



STATE MEDICAL BOARD OF OHIO

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

December 6, 1991

Robert Gutierrez, M.D.
520 E. Lucius Avenue
Youngstown, Ohio 44502

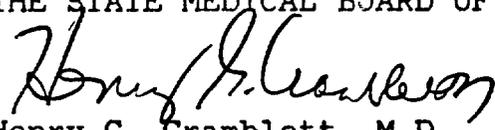
Dear Doctor Gutierrez:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Kevin P. Byers, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on December 4, 1991, including Motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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 055 325 366
RETURN RECEIPT REQUESTED

cc: David S. Barbee, Esq.

CERTIFIED MAIL NO. P 055 325 367
RETURN RECEIPT REQUESTED

Mailed 12/6/91



STATE MEDICAL BOARD OF OHIO

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

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Kevin P. Byers, Attorney Hearing Examiner, State Medical Board; and an excerpt of Minutes of the State Medical Board, meeting in regular session on December 4, 1991, including a Motion 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 Robert Gutierrez, 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

12/06/91
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

★

★

ROBERT GUTIERREZ, M.D.

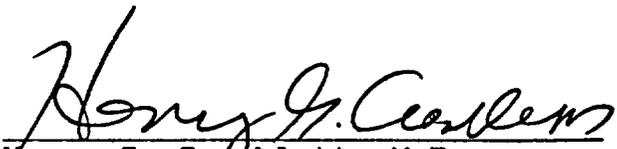
★

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 4th day of December, 1991.

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

It is hereby ORDERED that Robert Gutierrez, M.D., be REPRIMANDED with regard to the charges under Sections 4731.22(A) and (B)(5), Revised Code. The charge regarding failure of good moral character under Section 4731.08 is DISMISSED. Furthermore, it is ordered that the application of Robert Gutierrez, M.D., for Ohio licensure to practice medicine and surgery be GRANTED, provided that the application is otherwise complete and in compliance with Board requirements.


Henry G. Cranblett, M.D.
Secretary

(SEAL)

12/06/91

Date

STATE MEDICAL BOARD
OF OHIO
REPORT AND RECOMMENDATION
IN THE MATTER OF ROBERT GUTIERREZ, M.D.

OCT 11 AM 9:07

The Matter of Robert Gutierrez, M.D., came on for hearing before me, Kevin P. Byers, Esq., Hearing Examiner for the State Medical Board of Ohio, on September 16, 1991.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

- A. By letter dated July 10, 1991, mailed July 11, 1991 (State's Exhibit #1), the State Medical Board notified Robert Gutierrez, M.D., that it intended to determine whether to limit, revoke, suspend, refuse to register or reinstate his certificate to practice medicine and surgery, or to reprimand or place him on probation for one or more of the following reasons:
1. On or about February 15, 1991 Dr. Gutierrez submitted a Request for Application Form to the State Medical Board of Ohio. In requesting an application form, Dr. Gutierrez indicated that he transferred his medical education from the Instituto Tecnologico de Santo Domingo to the Universidad Central Del Este "to improve performance, better recognition".
 2. On or about March 28, 1991 Dr. Gutierrez submitted an Application for Licensure to Practice Medicine and Surgery. In that application he answered "No" to the question "[h]ave you ever been warned by, censored by, disciplined by, been put on probation by, been requested to withdraw from, dismissed from, been refused renewal of a contract by, or expelled from a medical school, clinical clerkship, externship, preceptorship, or post-doctoral training program?"
 3. The Board alleged that Dr. Gutierrez had been under academic probation for two consecutive trimesters while enrolled at Instituto Tecnologico de Santo Domingo.

The Board alleged that the foregoing acts, conduct, and/or omissions, individually 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), Revised Code; "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Revised Code; and failure to demonstrate good moral character as required by Section 4731.08, Revised Code.

STATE MEDICAL BOARD
OF OHIO

91 OCT 11 AM 9:07

- B. By letter dated July 19, 1991, received by the State Medical Board July 24, 1991 (State's Exhibit #2), Dr. Gutierrez requested a hearing.

II. Appearances

- A. On behalf of the State of Ohio: Lee I. Fisher, Attorney General, by Odella Lampkin, Assistant Attorney General
- B. On behalf of the Respondent: Roth, Stephens, Blair, Roberts & Co., by David S. Barbee.

III. Testimony Heard

Presented by the Respondent

- A. Robert Gutierrez, M.D.
- B. Luis Villaplana, M.D.

IV. Exhibits Examined

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

A. Presented by the State

1. State's Exhibit #3: July 26, 1991 letter to Dr. Gutierrez from the State Medical Board advising that a hearing set for August 7, 1991 was postponed until further notice pursuant to Section 119.09, Revised Code.
2. State's Exhibit #4: August 6, 1991 letter to Dr. Gutierrez from the State Medical Board scheduling his hearing for September 16, 1991.
3. State's Exhibit #5: February 15, 1991 Request for Application Forms submitted by Dr. Gutierrez and the completed licensure application returned to the Board by Dr. Gutierrez on March 25, 1991 along with various supplemental forms and documents.
4. State's Exhibit #6: Copy of Sections 4731.22 and 4731.08, Revised Code.

91 OCT 11 AM 9:07

B. Presented by the Respondent

1. Respondent's Exhibit A: August 18, 1987 four-page translation of Dr. Griffin's transcript from Instituto Tecnologico de Santo Domingo.
2. Respondent's Exhibit B: July 24, 1991 letter of recommendation from Anthony F. Cutrona, M.D.
3. Respondent's Exhibit C: July 23, 1991 letter of recommendation from Lawrence M. Pass, M.D.

V. Other Matters

Upon motion, the record in this Matter was held open until September 30, 1991 at 5:00 P.M. to allow the parties to file written argument regarding the issue of negligent misrepresentation as a violation of the Medical Practices Act. The memoranda have been duly filed and are ADMITTED as Board Exhibits 1 and 2.

FINDINGS OF FACT

1. Robert Gutierrez, M.D., is presently the holder of a temporary certificate to practice in the State of Ohio and also holds ECFMG certification. He is a graduate of a foreign medical college, Universidad Central Del Este (UCE), San Pedro de Macoris, Dominican Republic. However, prior to receiving his medical degree from UCE, Dr. Gutierrez attended the Instituto Tecnologico de Santo Domingo (INTEC), Santo Domingo, Dominican Republic, from September 1981 through March of 1985.

These facts are established by the testimony of Dr. Gutierrez (Tr. at 11-61), State's Exhibit #5 and Respondent's Exhibit A.

2. When Dr. Gutierrez initially requested an application form to obtain licensure in the State of Ohio, he properly listed both schools he attended in the Dominican Republic but listed the reason for his transfer from INTEC to UCE as "improve performance, better recognition." Dr. Gutierrez failed to inform the Board that he had actually been terminated from INTEC for receiving failing grades in clinical course work when he was placed in a rural community to practice under the auspices of a government doctor. Furthermore, in Dr. Gutierrez's application to sit for the FLEX, he failed to respond affirmatively to question number four which inquired about discipline, withdrawal, probation, dismissal or expulsion from a medical school. This initial application to sit for the FLEX was signed by Dr. Gutierrez on March 14, 1991. On April 25, 1991 the State Medical Board received an "explanatory note" from

91 OCT 11 AM 9:07

Dr. Gutierrez regarding his dismissal from the medical program at INTEC. In this explanatory note, Dr. Gutierrez claimed that the reason he was terminated from the training program at INTEC was due to his poor grammar on a writing project which was worth one-half of the credit during his last two trimesters at INTEC. At hearing, Dr. Gutierrez also reported that while working in the generally destitute village where he assigned, he discovered that necessary drugs and medications were not maintained in the stock of the government clinic. Upon further investigation, he testified that he discovered that government records showed the medications were shipped to the clinic though the clinic was chronically understocked. He reports that he discussed this matter with the government doctor who was overseeing his clinical practice as well as his INTEC program evaluator, who was responsible for eventually flunking him for his two clinical trimesters. Dr. Gutierrez claimed that he never obtained any satisfactory response or explanation of where the drugs and medications were going and was essentially told by the INTEC faculty member that "it was none of his business."

These facts are established by the testimony of Dr. Gutierrez (Tr. at 11-61) and State's Exhibit #5.

3. Dr. Gutierrez admitted that he did not submit the explanatory note to the State Medical Board until he received notification from the Board that his transcripts and references were going to be verified.

This fact is established by the testimony of Dr. Gutierrez (Tr. at 32-33).

4. Dr. Luis Villaplana testified that he has known Dr. Gutierrez a little over two years and is the physician presently responsible for overseeing Dr. Gutierrez's work as a resident. Dr. Villaplana has seen no indications that Dr. Gutierrez is not a competent, qualified physician and believes he possesses the knowledge, skills and moral character necessary to practice medicine in the State of Ohio.

These facts are established by the testimony of Dr. Villaplana (Tr. at 37-44).

CONCLUSIONS

Dr. Gutierrez's factual misrepresentation on his Request for Application Form submitted to the Board on or about February 15, 1991 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), Revised Code. The same misrepresentation supplied on his Application for Licensure to Practice Medicine and Surgery submitted to the Board on or about March 28, 1991 constitutes "publishing a false, fraudulent, deceptive, or misleading statement", as that clause is used

91 OCT 11 AM 9:08

in Section 4731.22(B)(5), Revised Code. However, Dr. Gutierrez's misrepresentations on these two forms do not rise to the level necessary to show deficient moral character under Section 4731.08, Revised Code. Therefore, the State has shown by reliable, probative and substantial evidence that Dr. Gutierrez violated Sections 4731.22(A) and (B)(5), Revised Code, in the course of applying to the Board for licensure to practice medicine and surgery in the State of Ohio. Dr. Gutierrez did, after the fact, voluntarily provide the Board with a written explanation of his misrepresentation and also testified in a forthright and credible fashion about his termination from the medical education program at INTEC. No aggravating factors appear in the record and mitigation is apparent by the absence of willful or reckless misconduct and the full and free disclosure by Dr. Gutierrez to the Board during the investigation and hearing of this Matter.

PROPOSED ORDER

It is hereby ORDERED that Robert Gutierrez, M.D., be REPRIMANDED with regard to the charges under Sections 4731.22(A) and (B)(5), Revised Code. The charge regarding failure of good moral character under Section 4731.08 is DISMISSED. Furthermore, it is ordered that the application of Robert Gutierrez, M.D., for Ohio licensure to practice medicine and surgery be GRANTED, provided that the application is otherwise complete and in compliance with Board requirements.

KEVIN P. BYERS

Kevin P. Byers
Attorney Hearing Examiner



STATE MEDICAL BOARD OF OHIO

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

EXCERPTS FROM THE MINUTES OF DECEMBER 4, 1991

REPORTS AND RECOMMENDATIONS

Mr. Albert asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and order, and any objections filed in the matters of William G. Conrad, M.D.; Richard F. Gehring, M.D.; Donald W. Laney, M.D.; Rafael Rodriguez-Diaz, M.D.; Victor J. Stegall, M.D.; Frederick P. Wurlitzer, M.D.; and Robert Gutierrez, M.D. A roll call was taken:

ROLL CALL:	Dr. O'Day	- aye
	Dr. Gretter	- aye
	Dr. Garg	- aye
	Dr. Kaplansky	- aye
	Dr. Heidt	- aye
	Dr. Hom	- aye
	Ms. Rolfes	- aye
	Dr. Agresta	- aye
	Mr. Albert	- aye

Mrs. Rolfes stated that she would abstain on Dr. Stegall because she had not had an opportunity to read the entire transcript in that matter.

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

All Assistant Attorney Generals and all Enforcement Coordinators left the meeting at this time.

REPORT AND RECOMMENDATION IN THE MATTER OF ROBERT GUTIERREZ, M.D.

DR. O'DAY MOVED TO APPROVE AND CONFIRM MR. BYERS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF ROBERT GUTIERREZ, M.D. DR. GRETTTER SECONDED THE MOTION.

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

ROLL CALL VOTE:	Dr. O'Day	- aye
	Dr. Gretter	- aye
	Dr. Garg	- aye
	Dr. Kaplansky	- aye
	Dr. Heidt	- aye
	Dr. Hom	- aye
	Ms. Rolfes	- aye
	Dr. Agresta	- aye

The motion carried.



STATE MEDICAL BOARD OF OHIO

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

July 10, 1991

Robert Gutierrez, M.D.
520 E. Lucius Avenue
Youngstown, OH 44502

Dear Doctor Gutierrez:

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 February 15, 1991 you submitted a Request for Application Form to the State Medical Board of Ohio. In said form you indicated that the reason you transferred from the Instituto Tecnologico de Santo Domingo to the Universidad Central Del Este was to "[i]mprove performance, [b]etter recognition."

In fact you were placed on academic probation for two consecutive trimesters prior to your separation from the Instituto Tecnologico de Santo Domingo.

- (2) On or about March 28, 1991 you submitted an application for licensure to practice medicine and surgery in the State of Ohio. In said application you answered "No" to the question "[h]avè you ever been warned by, censured by, disciplined by, been put on probation by, been requested to withdraw from, dismissed from, been refused renewal of a contract by, or expelled from a medical school, clinical clerkship, externship, preceptorship, or postdoctoral training program?"

Mailed 7/11/91

July 10, 1991

In fact you were placed on academic probation for two consecutive trimesters prior to your separation from the Instituto Tecnológico de Santo Domingo.

Such acts, conduct, and/or omissions as alleged in paragraphs (1) and (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, such acts, conduct, and/or omissions as alleged in paragraphs (1) and (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.

Further, such acts, conduct and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute a failure to demonstrate good moral character as required by Section 4731.08, 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 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.

July 10, 1991

Robert Gutierrez, M.D.
Page 3

Copies of the applicable sections are enclosed for your information.

Very truly yours,


Henry G. Cramblett, M.D.
Secretary

HGC:jmb

Enclosures:

CERTIFIED MAIL #P 055 328 941
RETURN RECEIPT REQUESTED