IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

EDWARD B. BLACKMON, JR., M.D.	]	CASE NO. 90CVC10-7582
Appellant,	]	JUDGE FAIS
vs.	]	
STATE MEDICAL BOARD OF OHIO,	]	
Appellee.	]	

FILED
COMMON PLEAS COURT
92 JAN 21 AM 11:56
FRANKLIN COUNTY, OHIO
THOMAS J. ENRIGHT
CLERK OF COURTS

D E C I S I O N

Rendered this 21st day of January, 1992.

FAIS, J.

This case is before the Court on administrative appeal, pursuant to Ohio Rev. Code §119.12, from the September 18, 1990 Order of the State Medical Board of Ohio ("Board") revoking Edward B. Blackmon, Jr., M.D.'s ("Blackmon") certificate to practice medicine and surgery, and staying such revocation with a suspension for an indefinite period of time, but not less than one (1) year. The Board adopted the Hearing Examiner's Report and Recommendation that Blackmon violated the following provisions of Ohio law:

1. Ohio Rev. Code §4731.22(B)(2)--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.

2. Ohio Rev. Code §4731.22(B)(3)--selling, prescribing, giving away, or administering drugs for other than legitimate therapeutic purposes.

3. Ohio Rev. 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.

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The basic complaint against Dr. Blackmon was the perception that he over-prescribed the narcotic Tylox for his wife to relieve chronic and severe pain over a two year period which ended before the Board investigated him.

An opinion was stated within the transcript by a Dr. Dierker that it is possible to become addicted to Tylox and that it is possible to suffer ill effects from its prolonged use. There was, however, no evidence that Mrs. Blackmon became addicted to Tylox or that she suffered any ill effects from taking it. The evidence was to the contrary and showed that Mrs. Blackmon had suffered from an unusual number of pain-producing ailments in the years prior to the two years in question and that Tylox was the only drug that both relieved her pain and did not have detrimental side effects. It had been prescribed for her by seven other physicians and three dentists for these reasons. She testified that it was the only drug that gave her some relief from her pain while allowing her to function normally. It appears that she had developed a natural tolerance to Tylox which required a larger dosage to be effective than would have been the case if she had not had the particular medical history which she had. This required that Dr. Blackmon keep in mind the risk of addiction versus the benefit of eliminating the pain. The evidence shows that he did this successfully. She did not become addicted and she was able to live a normal life.

The above risk versus benefit decision is the <u>sine qua non</u> of the medical profession and it is bravely faced by practitioners

daily. If these practioners are threatened with the loss of their license because it is possible to become addicted to the drug being prescribed, the benefits of the science which produced the drug and the long educational process on which their judgment is based will be lost to the public in a witch hunt.

The accused doctor had the unusual opportunity to observe the patient through her medical history preceding the two year period in question and to observe her daily during that period. This unique position permitted him to make that harm versus benefit decision with more information than any other doctor. There is not reliable, probative and substantial evidence to support the conclusion that he was wrong in result or in method.

The decision of the State Medical Board is REVERSED and VACATED.

For purposes of the record, Appellee's Motion to Strike is SUSTAINED as it relates to the Certificate of Achievement and recommendation of Dr. Blackmon for an Army Achievement Medal for his service during Operation Desert Storm. This evidence of the doctor's character and courage is precluded for the reasons stated by Appellee and further is not necessary for a decision in this case. Counsel for Appellant shall submit Judgment Entry pursuant to court rule.

DAVID W. FAIS, JUDGE

Copies to:

MICHAEL F. COLLEY, Esq.
AMYSUE TAYLOR, Esq.
Counsel for Appellant

ODELLA LAMPKIN, AAG
JOHN C. DOWLING, AAG
Counsel for Appellee

JOHN C. DOWLING, Esq.

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

92 AP 349

EDWARD B. BLACKMON, JR., M.D.	:	
Appellant-Appellee	:	CASE NO. 90CVC10-7582
vs.	:	
STATE MEDICAL BOARD OF OHIO	:	
Appellee-Appellant.	:	

FILED
COURT OF APPEALS
FRANKLIN CO. OHIO
1992 MAR 12 PM 4:47
THOMAS J. ENRIGHT
CLERK OF COURTS

NOTICE OF APPEAL

Now comes State Medical Board of Ohio, by and through counsel, and hereby gives notice of its appeal to the Franklin County Court of Appeals, Tenth Appellate District, from the decision and entry of the lower court, the Franklin County Court of Common Pleas filed January 21, 1992 and February 11, 1992, respectively. (See copies attached).

Respectfully submitted,

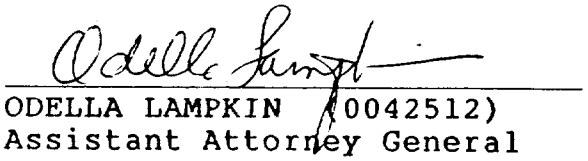
ATTORNEY GENERAL LEE FISHER

ODELLA LAMPKIN (0042512)
Assistant Attorney General
Health & Human Services Section
State Office Tower, 15th Flr.
30 East Broad Street
Columbus, Ohio 43266-0410
(614) 466-8600

Counsel for Appellee-Appellant
State Medical Board of Ohio

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Notice of Appeal was sent via regular U.S. Mail this 12th day of March, 1992 to Michael F. Colley, Esq. and AmySue Taylor, Esq. of Michael F. Colley Co., L.P.A., 536 S. High Street, Columbus, Ohio 43215.



ODELLA LAMPKIN (0042512)
Assistant Attorney General

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

Edward B. Blackmon, Jr., M.D.	:	
Appellant,	:	
vs.	:	Case No. 90CVC-10-7582
State Medical Board of Ohio,	:	Judge Fais
Appellee,	:	

FILED
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
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THOMAS J. EVANS
CLERK OF COURTS

JUDGMENT ENTRY

For the reasons set forth in the Court's Decision in this matter rendered on January 21, 1992, the appeal of Edward B. Blackmon, Jr., M.D., from the September 18, 1990 Order of the State Medical Board of Ohio, suspending his certificate to practice medicine and surgery in the State of Ohio is hereby GRANTED.

It is therefore ORDERED, ADJUDGED and DECREED that the said Order of the State Medical Board of Ohio is hereby REVERSED and VACATED and the license of Edward B. Blackmon, Jr. to practice medicine and surgery in Ohio is hereby REINSTATED without any restriction.

Dated: _____

David W. Fais, Judge

APPROVED:

MICHAEL F. COLLEY CO., LPA

Michael F. Colley #0007286

AmySue Taylor #0011331
536 S. High Street
Columbus, Ohio 43215
(614) 228-6453
Counsel for Appellant Edward B. Blackmon, Jr., M.D.

ATTORNEY GENERAL LEE FISHER

Odella Lampkin #0042512

John C. Dowling #0002806
Assistant Attorneys General
30 East Broad Street
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Columbus, Ohio 43266-0410
(614) 466-8600
Counsel for Appellee State Medical Board of Ohio

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

STATE MEDICAL BOARD OF OHIO

JAN 28 PM 12:40

Edward B. Blackmon, Jr., M.D.	:	
Appellant	:	Case No. 90CVG-10-7582
vs.	:	Judge David W. Fais
State Medical Board of Ohio	:	
Appellee	:	

RECEIVED
ATTORNEY GENERAL'S OFFICE
JAN 2 1991
HEALTH, EDUCATION & HUMAN SERVICES SECTION

ENTRY

For good cause shown, the Court hereby removes any ~~and all~~ previously ordered limitations on plaintiff's license to practice medicine in the State of Ohio. ~~said limitations~~ shall be immediately reinstated upon Appellant returning to his private practice in the State of Ohio.

1-16-90
(date)

Judge David W. Fais

Michael F. Colley
MICHAEL F. COLLEY CO., L.P.A.
536 S. High Street
Columbus, Ohio 43215
(614)228-6453
Attorney for Appellant

submitted
John C. Dowling
Assistant Attorney General
30 E. Broad Street, 15th Floor
Columbus, Ohio 43266-0410
(614)466-8600

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

IN THE MATTER OF	:	
	:	CASE NO. 90CVG-10-7582
EDWARD B. BLACKMON, JR., M.D.	:	JUDGE FAIS
	:	
	:	

E N T R Y

On October 17, 1990, an oral hearing was held on Plaintiff's Motion for Suspension of the State Medical Board's Order pending appeal. Since implementation of the Order would cause Plaintiff unusual hardship and for the health, safety and welfare of the community, Plaintiff's motion is well taken. It is therefore, ORDERED, ADJUDGED and DECREED that the State Medical Board Order of September 12, 1990, be and is hereby suspended for the duration of the appeal or fifteen (15) months, whichever comes first.

It is further ORDERED that for the duration of the appeal the Plaintiff shall not treat family members, except in the event of life-threatening emergencies; and shall not prescribe Schedule II and III narcotics for patients in conjunction with his office practice. There shall be no limitations on Plaintiff's right to prescribe Schedule II and III narcotics to patients in the course of hospital treatment.

IT IS SO ORDERED.

(date)

Judge David Fais

FILED
90 OCT 22 PM 4:39
CLERK OF COURTS

APPROVED:

Michael F. Colley
MICHAEL F. COLLEY CO., LPA
536 S. High Street
Columbus, Ohio 43215
(614) 228-6453
Attorney for Plaintiff

MENTAL HEALTH & HUMAN SERVICES SECTION

Submitted but not responded to/OST

John C. Dowling
Assistant Attorney General
30 E. Broad Street, 15th Floor
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STATE OF OHIO
THE STATE MEDICAL BOARD
77 South High Street
17th Floor
Columbus, Ohio 43266-0315

(614)466-3934

September 14, 1990

Edward B. Blackmon, Jr., M.D.
421 Graham Road, Suite E
Cuyahoga Falls, Ohio 44221

Dear Doctor Blackmon:

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 September 12, 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 055 325 316
RETURN RECEIPT REQUESTED

cc: Thomas W. Hess, Esq.

CERTIFIED MAIL NO. P 055 325 318
RETURN RECEIPT REQUESTED

Mailed 9/18/90

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 September 12, 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 Edward B. Blackmon, Jr., M.D., as it appears in the Journal of the State Medical Board of Ohio.

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

(SEAL)

Henry G. Cramblett, M.D.
Secretary

September 18, 1990
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

EDWARD B. BLACKMON, JR., M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 12th day of September, 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 atached 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 Edward B. Blackmon, Jr., M.D., to practice medicine and surgery in the State of Ohio shall be REVOKED. Such revocation is stayed, and Dr. Blackmon'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. Blackmon's certificate to practice unless and until all of the following minimum requirements are met:

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

   b. Dr. Blackmon shall provide documentation of successful completion of a minimum of thirty (30) hours of Continuing Medical Education courses in the areas of pharmacology, chronic pain management, and chemical dependency recognition and management. Such courses are to be approved in advance by the Board and shall not count toward fulfillment of the Continuing Medical Education required by Section 4731.281, Ohio Revised Code.

c. Dr. Blackmon shall take and pass the SPEX examination or any similar written examination which the Board deems appropriate to assess his clinical competency.

d. In the event that Dr. Blackmon has not been engaged in the active practice of medicine or surgery for a period in excess of two (2) years prior to his application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Blackmon's fitness to resume practice.

3. Upon reinstatement, Dr. Blackmon's license shall be subject to the following probationary terms, conditions, and limitations for a period of five (5) years:

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

b. Dr. Blackmon shall submit quarterly declarations under penalty of perjury stating that there has been compliance with all the terms of probation.

c. Dr. Blackmon shall appear in person for interviews before the full Board or its designated representative at six (6) month intervals, or as otherwise requested by the Board

d. Dr. Blackmon shall be ineligible to reapply for or to hold registration with the United States Drug Enforcement Administration.

e. Dr. Blackmon shall refrain from treating family members, except in the event of life-threatening emergency.

f. In the event that Dr. Blackmon's registration with the United States Drug Enforcement Administration is restored pursuant to Board approval, Dr. Blackmon shall thereafter keep a log of any controlled substances purchased, prescribed, dispensed, or administered. Further, Dr. Blackmon shall make his patient records with regard to such prescribing available for review by an agent of the State Medical Board upon request.

g. In the event that Dr. Blackmon should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Blackmon 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.

4. If Dr. Blackmon violates the terms of this Order in any respect, the Board, after giving Dr. Blackmon notice and an opportunity to be heard, may set aside the stay order and impose the revocation of his certificate.

5. Upon successful completion of probation, Dr. Blackmon's license will be fully restored.

This Order shall become thirty (30) days from the date of mailing of notification of approval by the State Medical Board of Ohio. In the thirty (30) day interim, Dr. Blackmon shall not undertake the care of any patient not already under his care.

(SEAL)

Henry G. Cramblett, M,.D.
Secretary

September 18, 1990

Date

REPORT AND RECOMMENDATION
IN THE MATTER OF EDWARD B. BLACKMON, JR., M.D.

The Matter of Edward B. Blackmon, Jr., M.D., came on for hearing before me, Joan Irwin Fishel, Esq., Hearing Examiner for the State Medical Board of Ohio, on July 16, 1990.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

A. By letter dated February 14, 1990 (State's Exhibit #1), the State Medical Board notified Edward B. Blackmon, Jr., M.D., that it proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio due to his prescribing of Tylox, a Schedule II Controlled Substance, to Patient #1 (so identified in the confidential Patient Key attached to State's Exhibit #1) from July 29, 1987 through August 25, 1989. The Board alleged that this prescribing occurred with increasing frequency and increasing dosage throughout Patient #1's pregnancy and following delivery on August 1, 1988. The Board alleged that Dr. Blackmon's medical records did not indicate an appropriate consultation for Patient #1's migraine headaches and/or complaints of pain until August 1989. Dr. Blackmon's medical records were also alleged to be incomplete and inaccurate regarding his examination, evaluation, and treatment of Patient #1 prior to her delivery in August 1988 and alleged to inaccurately reflect his utilization of controlled substances in the treatment of Patient #1.

The Board alleged that Dr. Blackmon's acts, conduct, and/or omissions constituted:

1. "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;

2. "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;

3. "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

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4. "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)(20), Ohio Revised Code, to wit: Rule 4731-11-02(A), (C), and (D), Ohio Administrative Code. Pursuant to paragraph (F) of Rule 4731-11-02, Ohio Administrative Code, a violation of paragraph (C) of that Rule, if committed purposely, knowingly, or recklessly, further constitutes a violation of Section 4731.22(B)(3), Ohio Revised Code.

B. By letter received by the State Medical Board on March 6, 1990 (State's Exhibit #2), Dr. Blackmon requested a hearing.

II. Appearances

A. On behalf of the State of Ohio: Anthony J. Celebrezze, Jr., Attorney General, by John C. Dowling, Assistant Attorney General

B. On behalf of the Respondent: Thomas W . Hess, Esq.

1. Leroy J. Dierker, M.D.

2. Michael A. Giar

3. Timothy Lea

4. Edward B. Blackmon, Jr., M.D., as on cross-examination

B. Presented by the Respondent

1. Susan Blackmon

2. Glen D. Solomon, M.D.

3. Warren P. Kilway, M.D.

4. Edward B. Blackmon, Jr., M.D.

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 #1A: Copy of the certified mail return and receipt card showing service of State's Exhibit #1.

STATE BOARD OF MEDICINE
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2. State's Exhibit #3: March 13, 1990 letter to George Tsarnas, Esq., from the State Medical Board advising that a hearing initially set for March 20, 1990, was postponed pursuant to Section 119.09, Ohio Revised Code.

3. State's Exhibit #4: March 19, 1990 letter to Attorney Tsarnas from the State Medical Board scheduling the hearing for May 22, 1990.

4. State's Exhibit #5: Entry dated April 30, 1990 granting the Respondent's continuance request and rescheduling this Matter for July 16, 1990.

5. State's Exhibit #6: Curriculum vitae of Leroy Dierker, M.D.

6. State's Exhibit #7: Dr. Blackmon's patient record for his wife, Susan Blackmon. (See Section V. - Other Matters).

7. State's Exhibit #8: Susan Blackmon's medical record from St. Thomas Medical Center.

8. State's Exhibit #9: Copies of numerous Tylox prescriptions written by Dr. Blackmon for Susan Blackmon.

9. State's Exhibit #9A: Additional copies of Tylox prescriptions writen by Dr. Blackmon for Susan Blackmon (See Section V. - Other Matters).

10. State's Exhibit #10: Computer printout generated by Blue Cross and Blue Shield of Ohio showing, by month, the number of Tylox prescriptions written by Dr. Blackmon for Patient #1, the day on which the prescription was written, the quantity of drug, and the name and address of the pharmacy at which the prescription was filled.

B. Presented by the Respondent

1. Respondent's Exhibit A: Dental records for Susan Blackmon for the period of March 13, 1984 through December 6, 1984.

2. Respondent's Exhibit B: Autopsy record for Dr. and Mrs. Blackmon's infant son delivered by C-section on May 28, 1985, and a copy of the pathology report showing results of testing done on abdominal scar tissue, the placenta and umbilical cord.

3. Respondent's Exhibit C: History and Physical from Mrs. Blackmon's delivery of her third child at Cape Fear Valley Medical Center, Fayetteville, North Carolina, on September 23, 1986.

STATE MEDICAL BOARD
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4. Respondent's Exhibit D: Dental record for Susan P. Blackmon for the period of February 26, 1987 through January 4, 1988.

5. Respondent's Exhibit E: Outpatient record for Susan Blackmon's physical therapy dated July 21, 1987.

6. Respondent's Exhibit F: Outpatient record for Susan Blackmon's physical therapy dated August 14, 1987.

7. Respondent's Exhibit G: Patient record for Susan Blackmon for Ob/Gyn care rendered by Dr. Scherger for the period August 19, 1987 to December 7, 1987.

8. Respondent's Exhibit H: Photograph of Dr. Blackmon's waiting room at the Graham Road office in Cuyahoga Falls, Ohio.

9. Respondent's Exhibit I: Photograph of Dr. Blackmon's waiting room at the Graham Road office in Cuyahoga Falls, Ohio.

10. Respondent's Exhibit J: Photograph of Dr. Blackmon's personal office at the Graham Road office in Cuyahoga Falls, Ohio.

11. Respondent's Exhibit K: Photograph of Mrs. Blackmon's personal office at the Graham Road office in Cuyahoga Falls, Ohio.

12. Respondent's Exhibit L: Photograph of the insurance office at the Graham Road office in Cuyahoga Falls, Ohio.

13. Respondent's Exhibit M: Pamphlet welcoming patients to Dr. Blackmon's practice.

14. Respondent's Exhibit N: Cat-scan report for Susan Blackmon dated April 21, 1988.

15. Respondent's Exhibit O: EEG report for Susan Blackmon dated April 21, 1988.

16. Respondent's Exhibit P: Copy of a prescription for 14 Tylox written by Thomas P. Russin, D.D.S., for Mrs. Blackmon on April 27, 1989.

17. Respondent's Exhibit Q: Patient record for Susan Blackmon for treatment of varicose veins on July 26, 1989.

18. Respondent's Exhibit R: Operative report and pathological report for Susan Blackmon's laparoscopy on March 19, 1990.

19. Respondent's Exhibit S: Dr. Eric Jenison's patient record for Susan Blackmon for an examination on June 19, 1990.

STATE MEDICAL BOARD
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20. Respondent's Exhibit T: Operation record for Susan Blackmon's hysterectomy on June 25, 1990.

21. Respondent's Exhibit U: Curriculum vitae of Glen D. Solomon, M.D.

22. Respondent's Exhibit V: Dr. Blackmon's standard obstetrical patient record.

C. Hearing Exhibits

On the Hearing Examiner's own motion, an excerpt from the 1987 Physician's Desk Reference describing Tylox will be admitted in this Matter as Hearing Exhibit #1.

V. Others Matters

A. At hearing, Susan Blackmon, who had been previously identified by the State (State's Exhibit #1) as Patient #1, waived her right to confidentiality in these proceedings and waived her physician/patient privilege.

B. On July 20, 1990, the State filed with the Board a Motion to Reopen the Record in this Matter. The State requested that the record be reopened for the submission of approximately twenty-eight (28) additional prescriptions written by Dr. Blackmon for Mrs. Blackmon which had inadvertently been omitted from State's Exhibit #9 at the time of the hearing. The Attorney Hearing Examiner issued an Entry on July 31, 1990, stating that the record amply detailed the investigative process that had been conducted in this Matter and stating that all prescriptions that had been found as part of this investigation should be in evidence. As of the date of that Entry no response to the State's Motion had been filed by the Respondent.

On August 1, 1990 Respondent's Memorandum in Opposition was filed with the Board. Respondent asserted that the State's request should be denied because the evidence sought to be admitted was not "newly discovered" and that only newly discovered evidence was covered under Rule 4731-13-15, Ohio Administrative Code. On August 2, 1990 the Attorney Hearing Examiner issued another Entry acknowledging the receipt of Respondent's Memorandum in Opposition and informing the parties that the initial Entry would not be changed. The Attorney Hearing Examiner found the Respondent's arguments unpersuasive. On August 2, 1990 a letter was received from Respondent's counsel requesting admission into the record of the Memorandum in Opposition and offering a further argument that pursuant to Rule 4731-13-15(E), Ohio Administrative Code, the Attorney Hearing Examiner did not have the authority to reopen the record.

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The State's motion, the July 31 and August 2 Entries, the Respondent's Memorandum in Opposition and August 2 letter, will be admitted to the record in this Matter. The additional prescriptions admitted into evidence pursuant to the July 31 Entry will be marked as State's Exhibit #9A.

FINDINGS OF FACT

1. Edward B. Blackmon, Jr., M.D., is an obstetrician/gynecologist with a solo practice in the Akron, Ohio area. Beginning in the summer of 1987, and until approximately September 1989, Dr. Blackmon was the treating physician for his wife Susan. During that time period he treated her for complaints of abdominal pain, menstrual cramping, migraine headaches, tooth pain, and varicose veins. He also followed the course of her pregnancy and was the attending physician at the C-section delivery of his daughter on August 1, 1988.

   Dr. Blackmon prescribed Tylox for his wife's various pain complaints during this time period in the amounts and on the dates as indicated in paragraph number one of the State's citation letter, except for the following additions, changes, and/or deletions: a prescription for 60 Tylox on September 25, 1988 should be added; the prescription listed for October 2, 1988 was actually dated October 3, 1988; the prescription listed for December 26, 1988 was actually dated December 27, 1988; and prescriptions for the following dates should be deleted as they are not within State's Exhibits #9 or #9A - January 26, 1988, October 10, 1988, December 9, 1988, March 5, 1989, April 5, 1989, June 2, 6, 15, 18, 22, 25, 1989, July 17, 1989, and August 14 and 21, 1989.

   Over a period of approximately 755 days Dr. Blackmon made available for Patient #1 6,810 dosage units of Tylox, or approximately 9 tablets per day.

   These facts are established by State's Exhibits #8 and #9.

2. Tylox is a Schedule II controlled substance narcotic analgesic consisting of Tylenol and oxycodone. Psychic dependence, physical dependence and tolerance may develop upon repeated use. Tylox is indicated for the relief of moderate to moderately severe pain. The usual adult dosage is one capsule every six hours.

   These facts are established by Hearing Exhibit #1 and by the testimony of Dr. Dierker (Tr. 22-23).

3. Susan Blackmon has a history of migraine headaches. She had a seizure of unknown origin at the age of eighteen. Her migraines began in the second trimester of her first pregnancy in 1981-1982. These headaches lasted for approximately two months and then went away. Her obstetrician at that

STATE MEDICAL BOARD
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time prescribed Tylox for those headaches. This pregnancy resulted in a daughter delivered by Cesarean section in March 1982. The baby had been premature and in a breech position. Mrs. Blackmon's post-operative pain medication was Tylox; she had not experienced any pain relief with morphine. The migraines did not continue after the delivery and Mrs. Blackmon testified that she had experienced no withdrawal symptoms after ceasing Tylox use.

Mrs. Blackmon also experienced migraines during her second pregnancy. A repeat C-section was done in November 1983 while the Blackmon family was stationed at an army base in Frankfurt, Germany. With this pregnancy, migraine headaches were experienced throughout the second and third trimester. Again, Mrs. Blackmon's attending physician prescribed Tylox as needed for pain. The migraines continued while Mrs. Blackmon nursed her child for a four to six week period, but stopped thereafter. Mrs. Blackmon testified she had experienced no withdrawal symptoms after ceasing Tylox use.

Mrs. Blackmon experienced migraines throughout her third pregnancy. By this time the Blackmon family had moved to Fayetteville, North Carolina. Her migraines produced excruciating pain with sensitivity to noise and light. She would be nauseous and the pain felt like a vise on her head. She was prescribed Tylox throughtout her pregnancy by her attending physician. A baby boy was delivered via C-section in May 1985 but died fourteen hours later from pneumonia and sepsis. Mrs. Blackmon had headaches off and on after delivery for which she took Tylox and Fiorinal. Mrs. Blackmon testified that she had experienced no withdrawal symptoms after ceasing Tylox use.

After a year in North Carolina, the Blackmon's moved to Lima, Ohio. Mrs. Blackmon's fourth child, a daughter, was delivered by C-section in September 1986. Again, Mrs. Blackmon suffered migraine headaches throughout her pregnancy and was prescribed Tylox. The migraines continued throughout the seven-month period that she nursed the baby. Mrs. Blackmon testified that she had experienced no withdrawal symptoms after ceasing Tylox use.

In January 1988 the Blackmons moved to Akron, Ohio. Their fourth daughter was born on August 1, 1988. Dr. Blackmon was the prenatal treating physician and the attending physician at the C-section delivery. He prescribed Tylox for the severe migraine headaches and other pain complaints that Patient #1 experienced almost daily throughout this pregnancy and for approximately a year thereafter.

These facts are established by the testimony of Mrs. Blackmon (Tr. 101-102, 105-108, 112-117, 121-123), the testimony of Dr. Blackmon (Tr. 188-189, 191, 199, 202-210), State's Exhibits #8 and #9, and Respondent's Exhibits B and C.

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4. Before being treated by her husband, Mrs. Blackmon had experienced numerous pain producing problems in addition to her migraines. In 1982 Mrs. Blackmon was diagnosed as suffering from superior mesentery artery syndrome, a condition in which the artery serving the intestines is pushed up against the duodenum causing digestional obstruction, including nausea and indigestion. Mrs. Blackmon did not indicate that she had ever taken Tylox for this condition. Mrs. Blackmon had extensive dental work, specifically a bridge and gum grafts, done between March and December 1984. Her dentist prescribed 10 Tylox on March 16, 1984 and 15 Tylox on May 15, 1984.

   In March 1987, Mrs. Blackmon's dentist in Lima diagnosed her as suffering from temporomandibular joint dysfunction (TMJ). She was under the dentist's care from February 26, 1987 through January 4, 1988. This syndrome caused Mrs. Blackmon to suffer from headaches, particulary in the morning. Mrs. Blackmon was given a dental splint to wear in order to reposition her teeth and prevent teeth grinding. She also underwent physical therapy consisting of moist heat and ultrasound to her neck and temporalmandibular joints. She was advised on relaxation techniques. On June 30, 1987 the dentist wrote one prescription for Tylox for her pain. Also during 1987, Mrs. Blackmon was hospitalized for severe abdominal pain related to gastrointestinal disease or the flu. Her family physician at that time was Dr. Scherger. Dr. Scherger, on November 4, 1987 prescribed 20 Tylox and Inderol for Mrs. Blackmon's headaches. At the next visit of December 7, 1987 he prescribed only non-narcotic medication.

   Beginning with her second or third pregnancy, Mrs. Blackmon experienced severe pain from varicose veins. As a consequence of repeat C-sections, Mrs. Blackmon developed abdominal scar tissue which caused her significant pain. It is not clear whether the pain from these conditions was independently treated with Tylox or only in conjunction with the migraine pain during pregnancy.

   These facts are established by the testimony of Mrs. Blackmon (Tr. 103-104, 108-110, 114, 118-120, 129-132), the testimony of Dr. Blackmon (Tr. 196-197, 206, 209) and Respondent's Exhibits A through G, P through R.

5. Dr. Blackmon first prescribed Tylox for Mrs. Blackmon in July, 1987. This was at the time that she was suffering from TMJ headaches and severe abdominal pain, but before the outset of her fifth pregnancy. Additional prescriptions were written by Dr. Blackmon in August, October, November and December, 1987. This was a period when Mrs. Blackmon was under the care of another physician, Dr. Scherger, and under the care of her dentist. Though Dr. Scherger had prescribed Inderal LA and 20 Tylox on November 4, 1987, Dr. Blackmon prescribed 40 Tylox on November 18, 1990. Dr. Blackmon also prescribed 40 Tylox on December 8, 1987, one day after Mrs. Blackmon received a prescription for non-narcotic headache medication from Dr. Scherger. There is no indication that Dr. Scherger or the dentist was aware of Dr. Blackmon's prescribing.

   These facts are established by State's Exhibit #9 and by Respondent's Exhibits D and G.

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6. Both Dr. and Mrs. Blackmon testified that Dr. Blackmon had decided to treat Patient #1 during her fifth pregnancy because they had just recently moved to Akron and did not know any other physicians. They had had a bad experience with the physician in North Carolina who had delivered their son. Dr. Blackmon further testified that it had always been his desire to deliver one of his children.

   These facts are established by the testimony of Mrs. Blackmon (Tr. 122) and by the testimony of Dr. Blackmon (Tr. 210).

7. Dr. Blackmon used a standard obstetrical patient record for Mrs. Blackmon's fifth pregnancy. He testified that these forms had been supplied to all Akron area physicians by St. Thomas Hospital. The form consists of three separate pages: a.) Prenatal History; b.) Prenatal Screening and Plan; and c.) Prenatal Flow and Developing Problems. These obstetrical records are contained within State's Exhibit #7. These records note Mrs. Blackmon's prenatal office visits and record typical obstetrical information such as blood pressure, gestational age, fundus, fetal presentation, fetal heart rate, the dates of or results of ultrasounds, and lab results. These obstetrical records do not indicate that throughout the pregnancy Dr. Blackmon prescribed Tylox for Patient #1's migraines and other pain complaints. Migraines are mentioned only twice, once under "comments" in the "Prenatal Flow" section for a visit in late May or early June and once in the "Historical Problems" section. From January through August 1, 1988, the date of delivery, Dr. Blackmon actually wrote thirty-three (33) Tylox prescriptions for his wife with a usual dosage amount of 50 tablets each.

   These facts are established by State's Exhibit #7 and by the testimony of Dr. Blackmon (Tr. 219).

8. In April 1988, Dr. Blackmon insisted that Patient #1 get a neurological evaluation due to the severity of her migraines. He accompanied her to an appointment with Lawrence M. Saltis, M.D. On April 21, 1988, an EEG and a Cat-scan of the head were done and both showed normal results. Copies of these test results were not within the patient record (State's Exhibit #7) but were produced by Dr. Blackmon at hearing (Respondent's Exhibits N and O). Dr. Blackmon could not explain why the copies had not been within the patient record that he kept for his wife at his office; he had expected to receive them.

   These facts are established by the testimony of Dr. Blackmon (Tr. 212, 239), by State's Exhibit #8, and by Respondent's Exhibits N and O.

9. The patient record (State's Exhibit #7) contains narrative notes made by Dr. Blackmon for his post-delivery care of Mrs. Blackmon. The patient record reflects that at times Dr. Blackmon conducted a full physical examination of his wife and at times he did not. Numerous entries in the patient record simply recite Mrs. Blackmon's continuing pain complaints

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including migraines, headaches, varicose veins, ovarian cysts and infections. The patient record reflects Dr. Blackmon's prescribing of Tylox, but not the extent of that prescribing. For instance, a total of nine Tylox prescriptions are noted in the patient record for September 23, 1988 through August 21, 1989, when the number of prescriptions actually written was seventy (70). Dr. Blackmon would note Mrs. Blackmon's continuing use of Tylox without noting when a prescription had actually been written and its dosage amount.

The notes in the patient record do not indicate the use of any medications for migraine other than Tylox until February 27, 1989. The entry for that date indicates Inderal was prescribed. The entry for May 19, 1989 states that the patient had stopped using Inderal L.A. and that non-steroidal anti-inflammatory drugs offered no relief. Dr. Blackmon prescribed Calan on June 16, 1989. Dr. Blackmon continued to prescribe Tylox a month after Mrs. Blackmon consulted with a headache specialist on August 2, 1989. That headache specialist had prescribed non-narcotic medications for the treatment of Mrs. Blackmon's migraines (See Finding of Fact #11).

To relieve Mrs. Blackmon's abdominal pain, Dr. Blackmon prescribed antibiotics and eventually removed her IUD. He prescribed Pencillin for her tooth pain. There is no indication of any specific treatment of Mrs. Blackmon's varicose veins until June 2, 1989 when the record notes the use of support hose. She had her varicose veins evaluated at a circulatory center on July 26, 1989.

These facts are established by State's Exhibit #7.

10. Mrs. Blackmon became tolerant to Tylox, requiring her to take larger and larger amounts in order to acheive pain relief. In February 1988 a total of 190 dosage units of Tylox were prescribed; in June 1988 a total of 350 dosage units of Tylox were prescribed; and in October 1988 a total of 470 dosage units of Tylox were prescribed. On April 25, 1989 DBlackmon noted in the patient record that Mrs. Blackmon's use of Tylox was increasing as tolerance was developing. On June 25, 1989 he noted that his wife was continuing her large amount of Tylox use. On July 5, 1989 the patient record states, "continue efforts to wean off number...". The rest of the entry for that date is not in evidence. On July 17, 1989 Mrs. Blackmon was instructed to use non-steroidal anti-inflammatory drugs.

    These facts are established by State's Exhibit #7.

11. On August 2, 1989, Mrs. Blackmon was evaluated by Glen D. Solomon, M.D., a specialist in the treatment of headaches, at the Cleveland Clinic. After Mrs. Blackmon and her husband had learned of Dr. Solomon from a drug representative, Mrs. Blackmon had called to make an appointment. She had approximately three to four visits with Dr. Solomon between August and October 1989. Dr. Solomon diagnosed Mrs. Blackmon as suffering from mixed-heachache syndrome: migraine headaches plus chronic tension

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headaches. He prescribed Prozac, Corgard, Ansaid, and Norflex. In the early part of September 1989, Mrs. Blackmon's headaches stopped. She no longer has an occasion to use Tylox for migraine headaches.

These facts are established by State's Exhibit #7, by the testimony of Dr. Solomon (Tr. 160, 162-163), and by the testimony of Mrs. Blackmon (Tr. 133).

12. During the time that Dr. Blackmon cared for Patient #1, she worked as his office manager at his three different offices located in various parts of the greater Akron area. She was responsible for all administrative duties and also coordinated the decorating of the Graham Road office.

These facts are established by the testimony of Mrs. Blackmon (Tr. 123-126).

13. Both Dr. Blackmon and Mrs. Blackmon testified that Tylox had seemed to be the only narcotic pain medication that worked for Mrs. Blackmon. Tylenol with codeine upset her stomach and Percodan overmedicated her. Non-steroidal medications aggravated her ulcer. Further, Dr. Blackmon testified that Tylox had been the narcotic pain medication of choice in the army.

These facts are established by the testimony of Mrs. Blackmon (Tr. 130) and by the testimony of Dr. Blackmon (Tr. 200, 215).

14. The Tylox prescriptions written by Dr. Blackmon for Patient #1 between January 5, 1988 and April 15, 1989, were filled at twenty-eight (28) different pharmacies, twenty-five (25) of which are in the greater Akron area.

The prescriptions were obtained through an investigation conducted by the State Medical Board and Blue Cross and Blue Shield of Ohio.

These facts are established by State's Exhibit #10, the testimony of Michael Giar (Tr. 58, 66-67), and the testimony of Timothy Lea, (Tr. 80-83).

15. Dr. Blackmon testified that he had been aware of the potential for dependency with long-term use of Tylox when he had begun to prescribe it to Patient #1. However, he had seen Patient #1 use Tylox for long periods of time in the past. On those occasions she had stopped using the drug when the pain had stopped. He had never observed any withdrawal symptoms in Patient #1 nor had she ever engaged in any deceptive, drug-seeking behavior. In Dr. Blackmon's opinion he had merely continued an established pattern of prescribing for Patient #1. At all times he had believed the benefits of prescribing Tylox to outweigh the risk.

These facts are established by the testimony of Dr. Blackmon (Tr. 229, 234-237, and 264).

16. Leroy J. Dierker, M.D., testified as an expert witness of behalf of the State. Dr. Dierker is board certified in obstetrics and gynecology and in maternal-fetal medicine. Dr. Dierker is an associate professor at Case Western Reserve and director of the Maternal-Fetal Program at Cleveland Metro General Hospital. Dr. Dierker had reviewed Dr. Blackmon's patient records, the hospital record, the State's citation letter, and a computer printout of prescriptions in preparation for his testimony.

    Dr. Dierker has in the course of his practice treated many patients for chronic pain problems, including at least twenty-five to thirty patients who have suffered migraines during pregnancies. Dr. Dierker would only prescribe narcotic pain relievers during pregnancy if the pain was persistent, severe and debilitating. He would prescribe narcotic analgesics only on a short-term basis of one or two days. He would want to re-evaluate a patient whose pain persisted after two days because long-term use of narcotics carries a significant potential for dependence. Because of the increasing frequency of the prescriptions written by Dr. Blackmon, Dr. Dierker suspected that Mrs. Blackmon may have developed tolerance and/or dependence to the Tylox.

    Dr. Dierker explained that Tylox is a Category C drug. Category C drugs are those that have not been extensively tested in humans and have not received complete approval for use during pregnancy. While Category C drugs have not been shown to cause signicant teratogenic or developmental effects on the fetus, they can produce dependence in the newborn. With the safety of Category C drugs unproven, they are generally used only when their benefits are perceived to outweigh their risks.

    In Dr. Dierker's opinion, the care rendered by Dr. Blackmon to Mrs. Blackmon was inappropriate regardless of the numerous pain producing problems she had experienced. No concern for dependence or addiction are found in the record. In Dr. Dierker's opinion, the use of an increasing dosage of narcotic medication without documentation in the record is not appropriate and below the standard of care.

    These facts are established by the testimony of Dr. Dierker (Tr. 14-36, 52-53) and by Hearing Exhibit #1.

17. Dr. Solomon testified that Mrs. Blackmon had reported her use of Tylox to him but that he had not known of the extent of her use. He had assumed it to be two to six tablets per day, per migraine episode. Dr. Solomon did not state that Dr. Blackmon's prescribing of 10 to 12 Tylox per day for his wife constituted reasonable care discrimination in prescribing. He did, however, state that Dr. Blackmon's prescribing did not vary widely from what he had seen with other patients that had been referred to him. Also, it did not appear to Dr. Solomon that Dr. Blackmon had been prescribing for inappropriate reasons. Dr. Solomon would limit narcotic use to the management of an acute headache attack, that being for a one to two-day period.

    These facts are established by the testimony of Dr. Solomon (Tr. 165-168, 170-172).

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18. Warren P. Kilway, Jr., M.D., Medical Director of St. Thomas Medical Center in Akron, Ohio, testifed regarding his knowledge of Dr. Blackmon and his knowledge of procedures within St. Thomas. According to Dr. Kilway, Dr. Blackmon had a good reputation within the medical community. Dr. Kilway knows of at least two instances, excluding Dr. Blackmon's, where a physician has performed a C-section on his wife at St. Thomas. On these occasions a physician of equal capability served as first assistant.

These facts are establilshed by the testimony of Dr. Kilway (Tr. 175, 178-179).

CONCLUSIONS

1. The acts, conduct, and/or omissions of Edward B. Blackmon, Jr., M.D., as set forth in the Findings of Fact, 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 Revisde 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.

Mrs. Blackmon testified that her use of Tylox began with her first pregnancy in 1981. The record supports her testimony that her husband was not the first physician to prescribe Tylox for her. What is absent from her testimony, however, is any indication that her prior use had been at dosage levels comparable to those prescribed by her husband between July 1987 and August 1989.

Dr. Blackmon cannot justify his prescribing by asserting that he was continuing the prescribing pattern established by other physicians. Up until after her fourth pregnancy, there was no indication that Mrs. Blackmon's migraines were chronic; they had been associated soley with her pregnancies. It was only after her fourth pregnancy that the migraines apparently began to linger beyond a nursing period. Mrs. Blackmon testified that her use of Tylox was continuous from January 1988 to August 1989. Dr. Blackmon prescribed Tylox for Mrs. Blackmon even when she was under the care of other healthcare practitioners.

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It is clear from the record that by early in her fifth pregnancy Mrs. Blackmon had developed a tolerance to Tylox. Dosage levels had increased dramatically to the point where she was taking up to 20 Tylox per day. By prescribing in these amounts, Dr. Blackmon was not simply continuing a pre-existing prescribing pattern. Prescribing to a tolerant patient in such amounts violates all the above Sections of the Revised Code; to prescribe Tylox in such large amounts to a pregnant woman when the drug has been shown to cause dependence in newborns likewise violates the above statutes. This Board cannot use hindsight to say that no violation occurred because the baby was born without any problems.

In April 1988, Dr. Blackmon did urge his wife to get a neurological evaluation. However, he made no other attempt to evaluate and/or treat the causes of her migraine pain, nor did he make any attempts to seek consultation until August 1989. The record does not reflect any search by Dr. Blackmon for appropriate varicose vein treatment. Mrs. Blackmon did not go to a circulatory center until nearly a year after the delivery of her fifth child. Mrs. Blackmon's testimony indicates that she was suffering from TMJ headaches throughout her treatment by her husband and, indeed, still suffers occasional headaches to this day. However, the patient records in this Matter do not reflect any instruction or advice from Dr. Blackmon to his wife to follow the exercises and recommendations made by the physical therapy department when the TMJ was originally diagnosed.

Dr. Blackmon's lack of on-going evaluation and failure to seek appropriate consultations are particularly egregious in light of the emotional relationship between Dr. Blackmon and Mrs. Blackmon and the possible lessening of Dr. Blackmon's objectivity.

Though Dr. Blackmon may have had a legitimate therapeutic purpose at the outset of his treatment, certainly it was extinguished by his continued prescribing long after tolerance had developed.

It was the opinion of Dr. Dierker that the care rendered by Dr. Blackmon had not constituted reasonable care discrimination in the administration of drugs and had not conformed to minimal standards of care. Dr. Dierker found the medical records in this Matter to inadequately document any concern for the possibility of dependence and addiction to Tylox.

2. Dr. Blackmon's acts and omissions also constitute violation of Rule 4731-11-02(D), Ohio Administrative Code: "a physician shall complete and maintain accurate medical records reflecting his examination, evaluation, and treatment of all his patients. Patient medical records shall accurately reflect the utilization of any controlled substances in the treatment of a patient and shall indicate the diagnosis and purpose for which the controlled substance is utilized, and any additional information upon which the diagnosis is based."

Dr. Blackmon wrote 10 Tylox prescriptions for his wife before keeping any patient record at all. The obstetrical record for Mrs. Blackmon starts in February of 1988, however, it does not note Mrs. Blackmon's use of Tylox. The narrative notes, which begin with the first post-delivery visit and continue for approximately one year, do not reflect the reality of the prescribing. Actual prescriptions are rarely noted. The majority of the entries reflect only the continuing use of Tylox, not the dates of the prescriptions or the dosage amounts. The record does not reflect whether the prescribing is for migraines alone, for varicose veins alone, for tooth pain alone, or for any combination of those problems. The records further fail to reflect the fact that Mrs. Blackmon was taking Tylox on a daily basis.

The importance of complete and accurate medical records cannot be overemphasized. Dr. Blackmon's statement that he did not need to write down everything his wife had experienced because he had observed it, is exactly the type of situation the Rule was meant to eliminate; Mrs. Blackmon's subsequent physicians cannot have the benefit of Dr. Blackmon's observations unless they have been recorded.

3. The acts and omissions of Dr. Blackmon also constitute a violation of Rule 4731-11-02(C), Ohio Administrative Code: "A physician shall not utilize a controlled substance without taking into account the drug's potential for abuse, the possibility the drug may lead to dependece, the possibility the patient will obtain the drug for a nontherapeutic use or to distribute to others, and the possibility of an illicit market for the drug."

   Dr. Blackmon considered the risks of addiction and dependence at the outset of his treatment of his wife and considered those risks to be minimal in light of her past history of Tylox use. However, this obligation is an ongoing one. A physician must constantly observe his patient and monitor the treatment. In this instance there was ingestion of a controlled substance in much greater amounts than had been the case in the past and for a much longer period of time. There is ample evidence that Dr. Blackmon knew or should have known of Mrs. Blackmon's possible dependence on Tylox and his continued prescribing without a reevaluation of her treatment plan or without the obtaining of a consultation constitutes a reckless abandonment of his obligation under this Rule.

   Paragraph (F) of Rule 4731-11-02, Ohio Administrative Code, provides that a violation of paragraph (C) of that Rule, if committed purposely, knowingly or recklessly, constitutes a violation of Section 4731.22(B)(3), Ohio Revised Code.

4. By virtue of his violations of Rules 4731-11-02(C) and (D), as set forth in Conclusions #2 and #3, Dr. Blackmon has violated Section 4731.22(B)(20), Ohio Revised Code: "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."

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PROPOSED ORDER

It is hereby ORDERED that:

1. The certificate of Edward B. Blackmon, Jr., M.D., to practice medicine and surgery in the State of Ohio, shall be REVOKED. Such revocation is stayed, and Dr. Blackmon'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. Blackmon's certificate to practice medicine and surgery in Ohio unless and until all of the following minimum requirements are met:

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

   b. Dr. Blackmon shall provide documentation of successful completion of a minimum of thirty (30) hours of Continuing Medical Education courses in the areas of pharmacology, chronic pain management, and chemical dependency recognition and management. Such courses are to be approved in advance by the Board and shall not count toward fulfillment of the Continuing Medical Education required by Section 4731.281, Ohio Revised Code.

   c. Dr. Blackmon shall take and pass the SPEX examination or any similar written examination which the Board deems appropriate to assess his clinical competency.

   d. In the event that Dr. Blackmon has not been engaged in the active practice of medicine and surgery for a period in excess of two (2) years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Blackmon's fitness to resume practice.

3. Upon reinstatement, Dr. Blackmon's license shall be subject to the following probationary terms, conditions, and limitations for a period of five (5) years:

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

   b. Dr. Blackmon shall submit quarterly declarations under penalty of perjury stating that there has been compliance with all the terms of probation.

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c. Dr. Blackmon shall appear in person for interviews before the full Board or its designated representative at six (6) month intervals, or as otherwise requested by the Board.

d. Dr. Blackmon shall be ineligible to reapply for or to hold registration with the United States Drug Enforcement Administration.

e. Dr. Blackmon shall refrain from treating family members, except in the event of life-threatening emergency.

f. In the event that Dr. Blackmon's registration with the United States Drug Enforcement Adminstration is restored pursuant to Board approval, Dr. Blackmon shall thereafter keep a log of any controlled substances purchased, prescribed, dispensed, or administered. Further, Dr. Blackmon shall make his patient records with regard to such prescribing available for review by an agent of the State Medical Board upon request.

g. In the event that Dr. Blackmon should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Blackmon 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.

4. If Dr. Blackmon violates the terms of this Order in any respect, the Board, after giving Dr. Blackmon notice and an opportunity to be heard, may set aside the stay order and impose the revocation of his certificate.

5. Upon successful completion of probation, Dr. Blackmon's license will be fully restored.

This Order shall become effective thirty (30) days from the date of mailing of notification of approval by the State Medical Board of Ohio. In the thirty (30) day interim, Dr. Blackmon shall not undertake the care of any patient not already under his care.

Joan Irwin Fishel
Attorney Hearing Examiner

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

EXCERPT FROM THE MINUTES OF SEPTEMBER 12, 1990

REPORTS AND RECOMMENDATIONS

All Enforcement Coordinators left the meeting at this time.

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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 Manuel E. Lopez, M.D.; Richard W. Liss, M.D.; Edward B. Blackmon, M.D.; Jaime Blasquez, M.D.; and Mathew I. Charms, M.D. A roll call was taken:

ROLL CALL:	Dr. O'Day	- aye
	Dr. Gretter	- aye
	Dr. Stephens	- aye
	Mr. Jost	- aye
	Dr. Ross	- aye
	Dr. Rauch	- aye
	Mr. Albert	- aye
	Dr. Daniels	- aye
	Dr. Agresta	- aye
	Dr. Kaplansky	- aye

Mr. Jost stated that he did not read the record in the matter of Jaime Blasquez, M.D., due to a conflict of interest regarding this case.

.....

REPORT AND RECOMMENDATION IN THE MATTER OF EDWARD B. BLACKMON, JR., M.D.

.....

DR. GRETTER MOVED TO APPROVE AND CONFIRM MS. FISHEL'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF EDWARD B. BLACKMON, JR., 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. O'Day	- aye
	Dr. Gretter	- aye
	Dr. Stephens	- aye
	Mr. Jost	- aye
	Dr. Ross	- aye
	Dr. Rauch	- abstain
	Mr. Albert	- aye
	Dr. Daniels	- aye
	Dr. Agresta	- aye

The motion carried.

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

February 14, 1990

Edward B. Blackmon, Jr., M.D.
421 Graham Road, Suite E
Cuyahoga Falls, OH 44221

Dear Doctor Blackmon:

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 the following dates you prescribed Tylox, a Schedule II controlled substance, in the strengths and amounts indicated, to Patient 1, who is identified in the attached patient key (key to be withheld from public disclosure to protect patient confidentiality):

Date	Drug	Dosage Units
07/29/87	Tylox	40
08/24/87	Tylox	40
10/15/87	Tylox	40
11/18/87	Tylox	40
12/08/87	Tylox	40
01/05/88	Tylox	40
01/15/88	Tylox	50
01/26/88	Tylox	50
02/04/88	Tylox	50
02/12/88	Tylox	50
02/19/88	Tylox	40
02/26/88	Tylox	50
03/05/88	Tylox	50
03/12/88	Tylox	50
03/21/88	Tylox	50
03/28/88	Tylox	50

February 14, 1990

Date	Drug	Dosage Units
04/04/88	Tylox	50
04/11/88	Tylox	50
04/16/88	Tylox	50
04/22/88	Tylox	50
04/28/88	Tylox	50
05/03/88	Tylox	50
05/08/88	Tylox	50
05/13/88	Tylox	50
05/17/88	Tylox	50
05/20/88	Tylox	50
06/02/88	Tylox	50
06/06/88	Tylox	50
06/10/88	Tylox	50
06/15/88	Tylox	50
06/19/88	Tylox	50
06/23/88	Tylox	50
06/27/88	Tylox	50
07/02/88	Tylox	50
07/05/88	Tylox	50
07/09/88	Tylox	50
07/15/88	Tylox	50
07/20/88	Tylox	50
07/28/88	Tylox	50
08/09/88	Tylox	50
08/12/88	Tylox	50
08/15/88	Tylox	60
08/20/88	Tylox	50
08/24/88	Tylox	50
08/31/88	Tylox	60
09/05/88	Tylox	50
09/09/88	Tylox	60
09/18/88	Tylox	50
09/22/88	Tylox	50
09/29/88	Tylox	50
10/02/88	Tylox	50
10/06/88	Tylox	60
10/10/88	Tylox	60
10/14/88	Tylox	60
10/17/88	Tylox	60
10/21/88	Tylox	60
10/24/88	Tylox	60
10/27/88	Tylox	60
10/30/88	Tylox	60
11/02/88	Tylox	60
11/06/88	Tylox	60
11/10/88	Tylox	60

February 14, 1990

Date	Drug	Dosage Units
11/13/88	Tylox	60
11/21/88	Tylox	60
11/28/88	Tylox	60
12/02/88	Tylox	60
12/06/88	Tylox	60
12/09/88	Tylox	60
12/12/88	Tylox	60
12/16/88	Tylox	60
12/26/88	Tylox	60
12/31/88	Tylox	60
01/06/89	Tylox	80
01/14/89	Tylox	60
01/19/89	Tylox	60
01/23/89	Tylox	60
01/27/89	Tylox	60
01/30/89	Tylox	60
02/03/89	Tylox	60
02/07/89	Tylox	60
02/10/89	Tylox	60
02/14/89	Tylox	60
02/18/89	Tylox	60
02/23/89	Tylox	60
02/27/89	Tylox	60
03/02/89	Tylox	60
03/05/89	Tylox	60
03/09/89	Tylox	60
03/12/89	Tylox	60
03/16/89	Tylox	75
03/19/89	Tylox	75
04/05/89	Tylox	60
04/09/89	Tylox	50
04/13/89	Tylox	60
04/15/89	Tylox	60
04/20/89	Tylox	60
04/23/89	Tylox	60
04/27/89	Tylox	60
04/29/89	Tylox	60
05/03/89	Tylox	60
05/07/89	Tylox	60
05/10/89	Tylox	60
05/15/89	Tylox	60
05/20/89	Tylox	60
05/24/89	Tylox	60
05/27/89	Tylox	60
06/01/89	Tylox	60
06/02/89	Tylox	?
06/04/89	Tylox	60

Date	Drug	Dosage Units
06/06/89	Tylox	?
06/08/89	Tylox	60
06/12/89	Tylox	60
06/15/89	Tylox	?
06/16/89	Tylox	60
06/18/89	Tylox	60
06/22/89	Tylox	60
06/23/89	Tylox	60
06/25/89	Tylox	?
06/27/89	Tylox	50
06/30/89	Tylox	60
07/03/89	Tylox	60
07/07/89	Tylox	60
07/11/89	Tylox	60
07/16/89	Tylox	60
07/17/89	Tylox	?
07/25/89	Tylox	60
07/31/89	Tylox	60
08/13/89	Tylox	60
08/14/89	Tylox	60
08/19/89	Tylox	60
08/21/89	Tylox	60
08/25/89	Tylox	60

(2) You prescribed Tylox, a Schedule II controlled substance, to Patient 1 with increasing frequency and increasing dosage throughout the course of her pregnancy. This pregnancy resulted in delivery of a baby girl by repeat C-section which you performed on or about August 1, 1988.

This pattern of prescribing continued with increased frequency following delivery in August 1988.

(3) Further, there is no indication in your medical records that an appropriate consultation for the migraine headaches and/or complaints of pain of Patient 1 was obtained or even attempted by you until August 1989.

(4) Further, you failed to complete and maintain accurate medical records reflecting your examination, evaluation and treatment of Patient 1 prior to her Caesarian section in August 1988. Nor do your medical records of Patient 1 accurately reflect your utilization of controlled substances in the treatment of this patient.

Your acts, conduct, and/or omissions as alleged in the above paragraphs (1) through (4), 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, your acts, conduct, and/or omissions as alleged in the above paragraph (4) individually, and the above paragraphs (1) through (4) 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, your acts, conduct, and/or omissions as alleged in the above paragraphs (1) through (4), individually and/or collectively, constitute "a departure from, or the failure to conform to, minimal standards of care of similar practitioner 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, your acts, conduct, and/or omissions as alleged in the above paragraph (4) individually, and the above paragraphs (1) through (4) 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, to wit: Rule 4731-11-02(A), (C) and (D), Ohio Administrative Code. Pursuant to paragraph (F) of rule 4731-11-02, Ohio Administrative Code, a violation of paragraph (C) of this rule, if committed purposely, knowingly, or recklessly, further constitutes a violation of Section 4731.22(B)(3), Ohio Revised Code.

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

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.

February 14, 1990

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 MD RBB

Henry G. Cramblett, M.D.
Secretary

HGC:jmb

Enclosures:

CERTIFIED MAIL #P 746 510 127
RETURN RECEIPT REQUESTED