE APPELLANT."

5. "THE TRIAL COURT ERRED OR ABUSED ITS DISCRETION, TO THE PREJUDICE OF APPELLANT MATTIE L. VAUGHN, M.D., IN OVERRULING HER AMENDED APPLICATION FOR AN ORDER CONTINUING THE STAY OF REVOCATION OF HER CERTIFICATE TO PRACTICE MEDICINE SINCE PARAGRAPH 8 OF R.C. § 119.12, UPON WHICH THE COURT RELIED, AS APPLIED TO DR. VAUGHN, VIOLATES HER RIGHT TO DUE PROCESS OF LAW, GUARANTEED BY ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION, AND SECTION 1 OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION."

6. "THE TRIAL COURT ERRED OR ABUSED ITS DISCRETION, TO THE PREJUDICE OF APPELLANT MATTIE L. VAUGHN, M.D., IN OVERRULING HER AMENDED APPLICATION FOR AN ORDER CONTINUING THE STAY OF REVOCATION OF HER CERTIFICATE TO PRACTICE MEDICINE SINCE PARAGRAPH 8 OF R.C. § 119.12, UPON WHICH THE COURT RELIED, APPLIED TO DR. VAUGHN, VIOLATES THE PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT AND EXCESSIVE FINES, GUARANTEED BY ARTICLE I, SECTION 9 OF THE OHIO CONSTITUTION AND THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION."

7. "THE TRIAL COURT ERRED OR ABUSED ITS DISCRETION, TO THE PREJUDICE OF APPELLANT MATTIE L. VAUGHN, M.D., IN OVERRULING HER AMENDED APPLICATION FOR AN ORDER CONTINUING THE STAY OF REVOCATION OF HER CERTIFICATE TO PRACTICE MEDICINE SINCE PARAGRAPH 8 OF R.C. §119.12, UPON WHICH THE COURT RELIED, AS APPLIED TO DR. VAUGHN, VIOLATES HER CONSTITUTIONAL RIGHT TO THE EQUAL PROTECTION OF THE LAW GUARANTEED BY ARTICLE I, SECTION 2 OF THE OHIO CONSTITUTION."

8. "THE TRIAL COURT ERRED OR ABUSED ITS DISCRETION, TO THE PREJUDICE OF APPELLANT MATTIE L. VAUGHN, M.D., IN OVERRULING HER AMENDED APPLICATION FOR AN ORDER

CONTINUING THE STAY OF REVOCATION OF HER CERTIFICATE TO PRACTICE MEDICINE SINCE PARAGRAPH 8 OF R.C. § 119.12, UPON WHICH THE COURT RELIED, AS APPLIED TO DR. VAUGHN, VIOLATES HER CONSTITUTIONAL RIGHTS TO JUSTICE AND A REMEDY GUARANTEED BY ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION."

In her first assignment of error, appellant asserts that she was deprived of her right to due process under the Ohio and United States Constitutions by the board's denial at the August 11, 1993 meeting of her request to testify and to present additional evidence in mitigation of sanction.

To be consistent with the Due Process Clause, deprivation of a right, including revocation of a professional license, must be preceded by notice and a hearing. Determining the type of hearing that minimally comports with due process requires a balancing of the governmental and individual interests at stake. *Korn v. Ohio State Medical Bd.* (1988), 61 Ohio App.3d 677, 684. Ohio's Due Course Clause, Section 16, Article I, Ohio Constitution is equivalent to the Due Process Clause of the Fourteenth Amendment. *Sorrell v. Thevenir* (1994), 69 Ohio St.3d 415, 422.

In cases involving the revocation of a certificate to practice medicine, generally the interests are great: the state's interest in protecting the public and the physician's interest in maintaining a livelihood. This appeal, however, involves the narrower question of what due process must be afforded a physician when guilt has already been adjudged and only the issue of sanction remains before the board.

We find that, under these circumstances, a physician has no cognizable due process interest in having another opportunity to be heard. All of the evidence appellant now proffers is evidence of her conduct since the

hearing examiner's 1990 report. Appellant claims that she has reformed her medical practice, that she cooperated in the board's investigation, that her transgressions did not cause any documented harm to patients, and that she now provides excellent medical care. Appellant's opportunities to be heard included the hearing before the hearing examiner, written objections to the hearing examiner's report, and motions before the board. See Ohio Adm.Code 4731-13-15. The board and two courts have already considered the question of appellant's guilt. The remand to the board was for the sole purpose of reconsidering the sanction. Appellant is now demanding an opportunity to be heard that she was not entitled to at the first board meeting: an opportunity after the hearing before the hearing examiner but before the board voted on a sanction. See *Bharmota v. State Medical Bd. of Ohio* (Dec. 7, 1993), Franklin App. No. 93AP-630, unreported (1993 Opinions 5165); *Mustafa v. State Medical Bd. of Ohio* (Oct. 17, 1991), Franklin App. No. 91AP-282, unreported (1991 Opinions 5010). The state is not constitutionally required to provide additional opportunity to be heard merely because appellant's appeals have been pending for five years.

Moreover, the minutes of the August 11, 1993 meeting show that the board considered the impact additional mitigating evidence might have had at that point in the proceedings. The meeting minutes show that the unanimous vote not to remand the case to a hearing examiner for the presentation of further evidence was taken after significant debate, in which board members expressed arguments both in favor of and against remand. This debate over the mitigating evidence demonstrated that the board was not summarily refusing appellant's request to present more evidence. This debate was itself some quantum of process beyond

that which is constitutionally required. In addition, appellant's counsel was permitted to speak to the board at this meeting.

Because we conclude that the board's denial of appellant's requests to testify and to present additional evidence in mitigation of sanction did not violate appellant's rights of due process under the Ohio and United States Constitutions, her first assignment of error is overruled.

Under her second assignment of error, appellant argues that permanent revocation of her certificate violates (1) Ohio statutory law, (2) the cruel and unusual punishment provisions of the Ohio and United States Constitutions, and (3) the equal protection provisions of the Ohio and United States Constitutions.

Under the standard of review in appeals from the board, the court of common pleas must affirm if the board's order is "supported by reliable, probative, and substantial evidence and is in accordance with law." R.C. 119.12, paragraph 13. The standard of review for the court of appeals in appeals of board orders from the court of common pleas, however, is abuse of discretion. That is, the judgment of the trial court will be affirmed unless there is a "perversity of will, passion, prejudice, partiality, or moral delinquency." *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621. In this appeal, however, appellant's guilt is not at issue; appellant is challenging only the validity of the sanction. If the board's sanction is within its statutory authority, courts have no authority to reverse or modify it. *Roy v. State Medical Bd.* (1992), 80 Ohio App.3d 675, 683; *DeBlanco v. Ohio State Medical Bd.* (1992), 78 Ohio App.3d 194, 202; *Sicking v. Ohio State Medical Bd.* (1991), 62 Ohio App.3d 387, 395; *Angerman v. Ohio State Medical Bd.* (1990), 70 Ohio App.3d 346, 353; *In re Jones*

(1990), 69 Ohio App.3d 114, 121; *Kuzas v. Ohio State Medical Bd.* (1990), 67 Ohio App.3d 147, 150. Because permanent revocation is an authorized sanction under R.C. 4731.22(B), appellant's sanction was consistent with Ohio statutory law.

Appellant also asserts that revocation of her certificate constitutes cruel and unusual punishment in violation of the Ohio and United States Constitutions. First, the Eighth Amendment generally applies only to criminal prosecutions and punishments. *Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc.* (1989), 492 U.S. 257, 109 S.Ct. 2909; *Ingraham v. Wright* (1977), 430 U.S. 651, 664-668, 97 S.Ct. 1401, 1408-1411; *State ex rel. Matz v. Brown* (1988), 37 Ohio St.3d 279, 280 (*per curiam*); *In re Complaint of Sarver* (1990), 70 Ohio App.3d 471, 479. Therefore, the state's revocation of appellant's certificate is not subject to review under the Eighth Amendment.

Second, as a general rule, a sentence that falls within the terms of a valid statute cannot amount to cruel and unusual punishment. *McDougle v. Maxwell* (1964), 1 Ohio St.2d 68, 69 (*per curiam*). Therefore, even assuming that revocation of appellant's certificate was reviewable under the Eighth Amendment, the revocation would not be unconstitutional.

Third, even assuming that the proportionality principle of *Solem v. Helm* (1983), 463 U.S. 277, 103 S.Ct. 3001, were applicable in this case, we would not find revocation so disproportionate as to constitute cruel and unusual punishment. According to the hearing examiner's report:

\*\*\* Dr. Vaughn routinely prescribed Obetrol, a Schedule II amphetamine anorectic, and other stimulant controlled substance anorectics for treatment of overweight or obesity. Dr. Vaughn did not require that patients be obese by medical definition (20% over ideal weight), but accepted any adult who was 20 lbs. or more overweight

for treatment in her 'diet program.' Dr. Vaughn initiated treatment with amphetamines upon patients' first visits, without first objectively establishing that the patients were refractory to other methods of weight loss, and without performing adequate workups and evaluations. Dr. Vaughn's patient records are generally devoid of laboratory studies or any other evidence which would indicate that she made an effort to identify either etiological factors or problems which might be attendant with obesity and potentially exacerbated by weight loss. Often, patient records show that stimulant medications were prescribed to female patients without establishing that they were not pregnant or at risk for pregnancy. In one case, a patient apparently became pregnant during the course of her treatment with amphetamines. In some cases, stimulant appetite suppressants were inappropriately prescribed for patients who had elevated blood pressure readings. Further, Dr. Vaughn often maintained patients on Obetrol and other stimulant anorectics for an appropriately long periods of time, many in excess of three months, regardless of whether or not any significant weight loss was achieved. Although it was Dr. Vaughn's practice to alternate medications so that patients received Obetrol only every other month, patients were routinely alternated back to Obetrol even when they had gained weight on Obetrol and/or had shown better response to non-amphetamine medications. It is apparent that Dr. Vaughn failed to exercise appropriate medical judgment in her treatment of diet patients, but rather blindly adhered to inadequate 'protocols' which she had established. \*\*\*

\*\*\* [I]t was Dr. Vaughn's practice to prepare pre-signed prescriptions for various controlled substances and dangerous drugs and to distribute them to members of her office staff for completion and issuance to patients. Dr. Vaughn sought to show that this practice entailed little risk of unauthorized diversion of prescriptions. She claimed not only that her office layout made it unlikely that patients could gain access to the pre-signed prescriptions, but also that her office policies and daily prescription monitoring procedures would prevent unauthorized diversions by her staff. It is apparent, however, that Dr. Vaughn's procedures were not foolproof. As set forth in Finding of Fact #7, above, one of Dr. Vaughn's office staffers issued herself a prescription for Obetrol during a period when Dr. Vaughn's office was closed and Dr.

Vaughn was out of town. Further, as set forth in Finding of Fact #8, above, another office staff person, in Dr. Vaughn's absence, issued two separate prescriptions for 30 Didrex 50 mg. to one patient on the same date. As indicated in Findings of Fact #1 and #2, above, Dr. Vaughn on at least one occasion entrusted one of her employees with pre-signed prescriptions for over 2,000 dosage units of controlled substances and dangerous drugs, as well as 10 pre-signed blank prescriptions, to be issued at that employee's discretion in Dr. Vaughn's absence. \*\*\*

\*\*\* [I]t was Dr. Vaughn's practice to authorize her non-physician office staff members, in her absence, to assess, examine, diagnose, and issue pre-signed prescriptions to both new and follow-up patients, acts which constitute the practice of medicine pursuant to Section 4731.34, Ohio Revised Code. There is no merit in Dr. Vaughn's contention that she, rather than her office staff, diagnosed patients whom she did not personally see or examine. Although a tentative diagnosis might have been made by Dr. Vaughn prior to a patient's visit, such diagnosis could be confirmed only by the person who actually examined and assessed the patient. Dr. Vaughn's further contention, that such assessments and initiations of treatments by her office staff were acceptable because they were done in accordance with 'protocols' which she had established, is well-rebutted by the testimony of Dr. Steven William Jennings (see Finding of Fact #13). As Dr. Jennings pointed out, the diagnosis and treatment of obesity requires clinical judgments by a physician. Certainly, the evidence establishes that Dr. Vaughn's 'protocols' were inadequate, calling for rote prescribing for all diet patients without regard to variant problems and needs, and creating unnecessary risks to patients. Dr. Jennings cited instances where Dr. Vaughn's patients were issued prescriptions for stimulant medications despite elevated blood pressures and risks of pregnancy. \*\*\*" (Report and Recommendation of the Hearing Examiner, at 29-30.)

Given the threat to patients' health posed by appellant's conduct, revocation not a disproportionate sanction.

Appellant also asserts that revocation of her certificate constitutes a violation of the equal protection principles of the Ohio and United States Constitutions. Appellant claims that she was punished much more severely than other physicians who engaged in more egregious behavior and that this disparity can be explained only by discrimination based on race or gender. In an equal protection claim, the alleged victim has the burden of proving discriminatory intent or purpose. *Village of Arlington Heights v. Metropolitan Housing Development Corp.* (1977), 429 U.S. 252, 265, 97 S.Ct. 555, 563. The scope of protection provided by Section 2, Article I of the Ohio Constitution is nearly identical to that provided by the United States Constitution. *Sorrel, supra*, at 424.

Appellant offered no evidence to support her claim of discrimination other than a list of other physicians who received lesser sanctions. The board offered its own list of physicians whose certificates were revoked. We agree with the court of common pleas that "[t]he information provided is insufficient for the Court to conclude that the Board violated Appellant's right to equal protection based on a comparison of the discipline of the cited physicians and that of the Appellant." (Trial Court Decision, Mar. 20, 1995, at 6.) Appellant's second assignment of error is overruled.

In her third assignment of error, appellant asserts that the board's revocation of her certificate was not in compliance with the March 25, 1992 remand order of the court of common pleas. That order remanded the case "to the Board for a disciplinary hearing and/or a finding consistent with this Order and the Appellate Court's decision." Appellant argues that this language constituted

an order by the court of common pleas that the board conduct a disciplinary hearing that included the right to present mitigating evidence and the right to speak to the board. We disagree. Given the court's use of the disjunctive "or," the plain meaning of the court's order gave the board the option of merely rendering a finding consistent with the courts' decisions. Because the board's revocation of appellant's certificate did not violate the court's remand order, the third assignment of error is overruled.

In assignments of error four through eight, appellant challenges the constitutionality of the fifteen-month limitation on stays in paragraph eight of R.C. 119.12. R.C. 119.12 provides in pertinent part:

"\*\*\* In the case of an appeal from the state medical board or chiropractic examining board, the court may grant a suspension and fix its terms if it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order pending determination of the appeal and the health, safety, and welfare of the public will not be threatened by suspension of the order. \*\*\*

"\*\*\*

"Notwithstanding any other provision of this section, any order issued by a court of common pleas suspending the effect of an order of the state medical board or chiropractic examining board that limits, revokes, suspends, places on probation, or refuses to register or reinstate a certificate issued by the board or reprimands the holder of such a certificate shall terminate not more than fifteen months after the date of the filing of a notice of appeal in the court of common pleas, or upon the rendering of a final decision or order in the appeal by the court of common pleas, whichever occurs first."

Because this court granted appellant's motion for stay of revocation pending appeal on August 25, 1995, the assignments of error pertaining to R.C. 119.12 are moot.

Ohio courts generally will not decide questions that are moot. However, a court may, in its discretion, decide moot questions that (1) are capable of repetition yet evading review, *In re Appeal of Suspension of Huffer from Circleville High School* (1989), 47 Ohio St.3d 12, paragraph one of the syllabus; *State ex rel. Plain Dealer Publishing Co. v. Barnes* (1988), 38 Ohio St.3d 165, paragraph one of the syllabus; *Wallace v. University Hospitals of Cleveland* (1961), 171 Ohio St. 487, 489; or (2) involve a matter of public or great general interest, *Huffer, supra*, at 14 and fn. 5; *Franchise Developers, Inc. v. Cincinnati* (1987), 30 Ohio St.3d 28, 31; *In re Popp* (1973), 35 Ohio St.2d 142, 144.

The question of the constitutionality of the fifteen-month limit on stays is moot as to appellant because she "has obtained all that she asks for \*\*\* and no order could be made by this court that would give her more than she already has." *Wallace, supra*, at 488-489. Appellant argues that she would benefit from our holding that the fifteen-month limit is unconstitutional because, absent a further stay pending an appeal to the Supreme Court, she would be denied the opportunity to practice. Appellant is incorrect. The stay granted by this court on August 25, 1995, was equivalent to the stay that the court of common pleas would have granted — a stay pending appeal. Because both a stay granted by the court of common pleas and a stay granted by this court expire with

the rendering of judgment by this court, appellant would be in the same position regardless of which court had granted the stay.

Because appellant cannot benefit from our ruling that the fifteen-month limit is unconstitutional, the issue is moot. We decline to address the issue under either of the exceptions to the mootness doctrine. Therefore, appellant's assignments of error four through eight are rendered moot.

For the foregoing reasons, appellant's first, second, and third assignments of error are overruled, and her fourth, fifth, sixth, seventh, and eighth assignments of error are moot; and the judgment of the Franklin County Court of Common Pleas is affirmed.

*Judgment affirmed.*

BOWMAN, P.J., and PETREE, J., concur.

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IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

STATE MEDICAL BOARD  
OF OHIO

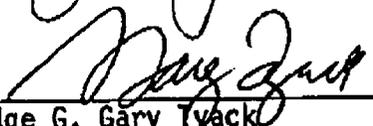
In the Matter of :  
Mattie L. Vaughn, M.D., :  
Appellant-Appellant, :  
v. :  
The State Medical Board State of Ohio, :  
Appellee-Appellee. :

FILED  
COURT OF APPEALS  
FRANKLIN COUNTY  
JUL 25 11 09 AM '95  
CLERK OF COURTS  
No. 95APE05-645  
(REGULAR CALENDAR)

JOURNAL ENTRY

Appellant's motion for a stay of execution of the trial court judgment pending appeal is granted conditioned upon appellant's posting with the clerk of the trial court, not later than September 1, 1995, a supersedeas bond in the amount of \$100.00.

  
\_\_\_\_\_  
Judge John C. Young

  
\_\_\_\_\_  
Judge G. Gary Lyack

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

cc: Michael F. Colley  
David K. Frank  
Betty D. Montgomery, AG  
Anne Berry Strait, AAG

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

Please contact the Franklin County Court of Common Pleas to obtain a copy of this document. The Franklin County Court of Common Pleas can be reached at (614) 462-3621, or by mail at 369 S. High Street, Columbus, OH 43215.

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

MATTIE L. VAUGHN, M.D.

Appellant,

v.

THE STATE MEDICAL BOARD  
OF OHIO,

Appellee.

9 5 A P E 0 5

Case No 90CVF-04-2480

Judge Miller

95 MAY 24 PM 4:30  
FILED  
COURT OF APPEALS  
FRANKLIN CO. OHIO  
645

**NOTICE OF APPEAL OF APPELLANT  
MATTIE L. VAUGHN, M.D.**

Notice is hereby given that Appellant Mattie L. Vaughn, M.D., hereby appeals to the Court of Appeals of Franklin County, Ohio, Tenth Appellate District, from:

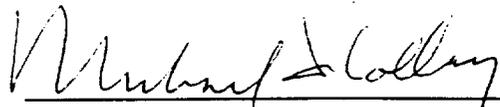
1. The final judgment and Judgment Entry herein of the Franklin County Common Pleas Court entered in this action on May 24, 1995, affirming the August 13, 1993 Order of The State Medical Board of Ohio, and;
2. The Decision of the Franklin County Common Pleas Court rendered herein on March 20, 1995, and entered in this action on March 21, 1995, which decision is incorporated by reference in the Court's said Judgment Entry dated May 24, 1995, and;

64

FILED  
COURT OF APPEALS  
FRANKLIN CO. OHIO  
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JESSIE L. ODDI  
CLERK OF COURTS

3. The "Decision And Journal Entry" of the Franklin County Common Pleas Court entered herein on May 12, 1995, which overruled Appellant Mattie L. Vaughn's request and motion for reconsideration filed on March 20, 1995, and the Appellant's April 12, 1995, amended application for an order continuing the stay of revocation of her certificate to practice medicine and surgery.

Respectfully submitted,

  
Michael F. Colley (007286)

  
David K. Frank (0022925)

MICHAEL F. COLLEY CO., L.P.A.  
536 South High Street  
Columbus, Ohio 43215  
(614) 228-6453

Appellate Counsel For Appellant  
Mattie L. Vaughn, M.D.

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal was served, by First Class U.S. Mail, postage prepaid, upon Attorney General Betty Montgomery and Anne Berry Strait, Assistant Attorney General, Health and Human Services Section, counsel for Appellee, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3428, on this 24th day of May, 1995.

A handwritten signature in black ink, appearing to read "David K. Frank". The signature is written in a cursive style with a large initial "D".

David K. Frank (0022925)  
Appellate Counsel For Appellant

266

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

MATTIE L. VAUGHN, M.D.;

Appellant,

vs.

THE STATE MEDICAL BOARD  
OF OHIO,

Appellee.

CASE NO. 90CVF-04-2480

JUDGE NODINE MILLER

CLERK OF COURTS  
MAY 23 1995

JUDGMENT ENTRY  
AFFIRMING THE AUGUST 13, 1993 ORDER  
OF THE STATE MEDICAL BOARD OF OHIO

This cause is before the Court upon the appeal, pursuant to R.C. 119.12, of the August 13, 1993 order of the State Medical Board of Ohio. For the reasons stated in the decision of this Court rendered March 20, 1995, and filed on March 21, 1995, which decision is incorporated by reference as if fully rewritten herein, it is hereby

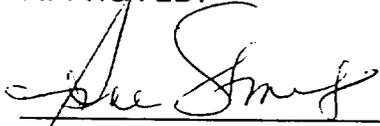
ORDERED, ADJUDGED AND DECREED that judgment is hereby entered in favor of Appellee, the State Medical Board of Ohio, and the August 13, 1993 order of the State Medical Board in the Matter of Mattie L. Vaughn, M.D. is hereby affirmed. Costs to Appellant.

*Nodine 5.23.95*

\_\_\_\_\_  
JUDGE NODINE MILLER

62

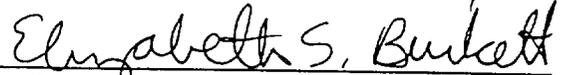
APPROVED:



ANNE BERRY STRAIT (0012256)  
Assistant Attorney General  
Health & Human Services Section  
30 East Broad Street, 26th floor  
Columbus, Ohio 43215-3428  
(614) 466-8600  
Attorney for Appellee



MICHAEL F. COLLEY (007286)



ELIZABETH S. BURKETT (0037113)

Michael F. Colley & Associates  
536 South High Street  
Columbus, Ohio 43215  
(614) 228-6453  
Attorneys for Appellant

anne\vaughn.ent

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

CIVIL DIVISION

RECEIVED  
Attorney General's Office  
MAY 18 1995  
Health & Human  
Services Section

MATTIE L. VAUGHN, M.D.,

:

Appellant,

:

vs.

:

Case No. 90CVF-04-2480

STATE MEDICAL BOARD  
OF OHIO,

:

Judge Miller

Appellee.

:

**DECISION AND JOURNAL ENTRY OVERRULING**  
**APPELLANT, MATTIE L. VAUGHN, M.D.'S**  
**REQUEST AND MOTION FOR RECONSIDERATION**  
**FILED ON MARCH 30, 1995 AND**  
**APPELLANT, MATTIE VAUGHN, M.D.'S AMENDED APPLICATION**  
**FOR AN ORDER CONTINUING THE STAY OF REVOCATION OF**  
**HER CERTIFICATE TO PRACTICE MEDICINE AND SURGERY**  
**FILED ON APRIL 12, 1995**

Rendered this <sup>11<sup>th</sup></sup> day of May, 1995.

MILLER, J.

On March 20, 1995, the Court rendered its decision ("Decision") upon an administrative appeal filed by Appellant, Mattie L. Vaughn, M.D. ("Vaughn") on March 10, 1994. That Decision affirmed the order of the Ohio State Medical Board, ("the Board") finding the Board's order to have been supported by reliable, probative, and substantial evidence. This Decision was not journalized.

On March 30, 1995, Vaughn filed a Request and Motion for Reconsideration of the Decision. On April 12, 1995, the Board filed its Memorandum Contra Vaughn's Motion. On April 24, 1995, Vaughn filed her Reply Memorandum in Support of her Motion for Reconsideration.

**I. THE BOARD'S FAILURE TO FILE A JUDGMENT ENTRY  
MEMORIALIZING THIS COURT'S MARCH 20, 1995 DECISION  
AFFIRMING THE ORDER OF THE OHIO STATE MEDICAL BOARD**

The final paragraph of the Decision states "[t]herefore, in light of the foregoing, this Court hereby **AFFIRMS** the order of the Ohio State Medical Board. Counsel for Appellee shall prepare and submit an appropriate entry in accordance with Local Rule 25.01."

Rule 25.01 of the Rules of Practice of the Court of Common Pleas provides in pertinent part:

"Unless the Trial Judge otherwise directs, counsel for the party in whose favor a decision, order, decree, or judgment is rendered, shall within five days thereafter prepare the proper journal entry and submit it to the counsel for the adverse party, who shall approve or reject the entry within three days after receipt.\*\*\*"

The Decision in this case was signed by the Court on March 20, 1995 and filed stamped on March 21, 1995. Given three (3) days for mail delivery to the parties, counsel for the Board had until Monday, March 30, 1995 to prepare and submit a proposed judgment entry to counsel for Vaughn. On Monday, March 30, 1995 at 10:37 A.M., Vaughn filed her Request and Motion for Reconsideration. The Court finds that under the circumstances it would have been impossible for the Board to have filed a final Judgment Entry incorporating the Court's decision on Vaughn's appeal within the time allotted by the local rules. Because of the foregoing, the Court intends to treat its Decision filed on March 21, 1995, as a judgment for the sole purpose of considering Vaughn's Request and Motion for Reconsideration.

## II. VAUGHN'S REQUEST AND MOTION FOR RECONSIDERATION

In Pitts v. Ohio Dept. of Transportation (1981), 67 Ohio St.2d 378, 21

O.O.3d 238, 423 N.E.2d, 1105, the Ohio Supreme Court said at 379-80:

"Interpretation of the Rules of Civil Procedure and practical considerations warrant our determination that motions for reconsideration of a final judgment in the trial court are a nullity.

[T]he Rules of Civil Procedure specifically limit relief from judgments to motions expressly provided for within the same Rules. A motion for reconsideration is conspicuously absent within the Rules.

\* \* \*

This court is not fashioning a new interpretation by the foregoing, but rather it has advanced this same policy on various occasions. William W. Bond, Jr. and Assoc. v. Airway Development Corp. (1978), 54 Ohio St.2d 363, and Kauder v. Kauder (1974), 38 Ohio St.2d 265. See, also, Browne, The Fatal Pause--Summary Judgment and the Motion for Reconsideration, 44 Cleve. Bar J. 7."

See also, State, Ex Rel. Pendell v. Bd. of Elections (1988), 40 Ohio St.3d 58 at 60 and Collini v. Cincinnati (1993), 87 Ohio App.3d 553 at 555.

A Motion for Reconsideration of a decision on an administrative appeal is an aberration. The Franklin County Court of Appeals said in Garfield Heights City School District v. State Board of Education (1992), 85 Ohio App.3d 117 at 121:

"R.C.119.12 provides for an appeal to the common pleas court from certain state administrative agency orders. Under this provision, the court is charged with determining whether there was substantial, reliable, and probative evidence in accordance with the law to support the agency's decision. Univ. of Cincinnati v. Conrad (1980), 63 Ohio St.2d 108, 17 O.O.3d 65, 407 N.E.2d 1265. Like other judgments, the court's judgment in this regard is accorded finality. R.C.119.12 expressly provides that '[t]he judgment of the court shall be final and conclusive unless reversed, vacated, or

modified on appeal." There is no provision in R.C.119.12 for relief from judgment. Giovanetti v. Ohio State Dental Bd. (1990), 66 Ohio App.3d 381, 584 N.E. 2d 66; Stover v. Cty. Commrs. (July 2, 1985), Franklin App. No. 84AP-1085, unreported, 1985 WL 10056. Rather errors should be corrected by further appeals as provided for in R.C. 119.12. Tozzi v. Bur. of Motor Vehicles (June 8, 1978), Cuyahoga App. No. 37495, unreported."

Based on the foregoing, the Court hereby **OVERRULES** the Request and Motion of Appellant Mattie L. Vaughn, M.D. for Reconsideration of the Court's Decision filed March 21, 1995.

**III. VAUGHN'S AMENDED APPLICATION FOR AN ORDER CONTINUING THE STAY OF REVOCATION OF HER CERTIFICATE TO PRACTICE MEDICINE AND SURGERY**

On April 7, 1995, Vaughn filed with this Court her Application for an Order Continuing the Stay of Revocation of Her Certificate to Practice Medicine and Surgery. On April 12, 1995, Vaughn filed her Amended Application for an Order Continuing the Stay of Revocation of Her Certificate to Practice Medicine and Surgery. On April 18, 1995, the Board filed its Memorandum Contra Vaughn's Amended Application. On April 26, 1995, Vaughn filed her Reply Memorandum in Support of her Amended Application for an Order Continuing the Stay of Revocation of Her Certificate to Practice Medicine and Surgery.

R.C.119.12 governs the issuance of a stay of the Order of the Board. The applicable paragraphs provide:

"In case of an appeal from the State Medical Board \*\*\* the court may grant a suspension and fix its terms if it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order PENDING DETERMINATION OF THE APPEAL and health, safety, and welfare of the public will not be threatened by suspension of the order.

\*

\*

\*

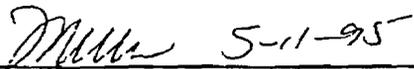
Notwithstanding any other provision of this section, any order issued by a court of common pleas suspending the effect of an order of the state medical board \*\*\* that limits, revokes, suspends, places on probation, or refuses to register or reinstate a certificate issued by the board or reprimands the holder of such a certificate shall terminate not more than FIFTEEN MONTHS AFTER THE DATE OF THE FILING OF A NOTICE OF APPEAL IN THE COURT OF COMMON PLEAS, OR UPON THE RENDERING OF A FINAL DECISION OR ORDER IN THE APPEAL BY THE COURT OF COMMON PLEAS, whichever occurs first." (Emphasis added).

Paragraph one above sets forth the criteria for determining the appropriateness of suspending an order of the state medical board, giving the court the authority to do so PENDING DETERMINATION OF THE APPEAL. A determination of Vaughn's appeal was made by this Court on March 21, 1995, when it affirmed the Board's order. Therefore, the enumerated criteria, with which Vaughn's Application is laced, is of no significance at this stage of the case.

Paragraph two above sets forth two circumstances which mandate the termination of a stay of an order of the Board: (1) the expiration of 15 months or (2) a final decision or order on the appeal. Vaughn filed her Notice of Appeal to the common pleas court on September 3, 1993. This Court stayed the execution of the Board's Order on October 4, 1993. More than nineteen (19) months have elapsed since the issuance of this Court's stay on October 4, 1993, a stay which has clearly expired by its own terms. "A final decision or order in the appeal" was handed down on March 21, 1995. Both conditions have clearly been met.

The Franklin County Court of Appeals examined these limitations and found them to be constitutional in Plotnick v. State Medical Board of Ohio, (September 27, 1984), Franklin App. Nos. 84AP 225 and 84AP 362, unreported. Therefore, the Court **DENIES** the Amended Application of Appellant, Mattie L. Vaughn, M.D. for an Order Continuing the Stay or Revocation of Her Certificate to Practice Medicine and Surgery.

**IT IS SO ORDERED.**

 5-11-95  
\_\_\_\_\_  
JUDGE NODINE MILLER

Copies to:  
Michael F. Colley  
Elizabeth S. Burkett  
Attorneys for Appellant

Anne B. Straight  
Attorney for Appellee

FILED  
COMMON PLEAS COURT  
IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

MATTIE L. VAUGHN, M.D., 95 MAR 21 AM 10:24

Appellant,

vs.

Case No. 90CVF04-2480

THE STATE MEDICAL BOARD  
OF OHIO,

Judge Miller

Appellee.

DECISION

Rendered this 20<sup>th</sup> day of March, 1995

MILLER, J.

This case came before this Court upon an administrative appeal filed by Mattie L. Vaughn M.D. (Appellant) on March 10, 1994.

This case arose in 1986 when the State Medical Board of Ohio (Appellee) issued a Notice of Opportunity for Hearing alleging that Appellant violated several provisions of Ohio Revised Code 4731.22(B). On November 21, 1986, the notice was amended to include an additional violation of Ohio Revised Code 4731.22(B). An administrative hearing was conducted on April 13, 1989 before a Hearing Examiner. On February 2, 1990, the Hearing Examiner issued a report recommending that Appellant's license be revoked. The Board affirmed the Hearing Examiner's report and issued an order permanently revoking Appellant's license to practice medicine within the State of Ohio for violation of Ohio Revised Code 4731.33(B)(1),(2),(3),(4),(6), and (16).

Appellant appealed the Board's order and on August 15, 1990, the Court

affirmed that part of the order finding that Appellant violated Ohio Revised Code 4731.22(B)(2),(4),(6), and (16) and reversed that part of the order finding that Appellant violated Ohio Revised Code 4731.22(B)(1) and (3).

In an amended decision filed on September 7, 1990, the trial court remanded the case to the Board for new review to be conducted regarding the appropriate discipline to be imposed given its prior decision. On September 25, 1990, the trial court in its judgment entry affirmed in part and reversed in part the Board's Order revoking Appellant's certificate to practice and remanded the matter to the Board for a disciplinary finding consistent with its decisions.

Appellant appealed the trial court's decision to the Tenth Appellate District, Court of Appeals. The appellate court reversed the trial court's decision relative to Ohio Revised Code 4731.22(B)(3) and (4) and remanded the matter for "further proceedings consistent with law and the trial court's decision."

Upon remand the trial court issued a decision on February 19, 1992, finding that the Board's determination that Appellant violated Ohio Revised Code 4731.22(B)(1),(2),(3),(6), and (16) was supported by reliable, probative and substantial evidence. The trial court further found that the Board's determination that Appellant violated Ohio Revised Code 4731.22(B)(4) was not supported by reliable, probative and substantial evidence. On March 25, 1992, the trial court issued an entry journalizing its decision and remanding the case to the Board "for a disciplinary hearing and/or a finding consistent with this Order and the Appellate Court's decision."

Appellant moved that the Board to remand the matter to a hearing officer for the purpose of presenting new and mitigating evidence. The Board met on August 11, 1993. After a thorough discussion, the Board voted to deny Appellant's Motion for Remand on the basis that the Board's decision was based upon what happened in 1986 not what happened after 1986 and that any information beyond 1986 would not be necessary. The Board, by majority vote, revoked Appellant's certificate permanently. On August 13, 1993, the Board ordered that "the certificate of Mattie L. Vaughn, M.D. to practice medicine and surgery in the State of Ohio be and is hereby **PERMANENTLY REVOKED.**"

Appellant filed this appeal pursuant to Ohio Revised Code 119.12. According to Ohio Revised Code 119.12, this Court must affirm the Board's order if it finds that the order is supported by reliable, probative, and substantial evidence. Univ. of Cincinnati v. Conrad (1980), 63 Ohio St.2d 108, 111.

In this case, the Board's order finding that Appellant violated Ohio Revised Code 4731.22(B)(1),(2),(3),(6), and (16) was affirmed by the trial court and upheld by the appellate court as being supported by reliable, probative, and substantial evidence. Thus, the issue before the Court is not whether the Board's finding that Appellant's violation of these provisions of the statute is supported by reliable, probative, and substantial evidence; but whether Appellant's various rights were violated by the Board and whether the permanent revocation of Appellant's license was appropriate in light of the violations, which were affirmed on appeal.

It has been established that Appellant violated the following provisions of Ohio Revised Code 4731.22(B):

**Ohio Revised Code 4731.22(B)(1):** Permitting one's name or one's certificate of registration to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given;

**Ohio Revised Code 4731.22(B)(2):** Failure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease;

**Ohio Revised Code 4731.22(B)(3):** Selling, 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;

**Ohio Revised Code 4731.22(B)(6):** A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established;

**Ohio Revised Code 4731.22(B)(16):** Violating or attempting to violate, directly, or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board \*\*\* (as in effect prior to March 17, 1987).

As a result, the Board upon remand permanently revoked Appellant's certificate to practice medicine in the State of Ohio. Appellant claims that by failing to admit additional mitigating evidence and by refusing to allow Appellant to give a statement to the Board, Appellant's right to due process and equal protection were violated; the penalty was excessive under the circumstances; and the Board failed to comply with the remand order of the Court.

Due process encompasses notice and an opportunity to be heard. Korn v.

Ohio State Medical Bd. (1988), 61 Ohio App.3d 677. A review of the procedural history of this case reveals that a notice setting forth the alleged violations was issued in 1986 and an administrative hearing was conducted before a hearing examiner on April 13, 1989. Appellant was not only given notice of the allegations against her, but she was also afforded a hearing during which she had the opportunity to cross-examine witnesses appearing against her and to present her own evidence for consideration. It is from the evidence adduced at the administrative hearing that the decisions issued during the appeals process were based. The Board rendered its decision based on the evidence adduced at the administrative hearing. Appellant appealed the Board's decision to the Franklin County Court of Common Pleas pursuant to Ohio Revised Code 119.12. Upon appeal the trial court was confined to the record certified to it by the Board. Ohio Revised Code 119.12 (Page's 1993). The trial court reviewed the administrative proceeding and rendered its decision on August 15, 1990. All subsequent appeals resulted from the initial administrative hearing conducted on April 13, 1989. Thus, Appellant's due process rights were not violated on August 11, 1993, when the Board refused to remand the matter to a hearing examiner.

Second, Appellant claims that she was denied her right to equal protection. She raises the issue of being an African-American female and being treated differently. To support her contention of disparate treatment, Appellant named physicians who were found guilty of violating various provisions of the Ohio Revised Code and indicated the penalty imposed by the Board. However,

Appellant failed to set forth with specificity the facts and the circumstances surrounding the act or acts committed by the named physicians which resulted in the Board finding a violation and imposing a sanction. The information provided is insufficient for the Court to conclude that the Board violated Appellant's right to equal protection based on a comparison of the discipline of the cited physicians and that of the Appellant.

Third, Appellant claims that the Board did not comply with the Court's order, which was issued on March 25, 1992 and provided that:

In accordance with the Court of Appeals, Tenth Appellate District's Journal Entry of Judgment filed August 21, 1991, it is hereby **ORDERED** on remand that the State Medical Board of Ohio's Order revoking Mattie L. Vaughn, M.D.'s certificate to practice medicine and surgery based on violations of Ohio Revised Code 4731.22(B)(1), (B)(2), (B)(3), (B)(6), and (B)(16), with the exception of (B)(4), is hereby **AFFIRMED**. This matter is Remanded to the Board for a disciplinary hearing and/or a finding consistent with this Order and the Appellate Court's Decision. (emphasis added).

The express language of the order indicates that the Board had the option of having a hearing or rendering a finding consistent with the court's modification of the Board's order. In this case, the Board heard arguments of counsel and deliberated upon the appropriate sanction to impose. The Board found that in light of the violations that were affirmed by the trial court and upheld by the appellate court that a permanent revocation was in order. Therefore, this Court finds that the Board complied with the remand order of the Court, in determining the appropriate penalty for the remaining violations.

Finally, Appellant claims that the permanent revocation, which was

imposed against Appellant was excessive. Ohio Revised Code 4731.22(B) provides:

The board, pursuant to an adjudicatory hearing under Chapter 119 of the Ohio Revised Code and by a vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend a certificate, refuse to register or refuse to reinstate an applicant, or reprimand or place on probation the holder of a certificate\*\*\*

The Board has been granted the authority to impose a broad spectrum of penalties. Brost v. Ohio State Medical Board (1991), 62 Ohio St.3d 218, 221. These penalties were granted with the intent that the Board would impose a penalty appropriate to the prohibited act or acts committed by the physician. Id. Permanent revocation, albeit the most serious, is a penalty which the Board has the authority to impose.

In an administrative review, the court may not reverse, vacate, or modify an order which is supported by reliable, probative, and substantial evidence. In this case, it has previously been determined that the violations were supported by the requisite quantum of evidence. Miller v. Ohio Rehab. Serv. Comm. (1993), 85 Ohio App.3d 701. As a result, the Board has the authority to determine the appropriate punishment for physicians found to have violated the provisions in Ohio Revised Code 4731.22(B). Members of the Board deemed the violations committed by Appellant to be very serious in nature and determined that a permanent revocation was appropriate under the circumstances. The penalty imposed is within the scope of authority granted to the Board, this Court cannot reverse, vacate or modify it. Kuzas v. Ohio State Medical Board (1990), 67 Ohio

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

Please contact the Franklin County Court of Common Pleas to obtain a copy of this document. The Franklin County Court of Common Pleas can be reached at (614) 462-3621, or by mail at 369 S. High Street, Columbus, OH 43215.

09/02/93  
TLH/WDF/ns

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

IN THE MATTER OF: :

MATTIE L. VAUGHN, M.D. :

MATTIE L. VAUGHN, M.D. :  
580 East Town Street :  
Apartment 111 :  
Columbus, Ohio 43215 :

Plaintiff- :  
Appellant :

-vs- :

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

Defendant- :  
Appellee :

Case No. 90 CVF04-2480  
JUDGE REECE

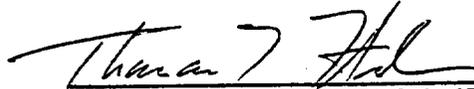
93 SEP 02 9:59 AM  
CLERK OF COURT  
FRANKLIN COUNTY, OHIO

STATE MEDICAL BOARD OF OHIO  
93 SEP -8 AM 10:36  
JDF

NOTICE OF APPEAL

Now comes Appellant Mattie L. Vaughn, and hereby gives notice, pursuant to Ohio Revised Code § 119.12, of her appeal from the Order of the State Medical Board of Ohio that was issued on August 13, 1993, on the following grounds: 1. Said Order is not supported by reliable, probative and substantial evidence, and is not in accordance with law; 2. Said Order does not comply with the Remand Order of this Court issued on March 25, 1992; 3. In the

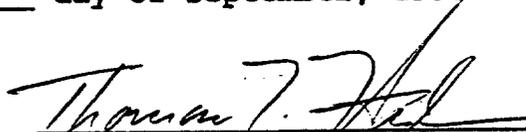
conduct of its proceedings on remand and the issuance of said Order, the State Medical Board denied Appellant due process of law. A copy of said Order is attached hereto.



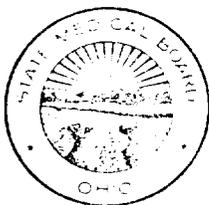
THOMAS L. HENDERSON (HEN-41)  
Ohio Supreme Court No. 0039789  
MATAN & SMITH  
261 South Front Street  
(614) 228-2678  
Attorney for Appellant

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Notice of Appeal has been forwarded to the State Medical Board of Ohio c/o Lauren Lubow, Case Control Officer, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0315 and Anne C. Berry, Assistant Attorney General, 30 East Broad Street, 15th Floor, Columbus, Ohio 43266-0410, Attorney for State Medical Board, by ordinary United States Mail service this 3<sup>rd</sup> day of September, 1993.



THOMAS L. HENDERSON (HEN-41)  
Ohio Supreme Court No. 0039789  
MATAN & SMITH  
261 South Front Street  
(614) 228-2678  
Attorney for Appellant



# STATE MEDICAL BOARD OF OHIO

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

August 13, 1993

Thomas L. Henderson, Esq.  
MATAN & SMITH  
261 South Front Street  
Columbus, Ohio 43215

RE: Mattie L. Vaughn, M.D.

Dear Mr. Henderson:

Please find enclosed a certified copy of the Order and Entry in the above matter approved and confirmed by the State Medical Board of Ohio meeting in regular session on August 11, 1993. This Order and Entry documents the Medical Board's reconsideration of the penalty in Dr. Vaughn's case in accordance with the instructions of the Tenth District Court of Appeals and the Franklin County Court of Common Pleas.

Section 119.12, Ohio Revised Code, may, but does not necessarily, authorize an appeal from this Order. Such an appeal may be taken to the Court of Common Pleas in Franklin County 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 appropriate court 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,

*Carla S. O'Day, M.D.*  
Carla S. O'Day, M.D.  
Secretary

CSO:ll  
enclosures

CERTIFIED MAIL # P 741 123 885  
RETURN RECEIPT REQUESTED

cc: Mattie L. Vaughn, M.D.  
CERTIFIED MAIL # P 741 123 884  
RETURN RECEIPT REQUESTED

*Mailed 8/26/93*



# STATE MEDICAL BOARD OF OHIO

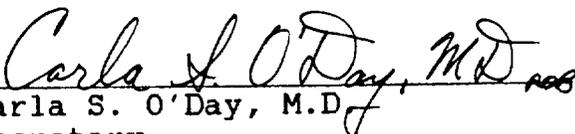
77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

## CERTIFICATION

I hereby certify that the attached copy of the Order and Entry of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board; and March 14, 1990 Entry of Order in the matter of Mattie L. Vaughn, M.D.; and attached excerpt of Minutes of the State Medical Board, meeting in regular session on August 11, 1993, including a Motion approving and confirming the Findings of Fact, amending the Conclusions of Law, and adopting an amended Order, constitute a true and complete copy of the Order and Entry of the State Medical Board in the matter of Mattie L. Vaughn, 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)

  
Carla S. O'Day, M.D.  
Secretary

8/16/93  
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF

\*

\*

MATTIE LOU VAUGHN, M.D.

\*

**ORDER AND ENTRY**

On or about March 14, 1990, the State Medical Board of Ohio issued its Findings and Order in the Matter of Mattie Lou Vaughn, M.D., whereby Dr. Vaughn's license to practice medicine and surgery in the State of Ohio was revoked. A copy of those Findings and Order is attached hereto and incorporated herein.

Pursuant to Section 119.12, Ohio Revised Code, Dr. Vaughn appealed the Medical Board's decision to the Franklin County Court of Common Pleas and was granted a stay by Entry dated May 2, 1990, provided that she prescribe no Schedule II or III controlled substances. Subsequently, the Court of Common Pleas issued a decision upholding the Board on the basis of all but two of the Board's findings. In an Amended Decision issued on September 7, 1990, the Court ordered that the case be remanded to the Board for issuance of a new Order consistent with the remaining findings upheld by the Court. Dr. Vaughn's stay was to remain in effect until the Board issued a new disciplinary Order.

Dr. Vaughn appealed the Common Pleas Court's decision to the Court of Appeals. On August 6, 1991, the appellate court issued a decision reversing the lower court's ruling, holding that the only provision of the Board's Findings and Order that had been found to be unsupported by reliable, probative and substantial evidence was the finding that Dr. Vaughn had violated Section 4731.22(B)(4), Ohio Revised Code, by accepting "value points" from a pharmacy for referring patients.

On March 25, 1992, at the direction of the Court of Appeals, the Common Pleas Court entered a judgment affirming the Board's Order on all of its findings with the exception of the Board's determination that Dr. Vaughn had violated Section 4731.22(B)(4), Ohio Revised Code. The Court then remanded the matter back to the Board for a disciplinary hearing and/or a finding consistent with the courts' rulings.

Upon consideration of the original hearing transcripts and exhibits in the Matter of Mattie Lou Vaughn, M.D.; the March 19, 1990 Findings and Order of the State Medical Board in the Matter of Mattie Lou Vaughn, M.D.; Dr. Vaughn's objections to the Attorney Hearing Examiner's Report and Recommendation; minutes of the Board's March 14, 1990 discussion of this matter; and decisions and entries of the Franklin County Court of Common Pleas and the Tenth District Court of Appeals; and in accordance with the instructions of those Courts; and upon approval and confirmation by vote of the Board on August 11, 1990, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for that date.

It is hereby ORDERED that the certificate of Mattie Lou Vaughn, M.D., to practice medicine and surgery in the State of Ohio be and is hereby PERMANENTLY REVOKED.

This Order shall become effective thirty (30) days from the date of mailing of notification of approval by the State Medical Board of Ohio, except that Dr. Vaughn shall immediately surrender her Drug Enforcement Administration certificate and shall not order, purchase, prescribe, dispense, administer, or possess any controlled substances, except for those prescribed for her personal use by another so authorized by law. In addition, Dr. Vaughn shall not in the interim undertake the care of any patient not already under her care.

(SEAL)

  
\_\_\_\_\_  
Carla S. O'Day, M.D.  
Secretary

\_\_\_\_\_  
8/13/93  
Date



# STATE MEDICAL BOARD OF OHIO

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

EXCERPT FROM THE MINUTES OF AUGUST 11, 1993

REMAND IN THE MATTER OF MATTIE L. VAUGHN, M.D.

Dr. Agresta announced that the Board would now consider the Remand Order in the matter of Mattie L. Vaughn, M.D.

Dr. Agresta asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and order, and any objections filed in the matter of Mattie L. Vaughn, M.D.

A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Stephens	- aye
	Dr. Gretter	- aye
	Dr. Heidt	- aye
	Dr. Buchan	- aye
	Dr. Garg	- aye
	Ms. Noble	- aye
	Dr. Steinbergh	- aye
	Dr. Agresta	- aye

Dr. Agresta 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. Stephens	- aye
	Dr. Gretter	- aye
	Dr. Heidt	- aye
	Dr. Buchan	- aye
	Dr. Garg	- aye
	Ms. Noble	- aye
	Dr. Steinbergh	- aye
	Dr. Agresta	- 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 this matter.



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EXCERPT FROM THE MINUTES OF AUGUST 11, 1993  
IN THE MATTER OF MATTIE L. VAUGHN, M.D.

Page 2

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

Dr. Agresta advised that this matter has been remanded to the Board by the Court of Common Pleas of Franklin County for a disciplinary hearing or a finding consistent with the Court's Order following a judgment by the Court affirming the Board's Order on all of its findings, with the exception of the Section 4731.22(B)(4) violation. He noted that Dr. Cramblett was Secretary in this case and Dr. Rauch was Supervising Member. The following members of the Board voted to adopt the original Findings, Conclusions and Order in the Matter of Mattie L. Vaughn, M.D.: Dr. Gretter, Dr. Stephens, Mr. Jost, Dr. Ross, Mr. Albert, Ms. Rolfes, and Dr. Agresta.

Dr. Agresta continued that a motion for remand has been filed by Dr. Vaughn's attorney, Thomas L. Henderson, Esq.

Mr. Henderson at this time stated that he was present and prepared to make a statement to the Board or answer questions the Board may have.

**DR. GARG MOVED TO GRANT MR. HENDERSON'S MOTION TO REMAND THE MATTER TO THE HEARING OFFICER. MS. NOBLE SECONDED THE MOTION.**

Dr. Gretter stated that Mr. Henderson's motion speaks of new and mitigating evidence. He asked whether the evidence is newly obtained since the time of the hearing, or whether it was available at the time of the hearing.

Mr. Henderson stated that, specifically, this matter commenced in 1986 with the Board's citation letter to Dr. Vaughn. A significant amount of time has passed since then. It is important for the Board to be aware of Dr. Vaughn's activities subsequent to the charge letter of 1986, as well as before 1986. For example, there are fewer violations before the Board now, pursuant to the Court's decision. In light of the fact that there are fewer violations before the Board — specifically the Court of Appeals having determined that Dr. Vaughn did not receive a thing of value for referring patients to particular pharmacists — it may be important to consider certain mitigating factors such as Dr. Vaughn's conduct subsequent to the violations.

Mr. Henderson added that it is also important to note that at the original proceeding Dr. Vaughn was not represented by counsel. Mr. Henderson stated that it is not his intention to retry the whole case, but to put forth Dr. Vaughn's side of the story in a manner which might be more concise than was originally done.

Dr. Agresta asked whether the Assistant Attorney General wished to respond.

Ms. Berry stated that she had discussed this matter at length with Mr. Henderson



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EXCERPT FROM THE MINUTES OF AUGUST 11, 1993  
IN THE MATTER OF MATTIE L. VAUGHN, M.D.

Page 3

over the last few days, and she doesn't have a problem with the Board's remanding it for the purpose of hearing mitigating evidence as to changes Dr. Vaughn has made in her practice. Ms. Berry noted that Dr. Vaughn has continued to practice during court-ordered stays of the Board's revocation order. She noted that in recent cases at least one court has informed the Board that it should take such evidence under consideration. Ms. Berry commented that the Board has appealed that decision, and the circumstances are not precisely the same as those in Dr. Vaughn's case, but in the interim she doesn't have a problem with hearing evidence offered in mitigation in the hearing setting.

She continued that she does have a problem with testimony being presented on the original charges. All but one of the Board's charges were upheld by the courts. The only charge the Court did not uphold was that of violation of Section 4731.22(B)(4), Ohio Revised Code, i.e., "the receiving of a thing of value in return for a specific referral of a patient to utilize a particular service or business." Ms. Berry stated that she would object in a remand hearing to any efforts to retry the original charges. The Board can hear whatever Dr. Vaughn has to say in mitigation. Following that hearing, the Hearing Officer would issue another Report and Recommendation, at which time the Board could choose any Order it considered appropriate. The Court has not said that the original Order cannot be imposed, but only that the Board should consider the change in findings before determining what the Order should be.

Dr. Steinbergh inquired concerning the length of time it will take if the Board remands the matter. She stated that she is amazed at the amount of time that Dr. Vaughn has been permitted to continue to practice.

Ms. Berry stated that the remand hearing could be held in the very near future.

Mr. Bumgarner stated that the average length of time from initiation until the Board receives the Report and Recommendation is 90 plus days.

Dr. Gretter spoke against the motion to remand, stating that in 1990 the Board based its decision to revoke Dr. Vaughn's license on four things: her prescribing without performing appropriate examinations of patients; her having pre-signed prescriptions available for use by her office staff; allowing her office staff to engage in the unlicensed practice of medicine; and receiving "valupoints" from a pharmacy as added incentive for sending her patients there. The Court reversed the Board on the final aspect, stating that it did not feel there was significant evidence to support the Board's finding on that charge. Dr. Vaughn did receive the "valupoints", but there was no evidence in the record that she ever redeemed them.

Dr. Gretter stated that the facts as to the other three matters have been established. Dr. Gretter stated that he didn't think it would do any good to remand



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EXCERPT FROM THE MINUTES OF AUGUST 11, 1993  
IN THE MATTER OF MATTIE L. VAUGHN, M.D.

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this case at this point.

Mr. Bumgarner stated that the Board members need to look at whether they feel there is evidence that could serve to mitigate in this case. If members believe there is, it would be appropriate to remand. If not, a remand would be unnecessary.

Dr. Gretter commented that the courts in reviewing this case noted that Dr. Vaughn was not represented by counsel, and that made no difference to the courts. She seemed to represent herself quite well.

Mr. Henderson stated that he would take issue with that point. In the most recent Judgment Entry remanding this matter back to the Board, Judge Reese states that he's remanding it back for a disciplinary hearing and/or a finding consistent with the Court's Order and the Appellate Court's decision. Mr. Henderson stated that he believes that the Judge contemplated something more than a cursory review of the very cold and very old record. This was contemplated not only by the trial court, but also by the Court of Appeals, both of which entered lengthy opinions. Mr. Henderson stated that demonstrated ability to practice without incident for a period of years in a clinical practice where the doctor sees 40 to 50 patients per day is of some significance and relevance to the Board's making a fair disciplinary determination.

Dr. Stephens called the question.

Dr. Gretter stated that in 1990 he spent a lot of time reading the materials in the hearing record. He did so again when the materials were delivered to him two weeks ago.

Dr. Stephens withdrew his call.

Dr. Garg stated that he made the motion to remand so that he could hear the circumstances of this case. One of the things he is hearing is that Dr. Vaughn would like to emphasize that she wasn't represented by counsel. Dr. Garg stated that the record indicates that this was questioned very clearly by the Hearing Examiner. The courts also noted that her lack of counsel was her own choice. Dr. Garg continued that, concerning any mitigating testimony, what happened after 1986 is not the basis for the Board's decision. The decision is based on what went on in 1986.

Dr. Heidt stated that in the last two weeks the Board has read hundreds of pages and has re-evaluated the entire case. Dr. Vaughn was prescribing "tons of Obetrol", and was allowing her office personnel to hand out prescriptions on presigned forms and to practice medicine without a license. Dr. Heidt stated that he sees no reason to remand this matter.



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IN THE MATTER OF MATTIE L. VAUGHN, M.D.

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A roll call vote was taken on Dr. Garg's motion to remand:

ROLL CALL VOTE:	Dr. O'Day	- nay
	Mr. Albert	- nay
	Dr. Stienecker	- nay
	Dr. Stephens	- nay
	Dr. Gretter	- nay
	Dr. Heidt	- nay
	Dr. Buchan	- nay
	Ms. Noble	- nay
	Dr. Garg	- nay
	Dr. Steinbergh	- nay

The motion failed.

MR. ALBERT MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF MATTIE L. VAUGHN, M.D. DR. GRETTTER SECONDED THE MOTION.

Dr. Agresta asked whether there were any questions concerning the proposed findings of fact, conclusions, and order in the above matter.

DR. GRETTTER MOVED THAT THE CONCLUSIONS IN THE MATTER OF MATTIE L. VAUGHN, M.D., BE AMENDED TO DELETE PARAGRAPH #4 IN ITS ENTIRETY. HE FURTHER MOVED THAT THE FOLLOWING ORDER BE ADOPTED IN THE MATTER OF MATTIE L. VAUGHN, M.D.:

It is hereby ORDERED that the certificate of Mattie L. Vaughn, M.D., to practice medicine and surgery in the State of Ohio be and is hereby PERMANENTLY REVOKED.

This Order shall become effective thirty (30) days from the date of mailing of notification of approval by the State Medical Board of Ohio, except that Dr. Vaughn shall immediately surrender her Drug Enforcement Administration certificate and shall not order, purchase, prescribe, dispense, administer, or possess any controlled substances, except for those prescribed for her personal use by another so authorized by law. In addition, Dr. Vaughn shall not in the interim undertake the care of any patient not already under her care.

Mr. Albert spoke in support of Dr. Gretter's motion, noting that there were many things involved in this case. He added that he didn't think that the "valupoints" played much part in his original decision in this matter.

Dr. Gretter stated that the specifics of this case have been reviewed. Dr. Vaughn failed to meet minimal standards of care, she left pre-signed prescriptions in her



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EXCERPT FROM THE MINUTES OF AUGUST 11, 1993  
IN THE MATTER OF MATTIE L. VAUGHN, M.D.

Page 6

office, she allowed the unlicensed practice of medicine in her office.

Dr. Agresta stated that he doesn't believe there was any doubt in the Board members' minds at the time of the initial consideration that this was a matter deserving permanent revocation.

Dr. Garg stated that he has nothing against the amendment except for the penalty of permanent revocation. Dr. Garg referred to the closing paragraph of Ms. Sage's Conclusions in her Report and Recommendation, which indicates that Dr. Vaughn's conduct did not arise from a lack of knowledge or training. It goes on to say that at the hearing Dr. Vaughn expressed valid concern about problems associated with obesity. Her faults seem to lie in establishing and following a protocol and delegating duties to her office and untrained staff. Dr. Garg stated that there is no doubt that the tone of Dr. Vaughn's practice indicated very reckless prescribing at that time, even if it was not illegal to prescribe the suppressants. There was a legitimate question concerning her practice. Dr. Garg continued that had he been sitting on the Board at the time of initial consideration he would not have supported a permanent revocation of Dr. Vaughn's license.

Mr. Henderson stated that Dr. Vaughn would like to make a statement to the Board.

Dr. Agresta stated that that would be out of line.

A roll call vote was taken on Dr. Gretter's motion to amend:

ROLL CALL VOTE:	Mr. Albert	- aye
	Dr. Stephens	- aye
	Dr. Gretter	- aye
	Dr. Heidt	- aye
	Dr. Buchan	- aye
	Dr. Garg	- nay
	Ms. Noble	- nay
	Dr. Steinbergh	- abstain
	Dr. Agresta	- aye

The motion carried.

**DR. GRETTER MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF MATTIE L. VAUGHN, M.D. DR. HEIDT SECONDED THE MOTION.**

Ms. Noble stated that she believes revocation is a bit harsh for what has been done in this case. Based on the cases she has reviewed during her time on the Board, this case does not fall into the category, in her mind, of permanent revocation.



## STATE MEDICAL BOARD OF OHIO

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EXCERPT FROM THE MINUTES OF AUGUST 11, 1993  
IN THE MATTER OF MATTIE L. VAUGHN, M.D.

Page 7

Ms. Noble stated that she agrees something needs to be done, but she does not agree with permanent revocation.

Dr. Garg agreed with Ms. Noble. He stated that he has no disagreement that Dr. Vaughn's practice was totally unacceptable, no matter how long ago it was. Dr. Vaughn showed a total disregard for the laws of the state in practicing medicine as she did. Dr. Garg stated that he would favor a lesser penalty, such as an indefinite suspension or a lengthy suspension with requirements for reinstatement. A mini-residency might be appropriate. Dr. Garg stated that Dr. Vaughn is a knowledgeable and intelligent person who could be of use to the community in providing services to its citizens.

Dr. Gretter stated that according to the Board's disciplinary guidelines, each individual violation by Dr. Vaughn carries a maximum penalty of permanent revocation. He added that this is true of both the previous guidelines adopted by the Board and the more current guidelines. He believes revocation is appropriate in this case.

Ms. Noble stated that the Board has seen other cases where revocation is in the guidelines but the Board didn't permanently revoke the license. Those physicians are presently practicing medicine with the Board's sanction. She stated that the Board really needs to look at the manner in which it issues permanent revocations and the types of cases in which the Board does not issue a permanent revocation.

Dr. Garg stated that during the hearing there was a point made by the Assistant Attorney General that the harm in this case was not to the patients but to the community. Dr. Garg stated that he is unsure what harm was done to the community. Basically, this is a controversial issue. Dr. Garg stated that he is not trying to justify Dr. Vaughn's practice. He stated that, in his judgment, she deserves a chance.

Dr. Heidt stated that the Board is seeing in this case a failure of minimum standards. Dr. Vaughn "used" medications poorly and there was insufficient recordkeeping. Not only that, but the established practice was for office staff to indiscriminately give out prescriptions. Dr. Heidt stated that the Board licenses over 100 individuals per month to practice medicine, who do so in the right way. It cannot tolerate those who can't maintain minimal standards of care.

Ms. Noble agreed that it should not be tolerated, but suggested a degree of training is necessary. She noted that no patient suffered harm.

Dr. Heidt stated that no patient suffered harm of which the Board is aware.

Ms. Noble stated that that is correct. She stated that the Board has seen cases



## STATE MEDICAL BOARD OF OHIO

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EXCERPT FROM THE MINUTES OF AUGUST 11, 1993  
IN THE MATTER OF MATTIE L. VAUGHN, M.D.

Page 8

where drugs were given to individuals who were known addicts, yet those doctors' licenses weren't permanently revoked. She stated that it is much worse to give drugs to someone addicted than to allow a licensed practical nurse to give out these types of prescriptions. Ms. Noble added that the Board has also seen physicians with psychological problems who have caused detrimental, irrevocable problems for patients and the Board has not revoked their licenses. The Board needs to weigh cases such as the one under consideration to see if the physician is retrainable. She does not see how the Board can say that Dr. Vaughn's license needs to be permanently revoked when it has not revoked in other cases involving much worse behavior. She stated that something needs to be done in this case, but not revocation.

Dr. Stephens stated that he disagrees completely with Ms. Noble. He stated that, to him, the most glaring problem in this case was not the fact that Dr. Vaughn wrote prescriptions, but that she allowed someone else to illegally practice medicine. The Board cannot tolerate a physician doing that.

Dr. Garg stated that he can't disagree with Dr. Stephens' statement. He does disagree with Dr. Heidt only in the sense that the Board doesn't know that the over 100 physicians it licenses every month practice correctly. He added that the question of patient harm was also addressed. 25% of 4,000 patient records were reviewed by the Board's expert witness and no patient harm was found. Dr. Garg stated that that is beside the point and doesn't lessen what Dr. Vaughn did wrong. All he is saying is that he does not favor permanent revocation in this case.

Dr. Agresta stated that this case was appealed, and the court upheld everything but one factor, and that related to the acceptance of "valupoints."

Dr. Garg stated that the appellate court does not base its decision on right and wrong. The Appellate Court only looks at whether the trial court did its job properly. It did reverse a couple of points that were reversed by the trial court.

Mr. Henderson stated that the two court decisions must be read in conjunction with each other. He stated that this is imperative.

Dr. Garg stated that the Appellate Court cannot retry the case, they only looked at what the lower court did. The Appellate Court disagreed with the lower court's conclusions.

Ms. Berry stated that the Court of Appeals decision is the final decision. The Court of Appeals upheld the Board's Order with the exception of the Board's findings as to the Section 4731.22(B)(4), Ohio Revised Code, violation.

Mr. Henderson stated that he takes strong exception to Ms. Berry's statement. The

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

RECEIVED  
MATTIE E. GENEVUGHN, M.D.,

Appellant,

VS. HEALTH & HUMAN SERVICES SECTION  
STATE MEDICAL BOARD,

Appellee.

CASE NO. 90CVF-04-2480

JUDGE REECE

FILED  
COMMON PLEAS COURT  
92 FEB 19 PM 2:24  
FRANKLIN COUNTY, OHIO  
THOMAS J. ENRIGHT  
CLERK OF COURTS

DECISION

Rendered this 19th day of February, 1992.

Reece, J.

This cause is before the Court on remand for further proceedings from the Court of Appeals of the Tenth Appellate District which revised the judgment of this Court. The Appellate Court ruled that this Court had abused it's discretion in sustaining one of the basis Appellee used in revoking Appellant license to practice medicine in the State of Ohio. It should be noted that during the pendency of the action Appellant has been practicing medicine under a Court Order issued on May 2, 1990. The Court after a complete review of the record in this case the Courts Judgment Entry of September 25, 1990 is modified as follows:

1. The Board's determination of violation of R.C. §4731.22(B)(1) is supported by substantial, reliable and probative evidence;
2. The Board's determination of a violation of R.C. §4731.22(B)(3) is supported by substantial, reliable and probative evidence;
3. There is substantial, reliable and probative evidence to show that R.C. §4731.22(B)(2) was violated;

4. The Board's determination of a violation of R.C. §4731.22(B)(4) is not supported by evidence;

5. There is substantial, reliable and probative evidence to show that R.C. §4731.22(B)(16) was violated

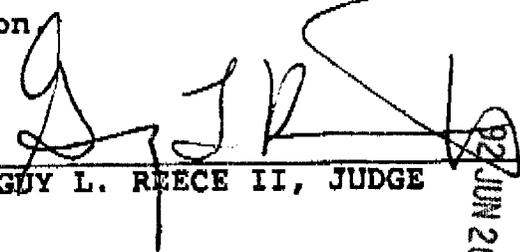
6. There is substantial, reliable and probative evidence to show that R.C. §4731.22(B)(6) was violated;

7. Appellant was not prejudiced by a lack of counsel before the Board.

It is not appropriate for this Court to determine the appropriate sanction to be imposed against the Appellant since the basis of the Board decision has been modified.

Accordingly, this matter is remanded to the Board for a disciplinary hearing and/or finding consistent with this order and the Appellate Courts decision. The suspension of the Medical Board's Order shall continue pending remand consideration by the Board until the issuance of a decision by the Board consistent herewith.

Counsel for Appellee shall prepare and submit an appropriate judgment entry pursuant to Loc. R. 25.01 within ten (10) days of receipt of this Decision.

  
GUY L. REECE II, JUDGE

STATE MEDICAL BOARD  
OF OHIO  
92 JUN 26 AM 8:07

Copies to:

Jeffrey M. Holtschulte  
Attorney for Appellant

Odella Lampkin  
Attorney for Appellee

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

92 MAR 25 AM 10:36

THOMAS J. ENRIGHT  
CLERK OF COURTS

MATTIE L. VAUGHN, M.D.,

PLAINTIFF/APPELLANT,

vs.

STATE MEDICAL BOARD,

DEFENDANT/APPELLEE.

2

CASE NO: 90CVF-04-2480

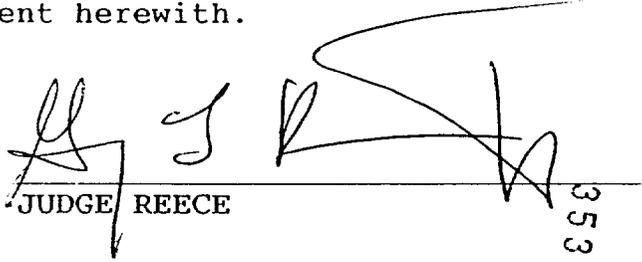
JUDGE REECE

JUDGMENT ENTRY

In accordance with the Court of Appeals, Tenth Appellate District's Journal Entry of Judgment filed August 12, 1991, it is hereby ORDERED on remand that the State Medical Board of Ohio's Order revoking Mattie L. Vaughn, M.D.'s certificate to practice medicine and surgery, based on violations of Ohio Rev. Code 4731.22(B)(1), (B)(2), (B)(3), (B)(6) and (B)(16), with the exception of (B)(4), is hereby AFFIRMED. This matter is remanded to the Board for a disciplinary hearing and/or a finding consistent with this Order and the Appellate Court's decision.

The suspension of the Medical Board's Order shall continue pending remand consideration by the Board until the issuance of a decision by the Board consistent herewith.

IT IS HEREBY ORDERED.

  
JUDGE REECE

35388J14

# The Supreme Court of Ohio

RECEIVED  
 ATTORNEY GENERAL'S OFFICE  
 JAN 17 1992  
 HEALTH & HUMAN  
 SERVICES SECTION

1992 TERM

92 JAN 22 11:16:16  
 STATE DEPT

To wit: January 15, 1992

Mattie L. Vaughn, M.D.,  
Appellant/Cross-Appellee,

:

Case No. 91-1996

v.

:

ENTRY

Ohio State Medical Board,  
Appellee/Cross-Appellant.

:

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

COSTS:

Motion Fee, \$40.00, paid by Matan & Smith.

COSTS:

Motion Fee, \$40.00, paid by Attorney General of Ohio.

(Court of Appeals No. 90AP1160)



THOMAS J. MOYER  
Chief Justice

9/5/91  
ELM/TLH/mr

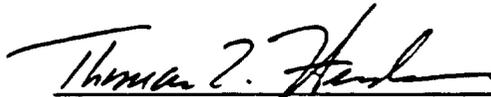
IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Mattie L. Vaughn, M.D. :  
 :  
Plaintiff-Appellant, :  
 :  
vs. : No. 90AP-1160  
 :  
The State Medical Board, : (Regular Calendar)  
 :  
Defendant-Appellee. :

STATE MEDICAL BOARD  
91 SEP 30 PM 2:22

NOTICE OF APPEAL

Plaintiff-Appellant Mattie L. Vaughn, M.D., hereby gives notice that she shall appeal the judgment of the Court of Appeals of Ohio for the Tenth Appellate District, rendered herein on August 6, 1991, to the Supreme Court of Ohio.



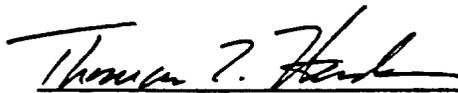
THOMAS L. HENDERSON (HEN-41)  
Ohio Supreme Court No. 0039789  
MATAN & SMITH  
261 South Front Street  
Columbus, Ohio 43215  
(614) 228-2678  
Attorney for Plaintiff-Appellant

FILED  
COURT OF APPEALS  
FRANKLIN CO OHIO  
1991 SEP -6 AM 11:19  
THOMAS J. ENRIGHT  
CLERK OF COURTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Notice of Appeal was served upon Lee Fisher, Attorney General, and John C. Dowling, Assistant Attorney General, Attorneys for Defendant-Appellee, Health, Education and Human Services Section, 30 East Broad Street, 15th Floor, Columbus, Ohio 43266-

0410, by ordinary U.S. Mail service, postage prepaid, this 10th  
day of September, 1991.



---

THOMAS L. HENDERSON  
Attorney for Plaintiff-Appellee



CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Cross-Appeal was served by ordinary mail, postage prepaid, this 10<sup>th</sup> day of September, 1991, upon: Thomas L. Henderson, Matan & Smith, 261 South Front Street, Columbus, Ohio 43215.

  
\_\_\_\_\_  
JOHN C. DOWLING  
Assistant Attorney General

1927S

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

**RECEIVED**  
ATTORNEY GENERAL'S OFFICE  
AUG 8 1991  
HEALTH, EDUCATION &  
FISHER SERVICES SECTION

In the matter of :  
Mattie L. Vaughn, M.D., :  
Appellant-Appellant, :  
v. :  
The State Medical Board, :  
Appellee-Appellee. :

No. 90AP-1160  
(REGULAR CALENDAR)

STATEMENT OF DECISION  
AUG 16 1991

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O P I N I O N

Rendered on August 6, 1991

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MATAN & SMITH and MR. JEFFERY M. HOLTSCULTE, for appellant.

MR. LEE FISHER, Attorney General, and MR. JOHN C. DOWLING, for appellee.

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APPEAL from the Franklin County Court of Common Pleas.

KLINE, J.

This is an appeal by appellant, Mattie L. Vaughn, M.D., from a judgment of the Franklin County Court of Common Pleas affirming in part and reversing in part the decision of appellee, The State Medical Board of Ohio ("board"), which revoked appellant's certificate to practice medicine and surgery in the state of Ohio.

On September 29, 1986, the board issued to appellant a notice of opportunity for hearing, alleging that appellant had violated various provisions of R.C. 4731.22 which sets forth the ground for disciplining a holder of a certificate to practice medicine and surgery within the state. The board alleged that appellant had allowed her nursing staff to operate her medical practice in her absence, which included assessing, examining, and diagnosing patients for treatment of obesity. In addition, the board alleged that appellant prescribed Schedule II stimulants to diet patients without proper examination and testing and that she directed her patients to two pharmacies from which she received value points which were redeemable for goods and services. On November 21, 1986, the board amended its notice of opportunity for hearing so as to include an additional allegation concerning the prescribing of controlled substances. The parties also note that appellant was indicted for alleged criminal conduct arising out of the foregoing but, following trial, the charges were dismissed.

An administrative hearing was held before a hearing examiner of the board who issued her report and recommendation on February 2, 1990, recommending the revocation of appellant's certificate to practice medicine and surgery. Appellant then filed objections to the report and recommendation. However, the board at a public meeting held on March 14, 1990, voted to approve the referee's recommendation, and by letter dated March 16, 1990, informed appellant of its decision. Pursuant to R.C. 119.12, appellant appealed the board's order to the Franklin County Court of Common Pleas. On August 15, 1990, the trial court

affirmed the board's order finding that appellant had violated R.C. 4731.22(B)(2), (4), (6) and (16) but reversed that portion of the order finding that appellant had violated R.C. 4731.22(B)(1) and (3). In an amended decision filed on September 7, 1990, the trial court remanded the case to the board for a new review to be conducted regarding the appropriate discipline to be imposed given its prior decision. On September 25, 1990, the trial court in its judgment entry affirmed in part and reversed in part the board's order revoking appellant's certificate to practice and remanded the matter to the board for a disciplinary finding consistent with its decisions.

On appeal, appellant has set forth three assignments of error for this court's review:

"I. The trial court erred in not discrediting the testimony of Steven William Jennings, M.D.

"II. The trial court erred in not ruling the deposition of Bruce Kuhn [sic] inadmissible.

"III. The trial court erred in finding substantial, reliable, and probative evidence of violation of Ohio Rev. Code §4731.22(B)(4)."

R.C. 119.12 sets forth the standard which is to be applied by the trial court in reviewing an administrative appeal. Specifically, R.C. 119.12 provides in pertinent part:

"The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of such a finding, it may

reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. \*\*\*"

The trial court is therefore to affirm the order of the agency from which an appeal has been taken pursuant to R.C. 119.12 where that order is supported by reliable, probative, and substantial evidence and is in accordance with law. Univ. of Cincinnati v. Conrad (1980), 63 Ohio St. 2d 108.

However, upon appeal to an appellate court, the standard of review is more restricted. In Lorain City Bd. of Edn. v. State Emp. Relations Bd. (1988), 40 Ohio St. 3d 257, the Supreme Court of Ohio set forth the standard by which an appellate court is to review an order of an administrative agency:

"In reviewing an order of an administrative agency, an appellate court's role is more limited than that of a trial court reviewing the same order. It is incumbent on the trial court to examine the evidence. Such is not the charge of the appellate court. The appellate court is to determine only if the trial court has abused its discretion. An abuse of discretion ""\*\*\* implies not merely error of judgment, but perversity of will, passion, prejudice, partiality, or moral delinquency." \*\*\* Absent an abuse of discretion on the part of the trial court, a court of appeals must affirm the trial court's judgment. \*\*\*

"The fact that the court of appeals, or this court, might have arrived at a different conclusion than did the administrative agency is immaterial. Appellate courts must not substitute their judgment for those of an administrative agency or a trial court absent the approved criteria for doing so." Id. at 260-261.

Accordingly, it is within this limited standard of review that we address appellant's assignments of error.

In her first assignment of error, appellant argues that the trial court should have concluded that the testimony of one of the board's expert witnesses was discredited and therefore the board's decision could not be supported by substantial, reliable, and probative evidence. Appellant insists that Steven William Jennings, M.D., should not have been qualified as an expert when he gave testimony regarding appellant's practice.

Although appellant has set forth several reasons for discrediting Jennings' testimony, we are unable to conclude that the trial court abused its discretion in affirming the board's decision. Jennings is board certified in family medicine, having completed three years of residency in that field. Prior to his becoming involved in his current area of specialization involving sleep disorders, Jennings maintained a private practice in family medicine for approximately five years. While appellant cites various reasons to support her argument that Jennings is unqualified to offer expert testimony, we find that such arguments relate not to the admissibility of such evidence but rather the weight to be given Jennings' testimony. Accordingly, we cannot conclude that the trial court abused its discretion regarding the introduction of Jennings' testimony. Appellant's first assignment of error is therefore not well-taken and is overruled.

In her second assignment of error, appellant argues that the trial court should have ruled the deposition of Bruce Koehn was inadmissible at the administrative hearing before the board. Specifically, appellant argues that

while Civ. R. 32(A) provides the grounds upon which a deposition is admissible in lieu of live testimony, the reason advanced for the admission of Koehn's deposition, that he had long-standing vacation plans, did not fall within one of the enumerated provisions. Appellant insists that Koehn's testimony included prejudicial hearsay and that documents which were admitted in conjunction with his testimony should have been found to have been inadmissible before the board.

Appellant's argument initially relies upon the fact that Koehn's deposition given in lieu of live testimony contravenes the enumerated rules given in Civ. R. 32(A) which allow for the introduction of deposition testimony in lieu of live testimony. However, Civ. R. 1(A) specifically states that the Civil Rules apply to courts of the state. Therefore, the Civil Rules are not binding in adjudicatory proceedings before administrative agencies. See Yoder v. Ohio State Bd. of Edn. (1988), 40 Ohio App. 3d 111.

As appellant correctly recognizes, the Rules of Evidence are not strictly applicable to proceedings before the board. Evid. R. 101(A) specifically provides:

"These rules govern proceedings in the courts of this state and before court-appointed referees and magistrates of this state, subject to the exceptions stated in division (C) of this rule."

Accordingly, absent specific statutory authority, administrative agencies are not bound by the strict Rules of Evidence. Haley v. Ohio State Dental Bd. (1982), 7 Ohio App. 3d 1; Provident Savings Bank & Trust Co. v. Tax Commission (1931), 26 Ohio Law Abs. 175.

Nevertheless, we note the decision in Columbia Twp. Trustees v. Williams (1976), 11 O.O. 3d 233, in which this court held:

"Although a hearing before an administrative agency, or as in this instance an administrative reviewing body, is not conducted, or reviewed, in the same sense as a civil proceeding in a court of law, yet certain of the aspects thereof must be treated similarly. These proceedings are known to be quasi-judicial in nature and they must be conducted with basic concepts of fair play. \*\*\*

"Generally in the absence of statutory provisions to the contrary, an administrative agency may adopt and follow procedures for hearings and fact finding which are not strictly in accord with rules of practice as followed in the trial of civil actions. \*\*\*

"However, administrative agencies may not be permitted to sanction as evidence something which is clearly not evidence. \*\*\* And, an administrative agency should not act upon evidence which is clearly not admissible, competent or probative of the facts which it is to determine. \*\*\*" Id. at 236.

Accordingly, this court must review appellant's argument in light of the foregoing pronouncement.

In the present case, appellant was notified of the time and place of Koehn's deposition. She appeared at the deposition pro se and was given the opportunity to cross-examine the witness. At the beginning of the deposition, the following discussion took place:

"MS. ROSS: Let the record reflect that this is a deposition in lieu of testimony of Mr. Bruce Koehn. My name is Lauren M. Ross, Assistant Attorney General. I am representing the State Medical Board of Ohio in its proceedings concerning Mattie L. Vaughn, M.D. Dr. Vaughn is here today representing herself and has indicated to me before we went on the record that her

previous attorney, Joseph Carr, is no longer representing her and that she is, as I said, representing herself here today.

"Dr. Vaughn, am I correct that you agree that pending a ruling on a motion to admit this deposition in lieu of Mr. Koehn's testimony, that you will consent to that, that this deposition be submitted in lieu of his live testimony at the hearing next week?

"DR. VAUGHN: That is satisfactory.

"MS. ROSS: As I indicated, when I am done with Mr. Koehn here today in terms of my questioning of him, you will have the opportunity to ask him questions and when I am done we can take a break and give you some time to formulate your questions for him, and I will state for the record that if in connection with me asking Mr. Koehn any questions you feel the need to object on any ground, that you have the right to do so. However, it is my understanding since we don't have a hearing officer here to rule on those objections, that any ruling on the objections will have to await the hearing officer and that in the meantime I would then ask and instruct Mr. Koehn to answer the question and your objection will be noted for the record, and we can bring that to the attention of the hearing officer for her ruling.

"DR. VAUGHN: That is satisfactory." (Koehn deposition at 3-4.)

Following the questioning of Koehn by Ross, the following occurred:

"Q. I have no other questions of Mr. Koehn. At this time as I indicated at the outset, I informed Dr. Vaughn that she has the right to examine and ask questions of Mr. Koehn, and I will leave it up to her. If she wants to take a break, then we can discuss how long. Doctor?

"DR. VAUGHN: I wouldn't care do [sic] cross-examine Mr. Koehn.

"MS. ROSS: I guess this deposition can be declared closed. I would like to state on the record, Dr. Vaughn, what I intend to do is to file a motion with the hearing officer at the Medical Board to remit this deposition in lieu of Mr. Koehn's appearing at the hearing that is presently scheduled for April 13th and 14th. Do you have any objection to such a motion?"

"DR. VAUGHN: I have no objection.

"MS. ROSS: Thank you. I will draft something up and forward it to you and the hearing officer, and we will await her ruling then." (Koehn deposition at 60-61.)

In her brief, appellant insists that Koehn's deposition is so replete with prejudicial hearsay that it should have been excluded in its entirety. In Foster v. Bd. of Elections (1977), 53 Ohio App. 2d 213, the court held in pertinent part, in paragraph six of its syllabus:

"Appellate Rule 12(A) provides that any errors not separately argued by brief may be disregarded. Appellate Rule 16(A)(4) requires that the brief contain an argument and that the argument include the contentions of the appellant and the reasons for his conclusion with citations to the appropriate authorities and to the parts of the record relied on. \*\*\*"

Accordingly, this court's review is limited solely to those portions of the record that appellant has specifically argued on appeal.

Appellant first argues that copies of certain documents were allowed to be admitted into evidence even though Koehn had no knowledge of the location of the original document that was allegedly seized during the search on September 5, 1986 of appellant's office. Appellant next argues that Koehn improperly testified by relating the content of alleged conversations with

appellant's patients. Again, we note that at the time that this testimony was given, no objection was raised by appellant. Given the remaining evidence, and applying the standard announced in Columbia Twp. Trustees, supra, we cannot conclude that the trial court abused its discretion in not finding Koehn's deposition to be inadmissible at the proceeding before the board. While appellant has an underlying argument that she was prejudiced by a lack of counsel when she appeared at the deposition, it is apparent from the record that appellant voluntarily elected to proceed without the presence of counsel. As we find no abuse of discretion by the trial court, appellant's second assignment of error is not well-taken and is overruled.

Finally, in her third assignment of error, appellant argues that the trial court erred in concluding that there existed substantial, reliable, and probative evidence that appellant had violated R.C. 4731.22(B)(4). At the time of appellant's alleged violations, R.C. 4731.22(B)(4) provided that the following constituted a ground for discipline by the board:

"Willfully betraying a professional confidence or engaging in the division of fees for referral of patients, or the receiving of a thing of value in return for a specific referral of a patient to utilize a particular service or business[.]"

In its decision of August 15, 1990, the trial court stated at 3-4:

"There is no question that Vaughn received 'value points,' a thing of value--having an equivalent in money or commodities. Therefore, she violated R.C. 4731.22(B)(4). Had there been some evidence she had refused the value points despite their issuance to her, a contrary finding may have been appropriate. It is of

no consequence that there is no direct evidence that Vaughn referred patients to the Taft Pharmacy as a quid quo pro. The mere acceptance of value points regardless of what she did with them constituted a per se violation of said statute. Nevertheless, the absence of any evidence that Vaughn redeemed the value points, even though she had ample opportunity, should necessarily, in the interest of justice, be considered by the Board in determining the appropriate discipline for violation of this statute. The Board's decision regarding the violation of R.C. 4731.22(B)(4) is AFFIRMED."

Upon review of the record, we are unable to conclude that appellant violated R.C. 4731.22(B)(4). This charge was based upon an allegation that in exchange for sending patients to a certain pharmacy, appellant received "value points" which could be redeemed for merchandise from that pharmacy. The record indicates that appellant had accumulated in excess of seventy thousand value points but there exists no evidence that these value points were in fact exchanged by appellant for merchandise. We are unable to conclude that the mere award of value points by a pharmacy to appellant without any action on her part, constitutes the "receiving of a thing of value" for purposes of R.C. 4731.22(B)(4). While the board points to testimony which indicates that the value points had a monetary value in an amount of twelve and one-half cents, the testimony also indicates that these points could only be redeemed for prizes and not cash. As there exists no evidence that appellant claimed merchandise in exchange for these accumulated value points, we find that the trial court abused its discretion in concluding that the board's decision finding appellant had violated R.C. 4731.22(B)(4) was supported by reliable, probative, and substantial

evidence. Accordingly, appellant's third assignment of error is well-taken and is sustained.

The board has also filed a notice of cross-appeal from the trial court's decision and has assigned the following error for this court's review:

"The Court of Common Pleas erred in its construction and interpretation of R.C. 4731.22(B)(3) in that it failed to inquire whether there was evidence that the drugs in question were prescribed by Dr. Vaughn without a 'legitimate therapeutic purpose.'"

In its cross-assignment, the board argues that the trial court erred in its interpretation of R.C. 4731.22(B)(3) which authorizes the board to take disciplinary action for the following:

"Selling, 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[.]"

In the present case, the trial court stated in its August 15, 1990 decision:

"To find a violation of R.C. 4731.22(B)(3), a Court must find that drugs are being distributed without a legal or legitimate therapeutic purpose. In this case, the record shows that although drugs were prescribed recklessly, there is no indication that they were distributed for illegal purposes. And, there is no direct evidence of alleged drug trade. For this reason, the Court REVERSES the Board's decision finding a violation of R.C. 4731.22(B)(3)." (Trial court decision at 3.)

It appears that the trial court erred by focusing solely upon whether there was evidence of a legal purpose for appellant's prescribing a Schedule II drug. R.C. 4731.22(B)(3) permits the board to conclude that there has been a violation of this provision when drugs were sold, prescribed, given away, or administered, for other than "legal and legitimate therapeutic purposes." This language indicates that there must be both a legal and legitimate therapeutic purpose for the administration of drugs. In her report and recommendation, the hearing examiner concluded:

"The evidence in this Matter substantially shows that Dr. Vaughn routinely prescribed Obetrol, a Schedule II amphetamine anorectic, and other stimulant controlled substance anorectics for treatment of overweight or obesity. Dr. Vaughn did not require that patients be obese by medical definition (20% over ideal weight), but accepted any adult who was 20 lbs. or more overweight for treatment in her 'diet program.' Dr. Vaughn initiated treatment with amphetamines upon patients' first visits, without first objectively establishing that the patients were refractory to other methods of weight loss, and without performing adequate workups and evaluations. Dr. Vaughn's patient records are generally devoid of laboratory studies or any other evidence which would indicate that she made an effort to identify either etiological factors or problems which might be attendant with obesity and potentially exacerbated by weight loss. Often, patient records show that stimulant medications were prescribed to female patients without establishing that they were not pregnant or at risk for pregnancy. In one case, a patient apparently became pregnant during the course of her treatment with amphetamines. In some cases, stimulant appetite suppressants were inappropriately prescribed for patients who had elevated blood pressure readings. Further, Dr. Vaughn often maintained patients on Obetrol and other stimulant anorectics for inappropriately long periods of time, many in excess of three months,

regardless of whether or not any significant weight loss was achieved. Although it was Dr. Vaughn's practice to alternate medications so that patients received Obetrol only every other month, patients were routinely alternated back to Obetrol even when they had gained weight on Obetrol and/or had shown better response to non-amphetamine medications. It is apparent that Dr. Vaughn failed to exercise appropriate medical judgment in her treatment of diet patients, but rather blindly adhered to inadequate 'protocols' which she had established. Such practice constitutes grounds for disciplinary action under each of the above provisions of law." (Referee's report at 29.)

We agree with the board that the trial court erred in failing to consider the evidence that appellant lacked a legitimate therapeutic purpose for her prescribing a Schedule II drug. Accordingly, the board's cross-assignment of error is well-taken and is sustained.

Based upon the foregoing, appellant's first and second assignments of error are not well-taken and are overruled. Appellant's third assignment of error is well-taken and is sustained. The board's cross-assignment of error is well-taken and is sustained. The judgment of the trial court is hereby reversed and this cause is remanded for further proceedings consistent with the law and this opinion.

Judgment reversed and cause remanded.

STRAUSBAUGH and BRYANT, JJ., concur.

KLINE, J., of the Pickaway County Court of Common Pleas,  
sitting by assignment in the Tenth Appellate District.

10/04/90  
JMH/ksk

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

MATTIE L. VAUGHN, M.D.,  
Plaintiff-Appellant,  
-vs-  
STATE MEDICAL BOARD,  
Defendant-Appellee.

90AP1160

Case No. 90CVF04-2480

JUDGE DESHLER

NOTICE OF APPEAL

Notice is hereby given that Plaintiff Mattie L. Vaughn, M.D. hereby appeals to the Court of Appeals of Franklin County, Ohio, Tenth Appellate District, from the Judgment Entry entered in this action on September 25, 1990.

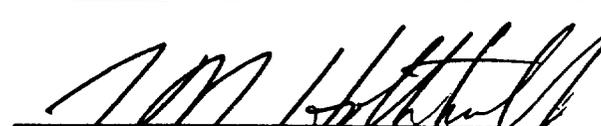


JEFFERY M. HOLTSCHULTE (HOL-52)  
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FRANKLIN COUNTY, OHIO  
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing NOTICE OF APPEAL was served upon JOHN C. DOWLING, Assistant Attorney General, Health, Education and Human Services Section, Attorney for Defendant, at 30 East Broad Street, 15th Floor, Columbus, Ohio 43266-0410, on this 5<sup>th</sup> day of October, 1990, by ordinary mail.



JEFFERY M. HOLTSCHULTE (HOL-52)  
MATAN & SMITH  
Attorney for Plaintiff-Appellant

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY

RECEIVED  
DIRECTOR OF PUBLIC SAFETY'S OFFICE  
AUG 17 1990  
HEALTH, EDUCATION &  
HUMAN SERVICES SECTION

MATTIE L. VAUGHN, M.D., :

Plaintiff, :

vs. :

Case No. 90CVT 04 2480

STATE MEDICAL BOARD, :

Judge Deshler

Defendant. :

DECISION

Rendered this 15<sup>th</sup> day of August, 1990.

DESHLER, J.

This matter is before the Court on appeal (R.C. 119.12) from a March 16, 1990 Order of the State Medical Board of Ohio ("Board") revoking Mattie L. Vaughn, M.D.'s ("Vaughn") license to practice medicine and surgery. In revoking her license, the Board adopted the Findings of Fact and Recommendation of the Hearing Examiner. The Board found Vaughn had violated:

1. "R.C. 4731.22(B)(1) - Permitting one's name or one's certificate of registration to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given;
2. "R.C. 4731.22(B)(2) - Failure to use reasonable care discrimination in the administration of drugs\*\*\*;
3. "R.C. 4731.22(B)(3) - Selling, prescribing, giving away or administering drugs for other than legal and legitimate therapeutic purpose\*\*\*;
4. "R.C. 4731.22(B)(4) - \*\*\*the receiving of a thing of value in return for a specific referral of a patient to utilize a particular service or business;
5. "R.C. 4731.22(B)(6) - A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established; and

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6. "R.C. 4731.22(B)(16) (as in effect prior to March 17, 1987) - Violating or attempting to violate, directly, or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board," to wit, R.C. 4731.41, Practice of Medicine or Surgery Without Certificate

Each of the violations will be addressed in the order as mentioned above. To find a violation of R.C. 4731.22(B)(1), a Court must find reliable, probative and substantial evidence exists that a physician has allowed her status as a physician to be used by an entity or a group of individuals to treat patients without the physician directing the treatment. What is required to find a violation R.C. 4731.22(B)(1) is the operation of medical practice by a doctor in name only. In this case, there is ample evidence to show that Vaughn directed the treatment by way of the "protocol for treatment" she established. Therefore, because the Board's determination of violation of R.C. 4731.22(B)(1) is not supported by the evidence, the Board's finding of a violation of this statute is REVERSED. Note, the Court is not giving support to the "protocol for treatment," but is merely finding there is no evidence to support a finding that Vaughn violated R.C. 4731.22 (B)(1) as a matter of law.

While there is insufficient evidence to show a violation of R.C. 4731.22(B)(1), there is substantial, reliable, and probative evidence to show that R.C. 4731.22(B)(2) was violated. Pre-signed prescriptions were written and given to patients who had not been assessed, examined, and diagnosed by Vaughn. Testimony established that Vaughn at times was not involved in the making of all clinical treatment decisions, rendering treatment,

advising patients, or issuing prescriptions for medication. Accordingly, the Court AFFIRMS the Board's decision with respect to a finding of violation by Vaughn of R.C. 4731.22(B)(2).

To find a violation of R.C. 4731.22(B)(3), a Court must find that drugs are being distributed without a legal or legitimate therapeutic purpose. In this case, the record shows that although drugs were prescribed recklessly, there is no indication they were distributed for illegal purposes. And, there is no direct evidence of alleged drug trade. For this reason, the Court REVERSES the Board's decision finding a violation of R.C. 4731.22(B)(3).

Next, the Court considers the Board's finding that Vaughn violated R.C. 4731.22(B)(4). At issue is whether the receipt of value points from Taft Pharmacy violated R.C. 4731.22(B)(4). The purpose of this statute is to preclude physicians from making decisions to prescribe drugs based upon consideration other than the interest of the patient. Another purpose is to keep physicians from making decisions based solely upon financial gain.

There is no question that Vaughn received "value points," a thing of value--having an equivalent in money or commodities. Therefore, she violated R.C. 4731.22(B)(4). Had there been some evidence she had refused the value points despite their issuance to her, a contrary finding may have been appropriate. It is of no consequence that there is no direct evidence that Vaughn referred patients to the Taft Pharmacy as a quid quo pro. The mere acceptance of value points regardless of what she did with them constituted a per se violation of said

statute. Nevertheless, the absence of any evidence that Vaughn redeemed the value points, even though she had ample opportunity, should necessarily, in the interest of justice, be considered by the Board in determining the appropriate discipline for violation of this statute. The Board's decision regarding the violation of R.C. 4731.22(B)(4) is AFFIRMED.

To violate R.C. 4731.22(B)(16), to wit 4731.41 (as in effect prior to March 17, 1987), there must be evidence supporting a finding that a physician helped someone to practice medicine without a license, i.e. exercise independent judgment to diagnose, treat, and prescribe drugs. In the case sub judice, there is substantial, reliable, and probative evidence to show that Vaughn's employees exercised independent judgment at times in applying Vaughn's "protocol," i.e. at those times when walk-in patients came to her office. For this reason, the Court AFFIRMS the Board's decision with respect to R.C. 4731.22(B)(16).

Finally, the Court finds the requisite evidence exists to support a finding that R.C. 4731.22(B)(6) was violated. Since other statutes have been violated governing the practice of medicine, which embody the minimal standard of care of similarly situated physicians, a fortiori, R.C. 4731.22(B)(6) has been violated. The Board's decision with respect to this finding is also AFFIRMED.

Lastly, the Court addresses Appellant's contention that she was prejudiced by a lack of counsel before the Board. The Court notes that it was Appellant who chose this manner to proceed. Therefore, she was bound by the same rules and procedures as litigants with Counsel. Dawson v. Pauline Homes, Inc. (1958), 107 Ohio App. 90. Appellant has in effect waived

this claim of error. Therefore, her argument regarding lack of counsel is REJECTED.

In sum then, the Court REVERSES and VACATES the Board's decision with respect to R.C. 4731.22(B)(1) and R.C. 4731.22(B)(3). The Court AFFIRMS the Board's decision with respect to R.C. 4731.22(B)(2), R.C. 4731.22(B)(4), R.C. 4731.22(B)(6), and R.C. 4731.22(B)(16). Further, the Court finds no prejudice to Appellant for her choice to proceed without counsel at the administrative level. Appellant shall submit an entry in accordance with Local Rule 39.01.

  
\_\_\_\_\_  
DANA A. DESHLER, JUDGE

Copies to:

Jeffery M. Holtschulte  
Attorney for Appellant

John C. Dowling  
Assistant Attorney General  
for Appellee

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

MATTIE L. VAUGHN, M.D., :

Plaintiff/Appellant, :

vs. :

Case No. 90CVF-04-2480

STATE MEDICAL BOARD, :

Judge Deshler

Defendant/Appellee. :

AMENDED DECISION

Rendered this 7 day of September, 1990.

DESHLER, J.

This matter is before the Court on Appellant's Motion with Notice of Oral Hearing attached. Appellee has filed a memoranda contra. In said motion, the Appellant asks the Court to (1) to amend its August 15, 1990 decision to address the penalty aspect of the State Medical Board's decision or to remand this case for reconsideration of the penalty of revocation in light of the Court's findings in said decision; (2) to suspend the Medical Board's order as it applies to Vaughn's pending remand for reconsideration to the Board, and (3) to grant an Oral Hearing on (1) and (2) above.

In the August 15, 1990 decision, the Court did not remand the case to the Board for a review of the appropriate discipline in light of the Court's findings. The Court now amends its decision of August 15, 1990 to include the following: "This case is hereby remanded to the Board for a disciplinary finding consistent with its decision (August 15, 1990)." By including this language, the Court does not wish to give any suggestion as to what discipline is appropriate; it is the Board's prerogative to determine whether revocation is or is not

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now appropriate in light of the Court's decision.

Next, the Court will allow the suspension of the Medical Board's Order as it applies to Vaughn to continue pending remand for reconsideration to the Board. Upon issuance of a decision by the Board, the stay of the Board's decision will end.

Given the above, Appellant's motion is therefore SUSTAINED in part and OVERRULED in part. And in light of the above, the Court finds that an Oral Hearing is unnecessary. Appellant shall submit an entry in accordance with Local Rule 39.01.

  
\_\_\_\_\_  
DANA A. DESHLER, JUDGE

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John C. Dowling  
Assistant Attorney General  
for Defendant/Appellee

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

IN THE MATTER OF MATTIE L. VAUGHN, M.D.:

MATTIE L. VAUGHN, M.D.  
5009 Lillian Drive, No. 2  
Cincinnati, Ohio 45237,  
  
Plaintiff-Appellant,

-vs-

THE STATE MEDICAL BOARD  
State of Ohio  
77 South High Street  
17th Floor  
Columbus, Ohio 43266-0315,

Defendant-Appellee.

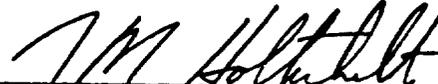
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CLERK OF COURTS

NOTICE OF APPEAL

Now comes Appellant, Mattie L. Vaughn, M.D. and hereby gives notice, pursuant to Ohio Revised Code §119.12, of her appeal from the Entry and Order of the State Medical Board of Ohio which was mailed on the 19th day of March, 1990, and which is attached hereto as "Exhibit A," on the grounds that said Order is not supported by reliable, probative and substantial evidence and is not in accordance with law.

  
JEFFERY M. HOLTSCHULTE (HOL-52)  
MATAN & SMITH  
Attorney for Appellant  
261 South Front Street  
Columbus, Ohio 43215  
(614) 228-2678

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing NOTICE OF APPEAL was served upon THE STATE MEDICAL BOARD, at 77 South High Street, 17th Floor, Columbus, Ohio 43266-0315; and upon LAUREN ROSS, Assistant Attorney General, Attorney for the State Medical Board, at 30 East Broad Street, Columbus, Ohio 43215 on this 3rd day of April, 1990, by ordinary mail.

  
JEFFERY M. HOLTSCHULTE (HOL-52)  
MATAN & SMITH  
Attorney for Appellant

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

(614)466-3934

March 16, 1990

Mattie L. Vaughn, M.D.  
5009 Lilian Drive, Apt. 2  
Cincinnati, Ohio 45237

Dear Doctor Vaughn:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on March 14, 1990, including Motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board.

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

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

THE STATE MEDICAL BOARD OF OHIO



Henry G. Cramblett, M.D.  
Secretary

HGC:em

Enclosures

CERTIFIED MAIL RECEIPT NO. P 746 514 705  
RETURN RECEIPT REQUESTED

cc: Jeffrey Holtschulte, Esq.

CERTIFIED MAIL NO. P 746 514 708  
RETURN RECEIPT REQUESTED

Mailed 3/19/90

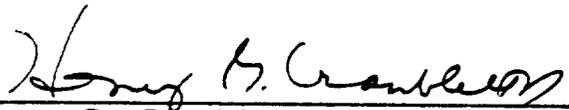
STATE OF OHIO  
STATE MEDICAL BOARD

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board; and attached excerpt of Minutes of the State Medical Board, meeting in regular session on March 14, 1990, including Motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Mattie L. Vaughn, 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)

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

3/16/90  
\_\_\_\_\_  
Date



**REPORT AND RECOMMENDATION  
IN THE MATTER OF MATTIE L. VAUGHN, M.D.**

The Matter of Mattie L. Vaughn, M.D., came on for hearing before me, Wanita J. Sage, Esq., Hearing Examiner for the State Medical Board of Ohio, on April 13, 14, and 19, 1989.

**INTRODUCTION AND SUMMARY OF EVIDENCE**

**I. Basis for Hearing**

A. By letter of September 29, 1986 (State's Exhibit #1), the State Medical Board notified Mattie L. Vaughn, M.D., that it proposed to take disciplinary action against her license to practice medicine and surgery in Ohio for one or more of the following reasons:

1. The Board alleged that, when a search of Dr. Vaughn's office was executed pursuant to warrant on September 5, 1986, law enforcement officials found unsecured, at the desks of various office staff persons, pre-signed prescriptions with DEA number; approximately 152 were written for various controlled substances but lacked patient names and addresses, and others were blank except for signature and DEA number. Such acts were alleged to constitute:

- a. "Failure to use reasonable care discrimination in the administration of drugs", as that clause is used Section 4731.22(B)(2), Ohio Revised Code;
- b. "Selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes", as that clause is used in Section 4731.22(B)(3), Ohio Revised Code; and
- c. "A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established", as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

2. The Board further alleged that, at the time the search warrant was executed, Dr. Vaughn's office was found to be in the charge of one Mary Shelton, L.P.N., who in Dr. Vaughn's absence was assessing, examining, and diagnosing patients, including, on that morning, nine new patients. The Board further alleged that, on the morning of September 5, 1986, Dr. Vaughn's staff issued in her absence prescriptions for various controlled substances to at least 31 patients, including nine new patients who had never been seen by Dr. Vaughn. The Board alleged that such prescribing practices were customarily and regularly employed by Dr. Vaughn in her medical practice and were done with her knowledge and at her direction. Such acts were alleged to constitute:

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- a. "Permitting one's name or one's certificate of registration to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given", as that clause is used in Section 4731.22(B)(1), Ohio Revised Code;
- b. "A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established", as that clause is used in Section 4731.22(B)(6), Ohio Revised Code; and
- c. "Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board", as that clause is used in Section 4731.22(B)(16), Ohio Revised Code (as in effect prior to March 17, 1987), to wit: Section 4731.41, Ohio Revised Code, Practice of Medicine or Surgery Without Certificate.

3. In addition, the Board alleged that it was Dr. Vaughn's practice that all first-time patients in excess of twenty pounds over their "ideal weight" be given prescriptions for 30 Obetrol unless another medication was requested by the patient. Such acts were alleged to constitute "failure to use reasonable care discrimination in the administration of drugs" and "failure to employ acceptable scientific methods in the treatment of disease", as those clauses are used Section 4731.22(B)(2), Ohio Revised Code.
4. The Board also alleged that it was Dr. Vaughn's custom and practice to direct her patients to Barrow's and Taft Road Pharmacies to fill prescriptions issued at her office, in exchange for which she received "valuepoints," which were redeemable by her at those pharmacies for goods or services. Such acts were alleged to constitute "the receiving of a thing of value in return for a specific referral of a patient to utilize a particular service or business", as that clause is used in Section 4731.22(B)(4), Ohio Revised Code.

Dr. Vaughn was advised of her right to request a hearing in this Matter.

- B. By letter dated October 8, 1986 (State's Exhibit-#1), John H. Burlew, Esq., requested a hearing on behalf of Dr. Vaughn.
- C. By letter of November 21, 1986 (State's Exhibit-#1), the State Medical Board again notified Dr. Vaughn that it proposed to take disciplinary action against her certificate to practice medicine and surgery in Ohio due to her prescribing of the controlled substances listed on an attached "Prescription List by Patient Number." The

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Board alleged that such prescribing constituted violations of Sections 4731.22(B)(2), (B)(3), and (B)(6), Ohio Revised Code.

Dr. Vaughn was advised of her right to request a hearing in this matter.

- D. By letter received by the State Medical Board on December 9, 1986 (State's Exhibit #1), John H. Burlew, Esq., requested a hearing on behalf of Dr. Vaughn.
- E. The allegations set forth in the Board's letters of September 29 and November 21, 1986, were consolidated for purposes of hearing.

## II. Appearances

- A. On behalf of the State of Ohio: Anthony J. Celebrezze, Jr., Attorney General, by Christopher M. Culley, Assistant Attorney General; Lauren M. Ross, Assistant Attorney General; and John C. Dowling, Assistant Attorney General
- B. Dr. Vaughn, having been duly advised of her right to representation, appeared on her own behalf without counsel.

## III. Testimony Heard

### A. Presented by the State

1. Bruce Todd Koehn, Police Officer and former RENU Agent, Cincinnati; by deposition taken on April 5, 1989
2. Rickie B. Richardson, former Police Officer, Village of Golf Manor
3. Patricia Ann McMahan, Investigator, State Medical Board
4. Marianne Lawrence, former patient of Dr. Vaughn
5. Mary Ann Shelton, L.P.N., former employee of Dr. Vaughn
6. Leo Okum, Pharmacist and owner of Taft Rd. Pharmacy, Cincinnati
7. Jack Barrow, Pharmacist and former owner of Barrow's Apothecary, Cincinnati
8. Mattie L. Vaughn, M.D., as on cross-examination
9. Steven William Jennings, M.D.
10. Penny McKenzie, Chief of Licensure, State Medical Board; rebuttal witness

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B. Presented by the Respondent

1. Stanley Broadnax, M.D.
2. Ann Sala, former office manager for Dr. Vaughn
3. Mattie L. Vaughn, M.D.

IV Exhibits-Examined

The following exhibits were identified and admitted into evidence at hearing or were identified at the deposition of Bruce Todd Koehn and are hereby admitted into evidence in this Matter:

A. Presented by the State at the Deposition of Bruce Todd Koehn

1. Koehn Exhibit #1: September 5, 1986, search warrant issued by the Hamilton County Municipal Court, authorizing the search of Dr. Vaughn's office at 2249 Losantiville, Golf Manor, Ohio, and the seizure of evidence; supporting affidavit of Agent Bruce T. Koehn.
2. Koehn Exhibit #2: 19 photographs of the exterior and vicinity of Dr. Vaughn's office, taken by Agent Koehn during surveillance prior to September 5, 1986 (Deposition Tr. at 12-13).
3. Koehn Exhibit #3: Notes made by Agent Koehn during surveillances of Dr. Vaughn's office on June 24 and June 27, 1986.
4. Koehn Exhibit #4: Documents received by Agent Koehn from Marianne Lawrence, including: 8/26/86 note to Mr. Koehn from Ms. Lawrence; 8/22/86 receipt for a \$35.00 cash payment by Ms. Lawrence for a visit to Dr. Vaughn's office; three-part requisition form for laboratory tests; copies of two prescriptions issued to Marianne Lawrence on August 22, 1986, both written on prescription forms preprinted with the name, address, and DEA number of Dr. Vaughn, one signed by Y. Mohlman, M.D., for 15 HCTZ 50 mg., the other signed by Dr. Vaughn for 30 Obetrol 20 mg.
5. Koehn Exhibit #5: 12 photographs of Dr. Vaughn's office taken on September 5, 1986, when the search warrant was executed.
6. Koehn Exhibit #6: Rough sketch of the layout of Dr. Vaughn's office, number-coded to assist verbal description (see Deposition Tr. at 17-20).
7. Koehn Exhibit #7: Notations made by Officer Richardson, including an inventory of pre-signed prescriptions seized from the desks of Mary Shelton and Victor Jones (Deposition Tr. at 21-22).

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8. Koehn-Exhibit-#8: Specimen envelope labeled "Shelton", found during the search of Dr. Vaughn's premises (original admitted as State's Exhibit-#23).
9. Koehn-Exhibits-#9 through #16: Pre-signed prescriptions seized from the desks of Mary Shelton and/or Victor Jones: #9 - 11 prescriptions for 30 Adipex-P; #10 - 17 prescriptions for 30 Ionomin; #11 - 6 prescriptions for 15 Dyazide with 3 refills; #12 - 14 prescriptions for 30 Didrex 50 mg. and 5 prescriptions for 60 Didrex 50 mg; #13 - 3 prescriptions for 30 Tenuate 75 mg. and 5 prescriptions for 15 Tenuate 75 mg.; #14 - 11 prescriptions for 30 Obetrol 20 mg.; #15 - 1 prescription for 30 Fastin; #16 - 1 "excuse script". Patient name, address, and date is blank on each of these prescriptions.
10. Koehn-Exhibit-#17: Sample of business cards from Barrow's Apothecary found in the reception area of Dr. Vaughn's office.
11. Koehn-Exhibit-#18: Sample of business cards from Taft Rd. Pharmacy found in the reception area of Dr. Vaughn's office.
- \* 12. Koehn Exhibit-#19: Listings of patients and medications for various dates, seized from Dr. Vaughn's desk.
13. Koehn Exhibit-#20: Copy of envelope seized from Dr. Vaughn's desk, with notations by Dr. Vaughn regarding Obetrol and Dyazide for new patients (original admitted as State's Exhibit-#36).
- \* 14. Koehn Exhibit #21: Copy of envelope and June 6, 1986, letter to Dr. Vaughn from a one-time patient, complaining about discourteous treatment she experienced at Dr. Vaughn's office.
15. Koehn-Exhibit-#22: Copy of hand-written note seized from Dr. Vaughn's desk, setting forth instructions to Ms. Sala regarding, among other things, staff assignments during Dr. Vaughn's absence (original admitted as State's Exhibit-#37).
16. Koehn-Exhibits-#23 through #28: Pre-signed prescriptions seized from Dr. Vaughn's desk, including: #23 - 6 prescriptions for 60 Didrex 50 mg. and 1 prescription for 30 Didrex 50 mg.; #24 - 8 prescriptions for 15 Dyazide with 3 refills; #25 - 2 prescriptions for 30 Adipex-P and 1 prescription for 35 Adipex-P; #26 - 10 prescriptions for 15 Tenuate 75 mg. and 2 prescriptions for 30 Tenuate 75 mg.; #27 - 2 prescriptions for 30 Ionomin and 3 prescriptions for 35 Ionomin; #28 - 3 prescriptions for 30 Obetrol 20 mg. and 1 prescription for 35 Obetrol 20 mg. Patient name, address, and date are blank on each of these prescriptions.

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17. Koehn Exhibit #29: Specimen envelope labeled "Sala", seized from Dr. Vaughn's desk, containing the following pre-signed prescriptions: 1 "excuse prescription"; 4 prescriptions for 30 Obetrol 20 mg; 5 prescriptions for 15 Tenuate 75 mg.; 2 prescriptions for 30 Tenuate 75 mg.; 3 prescriptions for 30 Didrex 50 mg.; and 9 prescriptions for 30 Ionomin. Patient name, address, and date are blank on each of these prescriptions.
18. Koehn Exhibit #30: Specimen envelope labeled "Vaughn" ("Davis", on reverse), seized from Dr. Vaughn's desk, containing two voided prescriptions dated 8/4/86, one for 15 Dyazide, the other for 15 Tenuate 75 mg.
19. Koehn Exhibit #31: Specimen envelope labeled "Sala", seized from Dr. Vaughn's desk, containing five pre-signed prescriptions without patient name or address for 15 Tenuate 75 mg., and six voided prescriptions written for various patients and medications on August 25, 1986.
20. Koehn Exhibit #32: Specimen envelope labeled "Victor", seized from Dr. Vaughn's desk, containing the following pre-signed prescriptions: 2 prescriptions for 15 Dyazide with 3 refills; 1 prescription for Ionomin (unsigned and missing number to be dispensed); 3 prescriptions for 30 Obetrol 20 mg.; and 10 prescriptions for 15 Tenuate 75 mg. Patient name, address, and date are blank on each of these prescriptions.
21. Koehn Exhibit #33: File folder labeled "Sala", seized from Dr. Vaughn's desk, containing the following pre-signed prescriptions: 3 prescriptions for 15 Dyazide with 3 refills; 2 prescriptions for 30 Obetrol 20 mg.; and 1 "excuse prescription". Patient name, address, and date are blank on each of these prescriptions.
22. Koehn Exhibit #34: File folder labeled "Bernadette Kidd", seized from Dr. Vaughn's desk, containing pockets labeled with names of various drugs.
23. Koehn Exhibit #35: Envelope seized from Dr. Vaughn's desk, containing Valupoint Check No. 85198 issued to Dr. Mattie Vaughn by Taft Rd. Pharmacy on August 2, 1986, showing 25,300 "Valupoints" earned.
24. Koehn Exhibit #36: Envelope containing a June 11, 1986, memorandum to Dr. Vaughn from Lee Okum, Taft Rd. Pharmacy, asking why no scripts had been received from Dr. Vaughn since June 6, 1986.
25. Koehn Exhibit #37: Copy of envelope and billing to Dr. Mattie Vaughn from Taft Rd. Pharmacy.

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26. Koehn Exhibit #38: Copy of Valupoint Check No. 85158 issued to Dr. Mattie Vaughn by Taft Rd. Pharmacy for April-May, 1986, showing 53,150 "Valupoints" earned.
- \* 27. Koehn Exhibit #39: Copies of September 5, 1986, appointment lists and sign-in sheets from Dr. Vaughn's office for new patients and return patients.
- \* 28. Koehn Exhibit #40A: Ledger book seized from Dr. Vaughn's office, labeled "RETURN PATIENT(S) ONLY", listing patient names and fees charged from 7/1/86, P.M., through 9/5/86, A.M. Despite its labeling, this ledger lists new patients for: 7/31/86, A.M., through 8/4/86, P.M.; 8/11/86, P.M., through 8/12/86, A.M.; 8/20/86, A.M., through 8/21/86, A.M.; and 9/2/86, A.M., through 9/5/86, A.M.
- \* 29. Koehn Exhibit #40B: Ledger book seized from Dr. Vaughn's office, labeled "NEW PATIENT(S) ONLY", but listing return patient names and fees charged for 9/2/86, A.M., through 9/5/86, A.M.
- \* 30. Koehn Exhibit #40C: Ledger book seized from Dr. Vaughn's office, labeled "NEW PATIENT(S) ONLY", and listing new patient names and fees charged for 7/1/86, A.M., through 7/8/86, A.M.
- \* 31. Koehn Exhibit #40D: Ledger book seized from Dr. Vaughn's office, labeled "NEW PATIENT/S ONLY", listing patient names and fees charged from 5/3 through 8/29/86. Despite its labeling, this ledger lists both new and return patients for 6/26/86, P.M., 6/27/86, A.M., 7/28/86, P.M., and 7/29/86, A.M., and only return patients for: 6/25/86, A.M.; 7/1/86, A.M.; 7/21/86, P.M.; 7/31/86, A.M., through 8/4/86, P.M.; 8/11/86, P.M., through 8/12/86, A.M.; 8/20/86, A.M.; and 8/21/86, A.M. (This Exhibit was also identified and admitted as Respondent's Exhibit S.)
- \* 32. Koehn Exhibit #40E: Ledger book seized from Dr. Vaughn's office, labeled "RETURN PATIENT/S ONLY", listing patients and fees charged from April 1 through June 30, 1986. Despite its labeling, this ledger lists both new patients and return patients from 4/1/86 through 5/2/86, P.M., and for 5/15/86, P.M., and 6/5/86, P.M. (This Exhibit was also identified and admitted at hearing as Respondent's Exhibit R.)
33. Koehn Exhibit #41: Height-weight charts for females and males, found posted in the assessment area of Dr. Vaughn's office.

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B. Presented by the State at Hearing

1. State's Exhibit #1: Various jurisdictional and scheduling documents, including: the Board's September 29, 1986, citation letter; Dr. Vaughn's October 8, 1986, hearing request; the Board's November 21, 1986, citation letter; Dr. Vaughn's December 3, 1986, hearing request; Respondent's December 12, 1986, motion for continuance of the hearing scheduled for December 17, 1986; State's December 15, 1986, memorandum in response to Respondent's motion for continuance; December 15, 1986, Order of Leonard L. Lovshin, M.D., Hearing Member, granting a continuance and rescheduling the hearing for January 22, 1987; December 17, 1986, letter to John H. Burlew, Esq., from the State Medical Board advising that a hearing scheduled for December 24, 1986, was postponed pursuant to Section 119.09, Ohio Revised Code; January 9, 1987, letter to the State Medical Board from Glenn V. Whitaker, Esq., advising of his substitution as counsel for Dr. Vaughn and requesting a continuance of the January 22, 1987, hearing; January 9, 1987, letter to Assistant Attorney General Culley from Attorney Whitaker requesting a list of witnesses and copies of the medical records which were seized from Dr. Vaughn on September 5, 1986; State's January 14, 1987, memorandum contra Respondent's motion for continuance; State's January 14, 1987, motion for consolidation of the Board's charges against Dr. Vaughn; September 9, 1988, letter to Attorney Burlew and Assistant Attorney General Costantini from Attorney Hearing Examiner Sage, requesting a written status report with regard to this Matter; State's September 20, 1988, status report, enclosing a January 23, 1987, Entry of the Hamilton County Common Pleas Court staying the State Medical Board's proceedings against Dr. Vaughn; December 29, 1988, letter to Attorney Burlew and Assistant Attorney General Costantini from Attorney Hearing Examiner Sage requesting a follow-up status report; December 19, 1988, letter from Joseph G. Carr, Esq., advising that the criminal charges against Dr. Vaughn had been dismissed on October 31, 1988; January 13, 1989, letter to the State Medical Board from Attorney Carr advising of his substitution as counsel for Dr. Vaughn and indicating that a hearing could be scheduled; February 1, 1989, letter to Attorney Carr from the State Medical Board scheduling the hearing for April 13 and 14, 1989.
- \* 2. State's Exhibit #1A: 211-page "Prescription List by Patient Number"; 182-page "Patient Number Key", identifying Patients 1 through 3089. (\*Note: Only the "Patient Number Key" portion of this Exhibit is sealed.)
3. State's Exhibit #2A: September 19, 1986, Temporary Restraining Order of the Hamilton County Common Pleas Court, restricting Dr. Vaughn's medical practice by suspending her DEA certificate and controlled substance prescribing privileges; prohibiting her

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in her private practice from practicing medicine on any patient seen by her prior to September 19, 1984; and requiring her to personally attend every patient otherwise seen in the course of her private practice.

4. State's Exhibit #2B: 18-count indictment against Dr. Vaughn, issued by the Hamilton County Grand Jury on December 23, 1986, for trafficking in violation of Section 2925.03(A)(1), Ohio Revised Code, and illegal processing of drug documents in violation of Section 2925.23, Ohio Revised Code.
5. State's Exhibit #2C: January 23, 1987, Entry of the Hamilton County Common Pleas Court, staying the State Medical Board's proceedings against Dr. Vaughn until the conclusion of the trial pending in the Hamilton County Court of Common Pleas, Case No. B-86-5263, upon the condition that Dr. Vaughn continue to comply with the previously issued injunctive order.
6. State's Exhibit #3: Transcript of the April 5, 1989, deposition of Bruce Todd Koehn.
7. State's Exhibit #4: Copies of the 19 photographs identified and admitted as Koehn Exhibit #2.
- \* 8. State's Exhibit #5: Supplementary Investigation Report filed by Police Officer Richardson on June 27, 1986, regarding the questioning of a female patient of Dr. Vaughn and her male companion.
- \* 9. State's Exhibit #6: Supplementary Investigation Report filed by Police Officer Richardson on July 18, 1986, with regard to the questioning of a female patient of Dr. Vaughn and her male companion.
- \* 10. State's Exhibit #7: Nine patient records seized from Dr. Vaughn's office, all containing information indicating that they pertain to new patients seen on September 5, 1986.
- \* 11. State's Exhibit #8: 21 patient records seized from Dr. Vaughn's office, 20 of which contain information indicating that they pertain to return patients seen on September 5, 1986.
12. State's Exhibit #9: Copies of the 12 photographs identified and admitted as Koehn Exhibit #5.
13. State's Exhibit #10: Notes made by Officer Richardson during the search of Dr. Vaughn's office, including names of employees and Dr. Vaughn's arrival time of 1:32 P.M.
14. State's Exhibit #11: Rough sketch made by Officer Richardson of the layout of Dr. Vaughn's office at 2249 Losantiville.

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15. State's Exhibit #12: Copy of September 5, 1986, search warrant and supporting affidavit (duplicate of Koehn Exhibit #1).
- \* 16. State's Exhibit #13: Copies of September 5, 1986, appointment lists and sign-in sheets from Dr. Vaughn's office for new patients and return patients (duplicate of Koehn-Exhibit #39).
- \* 17. State's Exhibits #14 and #15: Large envelopes containing bundles of the prescriptions of Dr. Vaughn which were collected by State Medical Board Investigator McMahan from Cincinnati area pharmacies and were used to compile State's Exhibit #1A.
18. State's Exhibit #16: Listing prepared by State Medical Board Investigator McMahan of investigative activities, including surveillances, with regard to Dr. Vaughn.
- \* 19. State's Exhibit #17: Investigative subpoena issued by the State Medical Board on September 29, 1986, for all medical records of Dr. Vaughn pertaining to patients receiving controlled substances for treatment of overweight during the period from 9/1/85 through 9/16/86; receipt and 52-page inventory from the State Medical Board for 4,449 patient records received from Dr. Vaughn on October 15, 1986. (\*Note: Only the inventory portion of this Exhibit is sealed.)
20. State's Exhibit #18: Box of business cards of Barrow's Apothecary, found at front reception area of Dr. Vaughn's office.
21. State's Exhibit #19: Bag of pads of business cards of Taft Rd. Pharmacy, found at front reception area of Dr. Vaughn's office.
22. Lawrence Exhibit #18: Documents with regard to Marianne Lawrence's visit to Dr. Vaughn's office on August 21, 1986, including: billing form, receipt, appointment card, uncompleted history and physical sheet, and laboratory requisition form.
23. Lawrence Exhibit #19: Documents with regard to Marianne Lawrence's visit to Dr. Vaughn's office on August 22, 1986, including: billing form, identification information, completed history and physical form, copies of two prescriptions, and laboratory requisition form.
24. State's Exhibit #20: Sample of business card of Barrow's Apothecary (duplicate of Koehn Exhibit #17).
25. State's Exhibit #21: Sample of business card of Taft Rd. Pharmacy (duplicate of Koehn Exhibit #18).
26. State's Exhibit #22: Copies of documents provided to Agent Koehn by Marianne Lawrence, including: 8/26/86 note from Ms. Lawrence, 8/22/86 receipt from Dr. Vaughn's office, two prescriptions dated 8/22/86, and laboratory requisition form (duplicate of Koehn Exhibit #4).

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27. State's Exhibit #23: Specimen envelope labeled "Shelton", seized from the premises of Dr. Vaughn (duplicate of Koehn Exhibit #8).
28. State's Exhibit #30: Sample of business card of Taft Rd. Pharmacy (duplicate of Koehn Exhibit #18 and State's Exhibit #21).
29. State's Exhibit #31: Envelope and June 11, 1986, memorandum to Dr. Vaughn from Lee Okum, Taft Rd. Pharmacy, asking why no scripts had been received since June 6 (duplicate of Koehn Exhibit #36).
30. State's Exhibit #32: Copy of Valupoint Check No. 85198, issued to Dr. Vaughn by Taft Rd. Pharmacy on August 2, 1986, showing 25,300 "Valupoints" earned (duplicate of Koehn Exhibit #35).
31. State's Exhibit #33: Copy of Valupoint Check No. 85158, issued to Dr. Vaughn by Taft Rd. Pharmacy for April-May, 1986, showing 53,150 "Valupoints" earned (duplicate of Koehn Exhibit #38).
32. State's Exhibit #34: Copy of envelope and billing to Dr. Vaughn from Taft Rd. Pharmacy (duplicate of Koehn Exhibit #37).
33. State's Exhibit #35: Sample of business card of Barrow's Apothecary (duplicate of Koehn Exhibit #17 and State's Exhibit #20).
34. State's Exhibit #36: Envelope seized from Dr. Vaughn's desk, with notations by Dr. Vaughn regarding Obetrol and Dyazide for new patients (duplicate of Koehn Exhibit #20).
35. State's Exhibit #37: Hand-writtten note seized from Dr. Vaughn's desk, setting forth instructions to Ms. Sala regarding, among other things, staff assignments during Dr. Vaughn's absence (duplicate of Koehn Exhibit #22).
36. State's Exhibit #38: Postcard dated June 18, 1986, sent by Dr. Vaughn to her office staff from Fort McCoy, Wisconsin.
- \* 37. State's Exhibit #39: Listing of 172 patients of Dr. Vaughn who received more than three prescriptions, indicating by asterisks (beside every fourth patient's name) the 58 patients whose medical records were submitted to Dr. Steven William Jennings for review.
38. State's Exhibit #40: Chart prepared by Dr. Steven William Jennings, graphing the weights exhibited by 20 patients at the time of each patient's initial visit and after 8 weeks, 12 weeks, and 6 months of treatment in Dr. Vaughn's weight loss program.

- \* 39. State's Exhibits #41A and #41B: Dr. Vaughn's medical records for the 58 patients reviewed by Dr. Jennings.
- \* 40. State's Exhibit #42: Dr. Vaughn's patient record for Bernadette Kidd (Patient 1531).

C. Presented by the Respondent at Hearing

1. Respondent's Exhibits A and B: Photographs identified by witness Ann Sala as being of Dr. Vaughn's nephew, Brooke (Tr. II at 148-149).
2. Respondent's Exhibits C and D: Height-weight charts for females and males used in Dr. Vaughn's office (duplicate of Koehn Exhibit #41).
3. Respondent's Exhibit E: April 7, 1989, letter from Yvonne Walker-Taylor, Wilberforce University, commending Dr. Vaughn's character during her four years as a student at Wilberforce University.
4. Respondent's Exhibit F: April 5, 1989, letter in support of Dr. Vaughn from Alan T. Radnor, Esq.
5. Respondent's Exhibit G: March 5, 1989, letter in support of Dr. Vaughn from Rev. J. L. Harris.
6. Respondent's Exhibit H: April 5, 1989, letter in support of Dr. Vaughn from Betty Warren, President, West End Community Council.
7. Respondent's Exhibit I: April 4, 1989, letter in support of Dr. Vaughn from Douglas K. Logan, M.D.
8. Respondent's Exhibit J: April 10, 1989, letter in support of Dr. Vaughn from Armando A. Cortez, M.D.
9. Respondent's Exhibit K: April 3, 1989, letter in support of Dr. Vaughn from Gloria C. Hernton, R.N.
10. Respondent's Exhibit L: April 5, 1989, letter in support of Dr. Vaughn from Bailey W. Turner, Ph.D.
11. Respondent's Exhibit M: April 4, 1989, letter from Col. Paul D. Crary, Jr., with regard to Dr. Vaughn's service as a Major in the U.S. Army Reserves and as a member of the medical staff of the 311 Station Hospital under his command.
12. Respondent's Exhibit N: April 10, 1989, letter in support of Dr. Vaughn from Carol Hubbard, M.D., Medical Director, West End Health Center.

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13. Respondent's Exhibit O: Undated letter in support of Dr. Vaughn from Pearl W. Smith, R.N.
14. Respondent's Exhibit P: Copy of Dr. Vaughn's orders from the Department of the Army to report on June 7, 1986, for active duty training for a period of 15 days at Ft. McCoy, Wisconsin.
15. Respondent's Exhibit Q: April 17, 1989, letter from Murray J. Riggins, M.D., stating that he covered for Dr. Vaughn from approximately June 6 to June 25, 1986, while she was out of town and her office was closed.
- \* 16. Respondent's Exhibits R and S: The office ledgers of Dr. Vaughn identified and admitted as Koehn Exhibits #40E and #40D, respectively.
17. Respondent's Exhibit T: Rough sketch of the layout of Dr. Vaughn's office at 2249 Losantiville.
18. Respondent's Exhibit U: DEA Physician's Manual (Rev. 1985), identified with specific reference to pp. 9 and 19.
19. Respondent's Exhibit V: Copy of "Your Report", a newsletter from the State Medical Board, with regard to the Board's adoption of controlled substances rules effective November, 1986.
20. Respondent's Exhibit W: Excerpt (pg. 134) from Pharmacy Law Digest, E. L. Kaluzny, with regard to general requirements for prescriptions for controlled drugs pursuant to Federal Regulation 1306.05.
21. Respondent's Exhibit X: Excerpts from the American Hospital Formulary Service with regard to respiratory and cerebral stimulants, specifically: pp. 1196-1197, regarding amphetamines in general; pg. 1200, regarding diethylpropion hydrochloride; pg. 1201, regarding fenfluramine hydrochloride; and pg. 1211, regarding phentermine.
22. Respondent's Exhibit Y: Excerpt from the Physicians' Desk Reference (1982) with regard to Obetrol.
23. Respondent's Exhibit Z: Copy of article from the Journal of the American Geriatrics Society (1966, Vol. 14, No. 6), entitled "Comparison of Weight Losses with Three Reducing Regimens--Diet Therapy, Phenmetrazine, and an Amphetamine Combination (Obetrol)", M. I. Berman, M.D., and I. R. Anderson, M.D.
24. Respondent's Exhibit AA: Article entitled "New Fat Facts--The Old Ones May Be Wearing Thin", B. Weiss, Drug Topics (11/17/86).

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25. Respondent's Exhibit BB: Excerpt from unidentified source entitled "Nervous System Diencephalon", identified at hearing with reference to the function of the hypothalamus.
26. Respondent's Exhibit CC: Excerpt (pp. 1219-1227) entitled "Obesity", F. X. Pi-Sunyer, represented by Dr. Vaughn to be from a textbook of internal medicine by Cecil and Loeb (see Tr.III at 51-52).
27. Respondent's Exhibit DD: Handout entitled "Mayo Clinic Diet".
28. Respondent's Exhibit EE: Two-page excerpt from an article entitled "Arterial Hypertension", S. Oparil, represented by Dr. Vaughn to be from a textbook of internal medicine by Cecil and Loeb.
29. Respondent's Exhibit FF: Excerpts from Goodman and Gilman's The Pharmacological Basis of Therapeutics (7th Ed.), specifically: pp. 166-168, regarding amphetamine; and pp. 174-179 regarding therapeutic uses of sympathomimetic drugs.
30. Respondent's Exhibit GG: Samples of various history and physical forms available on the market, introduced for comparative purposes (see Tr.III at 59-61).
31. Respondent's Exhibits MH and II: Two history and physical forms, represented by Dr. Vaughn as being samples of those used by two family practitioners in the Cincinnati area.

\*NOTE: THE ABOVE EXHIBITS MARKED WITH AN ASTERISK (\*) HAVE BEEN SEALED TO PROTECT PATIENT CONFIDENTIALITY.

V. Closing of Hearing Record

With the consent of both the State and the Respondent, the hearing record in this Matter was held open for an indefinite period to allow the Hearing Examiner time to obtain and review the transcripts of testimony and the massive volume of exhibits presented. The record was subsequently closed as of 5:00 P.M., February 1, 1990, by Entry of this Hearing Examiner dated January 18, 1990, a copy of which is hereby admitted to the record.

FINDINGS OF FACT

1. On September 5, 1986, the office of Mattie L. Vaughn, M.D., at 2249 Losantiville Avenue, Golf Manor, Ohio, was searched by state and local law enforcement officials pursuant to a search warrant issued by the Hamilton County Municipal Court. During that search, numerous "pre-signed" prescriptions were found in or on the desks of various office staff members. These pre-signed prescriptions were written on prescription forms preprinted with Dr. Vaughn's DEA registration number, were signed by

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Dr. Vaughn, but were incomplete in that patient names and addresses were missing and the prescriptions were undated. Such pre-signed prescriptions, for a total of approximately 5170 dosage units of various controlled substances and dangerous drugs (as that term is defined by Section 4729.02(D), Ohio Revised Code), were found as follows:

a. At the desk of one Mary Shelton, L.P.N.:

<u>#Scripts</u>	<u>#Units/Drug/Description</u> (*includes authorized refills)	<u>Total Dosage Units</u>
11	30 Adipex-P, Schedule IV stimulant anorectic	330
17	30 Ionomin, Schedule IV stimulant anorectic	510
5	*60 Dyazide, diuretic	300
14	30 Didrex 50 mg., Schedule III stimulant anorectic	420
5	60 Didrex 50 mg., Schedule III stimulant anorectic	300
3	30 Tenuate 75 mg., Schedule IV stimulant anorectic	90
5	15 Tenuate 75 mg., Schedule IV stimulant anorectic	45
11	30 Obetrol 20 mg., Schedule II amphetamine anorectic	330
1	30 Fastin, Schedule IV stimulant anorectic	30
	<b>Total</b>	<b>2,355</b>

b. At the desk of office staffer Victor Jones:

<u>#Scripts</u>	<u>#Units/Drug/Description</u> (*includes authorized refills)	<u>Total Dosage Units</u>
1	*60 Dyazide, diuretic	60

c. At the desk of Dr. Vaughn, some in envelopes labeled with the names of various office staffers:

<u>#Scripts</u>	<u>#Units/Drugs/Description</u> (*includes authorized refills)	<u>Total Dosage Units</u>
6	60 Didrex 50 mg., Schedule III stimulant anorectic	360
4	30 Didrex 50 mg., Schedule III stimulant anorectic	120
13	*60 Dyazide, diuretic	780
2	30 Adipex-P, Schedule IV stimulant anorectic	60
1	35 Adipex-P, Schedule IV stimulant anorectic	35
30	15 Tenuate 75 mg., Schedule IV stimulant anorectic	450
4	30 Tenuate 75 mg., Schedule IV stimulant anorectic	120
11	30 Ionomin, Schedule IV stimulant anorectic	330
3	35 Ionomin, Schedule IV stimulant anorectic	105
12	30 Obetrol 20 mg., Schedule II amphetamine anorectic	360
1	35 Obetrol 20 mg., Schedule II amphetamine anorectic	35
	<b>Total</b>	<b>2,755</b>

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These facts are established by the testimony of Agent Bruce Koehn (Deposition Tr. at 21-28, 37-44); the testimony of Patricia McMahan (Tr. I at 87-88); the testimony of Officer Richardson (Tr. I at 24-33); Koehn Exhibits #7; #9 through #16; #23 through #33; and State's Exhibit #12.

2. In addition to those prescriptions, approximately 10 pre-signed blank prescriptions with DEA number were found at the desk of Mary Shelton, L.P.N.

These facts are established by Koehn Exhibit #7 and by the testimony of Patricia McMahan (Tr. I at 87-88).

3. Dr. Vaughn was not in her office while patients were being seen there on the morning of September 5, 1986. At the time the search warrant was executed, Dr. Vaughn's office was found to be in the charge of Mary Shelton, L.P.N. In Dr. Vaughn's absence, Ms. Shelton, with the assistance of one Victor Jones, was assessing, examining, and diagnosing patients, including, on that morning, at least nine new patients who had never been seen by Dr. Vaughn. In addition, in Dr. Vaughn's absence on the morning of September 5, 1986, her staff issued pre-signed prescriptions for the controlled substances Obetrol (Schedule II), Adipex-P (Schedule IV), Didrex (Schedule III), and Ionomin (Schedule IV), and the prescription drug Dyazide. Such prescriptions were issued to at least 29 patients, including the nine new patients who had never been seen by Dr. Vaughn.

Dr. Vaughn admitted at hearing that Mary Shelton had been in charge of the office on September 5, 1986, and that Ms. Shelton had performed "nursing assessments and examinations." However, Dr. Vaughn contended that she, rather than Ms. Shelton, had diagnosed the new patients seen that day. Dr. Vaughn stated that she had diagnosed those patients as being obese before they came to the office, based upon the weight, age, and height information taken by the receptionist when they called for appointments. It is noted that one of the new patients seen (see State's Exhibit #7, patient identifiable by initials P. A. for confidentiality purposes) is not on the appointment lists included in State's Exhibit #13 for September 5, 1986.

These facts are established by the testimony of Agent Koehn (Deposition Tr. at 10-11); the testimony of Officer Richardson (Tr. I at 24-33); the testimony of Patricia McMahan (Tr. I at 82-85, 88); the testimony of Mary Ann Shelton (Tr. I at 143-145); the testimony of Ann Sala (Tr. II at 169-173, 192-193); the testimony of Dr. Vaughn (Tr. II at 52-58; Tr. III at 35-39, 77-80); Koehn Exhibits #40A and #40B; and State's Exhibits #7, #8, #10, #13, and #37.

4. Dr. Vaughn denied that it was the custom of her office for an L.P.N. to be left in charge when new patients were scheduled. She claimed that her absence on the morning of September 5, 1986, was due to a personal emergency, and that her arrival at 1:32 P.M., 15 to 20 minutes after the of the law enforcement officials, was coincidence.

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Nevertheless, Dr. Vaughn admitted that she was routinely absent from her office once or twice every other week. She claimed, however, that only follow-up patients were scheduled with Quincy Davis, her "physician's assistant", on those occasions. Rebuttal testimony established that Quincy Davis has never been registered as a physician's assistant to Dr. Vaughn. Furthermore, Dr. Vaughn's office ledgers (Koehn Exhibits #40A through #40E) indicate that both new patients and follow-up patients were seen at Dr. Vaughn's office on a regular basis.

These facts are established by the testimony of Dr. Vaughn (Tr. III at 35-39, 77-80); and the testimony of Penny McKenzie (Tr. III at 107-110).

5. Mary Ann Shelton, L.P.N., testified on behalf of the State with regard to her employment at Dr. Vaughn's office from May, 1986, through September 5, 1986. Her routine duties at Dr. Vaughn's office included doing histories and physicals on new patients and giving them prescriptions for medications, according to protocols established by Dr. Vaughn. Patients were treated on occasions when Dr. Vaughn was absent from the office. Ms. Shelton stated that Dr. Vaughn was absent from the office a couple of days each week, but that she did not know why. There were occasions when she saw new patients whom Dr. Vaughn did not see. In Dr. Vaughn's absence, new patients received pre-signed prescriptions for Obetrol. Other employees also did patient assessments and gave prescriptions to patients, as did Dr. Vaughn when she was there. Ms. Shelton did not know the medical qualifications of Dr. Vaughn's seven or eight other employees, but believed that one Dorothy Welch was an R.N. and one Quincy Davis was a P.A. She did not know Ann Sala's position.

Each morning, Ms. Shelton would receive pre-signed prescriptions from either Dr. Vaughn or, when Dr. Vaughn was absent, from Ann Sala. Those prescriptions were completed with the name of the medication, dosage instructions, and Dr. Vaughn's signature; however, the "top part" of the prescriptions were not filled out. Ms. Shelton would herself fill out the top part of the prescriptions and give them to patients she assessed. Ms. Shelton kept a tally of the types of drugs given to patients, for purposes of a daily comparison by Dr. Vaughn of the number of prescriptions given and the number remaining with the number Ms. Shelton had received that morning. Ms. Shelton's pre-signed prescriptions were kept in her desk drawer during the day.

Ms. Shelton stated that patients had to be at least twenty pounds over their ideal weight, according to a height-weight chart, to be accepted into Dr. Vaughn's diet program. After assessment, new patients were given a prescription for Obetrol, unless the patient "indicated otherwise." In addition, it was office procedure to give new patients a diet sheet, to refer them for blood work, and to encourage them to exercise. Patients were given prescriptions before lab results were received, and no follow-up was done to determine whether the patients actually went for the lab tests. If results were received, they were placed in the patients' files.

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In the case of "follow-up" or "return" patients, weight and blood pressure were taken. If the patient had lost weight, that patient would be given a prescription for another month's supply of a diet medication. Medications were alternated, so that a patient would receive a prescription for Obetrol, a Schedule II amphetamine anorectic, only every other month, and a prescription for a Schedule III or Schedule IV stimulant anorectic in between.

Ms. Shelton estimated that an average of 60 to 70 patients per day were seen at Dr. Vaughn's office. Some days, particularly toward the weekend, would be busier than others. She spent approximately 15 minutes with each new patient she saw, and approximately 5 minutes with each return patient.

These facts are established by the testimony of Ms. Shelton (Tr. I at 133-154).

6. Ann Sala, who testified on behalf of Dr. Vaughn, was employed by Dr. Vaughn as an office manager and "health care assistant" from approximately 1981 through September, 1986. Ms. Sala, who is currently employed as a medical records clerk at a clinic, stated that she had been "in the health care system" for 33 to 35 years. Her duties at Dr. Vaughn's office included making appointments, checking patients in, ordering supplies, handling medical records, and assessing patients. According to Ms. Sala, assessments done by Dr. Vaughn's health care assistants consisted of taking patients' height, weight, blood pressure, and history. Although Dr. Vaughn's office ledgers do not so indicate, Ms. Sala claimed that when Dr. Vaughn was absent from the office once, sometimes twice, per week, only follow-up patients were scheduled with Quincy Davis, whom she believed to be both a P.A. and an L.P.N. Ms. Sala stated that it was office procedure for Dr. Vaughn to do most of the new patient physicals, though Quincy Davis did some.

Ms. Sala had often observed Dr. Vaughn checking appointments and patient charts and writing prescriptions in the evenings. Dr. Vaughn wrote and signed all prescriptions; however, name, address, and date were written in by the P.A., doctor, nurse, or health care assistant who "checked the patient in." Ms. Sala stated that pre-signed prescriptions were sometimes left for Quincy Davis or whoever was checking the patients, including, upon occasion, herself, Mary Shelton, and Bernadette Kidd. She believed that Ms. Kidd had worked as an assistant and receptionist for other physicians. Although one of the envelopes containing pre-signed prescriptions seized from Dr. Vaughn's desk had been labeled "Victor", Ms. Sala stated that Victor Jones shouldn't have been given pre-signed prescriptions.

These facts are established by the testimony of Ms. Sala (Tr. II at 144-195) and Koehn Exhibits #32 and #40A through #40E.

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7. In early June, 1986, Dr. Vaughn was ordered to report to Ft. McCoy, Wisconsin, on June 7, 1986, for 15 days of active duty training in the Army Reserves. Dr. Vaughn testified that she had left a day or so ahead of time, and that her office had been closed during her absence. However, her office ledgers show that 60 follow-up patients were seen on June 6, 1986. Although no further ledger entries were recorded until June 23, 1986, Dr. Vaughn's patient record for office employee Bernadette Kidd (Patient 1531) shows that a pre-signed prescription for 30 Obetrol 20 mg. was issued to Ms. Kidd on June 15, 1986. Dr. Vaughn identified the chart notation of this prescription as being in Ms. Kidd's handwriting, and stated that she did not know how this could have occurred.

These facts are established by the testimony of Dr. Vaughn (Tr. III at 16-19, 111); the testimony of Ann Sala (Tr. II at 181-183); State's Exhibits #16 and #42; Respondent's Exhibits P, Q, R, and S; and Koehn Exhibits #40D and #40E.

8. Surveillance notes prepared by Board Investigator Patricia McMahan indicate that Dr. Vaughn was not in her office on July 18, 1986. An investigative report prepared by Police Officer R. D. Richardson indicates that at least one patient received a prescription pre-signed by Dr. Vaughn for Didrex, a Schedule III controlled substance, on July 18, 1986, without having seen Dr. Vaughn. Further, a patient file included in State's Exhibit #8 indicates that another patient (identifiable by initials V. P. for confidentiality purposes) was seen on that same date by Ann Sala and was issued two separate prescriptions, each for 30 Didrex 50 mg. Dr. Vaughn's office ledgers show that 32 new patients and 26 return patients were treated in her office on July 18, 1986. Dr. Vaughn did not recall her whereabouts on that day.

These facts are established by Koehn Exhibits #40A and #40D; State's Exhibits #6, #8, and #16; and the testimony of Dr. Vaughn (Tr. III at 104-105).

9. On August 21, 1986, one Marianne Lawrence went to Dr. Vaughn's office without an appointment, seeking treatment in Dr. Vaughn's weight-loss program. Ms. Lawrence testified that, upon entering the office, she was handed a billing form and a laboratory requisition form on which she wrote her name, address, and telephone number. However, she was then told that she could not be seen without a driver's license or other picture ID.

The next day, August 22, still without an appointment, Ms. Lawrence returned with her driver's license. She observed that jewelry was displayed with prices in the reception area of Dr. Vaughn's office. On that occasion, she was told that it would cost \$35.00 to see the doctor. She was handed two cards bearing maps to pharmacies, and was told to have any prescriptions she received filled there. She paid \$35.00, received a receipt, and was seated in the waiting room. Although there were approximately 20 people in the waiting room, she waited less than half an hour before her name was called. She was taken to an examination room by a black woman (identified by Dr. Vaughn at hearing as Dorothy Welch, R.N.), who took her weight, pulse, blood pressure, respiration rate, and a

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brief history. She was then taken to a second examination room where she was seen by a white woman (identified by Dr. Vaughn at hearing as Dr. Yvonne Mohlman). Ms. Lawrence did not recall having had any further examination at that point, but she was asked about a previous surgery and types of diets she had tried. She then was told that her problem was obesity and was given prescriptions. No other problem was mentioned, including the mild hypertension noted in her chart (see Lawrence Exhibit #19). Ms. Lawrence stated that she was provided with no explanation of, nor literature pertaining to, a nutrition or diet program. She received a prescription pre-signed by Dr. Vaughn for 30 Obetrol 20 mg., as well as a prescription written by Dr. Y. Mohlman on one of Dr. Vaughn's prescription forms for 15 HCTZ 50 mg., a diuretic. Ms. Lawrence did not know at the time whether or not she had seen Dr. Vaughn. Since no one had been introduced as a doctor, she assumed she hadn't seen one.

After her office visit, Ms. Lawrence felt that there had been something wrong with her visit to Dr. Vaughn's office in that it had appeared that jewelry was being sold at the office, she had been asked to pay up front, she had been asked to go to specific pharmacies with which she was not acquainted, she had received no detailed physical, she had been told to get lab work when she could, she had not been asked for a detailed medical history, she had received prescriptions signed by two different doctors, and she believed that she had not seen a doctor. Consequently, she contacted the Regional Enforcement Narcotics Unit (RENU) in Cincinnati. On or about August 26, 1986, Ms. Lawrence gave Agent Bruce Koehn the receipt and the lab requisition form she had received from Dr. Vaughn's office, as well as copies of the prescriptions she had been given. She stated that those were the only papers she had been given at Dr. Vaughn's office; she had not received a diet sheet.

It is noted that Dr. Vaughn indicated during the testimony of Mary Ann Shelton that Dr. Yvonne Mohlman had covered in Dr. Vaughn's office on only one occasion. She also indicated that other physicians had upon occasion covered her office in her absence (see Tr. I at 152-153).

These facts are established by the testimony of Ms. Lawrence (Tr. I at 109-132), Koehn Exhibit #4, Lawrence Exhibits #18 and #19, and State's Exhibits #20 through #22.

10. Dr. Vaughn admitted that it was her usual practice during the time period in question that all first-time patients who weighed in excess of twenty pounds over their "ideal weight" be given prescriptions for 30 Obetrol 20 mg., a Schedule II controlled substance. Nevertheless, the definition of "obesity" she stated at hearing referred to individuals who were 20%, rather than 20 lbs., over ideal weight (Tr. II at 46-47). It was also Dr. Vaughn's practice that the Obetrol be alternated with Schedule III or Schedule IV diet medications, so that patients who remained in her diet program received Obetrol only every other month. Such protocols enabled her to pre-write prescriptions for issuance by her office staff to both new and follow-up patients scheduled to be seen on a particular day. Patient names, addresses, and dates were left blank on the pre-signed prescriptions, to be completed after the patients were assessed. Dr. Vaughn did not personally assess all patients on occasions when her office staff issued them pre-signed prescriptions.

Dr. Vaughn contended that her procedures were both medically and legally sound. According to Dr. Vaughn, her first-time diet patients always stated that they had tried caloric restriction without success, and she accepted their statements "on good faith." She stated that Obetrol was prescribed initially because of its "fewer side effects" and "effective appetite suppression"; however, it was alternated with other diet medications to reduce the likelihood of psychic addiction and tolerance. Although Dr. Vaughn claimed that all diet medications were given in conjunction with a program of caloric restriction and exercise, the testimony of Marianne Lawrence indicated otherwise (see Finding of Fact #9, above). In view of the protocols she had established, Dr. Vaughn saw no problem with her office staff completing patient name, address, and date on prescriptions she had pre-signed, then giving them to patients. Although Dr. Vaughn admitted that she did not personally see all patients before they received her pre-signed prescriptions, she claimed that she had already diagnosed them as being "obese" or having "metabolic insufficiency," terms she defined as being synonymous. In the case of new patients, such diagnosis was based upon the age, weight, and height information taken by telephone when appointments were made, to be verified by assessment. Dr. Vaughn admitted that her office staff sometimes, though rarely, saw patients without appointments.

These facts are established by the testimony of Dr. Vaughn (Tr. II at 46-50, 55-62; Tr. III at 36-42, 64-66, 76-77, 81-89, 114-115) and by Respondent's Exhibits U and W through FF.

11. During the September 5, 1986, search of Dr. Vaughn's office, large supplies of business cards from both Taft Rd. Pharmacy and Barrow's Apothecary were found in the reception area (see State's Exhibits #18 and #19). It was the practice of Dr. Vaughn's office to provide patients with the business cards of these two pharmacies and to direct them to fill prescriptions issued at her office there.

Although approximately 15 to 25 of Dr. Vaughn's patients filled their prescriptions at Barrow's Apothecary each day, no evidence was presented to indicate that Dr. Vaughn received any benefit from referring patients there. However, for each patient of Dr. Vaughn's who filled a prescription at Taft Rd. Pharmacy, Dr. Vaughn earned 50 "valupoints", which were redeemable for merchandise. Leo Okum, owner of Taft Rd. Pharmacy, testified that he issued "valupoint checks" to Dr. Vaughn, generally on a monthly basis. According to Mr. Okum, the redemption value was approximately 12.5 cents per 50 points. During the search of Dr. Vaughn's office, two "valupoint checks" were found in Dr. Vaughn's desk. One, dated August 2, 1986, was for 25,300 "valupoints", representing a volume of 506 patients and a monetary value of approximately \$63.25. The other, issued for April and May, 1986, was for 53,150 "valupoints", representing a volume of 1,063 patients and a monetary value of approximately \$132.88. It is noted that, while Mr. Okum testified that he had filled prescriptions for approximately 5 to 10 of Dr. Vaughn's patients per day, these "valupoint checks" would indicate an average of at least 17 per day.

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Dr. Vaughn denied that she had ever redeemed any of these "valupoints." Mr. Okum was unable to recall whether Dr. Vaughn had paid her \$602.68 account (see State's Exhibit #34) by "valupoint", cash, or check. Ann Sala, Dr. Vaughn's office manager, recalled that she had once sent a payment of \$200.00 to Taft Rd. Pharmacy.

These facts are established by the testimony of Marianne Lawrence (Tr. I at 112-113, 116-117, 130-132); the testimony of Leo Okum (Tr. II at 5-26); the testimony of Jack Barrow (Tr. II at 27-41); the testimony of Ann Sala (Tr. II at 166-168); the testimony of Dr. Vaughn (Tr. III at 42-45); and State's Exhibit's #20, #21, and #30 through #35.

12. Dr. Vaughn admittedly prescribed the controlled substances listed in the "Prescription List by Patient Number" identified as State's Exhibit #1A, on the dates and in the amounts indicated, to the patients who are named in the "Patient Number Key." This listing, prepared as a summary of the original prescriptions included in State's Exhibits #14 and #15, does not represent the entirety of Dr. Vaughn's prescribing for her diet patients. During an approximate one-year period from September 1, 1985, to September 19, 1986, approximately 4,449 patients were treated in Dr. Vaughn's diet program. Of these, at least 172 patients received three or more Obetrol prescriptions which, according to Dr. Vaughn's practice of prescribing on a monthly basis and alternating medications, would indicate that they were in her diet program for five or more months.

These facts are established by the testimony of Patricia McMahan (Tr. I at 71-73); the testimony of Dr. Vaughn (Tr. III at 45-46, 87-89, 117-118); and State's Exhibits #1A, #7, #8, #14, #15, #17, #39, #41A, #41B, and #42.

13. Steven William Jennings, M.D., testified on behalf of the State with regard to his review of Dr. Vaughn's patient records. Dr. Jennings, who is currently the Medical Director of the Sleep Disorders Center at Mercy Hospital, was formerly involved in the private practice of family medicine for over five years, with Board certification in family medicine following a three-year residency in that field. Dr. Jennings reviewed Dr. Vaughn's records for approximately 106 diet patients, including at least 55 of the 58 patients indicated by asterisks on the listing identified as State's Exhibit #39 (the records of Patients 1210, 1268, and 2804 were not included in State's Exhibits #41A and #41B).

Based upon his review of Dr. Vaughn's records, Dr. Jennings identified the following concerns with regard to Dr. Vaughn's care of these diet patients:

- a. In nearly every case, patients received prescriptions for medication on their first office visit;
- b. In nearly every case, there was inadequate evidence that an appropriate medical history, diet history, and family history had been taken, and that patients had been counseled with regard to specific behavior modification and dietary measures to be taken;

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- c. In nearly every case, there was inadequate evidence that an adequate physical assessment had been made at the time of the initial office visit;
- d. There was generally no indication of appropriate laboratory work, either at the time of the initial office visit or afterward, to support the diagnosis and treatment of "metabolic insufficiency";
- e. In some cases, the prescribing of Obetrol continued where patients either failed to lose weight on Obetrol or lost weight on other appetite suppressants and gained weight on Obetrol;
- f. Patients were continued on appetite suppressant medication for inappropriately long periods of time, often over three months;
- g. In some cases, stimulant appetite suppressants were prescribed for patients who had elevated blood pressure readings;
- h. In many cases, there was inadequate evidence that patients were not pregnant or at risk for pregnancy and, in one case, a patient became pregnant during the course of treatment;
- i. In several cases, it could not be determined whether or not Dr. Vaughn had been part of the office visit experience even though prescriptions had been given.

Dr. Jennings acknowledged that there were different clinical and philosophical approaches to the treatment of obesity. However, in his opinion, even if it is deemed appropriate to utilize medication to suppress the appetite, such medication should be utilized only after thorough and comprehensive historical and physical evaluation of the patient. Further, there should first be documented evidence that the patient has been refractory to other forms of treatment, such as caloric restriction diets, dietary modifications, behavior modification, or even psychotherapy.

In Dr. Jennings' opinion, an appropriate history for a diet patient would include information about prior illnesses, prior state of health, significant medical occurrences, family history, and a specific dietary history encompassing eating patterns, specific habits that may be contributing, work and free-time patterns, and a history of what the individual's weight was at different developmental stages. Specific weight loss efforts must be documented. Merely accepting a patient's statement as to prior weight loss efforts would not be appropriate except in the case of an established patient to whom the physician had already made specific recommendations. Especially in the area of weight loss, individuals may not know what constitutes significant efforts; there is often misunderstanding about what comprises an appropriate diet, an appropriate mix of diet and exercise, and calorie balance. Even if the patient related specific measures, it would be necessary to find out how long they were tried, what the results were, meal breakdown, activity level, and other significant details. No such dietary history appeared in Dr. Vaughn's records.

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Dr. Jennings stated that, although patient histories might appropriately be taken by trained non-physician personnel, physical assessment by a physician is required for the proper diagnosis and treatment of obesity. Although an accepted definition of obesity is 20% over "ideal weight", the determination of ideal weight by reference to a standard height-weight chart requires a clinical judgment regarding frame size. Once significant overweight is established, the physician must determine whether it derives from excessive lean body weight, excessive muscle mass, or excessive fat deposits. Beyond that, fat distribution is significant because there are different implications in terms of health risk for people who have generalized overall obesity, as opposed to trunkal obesity or obesity above the waist, at the waist, or extending into the hips. Such factors should be evaluated by the physician in diagnosing and making treatment decisions with regard to obesity. Moreover, because weight loss involves major physiological changes, the physician must adequately evaluate the cardiovascular system, the neurological system, the pulmonary system, and the gastrointestinal system. While a trained non-physician assistant may be qualified to obtain vital signs, height, weight, blood pressure, pulse, temperature, and respiratory rate, the physician must determine the competency and status of the major organ systems. Thorough physical assessment is especially important when stimulant medications, which can compound physiological changes, are prescribed. Despite Dr. Vaughn's routine prescribing of stimulant controlled substances for weight loss, her patient records failed to reflect thorough physical assessments or evaluations of diet patients.

Dr. Jennings noted that, with the exception of one patient with a prior hospitalization, there was no lab work available with regard to Dr. Vaughn's patients prior to the initiation of treatment with Obetrol for obesity or overweight. Often, though lab work was routinely ordered, there was no indication it was ever done. Dr. Jennings stated that some individuals have attendant problems with obesity, such as thyroid abnormality, blood sugar abnormality, elevated cholesterol and triglycerides, or elevated uric acid which could indicate an existing or potential gout condition. A diet could affect an individual's blood sugar, the use of a stimulant medication could change the thyroid status, and the tissue breakdown involved with weight loss would increase the level of uric acid in the body. In addition to aiding assessment of such potential problems, laboratory studies would indicate whether marked curtailment in lipid or fat intake were needed. Therefore, it is important that the physician obtain appropriate lab work and evaluate it prior to initiating treatment for the significant problem of obesity. Dr. Jennings specifically noted that, in the case of Patient 3, treatment was initiated without lab results, even though that patient stated symptoms which suggested diabetes (overweight, excessive thirst, excessive urination). Further, although a glucose tolerance test was ordered, Patient 3 was continued in the diet program with no evidence that lab results were ever obtained.

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Dr. Jennings also stated that amphetamine and non-amphetamine appetite suppressants are not recommended for administration during pregnancy unless the risks outweigh the benefits. According to Dr. Jennings, some literature suggests that babies of women who take amphetamines early in the course of pregnancy have a higher incidence of cardiac defects and cleft palate. In fact, one source suggested that women who use amphetamines within a period of 55 days before their last menstrual period have a higher incidence of those birth defects in their children. In Dr. Jennings' opinion, before giving any medication to a female patient 15 or more days after her last menstrual period, the physician should determine that the patient is either sexually inactive or practicing active birth control. He noted that Dr. Vaughn's records in some cases failed to reflect such information until women had had three or four office visits. In fact, Dr. Vaughn's record for Patient 1395 indicated that that patient conceived while she was receiving medication in Dr. Vaughn's diet program. The patient note for January 15, 1986, confirmed the pregnancy, but failed to indicate whether the patient had taken the prescription for 30 Obetrol 20 mg. she had received on December 18, 1985, or any other details pertinent to assessment of the risks of that mother and child.

With regard to Dr. Vaughn's prescribing of Obetrol 20 mg., a Schedule II amphetamine anorectic, Dr. Jennings indicated that safer and equally effective medications could have been used for the same purpose (see Finding of Fact #14, below). Furthermore, Dr. Vaughn's records indicated that patients were continued on Obetrol even when they failed to lose weight or gained weight on that medication. Although medications were alternated to get patients off of amphetamines at least a month at a time, patients were alternated back to Obetrol even when they had lost weight on the non-amphetamine medication and gained weight on Obetrol. The patient records offered no explanation or justification for reinstating the Schedule II medication in such cases.

Dr. Jennings also indicated that Dr. Vaughn's patients were maintained on Obetrol and other appetite suppressant drugs for inappropriately long periods of time. Such medications, if indicated, are recommended for only short-term use, generally from four to six weeks, in selected individuals (e.g., individuals with minor degrees of obesity; more significant obesity requires life-long behavioral change). According to Dr. Jennings, most individuals develop tolerance to appetite suppressants within a period of six to twelve weeks, and actual weight loss will taper off after six to eight weeks of therapy. Although such patterns were demonstrated by a substantial number of Dr. Vaughn's patients (see State's Exhibit #40), they were nevertheless continued on appetite suppressant medications for periods of three or more months.

Dr. Jennings stated that stimulant anorectics, especially amphetamines, can raise pulse and blood pressure, and should be avoided in treatment of patients with even mild hypertension. Dr. Jennings emphasized that a diagnosis of hypertension could not be based upon an isolated blood pressure reading. However, when a patient exhibits an elevated reading, the physician must be very cautious about prescribing stimulant

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medications. Further, if that patient has exhibited normal blood pressure readings on previous visits, the physician must be alert to the possibility that the patient is abusing the medication by taking more than was prescribed. The physician should be concerned about both absolute (systolic 140 or above, or diastolic 90 or above) and relative (30 or more points above the individual's normal systolic, or 15 or more points above the individual's normal diastolic) elevations. Upon obtaining such elevations, the physician should recheck the patient's blood pressure two or three times at intervals of a few days, at various times of day, to determine whether or not the elevation is sustained, signifying either absolute or relative hypertension. Unless it is established that the elevated pressure was a fluke, stimulant medications should be discontinued or given with caution after evaluation of benefits versus risks. Dr. Jennings cited several specific instances where patients of Dr. Vaughn had been given stimulant medications regardless of elevated blood pressure readings, including: Patient 2268, who was prescribed Obetrol upon her initial office visit despite a blood pressure reading of 180/86; Patient 266, who was prescribed stimulant medication on 9/11/86 despite a chart notation of mild hypertension based upon a blood pressure reading of 140/90; Patient 2885, who was prescribed Obetrol on 2/1/86 when she exhibited a blood pressure of 120/74 after several previous readings in the range of 90/60; and Patient 2937, who was prescribed Obetrol on 5/5/86 when she had a blood pressure reading of 140/90 after previous readings of 114/70 on 2/26/86 and 100/70 on 4/21/86.

Dr. Jennings noted that the patient records often failed to indicate by any notation, signature, or initials of Dr. Vaughn that Dr. Vaughn had participated in particular office visits; yet, patients had been issued prescriptions signed by Dr. Vaughn at those visits. Dr. Jennings stated that, in treating obesity or overweight, the physician must assure that weight is lost in a metabolically appropriate way, with attention to the significant physiological changes and attendant risks, which may be compounded by the giving of medications with potential physiological effects and side effects. Thus, the physician must be involved in making clinical treatment decisions, rendering treatment, advising patients, and issuing prescriptions for any medication. That involvement should be reflected in the patient record. The giving of prescriptions pre-signed by Dr. Vaughn to patients who had not been seen by Dr. Vaughn would, in Dr. Jennings' opinion, constitute failure to conform to minimal standards of care for the practice of medicine in Ohio, failure to use reasonable care discrimination in the administration of drugs, and failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease.

These facts are established by the testimony of Dr. Jennings (Tr. II at 63-138); State's Exhibits #1A and #39 through #41B; and Respondent's Exhibits X, Y, EE, and FF.

14. According to the 1982 Physicians' Desk Reference, the Schedule II amphetamine, Obetrol, is indicated for use in the treatment of exogenous obesity only as a "short-term (a few weeks) adjunct in a regimen of weight reduction based on caloric restriction, for patients refractory to alternative therapy, e.g., repeated diets, group programs, and other drugs." The limited usefulness of Obetrol should be weighed against possible risks inherent in its use. Among other things, Obetrol may cause

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elevation of systolic and diastolic blood pressures. The PDR not only indicates that tolerance to Obetrol's "anorectic" effects may develop, but also states: "AMPHETAMINES HAVE A HIGH POTENTIAL FOR ABUSE. THEY SHOULD THUS BE TRIED ONLY IN WEIGHT REDUCTION PROGRAMS FOR PATIENTS IN WHOM ALTERNATIVE THERAPY HAS BEEN INEFFECTIVE. ADMINISTRATION OF AMPHETAMINES FOR PROLONGED PERIODS OF TIME IN OBESITY MAY LEAD TO DRUG DEPENDENCE AND MUST BE AVOIDED. PARTICULAR ATTENTION SHOULD BE PAID TO THE POSSIBILITY OF SUBJECTS OBTAINING AMPHETAMINES FOR NON-THERAPEUTIC USE OR DISTRIBUTION TO OTHERS, AND THE DRUGS SHOULD BE PRESCRIBED OR DISPENSED SPARINGLY."

These facts are established by Respondent's Exhibit Y.

15. Dr. Vaughn offered an article from the Journal of the American Geriatrics Society (Respondent's Exhibit Z), to support her contention that Obetrol was "the medication of choice" for treatment of obesity in conjunction with a diet. Although this article, published in 1966, appears to indicate that Obetrol is a more effective anorectic with fewer side effects than Phenmetrazine, it neither addresses the issue of abuse potential nor compares Obetrol with anorectic medications other than Phenmetrazine.

The testimony of Dr. Jennings indicated that other available anorectic medications, such as Tenuate (diethylpropion hydrochloride), were safer than Obetrol and equally effective. Moreover, as Dr. Jennings pointed out, Dr. Vaughn's own patient records reflected instances where patients were routinely alternated back to Obetrol even though they achieved greater weight loss on non-amphetamine medications.

These facts are established by the testimony of Dr. Vaughn (Tr. III at 32-34), Respondent's Exhibits X through Z, and the testimony of Dr. Jennings (Tr. II at 84-89, 120-123).

16. At hearing, Dr. Vaughn submitted letters from eleven individuals, commending her character, professional competence, and/or community involvement. However, none of those individuals indicated any first-hand knowledge of Dr. Vaughn's private practice, and Dr. Vaughn admitted that she had not made any of them specifically aware of the nature of the Board's charges against her.

These facts are established by the testimony of Dr. Vaughn (Tr. III at 98-99) and Respondent's Exhibits E through O.

17. Stanley Broadnax, M.D., Health Commissioner for the City of Cincinnati since 1979, testified that he had known Dr. Vaughn since 1969, and had been her employer at the West End Health Center from approximately 1977 to 1979. About 1982 or 1983, Dr. Vaughn had also begun working part-time for the Cincinnati Health Department. Dr. Broadnax stated that Dr. Vaughn had been highly regarded by her patients and her employers. To his knowledge, there had been no problems with prescribing or other aspects of her practice during her employment. Dr. Broadnax admitted that he had no first-hand knowledge of Dr. Vaughn's private practice, and had never personally observed it. However, he offered the opinion that it would be appropriate for nurses or "physician extenders" to assume responsibility for routine activities if protocols were in place. Upon

cross-examination, Dr. Broadnax stated that he had no personal knowledge of a protocol which would permit the prescribing of amphetamines to patients for treatment of obesity when those patients had never been seen by the physician issuing the prescription.

These facts are established by the testimony of Dr. Broadnax (Tr. I at 50-67).

18. Dr. Vaughn moved her practice from Redding Road to Losantiville Avenue, Golf Manor, in early June, 1986. Dr. Vaughn testified that, at that time, diet patients comprised approximately 60% of her practice, and gynecology patients approximately 40%. However, Dr. Vaughn's office manager, Ann Sala, estimated (a "wild guess") that 85% of Dr. Vaughn's practice was diet and 15% gynecology in 1986. The testimony of Leo Okum and Jack Barrow indicated that most of the prescriptions filled for Dr. Vaughn's patients at Taft Rd. Pharmacy and Barrow's Apothecary were for diet medications. Mr. Okum, who had visited and observed Dr. Vaughn's practice, appeared to be under the impression that it was strictly a diet practice.

These facts are established by the testimony of Dr. Vaughn (Tr. II at 44-45); the testimony of Ann Sala (Tr II at 188-189); the testimony of Leo Okum (Tr. II at 7-8); and the testimony of Jack Barrow (Tr. II at 33-34).

#### CONCLUSIONS

1. The acts, conduct, and/or omissions of Mattie L. Vaughn, M.D., as set forth in Findings of Fact #1 through #15, above, constitute:
  - a. "Failure to use reasonable care discrimination in the administration of drugs" and "failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease", as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code;
  - b. "Selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes", as that clause is used in Section 4731.22(B)(3), Ohio Revised Code; and
  - c. "A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established", as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

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The evidence in this Matter substantially shows that Dr. Vaughn routinely prescribed Obetrol, a Schedule II amphetamine anorectic, and other stimulant controlled substance anorectics for treatment of overweight or obesity. Dr. Vaughn did not require that patients be obese by medical definition (20% over ideal weight), but accepted any adult who was 20 lbs. or more overweight for treatment in her "diet program." Dr. Vaughn initiated treatment with amphetamines upon patients' first visits, without first objectively establishing that the patients were refractory to other methods of weight loss, and without performing adequate workups and evaluations. Dr. Vaughn's patient records are generally devoid of laboratory studies or any other evidence which would indicate that she made an effort to identify either etiological factors or problems which might be attendant with obesity and potentially exacerbated by weight loss. Often, patient records show that stimulant medications were prescribed to female patients without establishing that they were not pregnant or at risk for pregnancy. In one case, a patient apparently became pregnant during the course of her treatment with amphetamines. In some cases, stimulant appetite suppressants were inappropriately prescribed for patients who had elevated blood pressure readings. Further, Dr. Vaughn often maintained patients on Obetrol and other stimulant anorectics for inappropriately long periods of time, many in excess of three months, regardless of whether or not any significant weight loss was achieved. Although it was Dr. Vaughn's practice to alternate medications so that patients received Obetrol only every other month, patients were routinely alternated back to Obetrol even when they had gained weight on Obetrol and/or had shown better response to non-amphetamine medications. It is apparent that Dr. Vaughn failed to exercise appropriate medical judgment in her treatment of diet patients, but rather blindly adhered to inadequate "protocols" which she had established. Such practice constitutes grounds for disciplinary action under each of the above provisions of law.

2. As set forth in Findings of Fact #1, #2, #5 through #8, #10, and #13, above, the testimony and evidence substantially show that it was Dr. Vaughn's practice to prepare pre-signed prescriptions for various controlled substances and dangerous drugs and to distribute them to members of her office staff for completion and issuance to patients. Dr. Vaughn sought to show that this practice entailed little risk of unauthorized diversion of prescriptions. She claimed not only that her office layout made it unlikely that patients could gain access to the pre-signed prescriptions, but also that her office policies and daily prescription monitoring procedures would prevent unauthorized diversions by her staff. It is apparent, however, that Dr. Vaughn's procedures were not foolproof. As set forth in Finding of Fact #7, above, one of Dr. Vaughn's office staffers issued herself a prescription for Obetrol during a period when Dr. Vaughn's office was closed and Dr. Vaughn was out of town. Further, as set forth in Finding of Fact #8, above, another office staff person, in Dr. Vaughn's absence, issued two separate prescriptions for 30 Didrex 50 mg. to one patient on the same date. As indicated in Findings of Fact #1 and #2, above, Dr. Vaughn on at least one occasion entrusted one of her employees with pre-signed prescriptions for over 2,000 dosage units of controlled substances and dangerous drugs, as well as 10 pre-signed blank prescriptions, to be issued at that employee's discretion in Dr. Vaughn's absence. Clearly, such practices constitute:

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- a. "Failure to use reasonable care discrimination in the administration of drugs", as that clause is used in Section 4731.22(B)(2), Ohio Revised Code;
- b. "Selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes", as that clause is used in Section 4731.22(B)(3), Ohio Revised Code; and
- c. "A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established", as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

As set forth in Findings of Fact #3 through #10 and #13, above, the testimony and evidence substantially show that it was Dr. Vaughn's practice to authorize her non-physician office staff members, in her absence, to assess, examine, diagnose, and issue pre-signed prescriptions to both new and follow-up patients, acts which constitute the practice of medicine pursuant to Section 4731.34, Ohio Revised Code. There is no merit in Dr. Vaughn's contention that she, rather than her office staff, diagnosed patients whom she did not personally see or examine. Although a tentative diagnosis might have been made by Dr. Vaughn prior to a patient's visit, such diagnosis could be confirmed only by the person who actually examined and assessed the patient. Dr. Vaughn's further contention, that such assessments and initiations of treatments by her office staff were acceptable because they were done in accordance with "protocols" which she had established, is well-rebutted by the testimony of Dr. Steven William Jennings (see Finding of Fact #13). As Dr. Jennings pointed out, the diagnosis and treatment of obesity requires clinical judgments by a physician. Certainly, the evidence establishes that Dr. Vaughn's "protocols" were inadequate, calling for rote prescribing for all diet patients without regard to variant problems and needs, and creating unnecessary risks to patients. Dr. Jennings cited instances where Dr. Vaughn's patients were issued prescriptions for stimulant medications despite elevated blood pressures and risks of pregnancy. Dr. Vaughn's providing of pre-signed prescriptions to her staff and her authorizing them to examine, diagnose, and treat diet patients in her absence constitute:

- a. "Permitting one's name or one's certificate of registration to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given", as that clause is used in Section 4731.22(B)(1), Ohio Revised Code;
- b. "A departure from, or a failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established", as that clause is used in Section 4731.22(B)(6), Ohio Revised Code; and

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c. "Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board", as that clause is used in Section 4731.22(B)(16), Ohio Revised Code (as in effect prior to March 17, 1987), to wit: Section 4731.41, Ohio Revised Code, Practice of Medicine or Surgery Without Certificate.

4. The acts, conduct, and/or omissions of Dr. Vaughn with regard to the referral of patients to Taft Rd. Pharmacy, as set forth in Findings of Fact #9 and #11, above, constitute "the receiving of a thing of value in return for a specific referral of a patient to utilize a particular service or business", as that clause is used in Section 4731.22(b)(4), Ohio Revised Code.

The fact that Dr. Vaughn's office customarily provided patients with business cards from both Barrow's Apothecary and Taft Rd. Pharmacy would appear to be undisputed. However, the testimony conflicted as to whether or not it was the custom of Dr. Vaughn's office to direct patients to fill prescriptions they received from her office at one of those two pharmacies. Marianne Lawrence, who had gone to Dr. Vaughn's office as a patient, testified that she was so directed. On the other hand, Ann Sala, Dr. Vaughn's former office manager, indicated that patients were not specifically directed to fill their prescriptions there, but were provided business cards of the two pharmacies because they often did not know where to find the medications they were prescribed (Tr. II at 166-167). However, Ms. Sala also testified that Dr. Vaughn received no gratuities from either pharmacy, an assertion which is well-rebutted by substantial evidence. The testimony of Marianne Lawrence is specifically found to be the more credible on this issue.

Although there is no indication that Dr. Vaughn received anything of value in return for referring patients to Barrow's Apothecary, she received "valupoints," redeemable for merchandise, for each prescription her patients filled at Taft Rd. Pharmacy. Whether or not Dr. Vaughn actually redeemed these "valupoints" is irrelevant to the finding of violation of Section 4731.22(B)(4).

\* \* \* \* \*

There would appear to be no significant mitigating factors in this case. The testimony of both Dr. Vaughn and Dr. Stanley Broadnax, as well as the letters of Dr. Vaughn's colleagues, indicate that Dr. Vaughn's conduct did not arise from lack of knowledge or training. At hearing, Dr. Vaughn expressed valid concerns about problems associated with obesity; however, her care of diet patients failed to reflect appropriate concern for patient welfare. Instead of affording these overweight patients individualized evaluation and care, she rotely prescribed them stimulant diet medications, without adequately addressing indications or contraindications. In fact, she established protocols involving the use of pre-signed prescriptions, so that her

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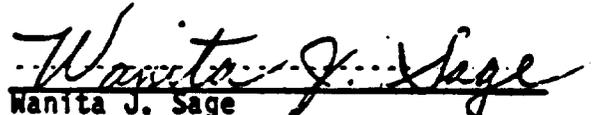
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non-physician office staffers could and did treat patients in her absence. Patients were prescribed potentially addictive controlled substance medications for months in cases where such medications were obviously ineffective in helping them achieve any significant weight loss. Dr. Vaughn's conduct with regard to her treatment of diet patients demonstrates failure to exercise sound medical judgment. Moreover, Dr. Vaughn's inappropriate delegations of patient care to her staff show a disregard for the responsibilities corollary to her privilege to practice medicine in this State.

PROPOSED ORDER

It is hereby ORDERED that the certificate of Mattie L. Vaughn, M.D., to practice medicine and surgery in the State of Ohio shall be and is hereby REVOKED.

This Order shall become effective thirty (30) days from the date of mailing of notification of approval by the State Medical Board of Ohio, except that Dr. Vaughn shall immediately surrender her Drug Enforcement Administration certificate and shall not order, purchase, prescribe, dispense, administer, or possess any controlled substances, except for those prescribed for her personal use by another so authorized by law. In addition, Dr. Vaughn shall not in the interim undertake the care of any patient not already under her care.

  
Wanita J. Sage  
Attorney Hearing Examiner

STATE MEDICAL BOARD

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EXCERPT FROM THE MINUTES OF MARCH 14, 1990

REPORTS AND RECOMMENDATIONS

.....

Dr. Kaplansky asked if 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 Gregory P. Calkins, M.D.; Bartis T. Mazeika, D.O.; Jonathan W. Singer, D.O.; and Mattie Vaughn, M.D. A roll call was taken:

ROLL CALL:

Dr. Cramblett	- aye
Dr. Gretter	- aye
Dr. Stephens	- aye
Mr. Jost	- aye
Dr. Ross	- aye
Dr. Rauch	- aye
Mr. Albert	- aye
Dr. Daniels	- aye
Ms. Rolfes	- aye
Dr. Agresta	- aye
Dr. Kaplansky	- aye

.....

Ms. Ross, Mr. Dowling, Mr. Jeffries, Mr. Schmidt, Ms. Thompson, Mr. Dilling, Mr. Compton, Mr. Huston, and Ms. Herman returned to the meeting at this time.

REPORT AND RECOMMENDATION IN THE MATTER OF MATTIE L. VAUGHN, M.D.

.....

DR. ROSS MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF MATTIE L. VAUGHN, M.D. MS. ROLFES SECONDED THE MOTION.

.....

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

ROLL CALL VOTE:

Dr. Cramblett	- abstain
Dr. Gretter	- aye
Dr. Stephens	- aye
Mr. Jost	- aye
Dr. Ross	- aye
Dr. Rauch	- abstain
Mr. Albert	- aye
Dr. Daniels	- abstain
Ms. Rolfes	- aye
Dr. Agresta	- aye

The motion carried.



3. Dr. Vaughn is hereby required to personally attend to every patient otherwise seen by her in the course of her private practice.

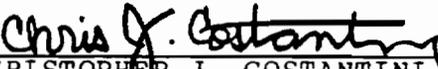
Respectfully submitted,

ANTHONY J. CELEBREZZE, JR.  
Attorney General

  
CHRISTOPHER J. COSTANTINI  
Assistant Attorney General  
1680 State Office Tower  
30 East Broad Street  
Columbus, Ohio 43266-0410  
(614) 466-8600

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Status Report was sent via regular U.S. Mail this 19 day of September, 1988 to John H. Burlew, Esq., Burlew, Caliman & Youngblood Co., L.P.A., Attorneys at Law, 1300 American Building, 30 East Central Parkway, Cincinnati, Ohio 45202.

  
CHRISTOPHER J. COSTANTINI  
Assistant Attorney General

4390

STATE OF OHIO  
THE STATE MEDICAL BOARD  
Suite 510  
65 South Front Street  
Columbus, Ohio 43266-0315

November 21, 1986

Mattie Vaughn, M.D.  
2249 Losantiville - Golf Manor  
Cincinnati, Ohio 45237

Dear Doctor Vaughn:

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 the following reason:

1. You did prescribe the Controlled Substances listed in the attached "Prescription List by Patient Number", on the dates and in the amounts indicated, to the patients who are named in the attached "Patient Number Key" (Key to be withheld from public disclosure). The total amounts of drugs prescribed to said patients are set forth in the attached "Total Drug Amounts by Drug, Year, and Month".

Your acts in the above paragraph (1), individually and/or collectively constitute "failure to use reasonable care discrimination in the administration of drugs" and "failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease, as those clauses are used in Section 4731.22(B)(2), Ohio Revised Code.

Further, such acts in the above paragraph (1), individually and/or collectively constitute "selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes", as that clause is used in Section 4731.22(B)(3), Ohio Revised Code.

Further, such acts in the above paragraph (1), individually and/or collectively, and the medical care rendered to the patients listed therein, constitute "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established", as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

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THE STATE MEDICAL BOARD

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Mattie Vaughn, M.D.

November 21, 1986

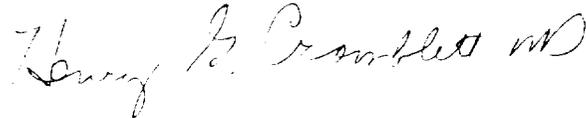
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing that request must be made within thirty (30) days of the time of mailing of this notice.

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Henry G. Cramblett, M.D.  
Secretary

HGC:caa

enclosures

CERTIFIED MAIL NO. P 569 361 892  
RETURN RECEIPT REQUESTED

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

September 29, 1986

Mattie L. Vaughn, M.D.  
2249 Losantiville-Golf Manor  
Cincinnati, OH 45237

Dear Doctor Vaughn:

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. As a result of a search of your office at 2249 Losantiville-Golf Manor, Cincinnati, Ohio, executed pursuant to warrant on September 5, 1986, state and local law enforcement officials did find in your office, unsecured, the following pre-signed prescriptions with DEA number, which prescriptions were incomplete only in that patient names and addresses were missing:

At the desk of one Mary Shelton, L.P.N., the following prescriptions pre-signed by Dr. Mattie Vaughn for the following drugs:

1. ADIPEX- (11 pre-signed prescriptions)
2. IONOMIN - (17 pre-signed prescriptions)
3. DYAZIDE - (5 pre-signed prescriptions)
4. DIDREX - (19 pre-signed prescriptions)
5. TENUATE- (8 pre-signed prescriptions)
6. OBETROL - (11 pre-signed prescriptions)

At the desk of office staffer Victor Jones the following prescriptions were pre-signed by Dr. Mattie Vaughn for the following drugs:

1. DYAZIDE- (1 pre-signed prescription)

At the desk of Dr. Mattie Vaughn, the following pre-signed prescriptions:

1. OBETROL- (12 pre-signed prescriptions)
2. IONOMIN - (15 pre-signed prescriptions)
3. TENUATE- (34 pre-signed prescriptions)
4. ADIPEX- (3 pre-signed prescriptions)
5. Dyazide- (6 pre-signed prescriptions)
6. DIDREX- (10 pre-signed prescriptions)

For a total of 4110 dosage units of these drugs.

2. As a result of the abovesaid search of September 5, 1986, state and local law enforcement officials did find in your office a number of other pre-signed blank prescriptions with DEA number filled in.

Such acts in the above paragraphs (1) and (2), individually and/or collectively, constitute "failure to use reasonable care discrimination in the administration of drugs," as that clause is used in Section 4731.22(B)(2), Ohio Revised Code.

Further, such acts in the above paragraphs (1) and (2), individually and/or collectively, constitute "selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes," as that clause is used in Section 4731.22(B)(3), Ohio Revised Code.

Further, such acts in the above paragraphs (1) and (2), individually and/or collectively, constitute, "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whther or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

3. At the time the above-said search was executed, officers did find your office to be in the charge of one Mary Shelton, L.P.N., who in your absence was assessing, examining and diagnosing patients, including, on the morning of September 5, 1986, nine (9) new patients.

Such acts in the above paragraph (3), individually and/or collectively, constitute "permitting one's name or one's certificate of registration to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given," as that clause is used in Section 4731.22(B)(1), Ohio Revised Code.

Further, such acts in the above paragraph (3), individually and/or collectively, constitute "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Further, such acts in the above paragraph (3), individually and/or collectively, constitute "violating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provisions of this chapter or any rule promulgated by the Board," as that clause is used in Section 4731.22(B)(16), Ohio Revised Code, to wit: Section 4731.41, Ohio Revised Code, Practice of Medicine or Surgery Without Certificate.

4. On the morning of September 5, 1986, your staff did issue in your absence, prescriptions for the controlled substances Obetrol, Adipex, Didrex 60, and Ionomin, and the prescription drug Dyazide, to at least thirty-one (31) patients, including nine (9) new patients who had never been seen by you. Further the prescribing practices utilized by your staff on that date are customarily and regularly employed by you in your medical practice and are done with your knowledge and at your direction.

Such acts in the above paragraph (4), individually and/or collectively, constitute "permitting one's name or one's certificate of registration to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given," as that clause is used in Section 4731.22(B)(1), Ohio Revised Code.

Further, such acts in the above paragraph (4), individually and/or collectively, constitute "a departure from, or the failure to conform to, minimal standards of care of similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Further, such acts in the above paragraph (4), individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(16), Ohio Revised Code.

5. It is your practice that all first-time patients in excess of twenty (20) pounds over their "ideal weight" be given prescriptions for thirty (30) Obetrol unless another medication is requested by the patient.

Such acts in the above paragraph (5), individually and/or collectively, constitute "failure to use reasonable care discrimination in the administration of drugs" and "failure to employ acceptable scientific methods for treatment of disease," as those clause are used in Section 4731.22(B)(2), Ohio Revised Code.

6. It is your custom and practice to direct your office patients to Barrow's and Taft Road Pharmacies to fill prescriptions issued at your office, in exchange for which you receive from those pharmacies "valuepoints," which may be redeemed by you at those pharmacies for goods or services.

Such acts in the above paragraph (6), individually and/or collectively, constitute "the receiving of a thing of value in return for a specific referral of a patient to utilize a particular service or business," as that clause is used in Section 4731.22(B)(4), 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 that request must be made within thirty (30) days of the time of mailing of this notice.

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

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

HGC:jmb

Enclosures:

CERIFIED MAIL #P 569 364 091  
RETURN RECEIPT REQUESTED



2. Dr. Vaughn is hereby prohibited in her private practice from practicing medicine as that term is defined in §4731.34, Revised Code, on any patient not seen by her prior to September 19, 1984.

3. Dr. Vaughn is hereby required to personally attend to every patient otherwise seen by her in the course of her private practice.

This Order shall become effective upon filing and, unless otherwise dissolved by Order of Court or continued by agreement of the parties, shall continue until October 10, 1986 9:00am at which time this matter is set for hearing on Preliminary Injunction.

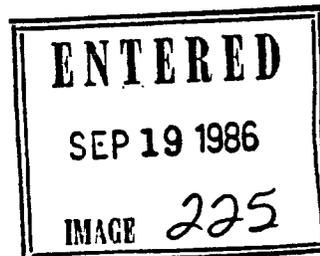
Exceptions noted.

Costs to Respondent.

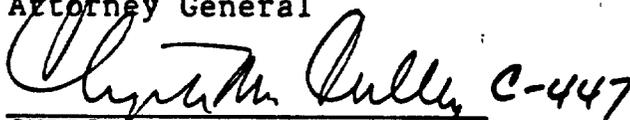
JUDGE GORMAN

APPROVED:

  
JOHN BURLEW  
1300 American Bldg.  
30 E. Central Parkway  
Cincinnati, Ohio 45202



ANTHONY J. CELEBREZZE, JR.  
Attorney General

  
CHRISTOPHER M. CULLEY  
Assistant Attorney General  
Administrative Agencies Section  
30 E. Broad St., 10th Fl.  
Columbus, Ohio 43215

THE STATE OF OHIO, HAMILTON COUNTY  
COURT OF COMMON PLEAS

THE STATE OF OHIO

Case No. **B865263**

HAMILTON COUNTY, ss:

INDICTMENT FOR: Trafficking Offense  
(Sale) 2925.03 (A)(1) R.C. and  
Illegal Processing Of Drug Documents  
2925.23 R.C.

In the Court of Common Pleas, Hamilton County, Ohio, of the  
Grand Jury Term Nineteen Hundred and Eighty-Six.

FIRST COUNT

The Grand Jurors of the County of Hamilton, in the name and  
by authority of the State of Ohio, upon their oaths do find and present  
that Mattie L. Vaughn, on or about the 5th day of September in the year  
Nineteen Hundred and Eighty-Six at the County of Hamilton and State of  
Ohio aforesaid, knowingly did sell or offer to sell a schedule II  
controlled substance; to wit, Obetrol, in an amount less than the  
minimum bulk amount, and further the conduct of Mattie L. Vaughn was not  
in accordance with Chapter 4731 and or 3719 of the Ohio Revised Code, in  
violation of Section 2925.03 (A)(1) of the Ohio Revised Code and against  
the peace and dignity of the State of Ohio.

SECOND COUNT

The Grand Jurors of the County of Hamilton, in the name and  
by authority of the State of Ohio, upon their oaths do find and present  
that Mattie L. Vaughn on or about the 5th day of September in the year  
Nineteen Hundred and Eighty-Six at the County of Hamilton and State of  
Ohio, aforesaid, did intentionally make, utter, or sell a false or  
forged prescription, where in the drug involved was a compound mixture,



ENTERED 12-23-86  
ATTEST ROBERT D. JENNINGS  
CLERK  
BY Jackie J. Herman  
DEPUTY

preparation, or substance included in Schedule II, to wit, Obetrol, in violation of Section 2925.23(B)(1) of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

THIRD COUNT

The Grand Jurors of the County of Hamilton, in the name and by authority of the State of Ohio, upon their oaths do find and present that Mattie L. Vaughn, on or about the 5th day of September in the year Nineteen Hundred and Eighty-Six at the County of Hamilton and State of Ohio aforesaid, knowingly did sell or offer to sell a schedule II controlled substance; to wit, Obetrol, in an amount less than the minimum bulk amount, and further the conduct of Mattie L. Vaughn was not in accordance with Chapter 4731 and or 3719 of the Ohio revised Code in violation of Section 2925.03 (A)(1) of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

FOURTH COUNT

The Grand Jurors of the County of Hamilton, in the name and by authority of the State of Ohio, upon their oaths do find and present that Mattie L. Vaughn on or about the 5th day of September in the year Nineteen Hundred and Eighty-Six at the County of Hamilton and State of Ohio, aforesaid, did intentionally make, utter, or sell a false or forged prescription, where in the drug involved was a compound, mixture, preparation, or substance included in Schedule II, to wit, Obetrol, in violation of Section 2925.23(B)(1) of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

FIFTH COUNT

The Grand Jurors of the County of Hamilton, in the name and by authority of the State of Ohio, upon their oaths do find and present that Mattie L. Vaughn, on or about the 5th day of September in the year Nineteen Hundred and Eighty-Six at the County of Hamilton and State of Ohio aforesaid, knowingly did sell or offer to sell a schedule II controlled substance; to wit, Obetrol, in an amount less than the minimum bulk amount, and further the conduct of Mattie L. Vaughn was not in accordance with Chapter 4731 and or 3719 of the Ohio revised Code in violation of Section 2925.03 (A)(1) of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

SIXTH COUNT

The Grand Jurors of the County of Hamilton, in the name and by authority of the State of Ohio, upon their oaths do find and present that Mattie L. Vaughn on or about the 5th day of September in the year Nineteen Hundred and Eighty-Six at the County of Hamilton and State of Ohio, aforesaid, did intentionally make, utter, or sell a false or forged prescription, where in the drug involved was a compound, mixture, preparation, or substance included in Schedule II, to wit, Obetrol, in violation of Section 2925.23 (B)(1) of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

SEVENTH COUNT

The Grand Jurors of the County of Hamilton, in the name and by authority of the State of Ohio, upon their oaths do find and present that Mattie L. Vaughn, on or about the 5th day of September in the year Nineteen Hundred and Eighty-Six at the County of Hamilton and State of Ohio aforesaid, knowingly did sell or offer to sell a schedule II controlled substance; to wit, Obetrol, in an amount less than the

minimum bulk amount, and further the conduct of Mattie L. Vaughn was not in accordance with Chapter 4731 and or 3719 of the Ohio Revised Code in violation of Section 2925.03 (A)(1) of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

EIGHTH COUNT

The Grand Jurors of the County of Hamilton, in the name and by authority of the State of Ohio, upon their oaths do find and present that Mattie L. Vaughn on or about the 5th day of September in the year Nineteen Hundred and Eighty-Six at the County of Hamilton and State of Ohio, aforesaid, did intentionally make, utter, or sell a false or forged prescription, where in the drug involved was a compound, mixture, preparation, or substance included in Schedule II, to wit, Obetrol, in violation of Section 2925.23 (B)(1) of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

NINTH COUNT

The Grand Jurors of the County of Hamilton, in the name and by authority of the State of Ohio, upon their oaths do find and present that Mattie L. Vaughn, on or about the 5th day of September in the year Nineteen Hundred and Eighty-Six at the County of Hamilton and State of Ohio aforesaid, knowingly did sell or offer to sell a schedule II controlled substance; to wit, Obetrol, in an amount less than the minimum bulk amount, and further the conduct of Mattie L. Vaughn was not in accordance with Chapter 4731 and or 3719 of the Ohio Revised Code, in violation of Section 2925.03 (A)(1) of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

TENTH COUNT

The Grand Jurors of the County of Hamilton, in the name and by authority of the State of Ohio, upon their oaths do find and present that Mattie L. Vaughn on or about the 5th day of September in the year Nineteen Hundred and Eighty-Six at the County of Hamilton and State of Ohio, aforesaid, did intentionally make, utter, or sell a false or forged prescription, where in the drug involved was a compound, mixture, preparation, or substance included in Schedule II, to wit, Obetrol, in violation of Section 2925.23 (B)(1) of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

ELEVENTH COUNT

The Grand Jurors of the County of Hamilton, in the name and by authority of the State of Ohio, upon their oaths do find and present that Mattie L. Vaughn, on or about the 5th day of September in the year Nineteen Hundred and Eighty-Six at the County of Hamilton and State of Ohio aforesaid, knowingly did sell or offer to sell a schedule II controlled substance; to wit, Obetrol, in an amount less than the minimum bulk amount, and further the conduct of Mattie L. Vaughn was not in accordance with Chapter 4731 and or 3719 of the Ohio Revised Code, in violation of Section 2925.03 (A)(1) of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

TWELFTH COUNT

The Grand Jurors of the County of Hamilton, in the name and by authority of the State of Ohio, upon their oaths do find and present that Mattie L. Vaughn on or about the 5th day of September in the year Nineteen Hundred and Eighty-Six at the County of Hamilton and State of Ohio, aforesaid, did intentionally make, utter, or sell a false or forged prescription, where in the drug involved was a compound, mixture,

preparation, or substance included in Schedule II, to wit, Obetrol, in violation of Section 2925.23 (B)(1) of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

THIRTEENTH COUNT

The Grand Jurors of the County of Hamilton, in the name and by authority of the State of Ohio, upon their oaths do find and present that Mattie L. Vaughn, on or about the 5th day of September in the year Nineteen Hundred and Eighty-Six at the County of Hamilton and State of Ohio aforesaid, knowingly did sell or offer to sell a schedule II controlled substance; to wit, Obetrol, in an amount less than the minimum bulk amount, and further the conduct of Mattie L. Vaughn was not in accordance with Chapter 4731 and or 3719 of the Ohio Revised Code, in violation of Section 2925.03 (A)(1) of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

FOURTEENTH COUNT

The Grand Jurors of the County of Hamilton, in the name and by authority of the State of Ohio, upon their oaths do find and present that Mattie L. Vaughn on or about the 5th day of September in the year Nineteen Hundred and Eighty-Six at the County of Hamilton and State of Ohio, aforesaid, did intentionally make, utter, or sell a false or forged prescription, where in the drug involved was a compound, mixture, preparation, or substance included in Schedule II, to wit, Obetrol, in violation of Section 2925.23 (B)(1) of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

FIFTEENTH COUNT

The Grand Jurors of the County of Hamilton, in the name and by authority of the State of Ohio, upon their oaths do find and present that Mattie L. Vaughn, on or about the 5th day of September in the year Nineteen Hundred and Eighty-Six at the County of Hamilton and State of Ohio aforesaid, knowingly did sell or offer to sell a schedule II controlled substance; to wit, Obetrol, in an amount less than the minimum bulk amount, and further the conduct of Mattie L. Vaughn was not in accordance with Chapter 4731 and or 3719 of the Ohio Revised Code, in violation of Section 2925.03 (A)(1) of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

SIXTEENTH COUNT

The Grand Jurors of the County of Hamilton, in the name and by authority of the State of Ohio, upon their oaths do find and present that Mattie L. Vaughn on or about the 5th day of September in the year Nineteen Hundred and Eighty-Six at the County of Hamilton and State of Ohio, aforesaid, did intentionally make, utter, or sell a false or forged prescription, where in the drug involved was a compound, mixture, preparation, or substance included in Schedule II, to wit, Obetrol, in violation of Section 2925.23 (B)(1) of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

SEVENTEENTE COUNT

The Grand Jurors of the County of Hamilton, in the name and by authority of the State of Ohio, upon their oaths do find and present that Mattie L. Vaughn, on or about the 5th day of September in the year Nineteen Hundred and Eighty-Six at the County of Hamilton and State of Ohio aforesaid, knowingly did sell or offer to sell a schedule II controlled substance; to wit, Obetrol, in an amount less than the

minimum bulk amount, and further the conduct of Mattie L. Vaughn was not in accordance with Chapter 4731 and or 3719 of the Ohio Revised Code, in violation of Section 2925.03 (A)(1) of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

EIGHTEENTH COUNT

The Grand Jurors of the County of Hamilton, in the name and by authority of the State of Ohio, upon their oaths do find and present that Mattie L. Vaughn on or about the 5th day of September in the year Nineteen Hundred and Eighty-Six at the County of Hamilton and State of Ohio, aforesaid, did intentionally make, utter, or sell a false or forged prescription, where in the drug involved was a compound, mixture, preparation, or substance included in Schedule II to wit, Obetrol, in violation of Section 2925.23 (B)(1) of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

*[Handwritten signature]*

Prosecuting Attorney  
Hamilton County, Ohio

By: *[Handwritten signature]*  
Assistant Prosecuting Attorney

Reported and filed this  
\_\_\_\_\_ day of  
\_\_\_\_\_, A.D. 19\_\_

by \_\_\_\_\_  
Clerk of Hamilton County  
Common Pleas

By \_\_\_\_\_  
Deputy

A TRUE BILL

By: \_\_\_\_\_  
Foreperson, Grand Jury

ENTER

JAN 23 1987

COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

STATE OF OHIO,  
STATE MEDICAL BOARD,

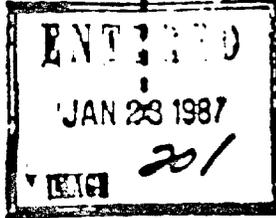
Petitioners.

Case No. A8607423  
(Judge Cochran)

vs.

MATTIE VAUGHN, M.D.,

Respondent.



This matter having come before the Court on Motion of Respondent Mattie L. Vaughn, M.D. for an order staying the proceedings of the Ohio State Medical Board on charges against Respondent dated September 29, and November 21, 1986, respectively, which charges are scheduled for hearing January 23, 1987, and the Court having found that the balance of interests in this case weigh most heavily in favor of the Respondent and establish good cause for the issuance of a stay, it is hereby

ORDERED that the proceedings of the Ohio State Medical Board against Mattie L. Vaughn, M.D., scheduled for January 23, 1987, be and hereby are stayed until the conclusion of the trial in Case No. B-86-5263, pending in the Hamilton County Court of Common Pleas. The Court notes the opposition of the State and imposes as a condition of this stay, Dr. Vaughn's continued compliance with the injunctive order previously issued in this case, and further states that the State shall have the right to seek modification of this Stay Order in the event there is unreasonable

State's Exhibit  
2-C

(copy substituted for clarity)

delay in Case No. E-86-5263, or in the event that Dr. Vaughn is shown to have violated the terms of this Court's injunction.

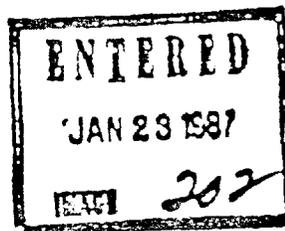
Judge, Hamilton County  
Court of Common Pleas

Have Seen:

*Glenn V. Whitaker*  
Glenn V. Whitaker  
Attorney for Respondent

*Christopher J. Constantine*  
*on Michael J. Gamm*  
Christopher J. Constantine  
Assistant Attorney General

L/CVE4/19



HAMILTON COUNTY COURT OF COMMON PLEAS  
CLERK OF COURT  
1-23-87  
2-11-87  
*Marlene Beach*  
DEPUTY CLERK

ENTER

COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

JAN 23 1987

STATE OF OHIO,  
STATE MEDICAL BOARD,  
Petitioners.

Case No. 1986-223  
(Judge Sobush)

vs.  
MATTIE VAUGHN, M.D.,  
Respondent.

ENTERED  
JAN 23 1987  
201

FILED BY

This matter having come before the Court on Motion of Respondent Mattie L. Vaughn, M.D. for an order staying the proceedings of the Ohio State Medical Board on charges against Respondent dated September 29, and November 21, 1986, respectively, which charges are scheduled for hearing January 22, 1987, and the Court having found that the balance of interests in this case weigh most heavily in favor of the Respondent and establish good cause for the issuance of a stay, it is hereby

ORDERED that the proceedings of the Ohio State Medical Board against Mattie L. Vaughn, M.D., scheduled for January 22, 1987, be and hereby are stayed until the disposition of the trial in Case No. 3-86-2263, pending in the Hamilton County Court of Common Pleas. The Court notes the opposition of the State and imposes as a condition of this stay, the Respondent's compliance with the injunctive order previously issued in this case and further states that the State shall have the right to seek modification of this stay order at any time.

STATE'S EXHIBIT  
2-C