

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

(614)466-3934

April 13, 1990

Eugene J. Coles, M.D.
605 Yorkshire Drive, N.W.
Findlay, Ohio 45840

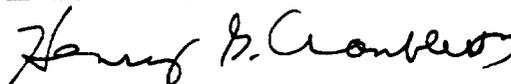
Dear Doctor Coles:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Joan Irwin Fishel, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on April 11, 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 746 514 722
RETURN RECEIPT REQUESTED

Mailed 4/16/90

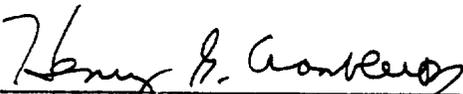
STATE OF OHIO
STATE MEDICAL BOARD

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 Joan Irwin Fishel, Attorney Hearing Examiner, State Medical Board; and attached excerpt of Minutes of the State Medical Board, meeting in regular session on April 11, 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 Eugene J. Coles, 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

4/13/90

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

EUGENE J. COLES, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 11th day of April, 1990.

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

It is hereby ORDERED:

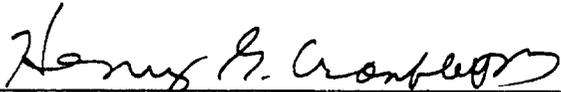
1. That the certificate of Eugene J. Coles, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than thirty (30) days.
2. The Board shall not consider reinstatement of Dr. Coles' certificate to practice unless and until all of the following minimum requirements are met:
 - a. Dr. Coles shall submit an application for reinstatement, accompanied by appropriate fees.
 - b. On or before December 31, 1990, or as otherwise directed by the Board, Dr. Coles shall provide documentation acceptable to the Board of his satisfactory completion of 80 hours of Category I C.M.E., during the period from January 1, 1987, to December 31, 1990. It shall be Dr. Coles' responsibility to work with appropriate Board staff to ascertain what is satisfactory documentation and to obtain the same.
 - c. Dr. Coles shall supply documentation acceptable to the Board of satisfactory completion of 100 hours of approved Continuing Medical Education, at least 40 hours of which shall be in Category I, for each biennium, if any, during which his certificate remains suspended after the 1989-1990 biennium.

Eugene J. Coles, M.D.

- d. In the event that Dr. Coles has not been engaged in the active practice of medicine or surgery for a period of more than two (2) years prior to his application for reinstatement, Dr. Coles shall take and pass the SPEX examination or any similar written examination which the Board may deem appropriate to assess his clinical competency.
3. Subsequent to the reinstatement of his certificate, Dr. Coles shall remain on probation for three (3) additional full biennial registration periods. During this probationary period, Dr. Coles shall submit documentation acceptable to the Board of satisfactory completion of the requisite hours of Continuing Medical Education.
4. Upon successful completion of probation, Dr. Coles' certificate shall be fully restored.

This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.

(SEAL)



Henry G. Cramblett, M.D.
Secretary

4/13/90
Date

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REPORT AND RECOMMENDATION
IN THE MATTER OF EUGENE J. COLES, M.D.

The Matter of Eugene J. Coles, M.D., came on for hearing before me, Joan Irwin Fishel, Esq., Hearing Examiner for the State Medical Board of Ohio, on January 23, 1990.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

- A. By letter of October 11, 1989 (State's Exhibit #5), the State Medical Board notified Eugene J. Coles, M.D., that it proposed to take disciplinary action against his certificate to practice medicine and surgery in the state of Ohio. Dr. Coles certified on his registration renewal application card that he had completed the requisite hours of Continuing Medical Education (C.M.E.) for the 1987-1988 biennium, as required by Section 4731.281, Ohio Revised Code. By letter dated June 28, 1989, the State Medical Board notified Dr. Coles that he was required to submit a log listing his C.M.E. for the 1987-1988 biennium, and to provide documentation that he had actually completed 40 hours of Category I C.M.E. credits. On July 26, 1989, Dr. Coles was sent a second notice of the C.M.E. audit request. On August 11, 1989, the Board received Dr. Coles' letter indicating that he was unable to document C.M.E. completed during the 1987-1988 registration period. The Board alleged that Dr. Coles had not completed the requisite hours of C.M.E. and/or he had failed to keep detailed records. His acts, conduct, and/or omissions were alleged to constitute:
1. "Fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the Board", as that clause is used in Section 4731.22(A), Ohio Revised Code;
 2. "Publishing a false, fraudulent, deceptive, or misleading statement", as that clause is used in Section 4731.22(B)(5), Ohio Revised Code; and
 3. "Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter or any rule promulgated by the Board", as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, (Section 4731.22(B)(16), Ohio Revised Code, prior to March 17, 1987) to wit: Section 4731.281, Ohio Revised Code, and Rules 4731-10-03 and 4731-10-08, Ohio Administrative Code.
- B. By letter received by the State Medical Board on November 14, 1989 (State's Exhibit #6), Dr. Coles requested a hearing.

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II. Appearances

- A. On behalf of the State of Ohio: Anthony J. Celebrezze, Jr., Attorney General, by Bryan L. Jeffries, Assistant Attorney General
- B. Dr. Coles, having been duly advised of his right to counsel, appeared on his own behalf.

III. Testimony Heard

Dr. Coles testified on his own behalf and was cross-examined by the State.

IV. Exhibits Examined

In addition to those noted above, the following exhibits were identified and admitted into evidence in this Matter:

A. Presented by the State

1. State's Exhibit #1: Copy of Dr. Coles' Ohio renewal application for the 1989-1990 biennial registration period, bearing his signature certifying his completion of C.M.E. requirements for the previous biennium.
2. State's Exhibit #2: June 28, 1989 letter to Dr. Coles from the State Medical Board notifying him that it would be necessary for him to complete a log of his Continuing Medical Education and to provide the Board with documentation that he had actually completed at least 40 hours of Category I C.M.E.
3. State's Exhibit #3: July 26, 1989 letter to Dr. Coles from the State Medical Board informing him of the earlier notice regarding the C.M.E. audit and requesting the completion of the enclosed C.M.E. log. The letter further notified Dr. Coles that this would be his last notice prior to the instigation of possible disciplinary proceedings.
4. State's Exhibit #4: Undated letter to the Medical Board from Dr. Coles (date received by the Board is not clearly discernible but would appear to be mid August 1989) stating that he could not document his C.M.E. credits because he had not sent at-home tests in to be scored and credited.
5. State's Exhibit #7: November 20, 1989 letter to Dr. Coles from the State Medical Board advising that a hearing initially set for November 27, 1989, was postponed pursuant to Section 119.09, Ohio Revised Code.
6. State's Exhibit #8: Notice of Appearance of counsel for State filed by Assistant Attorney General Jeffries on November 27, 1989.

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7. State's Exhibit #9: December 15, 1989 letter to Dr. Coles from the State Medical Board scheduling the hearing for January 23, 1990.
8. State's Exhibit #10: Motion for Continuance of Hearing filed by Assistant Attorney General Jeffries on December 21, 1989.
9. State's Exhibit #11: Entry dated January 3, 1990, granting the State's continuance request and rescheduling Dr. Coles' hearing for 2:00 P.M., January 23, 1990, rather than at 10:00 A.M. as originally scheduled.

B. Presented by the Respondent

1. Respondent's Exhibit A: Certification of Accreditation from Audio-Digest Foundation to Dr. Coles, dated January 28, 1987 and showing the receipt of 10 hours of Category I C.M.E. credit.
2. Respondent's Exhibit B: February 10, 1990 letter to the Medical Board from Dr. Coles with an enclosed letter from Audio-Digest Foundation supporting Dr. Coles' testimony at hearing that Audio-Digest did not automatically send test forms with the audio tapes that were sent to subscribers.

V. Additional Matter

At hearing on this Matter, the Hearing Examiner ordered the record held open until February 23, 1990 for the submission by Dr. Coles of documentation in support of his claim to have completed his Continuing Medical Education (C.M.E.) requirements by listening to certain audio tapes. A letter from Dr. Coles, dated February 10, 1990, was received by the Board on February 21, 1990. Enclosed with this letter was a copy of a letter from Audio-Digest Foundation to Dr. Coles. The letter and enclosure were admitted as Respondent's Exhibit B. By Entry dated February 27, 1990, the record in this Matter was closed as of February 23, 1990. That Entry is hereby made a part of the record in this Matter.

FINDINGS OF FACT

1. In applying for renewal of his Ohio medical license for the 1989-1990 biennial registration period, Eugene J. Coles, M.D., certified under penalty of the loss of his right to practice medicine and surgery in the State of Ohio, that he had completed the requisite hours of Continuing Medical Education (C.M.E.) during the last biennium.

This fact is established by State's Exhibit #1.

2. By letter dated June 28, 1989, the State Medical Board of Ohio notified Dr. Coles that, as a routine and random audit procedure, it would be necessary for him to complete a log of his C.M.E. for the 1987-1988 biennium and to provide the Board with documentation that he had actually completed at least 40 hours of Category I C.M.E. as certified on his license renewal application. This letter, sent to Dr. Coles by certified mail, was unclaimed.

These facts are established by State's Exhibit #2.

3. On July 26, 1989, the State Medical Board sent a second notice to Dr. Coles regarding the audit and the necessity of completing a C.M.E. log. The letter indicated that this was his second notice and that the first attempt to contact him had not been successful. The letter further informed Dr. Coles that this would be the last notice he would receive prior to the initiation of possible disciplinary proceedings. This letter was served on Dr. Coles by certified mail on July 27, 1989.

These facts are established by State's Exhibit #3.

4. In a letter received by the Board in mid August 1989, Dr. Coles informed the Board that he could not document his C.M.E. for 1987-1988. He had listened to audio tapes and done at-home tests for the Medical Letter, Audio-Digest, and Scientific America Medicine without sending in the tests to be scored and credited. Dr. Coles offered to do whatever was necessary to correct this problem.

These facts are established by State's Exhibit #4.

5. At hearing, and in a letter dated February 10, 1990, Dr. Coles elaborated on this explanation for his inability to document his C.M.E.. Throughout the 1987-1988 biennium he had subscribed to Audio-Digest Foundation, a non-profit subsidiary of the California Medical Association, and received audio tapes with accompanying test questions. In October 1986, Audio-Digest had stopped sending answer sheets along with the questions and the tapes. Dr. Coles testified that he had not separately requested answer sheets and, therefore, had not been able to send in his tests to be scored. Consequently, he received no Category I C.M.E. credit from Audio-Digest for the tapes he had listened to during 1987-1988.

These facts are established by State's Exhibits #4 and #6, Respondent's Exhibit B, and by the testimony of Dr. Coles (Tr. 12-20).

6. Dr. Coles' letter of February 10, 1990 informed the Board that though he had recently submitted answer sheets to Audio-Digest for the tapes he had listened to in 1987-1988, Audio-Digest would not give him Category I C.M.E. credit for that time period. Dr. Coles also indicated in his February 10 letter that the ten Category I C.M.E. credits documented in Respondent's Exhibit A were actually earned in 1986.

These facts are established by the testimony of Dr. Coles (Tr. 17) and by Respondent's Exhibits A and B.

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CONCLUSIONS

Section 4731.281, Ohio Revised Code, and Rule 4731-10-03, Ohio Administrative Code, require a practitioner to meet and to certify his completion of the requisite hours of C.M.E. as a condition for license renewal. Section 4731.281, Ohio Revised Code, and Rule 4731-10-08(A)(1), Ohio Administrative Code, authorize the Board to conduct random audits to verify practitioners' completion of C.M.E. requirements. Licensees whose applications are selected for audit are required to submit "additional documentation of compliance with C.M.E. requirements as the Board may require." Rule 4731-10-08(A)(2), Ohio Administrative Code, requires applicants for licensure renewal to keep detailed records of C.M.E. hours taken. Paragraph (B) of that Rule states that failure to maintain such records rebuts the presumption created by the applicant's certification on his renewal card that he has completed the requisite C.M.E.

Dr. Coles' certification on his renewal application card that he had completed the requisite hours of C.M.E. for the 1987-1988 biennium was false. By his own admission, he was unable to provide any documentation of Category I credits. Though he may have listened to audio tapes and may have completed accompanying test questions, Dr. Coles did not send the answer sheets to the accredited institution. His activities were, therefore, unsupervised, and cannot constitute Category I C.M.E. credit. The Category I C.M.E. activity could not have been completed until he had sent in the test forms and they had been scored. However, Dr. Coles' time in listening to the tapes and in performing the tests can be considered Category II C.M.E. The sixty (60) allowable hours of Category II C.M.E. would appear to have been completed by Dr. Coles in the 1987-1988 biennium.

Accordingly, Dr. Coles' acts, conduct, and/or omissions, as set forth in the above Findings of Fact, constitute:

- A. "Fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the Board", as that clause is used in Section 4731.22(A), Ohio Revised Code;
- B. "Publishing a false, fraudulent, deceptive, or misleading statement", as that clause is used in Section 4731.22(B)(5), Ohio Revised Code; and
- C. "Violating..., directly or indirectly, ...any provisions of this chapter or any rule promulgated by the Board", as that clause is used in Section 4731.22(B)(20), Ohio Revised Code (Section 4731.22(B)(16) prior to March 17, 1987), to wit: Section 4731.281, Ohio Revised Code, and Rules 4731-10-03 and 4731-10-08, Ohio Administrative Code.

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PROPOSED ORDER

It is hereby ORDERED that:

1. The certificate of Eugene T. Coles, M.D., to practice medicine and surgery in Ohio shall be suspended for an indefinite period of time, but not less than thirty (30) days.
2. The Board shall not consider reinstatement of Dr. Coles' certificate to practice unless and until all of the following minimum requirements are met:
 - a. Dr. Coles shall submit an application for reinstatement, accompanied by appropriate fees.
 - b. On or before December 31, 1990, or as otherwise directed by the Board, Dr. Coles shall provide documentation acceptable to the Board of his satisfactory completion of 80 hours of Category I C.M.E., during the period from January 1, 1987, to December 31, 1990. It shall be Dr. Coles' responsibility to work with appropriate Board staff to ascertain what is satisfactory documentation and to obtain the same.
 - c. Dr. Coles shall supply documentation acceptable to the Board of satisfactory completion of 100 hours of approved Continuing Medical Education, at least 40 hours of which shall be in Category I, for each biennium, if any, during which his certificate remains suspended after the 1989-1990 biennium.
 - d. In the event that Dr. Coles has not been engaged in the active practice of medicine or surgery for a period of more than two (2) years prior to his application for reinstatement, Dr. Coles shall take and pass the SPEX examination or any similar written examination which the Board may deem appropriate to assess his clinical competency.
3. Subsequent to the reinstatement of his certificate, Dr. Coles shall remain on probation for three (3) additional full biennial registration periods. During this probationary period, Dr. Coles shall submit documentation acceptable to the Board of satisfactory completion of the requisite hours of Continuing Medical Education.
4. Upon successful completion of probation, Dr. Coles' certificate will be fully restored.

This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.


Joan Irwin Fishel
Attorney Hearing Examiner

X CERPT FROM THE MINUTES OF APRIL 11, 1990

REPORTS AND RECOMMENDATIONS

Dr. Kaplansky advised that the Findings and Orders appearing on this day's agenda are those in the matters of Pablo Pons, M.D.; Eugene J. Coles, M.D.; Bruce Dawson, M.D.; Clarence B. Alston, M.D.; and William C. Downing, M.D.

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 Pablo Pons, M.D.; Eugene J. Coles, M.D.; Bruce Dawson, M.D.; Clarence B. Alston, M.D.; and William C. Downing, M.D.

ROLL CALL:

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

.....
Mr. Dowling and all Enforcement Coordinators left the meeting at this time.

REPORT AND RECOMMENDATION IN THE MATTER OF EUGENE J. COLES, M.D.

Dr. Kaplansky stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and order in the above matter. No objections were voiced by Board Members present.

DR. GRETTTER MOVED TO APPROVE AND CONFIRM MS. FISHEL'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF EUGENE J. COLES, M.D. DR. AGRESTA SECONDED THE MOTION.

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

ROLL CALL VOTE:

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

The motion carried.

STATE OF OHIO
THE STATE MEDICAL BOARD
77 SOUTH HIGH STREET
17TH FLOOR
COLUMBUS OH 43215

October 11, 1989

Eugene J. Coles, M.D.
605 Yorkshire Drive
Findlay, OH 45840

Dear Doctor Coles:

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) In applying for registration of your certificate to practice medicine or surgery for the current registration period, you certified that you had completed during the last registration period (January 1, 1987 through December 31, 1988) the requisite hours of Continuing Medical Education (CME), as required by Section 4731.281, Ohio Revised Code.
- (2) By letter dated June 28, 1989, and sent by certified mail you were notified by the State Medical Board that you are required to complete a log listing your CME for the 1987-1988 registration period, and to provide documentation that you had actually completed at least 40 hours of Category I CME credits. On July 26, 1989, you were given, by letter sent certified mail, a second notice of the CME audit request. On August 11, 1989, the Board received your letter indicating that you are unable to document CME completed during the 1987-1988 registration period.
- (3) Your response, or lack thereof, to the notices as detailed in the above Paragraph (2) establish that you did not complete the requisite hours of Continuing Medical Education, and/or that you failed to keep detailed records of CME taken.

The acts and/or omissions as alleged in the above paragraph (1), individually and/or collectively, constitute "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board", as that clause is used in Section 4731.22(A), Ohio Revised Code.

October 11, 1989

Further, such acts and/or omissions as alleged in the above paragraph (1), individually and/or collectively, constitute "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Further, such acts as alleged in the above paragraphs (1) through (3), individually and/or collectively, constitute "(v)iolating 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)(20), Ohio Revised Code, (Section 4731.22(B)(16), Ohio Revised Code, prior to March 17, 1987) to wit: Section 4731.281, Ohio Revised Code, and Rule 4731-10-03 and Rule 4731-10-08, Ohio Administrative 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 received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Henry G. Cramblett, M.D.
Secretary

HGC:jmb
Encls.

CERTIFIED MAIL #P 746 510 085
RETURN RECEIPT REQUESTED