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

March 11, 1994

Thomas M. Lehman, M.D.
4410 B West Aloha Drive
Diamond Head, MS 39525

Dear Doctor Lehman:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, 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 9, 1994, including Motions approving and confirming the Findings of Fact and the Conclusions of Law of the Hearing Examiner, and adopting an amended Order.

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

Carla S. O'Day, M.D.

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

CSO:em

Enclosures

CERTIFIED MAIL RECEIPT NO. P 741 123 978
RETURN RECEIPT REQUESTED

cc: Douglas E. Graff, Esq.

CERTIFIED MAIL RECEIPT NO. P 741 123 979
RETURN RECEIPT REQUESTED

Mailed 3-12-94

STATE MEDICAL BOARD OF OHIO
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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 R. Gregory Porter, Attorney Hearing Examiner, State Medical Board; and an excerpt of Minutes of the State Medical Board, meeting in regular session on March 9, 1994, including a Motion approving and confirming the Findings of Fact and Conclusions of Law of the Hearing Examiner, and adopting an amended Order, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Thomas M. Lehman, 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

3/14/94
Date

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

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

THOMAS M. LEHMAN, M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 9th day of March, 1994.

Upon the Report and Recommendation of R. Gregory Porter, 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 modification, approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

1. The certificate of Thomas M. Lehman, M.D., to practice medicine and surgery in the State of Ohio shall be permanently REVOKED. Such revocation is STAYED, and Dr. Lehman's certificate is hereby SUSPENDED for an indefinite period of time, but not less than one (1) year.

2. The State Medical Board shall not consider REINSTATEMENT of Dr. Lehman's certificate to practice unless and until all of the following minimum REQUIREMENTS are met:

   a. Dr. Lehman shall submit an application for reinstatement, accompanied by appropriate fees. Dr. Lehman shall not make such application for at least one (1) year from the effective date of this Order.

   b. Dr. Lehman shall provide the Board with evaluations from a minimum of two (2) physicians acceptable to the Board stating that Dr. Lehman is no longer drug or alcohol dependent and is able to practice according to acceptable and prevailing standards of care. Each of these evaluations shall be in writing and shall state with particularity the bases for such determination.

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3. In the event that Dr. Lehman wishes to practice in Ohio, he shall notify the Board in writing of his intention to commence practice in Ohio at least thirty (30) days in advance of commencing such practice. The Board may require whatever monitoring provisions or practice restrictions it deems appropriate to ensure the safe practice of medicine by Dr. Lehman.

4. Upon reinstatement and commencement of practice in Ohio, Dr. Lehman's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two (2) years:

   a. Dr. Lehman shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.

   b. Dr. Lehman shall submit quarterly declarations under penalty of falsification pursuant to Section 2921.13, Ohio Revised Code, stating whether or not there has been compliance with all the provisions of probation.

   c. Dr. Lehman shall appear in person for interviews before the full Board or its designated representative at three (3) month intervals, or as otherwise requested by the Board.

   d. In the event that Dr. Lehman should leave Ohio for three (3) consecutive months, or reside or practice outside the state, Dr. Lehman must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise performed.

   e. Dr. Lehman shall abstain completely from the personal use or possession of drugs, except as prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Dr. Lehman's history of chemical dependency.

   f. Dr. Lehman shall abstain completely from the use of alcohol.

g. Dr. Lehman shall submit to random urine screenings for drugs and alcohol on a bi-monthly basis or as otherwise directed by the Board. Dr. Lehman shall ensure that all screening reports are forwarded directly to the Board on a monthly basis. Within thirty (30) days of the effective date of the reinstatement of his certificate, Dr. Lehman shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Lehman shall submit the required urine specimens. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the Board of any positive screening results. In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Lehman must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable.

h. Dr. Lehman shall submit blood or urine specimens for analysis without prior notice at such times as the Board may request.

i. Dr. Lehman shall maintain participation in an alcohol and drug rehabilitation program, such as AA, NA, or Caduceus, approved in advance by the Board specifically for Dr. Lehman, no less than three (3) times per week, or as otherwise directed by the Board. At Dr. Lehman's appearances before the Board or its designated representative, Dr. Lehman shall submit acceptable documentary evidence of continuing compliance with this program.

j. Dr. Lehman shall provide a copy of this Order to all employers and the chief of staff at each hospital where he has, applies for, or obtains privileges.

5. If Dr. Lehman violates probation in any respect, the Board, after giving Dr. Lehman notice and the opportunity to be heard, may set aside the stay order and impose the revocation of Dr. Lehman's certificate.

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Thomas M. Lehman, M.D.

6. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Lehman's 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.

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

(SEAL)

3/14/94
Date

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REPORT AND RECOMMENDATION
IN THE MATTER OF THOMAS M. LEHMAN, M.D.

The Matter of Thomas M. Lehman, M.D., came on for hearing before me, R. Gregory Porter, Esq., Hearing Examiner for the State Medical Board of Ohio, on December 13, 1993.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

A. By letter dated August 11, 1993 (State's Exhibit #1), the State Medical Board notified Thomas M. Lehman, M.D., that it proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio, based on Dr. Lehman's conviction by general court martial for forging another provider's signature on a prescription for a controlled substance, and the conduct underlying said conviction; based on the suspension and revocation of Dr. Lehman's clinical privileges; and/or based on Dr. Lehman's providing of false information on an application for biennial registration of his license to practice medicine and surgery in Ohio. The Board alleged that such acts, conduct, and/or omissions, individually and/or collectively, constituted "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; "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code; "obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice," as that clause is used in Section 4731.22(B)(8), Ohio Revised Code; "commission of act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23(A) and (B)(1), Ohio Revised Code, Illegal processing of drug documents; and/or "the revocation, suspension, restriction, reduction, or termination of clinical privileges by the department of defense, or the veteran's administration of the United States, for any act or acts that would also constitute a violation of this chapter," as that clause is used in Section 4731.22(B)(24), Ohio Revised Code, to wit: Sections 4731.22(B)(5), (B)(8), and (B)(10), Ohio Revised Code, to wit: Sections 2925.23(A) and (B)(1), Ohio Revised Code, Illegal processing of drug of documents.

Dr. Lehman was advised of his right to request a hearing in this Matter.

B. By document received by the State Medical Board on September 16, 1993 (State's Exhibit #2), Douglas E. Graff, Esq., requested a hearing on behalf of Dr. Lehman. Mr. Graff informed the Board that the Board's notice letter had been mistakenly forwarded by the postal service to Dr. Lehman's estranged wife. Dr. Lehman was not informed of the existence of said notice until weeks later, which prevented him from responding in a timely manner.

II. Appearances

A. On behalf of the State of Ohio: Lee I. Fisher, Attorney General, by Lisa A. Sotos, Assistant Attorney General.

B. On behalf of the Respondent: Douglas E. Graff, Esq.

III. Testimony Heard

A. Presented by the State

No witnesses were presented.

B. Presented by the Respondent

Thomas M. Lehman, M.D.

IV. Exhibits Examined

In addition to State's Exhibits #1 and #2, noted above, the following exhibits were identified and admitted into evidence in this Matter:

A. Presented by the State

1. State's Exhibit #3: Respondent's September 16, 1993 notice of appearance of counsel.

2. State's Exhibit #4: Respondent's October 1, 1993 motion to accept an untimely hearing request. (4 pp.)

3. State's Exhibit #5: State's October 13, 1993 motion to table the Respondent's motion to accept an untimely hearing request. (2 pp.)

4. State's Exhibit #6: October 19, 1993 letter to Dr. Lehman from the State Medical Board, notifying Dr. Lehman that the Board accepted his untimely hearing request at its

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October 13, 1993 meeting, and advising that a hearing initially set for October 27, 1993 was postponed pursuant to Section 119.09, Ohio Revised Code.

5. State's Exhibit #7: October 19, 1993 letter to Attorney Graff from the State Medical Board, scheduling the hearing for November 18, 1993.

6. State's Exhibit #8: State's October 29, 1993 notice of substitution of counsel for the State.

7. State's Exhibit #9: Respondent's November 2, 1993 motion for continuance. (2 pp.)

8. State's Exhibit #10: November 5, 1993 Entry granting the Respondent's motion for continuance, and rescheduling the hearing for December 13, 1993.

9. State's Exhibit #11: Dr. Lehman's October 20, 1990 application for biennial registration of his license to practice medicine and surgery in the State of Ohio.

10. State's Exhibit #12: Dr. Lehman's July 1, 1992 application for biennial registration of his license to practice medicine and surgery in the State of Ohio.

11. State's Exhibit #13: Section 907, Article 107, of the Uniform Code of Military Justice, entitled "False official statements."

12. State's Exhibit #14: Collection of documents from the Department of the Air Force regarding Dr. Lehman. The pages have been numbered by the Hearing Examiner for the convenience of the Board. The exhibit consists of: undated letter from Lt. Col. James E. Hargreaves, Chairman, Department of Medicine, Keesler Medical Center, to the Keesler Medical Center Credentials Committee, regarding Dr. Lehman's court martial conviction (p. 3); September 30, 1991 letter from Lt. Col. David G. Young III, Acting Chairperson, Credentials Function, Keesler Medical Center, to Dr. Lehman, notifying Dr. Lehman that his clinical privileges had been suspended for six months, countersigned by Dr. Lehman (p. 4); March 26, 1992 letter from Col. Ronald E. Grimwood Jr., Chairman, Credentials Committee, Keesler Medical Center, to Dr. Lehman, notifying Dr. Lehman that the suspension of his clinical privileges was extended for three months pending final disposition of his case, countersigned by Dr. Lehman (p. 5); General Court-Martial Order dated

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August 18, 1992 (pp. 6-7); August 4, 1992 letter from Lt. Col. Ronald E. Persing, Chairman, Credentials Committee, Keesler Medical Center, to Dr. Lehman, regarding the proposed revocation of Dr. Lehman's clinical privileges, countersigned by Dr. Lehman (p. 8); September 3, 1992 notification of privileges hearing from Lt. Col. Persing, to Dr. Lehman (pp. 9, 10); August 31, 1992 credentials privileges hearing request from Dr. Lehman (p. 11); September 8, 1992 letter to Lt. Col. Persing from Dr. Lehman, requesting a continuance of his privileges hearing (p. 12); December 4, 1992 notification of credentials committee recommendation from Lt. Col. Persing, to Dr. Lehman (p. 13); January 12, 1993 letter to Dr. Lehman from Col. Peter D. Springberg, Commander, Keesler Medical Center, informing Dr. Lehman that his privileges to practice medicine at Keesler Medical Center were revoked (p. 14); cover letter (p. 1); and certification (p. 2).

B. Presented by the Respondent

1. Respondent's Exhibit A: June 3, 1993 continuing care advocacy contract between Dr. Lehman and M. S. Health Care Professionals Treatment Programs. (4 pp.)

2. Respondent's Exhibit B: November 10, 1993 letter from Kay Gatewood, Executive Director, Caduceus Club of Mississippi, to Attorney Graff, regarding Dr. Lehman's compliance with his current contract.

3. Respondent's Exhibit C: Dr. Lehman's curriculum vitae. (2 pp.)

4. Respondent's Exhibit D: Letters in support of Dr. Lehman regarding his clinical privileges hearing at Keesler Medical Center. (14 pp.)

5. Respondent's Exhibit E: Dr. Lehman's Air Force discharge papers.

6. Respondent's Exhibit F: July 10, 1992 letter from Dr. James M. Wasserman to Hancock Medical Center, regarding Dr. Wasserman's treatment of Dr. Lehman for depression. (2 pp.)

7. Respondent's Exhibit G: July 28, 1992 continuing care advocacy contract between Dr. Lehman and Caduceus Club of Mississippi. (4 pp.)

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V. Post-Hearing Admissions to the Record

Upon the Hearing Examiner's own motion, the following additional documents are hereby admitted to the record in this Matter:

1. Board Exhibit A: Section 2925.23, Ohio Revised Code, entitled "Illegal processing of drug documents," as in effect from November 20, 1990 to May 19, 1992.

2. Board Exhibit B: Excerpt from 1991 Physicians' Desk Reference (45th Ed.) with regard to Phenaphen with codeine no. 3.

3. Board Exhibit C: Excerpt from 1991 Physicians' Desk Reference (45th Ed.) with regard to Tylenol with codeine no. 3.

4. Board Exhibit D: Copy of title page and foreword to the 1991 Physicians' Desk Reference (45th Ed.).

FINDINGS OF FACT

1. On or about September 30, 1991, Thomas M. Lehman, M.D., then a major in the United States Air Force, was notified that his clinical privileges at the Air Force Medical Center, Keesler Air Force Base, were suspended for a period of six months, pending the outcome of an investigation then in progress as to whether Dr. Lehman had prescribed controlled substances in violation of Air Force regulations. Dr. Lehman acknowledged receipt of this notice on or about October 1, 1991.

   On or about March 26, 1992, Dr. Lehman was notified that the suspension of his clinical privileges at Keesler Medical Center had been extended for three months pending final disposition of his case. Dr. Lehman acknowledged receipt of this notice on or about March 26, 1992.

   On or about January 12, 1993 Dr. Lehman's clinical privileges at Keesler Medical Center were revoked. At the present hearing, Dr. Lehman denied that he had ever received notice of the revocation of his Keesler clinical privileges.

   These facts are established by State's Exhibit #14, pp. 4, 5, 8-14, and the testimony of Dr. Lehman (Tr. at 40-42).

2. On or about July 1, 1992, Dr. Lehman submitted an application for biennial registration of his license to practice medicine and surgery in Ohio. He answered "NO" to all of the questions contained on the back of the application card, including question 4, which

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asks: "At anytime since signing your last application for renewal of your certificate have you had any clinical privileges suspended, limited or revoked for reasons other than failure to maintain records or attend staff meetings?" Dr. Lehman had last applied for renewal of his certificate on or about October 20, 1990.

These facts are established by State's Exhibits #11 and #12.

3. On or about July 24, 1992, Dr. Lehman was convicted by a general court martial for having forged another physician's signature on a prescription for Phenaphen #3, a Schedule III controlled substance, on or about January 21, 1991. The court martial panel found that Dr. Lehman, with intent to deceive, signed another physician's name to a multiple-item prescription form for the aforementioned drug; the prescription and the signature of Dr. Kevin B. Chapin were false, and were known by Dr. Lehman to be false when he submitted the prescription to the Keesler Medical Center Pharmacy.

   Dr. Lehman was given no punishment as a result of the conviction, and was granted an honorable discharge effective August 2, 1992.

   These facts are established by State's Exhibit #14, pp. 3, 6-7, Respondent's Exhibit E, and Board Exhibit B.

4. At the present hearing, Dr. Lehman did not deny the Board's allegations, but instead offered mitigating evidence. Dr. Lehman stated that at the time he wrote the forged prescription, and at the time that he lied on his biennial registration application for Ohio licensure, he was chemically dependent and actively impaired. He stated that his thinking and judgment were clouded, and admitted he had been afraid that an affirmative response to question 4 on his renewal card would have resulted in the sort of disciplinary action that he is currently facing. Dr. Lehman stated that he has never had any patient care problems, has never been sued for malpractice, and has had no quality assurance issues raised at any hospital where he has practiced. Dr. Lehman said that, rather than give up his Ohio license, he asked for a hearing because he wants to make amends for his past conduct and to take responsibility for his actions. He stated that he will be willing to accept whatever disciplinary action the Board imposes.

   Dr. Lehman testified that he entered the Air Force in August, 1988 after finishing his medical training. He said he became addicted to Tylenol #3 sometime around August, 1990 after having been prescribed that substance for pain associated with a dental procedure. He testified that from September, 1990 through January, 1991, in order to obtain the drug, he wrote eight prescriptions for Tylenol #3 for his wife, and used the medication himself. In late January, 1991, Dr. Lehman obtained Phenaphen #3 (which he described as a generic of

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Tylenol #3) by forging the name of another physician to a prescription. Dr. Lehman said he realized at that time that he was really in trouble, and thereafter ceased his abuse of narcotics. He continued to drink alcohol on occasion, however.

Dr. Lehman's false prescriptions were discovered in August, 1991 after a routine pharmacy review. His clinical privileges at Keesler Medical Center were suspended, and he was eventually prosecuted and convicted by general court martial for the January, 1991 forged prescription. Following the conviction, his clinical privileges at Keesler were revoked after a hearing.

On his own volition, Dr. Lehman became involved with the Caduceus Club of Mississippi, and spent about four continuous months in inpatient recovery centers after violating his first contract by drinking alcohol. After his release in June, 1993, he entered into a new contract with Caduceus which requires, among other things, that Dr. Lehman attend three AA meetings per week, have one random drug screen per month, and report once per month to the Treatment Management Team by telephone. Dr. Lehman stated that he has complied in every way with the new contract. He said he has taken no drugs since January, 1991, other than those prescribed for him, and has had no alcohol since February 4, 1993.

Dr. Lehman stated that he is licensed in the state of Mississippi, Louisiana, and Ohio. He stated that the Mississippi and Louisiana Boards are aware of his problems.

These facts are established by Respondent's Exhibit B and the testimony of Dr. Lehman (Tr. at 11-56).

CONCLUSIONS

1. As set forth in Findings of Fact #3 and #4, above, Dr. Lehman was convicted by a general court martial on or about July 24, 1992, for forging another provider's signature on a prescription for a Schedule III controlled substance. The acts, conduct, and/or omissions of Dr. Lehman that led to his conviction constitute "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code. That Dr. Lehman did this in order to obtain Phenaphen #3 for his own use constitutes "the obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice," as that clause is used in Section 4731.22(B)(8), Ohio Revised Code. By his own admission at the present hearing, Dr. Lehman knowingly made a false statement in a prescription, and intentionally made, uttered, and knowingly possessed a forged prescription. Such conduct constitutes "commission of an act which constitutes a felony in this state

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regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.33(A) and (B)(1), Ohio Revised Code, Illegal processing of drug documents, a felony of the fourth degree as provided in Section 2925.23(F), Ohio Revised Code.

2. As set forth in Finding of Fact #1, Dr. Lehman's clinical privileges at Keesler Medical Center were suspended on or about September 30, 1991. This suspension was extended for three months on or about March 26, 1992, and his clinical privileges subsequently revoked on or about January 12, 1993. These actions occurred as a result of Dr. Lehman's improper prescribing of controlled substances as set forth in Findings of Fact #3 and #4, above. Such acts, conduct, and/or omissions, constitute "the revocation, suspension, restriction, reduction, or termination of clinical privileges by the department of defense, or the veteran's administration of the United States, for any act or acts that would also constitute a violation of this chapter," as that clause is used in Section 4731.22(B)(24), Ohio Revised Code, to wit: Sections 4731.22(B)(5) and (B)(8), Ohio Revised Code, and Section 4731.22(B)(10), Ohio Revised Code, to wit: Sections 2925.23(A) and (B)(1), Ohio Revised Code, Illegal processing of drug documents.

3. As set forth in Findings of Fact #1, #2, and #4, above, Dr. Lehman intentionally failed to notify the State Medical Board of the suspension of his clinical privileges at Keesler Medical Center in his response to question 4 on his 1992 application for biennial registration of his license to practice medicine and surgery in Ohio. This constitutes "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; and "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

PROPOSED ORDER

It is hereby ORDERED that:

1. The certificate of Thomas M. Lehman, M.D., to practice medicine and surgery in the State of Ohio shall be permanently REVOKED. Such revocation is STAYED, and Dr. Lehman's certificate is hereby SUSPENDED for an indefinite period of time, but not less than one (1) year.

2. The State Medical Board shall not consider REINSTATEMENT of Dr. Lehman's certificate to practice unless and until all of the following minimum REQUIREMENTS are met:

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a. Dr. Lehman shall submit an application for reinstatement, accompanied by appropriate fees. Dr. Lehman shall not make such application for at least one (1) year from the effective date of this Order.

b. Dr. Lehman shall provide acceptable documentation of successful completion of a course dealing with personal and professional ethics, such course to be approved in advance by the Board or its designee.

c. Dr. Lehman shall provide the Board with evaluations from a minimum of two (2) physicians acceptable to the Board stating that Dr. Lehman is no longer drug or alcohol dependent and is able to practice according to acceptable and prevailing standards of care. Each of these evaluations shall be in writing and shall state with particularity the bases for such determination.

3. In the event that Dr. Lehman wishes to practice in Ohio, he shall notify the Board in writing of his intention to commence practice in Ohio at least thirty (30) days in advance of commencing such practice. The Board may require whatever monitoring provisions or practice restrictions it deems appropriate to ensure the safe practice of medicine by Dr. Lehman.

4. Upon reinstatement and commencement of practice in Ohio, Dr. Lehman's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least two (2) years:

a. Dr. Lehman shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.

b. Dr. Lehman shall submit quarterly declarations under penalty of falsification pursuant to Section 2921.13, Ohio Revised Code, stating whether or not there has been compliance with all the provisions of probation.

c. Dr. Lehman shall appear in person for interviews before the full Board or its designated representative at three (3) month intervals, or as otherwise requested by the Board.

d. In the event that Dr. Lehman should leave Ohio for three (3) consecutive months, or reside or practice outside the state, Dr. Lehman must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside of Ohio will not apply to the reduction

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of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise performed.

e. Dr. Lehman shall abstain completely from the personal use or possession of drugs, except as prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Dr. Lehman's history of chemical dependency.

f. Dr. Lehman shall abstain completely from the use of alcohol.

g. Dr. Lehman shall submit to random urine screenings for drugs and alcohol on a bi-monthly basis or as otherwise directed by the Board. Dr. Lehman shall ensure that all screening reports are forwarded directly to the Board on a monthly basis. Within thirty (30) days of the effective date of the reinstatement of his certificate, Dr. Lehman shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Lehman shall submit the required urine specimens. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the Board of any positive screening results. In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Lehman must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable.

h. Dr. Lehman shall submit blood or urine specimens for analysis without prior notice at such times as the Board may request.

i. Dr. Lehman shall maintain participation in an alcohol and drug rehabilitation program, such as AA, NA, or Caduceus, approved in advance by the Board specifically for Dr. Lehman, no less than three (3) times per week, or as otherwise directed by the Board. At Dr. Lehman's appearances before the Board or its designated representative, Dr. Lehman shall submit acceptable documentary evidence of continuing compliance with this program.

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j. Dr. Lehman shall provide a copy of this Order to all employers and the chief of staff at each hospital where he has, applies for, or obtains privileges.

5. If Dr. Lehman violates probation in any respect, the Board, after giving Dr. Lehman notice and the opportunity to be heard, may set aside the stay order and impose the revocation of Dr. Lehman's certificate.

6. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Lehman's certificate wil be fully restored.

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

R. Gregory Porter
Attorney Hearing Examiner

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EXCERPT FROM THE MINUTES OF MARCH 9, 1994

REPORTS AND RECOMMENDATIONS

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

Dr. Heidt asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Mireya A. Francis-Carvajal, M.D.; Melvin W. Cohen, M.D.; Kemmes Keys, M.D.; Thomas M. Lehman, M.D.; Paul E. Morentz, M.D.; John T. Namey, Jr., D.O.; and Hyman David Sacks, D.O. A roll call was taken:

ROLL CALL:	Dr. O'Day	- aye
	Mr. Albert	- aye
	Dr. Stienecker	- aye
	Dr. Gretter	- aye
	Dr. Agresta	- aye
	Dr. Stephens	- aye
	Dr. Buchan	- aye
	Mr. Sinnott	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Dr. Heidt	- aye

Dr. Heidt 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:	Dr. O'Day	- aye
	Mr. Albert	- aye
	Dr. Stienecker	- aye
	Dr. Gretter	- aye
	Dr. Agresta	- aye
	Dr. Stephens	- aye
	Dr. Buchan	- aye
	Mr. Sinnott	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Dr. Heidt	- aye

In accordance with the provision in Section 4731.22(C)(1), Revised Code, specifying

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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.

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

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REPORT AND RECOMMENDATION IN THE MATTER OF THOMAS M. LEHMAN, M.D.

Dr. Heidt 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.

Ms. Noble joined the meeting at this time.

Dr. Heidt advised that a request to address the Board has been timely filed on behalf of Dr. Lehman.

Dr. Heidt advised Mr. Graff that there is not a court reporter present, but instead the Board's minutes serve as the Board's official record of the meeting. Mr. Graff stated that he did not have any objection to the absence of a court reporter.

Dr. Heidt reminded Mr. Graff that the Board members have read the entire hearing record, including the exhibits and any objections filed. He added that the Board will not retry the case at this time, and that pursuant to Section 4731.23(C), Revised Code, oral arguments made at this time are to address the proposed findings of fact and conclusions of the hearing examiner. Dr. Heidt stated that Mr. Graff would be allotted approximately five minutes for his address.

Dr. Heidt asked Ms. Noble whether she had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Kemmes Keys, M.D.; Thomas M. Lehman, M.D.; Paul E. Morentz, M.D.; John T. Namey, Jr., D.O.; and Hyman David Sacks, D.O. Ms. Noble indicated that she had.

Dr. Heidt asked Ms. Noble whether she 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. Ms. Noble indicated that she does understand.

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Mr. Graff advised that Dr. Lehman traveled from Mississippi to accompany him in this appearance before the Board. This matter was postponed from February. Mr. Graff noted that he has filed objections to Mr. Porter's Report and Recommendation in this matter.

Mr. Graff stated that Dr. Lehman was an Air Force physician who, after a dental procedure, was given Tylenol #3 by his physician. This activated Dr. Lehman's impairment. Two months later Dr. Lehman wrote himself a single prescription for 30 Tylenol #3, which he cashed at a military pharmacy. Recognizing the seriousness of his own actions, Dr. Lehman voluntarily entered a treatment program. The military does not provide such treatment programs within the military. He attended a Mississippi Board-approved program off the base. Seven months later in a pharmacy check; that single prescription was found and brought to his attention. This began a military investigation of Dr. Lehman. At that time he was put into research instead of clinical medicine. He faced a general court-martial.

During that time, Dr. Lehman did reapply for his Ohio license and did not notify the Ohio Board. He was faced with the general court-martial, which was held in June the following year. He was found guilty. Upon consideration of the evidence, the general court-martial found that no additional punishment was necessary. The court-martial found that Dr. Lehman's conduct warranted no punishment. One month later, at the end of Dr. Lehman's tour of duty, he was given a full and honorable discharge from the Air Force.

Dr. Lehman voluntarily continued in treatment in the Mississippi Health Professionals Program. He is known by the Mississippi Board and has a monitoring agreement with the program that they have approved. The Louisiana Board where he practices is also aware of his situation.

Four months after he left the military, Kesler Military Hospital revoked Dr. Lehman's privileges. Dr. Lehman was no longer working there, he was no longer a member of the military, and he was no longer entitled to practice at that base. Dr. Lehman did not contest the revocation. He was not present at the hearing, nor was he notified about it.

Mr. Graff continued that the Ohio Board became aware of Dr. Lehman through the normal reporting mechanisms. It began an action against Dr. Lehman, and Dr. Lehman came forward to provide the evidence to the Board. A hearing was held and the Hearing Officer recommended a suspension. Two Boards under which Dr. Lehman is currently working do not feel that suspension is appropriate.

Mr. Graff at this time introduced Dr. Lehman to the Board.

Dr. Lehman stated that he is currently practicing internal medicine and cardiology

in Mississippi and Louisiana. He has entered into consent agreements with both states and has been monitored by the treatment management team in Mississipi, which reports to Louisiana on a quarterly basis. When this issue arose in Ohio, he was offered the opportunity to resign his Ohio license with the understanding that there would be nothing reported to the National Data Bank as long as he agreed never to practice in Ohio. Dr. Lehman stated that he didn't feel this would be right for him or for his recovery. In recovery, it is important to face up to things he has done, and that is why he is before the Board today. He does not intend to make excuses, but to try to put his mistakes in the past and in perspective. He doesn't know that he will ever practice in Ohio, but this is where he did all of his training and where he lived for 32 years. He is not willing to give up his right to practice here without an appeal.

Dr. Lehman stated that he knows that it is important that he didn't report his impairment in a timely manner to the Board, but he was facing a general court-martial and the possibility of five years in prison for forging prescriptions. His lawyer recommended that he not report anything until the appeals process was complete.

Dr. Lehman stated that he has been in recovery for approximately two years.

Dr. Stephens asked whether Mr. Graff had stated that Dr. Lehman didn't know that he had lost his hospital privileges.

Mr. Graff stated that Dr. Lehman didn't know about the revocation hearing four months after he left the military. He was notified of the suspension of his privileges during investigation.

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

Ms. Sotos stated that this case involes a felony for the illegal processing of a drug document. Dr. Lehman forged the signature of another physician on a prescription in order to obtain and ultimately ingest controlled substances. He also failed to disclose the suspension of hospital privileges on his renewal application. In August 1990, Dr. Lehman underwent a dental procedure. He became addicted to Tylenol #3. Dr. Lehman subsequently wrote prescriptions for his wife but took the medications himself. In January 1991, Dr. Lehman forged a physician's signature for Phenaphen #3, a Schedule III controlled substance. This forged prescription was subsequently discovered in a routine pharmacy review in August 1991. In September 1991, his privileges at Kesler Medical Center were suspended. In July 1992, Dr. Lehman entered into an appropriate program. That was the month he was convicted by general court-martial, and that was the month that he did not disclose to the Board that his clinical privileges had been suspended. In October 1992, Dr. Lehman started to drink alcohol. In January 1993, his privileges were

revoked. In February 1993, Dr. Lehman's wife disclosed to the Caduceus program that he was drinking. In June 1993 he entered into another contract with the Caduceus program. Dr. Lehman's privileges at Kesler Medical Center were ultimately revoked.

Ms. Sotos stated that the citation letter is not based on whether Dr. Lehman in fact knew his privileges were revoked. Dr. Lehman did not disclose his felony conduct to the military. He did not disclose his suspension of privileges to the Board, and he did not disclose to the Physician Recovery Program when he consumed alcohol in violation of his first recovery contract. Dr. Lehman's conduct was intentional and deliberate.

Ms. Sotos noted that Mr. Graff asks the Board to overlook Dr. Lehman's offenses and fashion a remedy which in reality is no sanction at all and is confusing at best. As proposed in Mr. Graff's objections to the Report and Recommendation, Dr. Lehman only intends to be subject to the Board's scrutiny if he returns to Ohio to practice. As indicated by Dr. Lehman today and previously, there are no intentions at this point to return to Ohio to practice. If he returns, he intends to be subject only to probationary terms. The Hearing Examiner proposes a suspension of one year, probation for two years, assurances for a safe practice, and a requirement that Dr. Lehman take an ethics course. Ms. Sotos stated that the Findings of Fact and Conclusions are appropriate, and the Proposed Order is reasonable. Ms. Sotos urged the Board to adopt the Hearing Examiner's Report and Recommendation.

DR. GARG MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF THOMAS M. LEHMAN, M.D. DR. BUCHAN SECONDED THE MOTION.

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

Dr. Stienecker questioned the need to require that Dr. Lehman complete an ethics course. He added that Dr. Lehman recognizes his problem and has undergone treatment for it. Requiring such a course would be a moot point since Dr. Lehman is already doing a program in two other states.

DR. STIENECKER MOVED TO DELETE PARAGRAPH 2b OF THE PROPOSED ORDER, AND TO RENUMBER THE REMAINING PARAGRAPHS ACCORDINGLY. DR. GARG SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. O'Day	- abstain
	Mr. Albert	- abstain
	Dr. Stienecker	- aye
	Dr. Gretter	- aye
	Dr. Agresta	- aye

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Dr. Stephens	- aye
Dr. Buchan	- aye
Ms. Noble	- aye
Mr. Sinnott	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye

The motion carried.

Dr. Gretter stated that in reviewing the transcript and exhibits in this case, the facts are there. He spoke in support of the amended order.

DR. STIENECKER MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF THOMAS M. LEHMAN, M.D. DR. BUCHAN SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:

Dr. O'Day	- abstain
Mr. Albert	- abstain
Dr. Stienecker	- aye
Dr. Gretter	- aye
Dr. Agresta	- aye
Dr. Stephens	- aye
Dr. Buchan	- aye
Ms. Noble	- aye
Mr. Sinnott	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye

The motion carried.

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August 11, 1993

Thomas M. Lehman, M.D.
74610 Diamondhead Dr., N.
Bay St. Louis, MS 39520

Dear Doctor Lehman:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

(1) On or about July 24, 1992, you were convicted by a general court martial for forging another provider's signature on a prescription for a controlled substance in violation of Article 107 of the Uniform Code of Military Justice.

The misconduct involved you acting with the intent to deceive in submitting to the Keesler Medical Center Pharmacy a false document, AF Form 781, multi-item prescription form, for Phenaphen III, a controlled substance, which document was false in that the prescription and signature of Major (Dr.) Kevin B. Chapin were false and were then known by you to be so false.

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

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "obtaining of, or attempting to obtain money or anything of value by fraudulent misrepresentations in the course of practice," as that clause is used in Section 4731.22(B)(8), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively constitute "commission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23(A) and (B)(1), Ohio Revised Code, Illegal processing of drug documents.

Mailed 8/12/93

(2) On or about July 1, 1992, you completed and signed an application for biennial registration of your license to practice medicine and surgery in the State of Ohio. You answered "no" to question number four (4) on that application which asks, "At any time since signing your last application for renewal of your certificate have you had any clinical privileges suspended, limited or revoked for reasons other than failure to maintain records or attend staff meetings?"

In fact, on or about September 30, 1991, you were notified that your clinical privileges were being suspended for six (6) months pending the outcome of an investigation that was in progress as to whether you prescribed controlled substances in violation of Air Force Regulations. Further, on or about March 26, 1992, you were notified that the suspension of your clinical privileges was being extended for three (3) months pending final disposition of your case by the Base Legal Office.

Your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

(3) On or about September 30, 1991, you were notified that your clinical privileges were suspended for six (6) months pending the outcome of an investigation that was in progress as to whether you prescribed controlled substances in violation of Air Force Regulations. Further, on or about March 26, 1992, you were notified that the suspension of your clinical privileges was being extended for three (3) months pending final disposition of your case by the Base Legal Office. Further, on or about January 12, 1993, you were notified that your privileges to practice medicine in the Keesler Medical Center were revoked.

Your acts, conduct, and/or omissions as alleged in paragraph (3) above, individually and/or collectively, constitute "the revocation, suspension, restriction, reduction, or termination of clinical privileges by the department of defense, or the veterans administration of the United State, for any act or acts that would also constitute a violation of this chapter," as that clause is used in Section 4731.22(B)(24), Ohio Revised Code, to wit: Sections 4731.22(B)(5), (B)(8), and (B)(10), Ohio Revised Code, to wit: Sections 2925.23(A) and (B)(1), Ohio Revised Code, Illegal processing of drug documents.

August 11, 1993

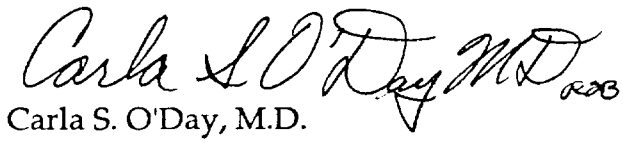
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



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

CSO:jmb

Enclosures:

CERTIFIED MAIL #P 348 885 267
RETURN RECEIPT REQUESTED

murders a bank employee during a robbery there is no private cause of action against the officer based on the alleged violation of RC § 2925.22: Burger v. U.S., 748 FSupp 1265 (S.D.).

2. (1983) Revised Code § 2317.02(B) does not make inadmissible the testimony of a physician regarding false statements made to said physician by a person seeking a prescription for an illegal drug where there is no evidence that the drug was obtained by said person for the treatment of any medical illness, disease or disorder: State v. Garrett, 8 OApp3d 244, 8 OBR 318, 456 NE2d 1319.

3. (1978) The possession of uncompleted preprinted blanks used for writing a prescription for a dangerous drug, prohibited by RC § 2925.22, involves more than the mere presence of an accused's proximity to such materials and his knowledge of their existence: State v. Reese, 56 OApp2d 278, 10 OO3d 285, 382 NE2d 1193.

4. (1989) Fines assessed and collected under prosecutions commenced for violations of RC Chapters 2925. and 3719. are excepted from the disbursement provisions of RC § 3375.52 and, pursuant to RC § 3719.21, are paid to the executive director of the State Board of Pharmacy and by him paid into the state treasury to the credit of the general revenue fund with the exception of mandatory drug fines, which are disbursed pursuant to RC § 2925.03(J): OAG No.89-103.

§ 2925.23 Illegal processing of drug documents.

(A) No person shall knowingly make a false statement in any prescription, order, report, or record required by Chapter 3719. of the Revised Code.

(B) No person shall intentionally make, utter, or sell, or knowingly possess a false or forged:

(1) Prescription;

(2) Uncompleted preprinted prescription blank used for writing a prescription;

(3) Official written order;

(4) License for a terminal distributor of dangerous drugs as required in section 4729.60 of the Revised Code;

(5) Registration certificate for a wholesale distributor of dangerous drugs as required in section 4729.60 of the Revised Code.

(C) No person, by theft as defined in section 2913.02 of the Revised Code, shall acquire any of the following:

(1) A prescription;

(2) An uncompleted preprinted prescription blank used for writing a prescription;

(3) An official written order;

(4) A blank official written order;

(5) A license or blank license for a terminal distributor of dangerous drugs as required in section 4729.60 of the Revised Code;

(6) A registration certificate or blank registration certificate for a wholesale distributor of dangerous drugs as required in section 4729.60 of the Revised Code.

(D) No person shall knowingly make or affix any false or forged label to a package or receptacle containing any dangerous drugs.

(E) Divisions (A) and (D) of this section do not apply to practitioners, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters 3719., 4715., 4725., 4729., 4731., and 4741. of the Revised Code.

(F) Whoever violates this section is guilty of illegal processing of drug documents, a felony of the fourth degree. If the offender previously has been convicted of a felony drug abuse offense, illegal processing of drug documents is a felony of the third degree. If the drug involved is a compound, mixture, preparation, or substance included in schedule I or II with the exception of marihuana, illegal processing of drug documents is a felony of the third degree. If the drug involved is a compound, mixture, preparation, or substance included in schedule I or II with the exception of marihuana, and the offender previously has been convicted of a felony drug abuse offense, illegal processing of drug documents is a felony of the second degree.

(G)(1) Notwithstanding the fines otherwise required to be imposed pursuant to section 2929.11 or 2929.31 of the Revised Code for violations of this section and notwithstanding section 2929.14 of the Revised Code, the court shall impose a mandatory fine of three thousand five hundred dollars if the violation of this section was a felony of the second degree, a mandatory fine of two thousand five hundred dollars if the violation of this section was a felony of the third degree, and a mandatory fine of one thousand five hundred dollars if the violation of this section was a felony of the fourth degree.

(2) The court may impose a fine in addition to a mandatory fine imposed pursuant to division (G)(1) of this section if the total of the additional and mandatory fines does not exceed the maximum fine that could be imposed pursuant to section 2929.11 or 2929.31 of the Revised Code.

(3) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, fifty per cent of any mandatory fine imposed pursuant to division (G)(1) of this section shall be paid by the clerk of the court in accordance with and subject to the requirements of, and shall be used as specified in, division (J) of section 2925.03 of the Revised Code, and fifty per cent shall be disbursed as provided in section 3719.21 of the Revised Code. Any additional fine imposed pursuant to division (G)(2) of this section shall be disbursed by the clerk of the court as otherwise provided by law.

(4) If a person is charged with any violation of this section and posts bail pursuant to sections 2937.22 to 2937.46 of the Revised Code or Criminal Rule 46, and if the person forfeits the bail, the forfeited bail shall be paid by the clerk of the court in accordance with and subject to the requirements of, and shall be used as specified in, division (G)(3) of this section.

(5) No court shall impose a mandatory fine pursuant to division (G)(1) of this section upon an offender who alleges, in an affidavit filed with the

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HISTORY: 136 v
144 v S 110. Eff 5-1

Cross-References

Penalties for felor
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Definitions appli
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Pleading, RC §
Proof, RC § 29
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Forms

Illegal processing

Research Aids

Illegal processing
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court prior to his sentencing, that he is indigent and is unable to pay any mandatory fine imposed pursuant to that division, if the court determines the offender is an indigent person and is unable to pay the fine.

(H) In addition to any other penalty imposed for a violation of this section, the court may suspend for up to five years the driver's or commercial driver's license of any person who is convicted of or has pleaded guilty to a violation of this section. If the offender is a professionally licensed person or a person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules, in addition to any other penalty imposed for a violation of this section, the court forthwith shall comply with section 2925.38 of the Revised Code.

HISTORY: 136 v H 300 (Eff 7-1-76); 143 v S 258 (Eff 11-20-90); 144 v S 110. Eff 5-19-92.

Cross-References to Related Sections

Penalties for felonies, RC § 2929.11.
Certain offenders disqualified from preschool employment, RC § 3301.54.
Controlled substance schedules, RC § 3719.41.
Convictions to be reported to professional licensing authorities, RC § 2925.38.
Definitions applicable to drug abuse offenses, RC § 3719.01.
Disposition of fines and forfeited bail, RC § 3719.21.
Drug abuse offense defined, RC § 2925.01.
Emergency paroles, RC § 2967.18.
False or forged prescription, RC § 4729.61.
Felony drug abuse offense defined, RC § 2925.01.
Knowingly defined, RC § 2901.22.
Notification to state medical board of conviction of certified health practitioner, RC § 4731.22.3.
Possess defined, RC § 2925.01.
Prior conviction—
Pleading, RC § 2941.11.
Proof, RC § 2945.75.
Suspension or revocation of license by trial judge, RC § 4507.16.

Forms

Illegal processing of drug documents. 4 OJI 525.23

Research Aids

Illegal processing of drug documents:
O-Jur3d: Crim L §§ 2297, 2298
Am-Jur2d: Drugs § 27.13
C.J.S.: Drugs&N § 152
West Key No. Reference
Drugs & N 71

ALR

Construction of provision of Uniform Narcotic Drug Act or similar statute dealing with obtaining or procuring the administration of a narcotic drug by fraud or deceit. 25 ALR3d 1118.

CASE NOTES AND OAG

1. (1984) A physician who unlawfully issues a prescription for a controlled substance not in the course of the bona fide treatment of a patient is guilty of selling a controlled substance in violation of RC § 2925.03: State v. Sway, 15 OS3d 112, 15 OBR 265, 472 NE2d 1065.

2. (1992) The defendant-physician did not violate RC § 2925.23(B)(2) by leaving pre-signed prescription blanks with his staff so his patients could receive maintenance medications: State v. Williams, 76 OApp3d 806, 603 NE2d 383.

3. (1991) Revised Code §§ 2925.03 and 2925.23 are not in all instances in conflict such that the latter statute controls. A pharmacist may be convicted for trafficking in drugs only where his conduct is so egregious that the dispensing of drugs is not in the course of bona fide treatment of a patient: State v. Friedman, 70 OApp3d 262, 590 NE2d 909.

4. (1984) Where defendant is charged with intentionally making, uttering, or selling false prescriptions which he contends were written in the course of his professional practice for a legitimate medical purpose, evidence concerning abuse potential, illegal use and street value of the drugs is relevant to both the issues of intent and the medical legitimacy of the prescriptions: State v. Gotsis, 13 OApp3d 282, 13 OBR 346, 469 NE2d 548.

5. (1990) Where there was no evidence as to who changed the date on the prescription and the circumstantial evidence supports a reasonable theory that defendant attempted to fill an authorized, albeit outdated, prescription, a conviction under RC § 2925.23 must be reversed: State v. McAdams, No. 89AP-1415 (10th Dist.).

6. (1989) Fines assessed and collected under prosecutions commenced for violations of RC Chapters 2925. and 3719. are excepted from the disbursement provisions of RC § 3375.52 and, pursuant to RC § 3719.21, are paid to the executive director of the State Board of Pharmacy and by him paid into the state treasury to the credit of the general revenue fund with the exception of mandatory drug fines, which are disbursed pursuant to RC § 2925.03(J): OAG No.89-103.

[HARMFUL INTOXICANTS]

§ 2925.31 Abusing harmful intoxicants.

(A) Except for lawful research, clinical, medical, dental, or veterinary purposes, no person, with purpose to induce intoxication or similar physiological effects, shall obtain, possess, or use a harmful intoxicant.

(B) Whoever violates this section is guilty of abusing harmful intoxicants, a misdemeanor of the fourth degree. If the offender previously has been convicted of a drug abuse offense, abusing harmful intoxicants is a misdemeanor of the first degree.

(C)(1) Notwithstanding the fines otherwise required to be imposed pursuant to section 2929.21 or 2929.31 of the Revised Code for violations of this section and notwithstanding section 2929.22 of the Revised Code, the court shall impose a mandatory fine of one thousand dollars if the violation of this section was a misdemeanor of the first degree and a mandatory fine of two hundred fifty dollars if the violation of this section was a misdemeanor of the fourth degree.

(2) The court may impose a fine in addition to a mandatory fine imposed pursuant to division (C)(1)