



STATE MEDICAL BOARD OF OHIO

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

June 14, 1996

Morley V. Somersall, M.D.
3978 Crestview, S.E.
Warren, Ohio 44484

Dear Doctor Somersall:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on June 12, 1996, 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 a copy of that Notice of Appeal with 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

A handwritten signature in cursive script, appearing to read "T. E. Gretter", is written over the printed name of the Secretary.

Thomas E. Gretter, M.D.
Secretary

TEG:em
Enclosures

Certified Mail No. P 152 983 580
Return Receipt Requested

Mailed 6-13-96



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 Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on June 12, 1996, including Motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio, constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Morley V. Somersall, 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.

Thomas E. Gretter, M.D.
Secretary

(SEAL)

6/12/96

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

*

*

MORLEY V. SOMERSALL, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 12th day of June, 1996.

Upon the Report and Recommendation of Sharon W. Murphy, 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 of Ohio for the above date.

It is hereby ORDERED that:

Morley V. Somersall, M.D., is hereby REPRIMANDED.

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

Thomas E. Gretter, M.D.
Secretary

(SEAL)

6/12/96

Date

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**REPORT AND RECOMMENDATION
IN THE MATTER OF MORLEY V. SOMERSALL, M.D.**

The Matter of Morley V. Somersall, M.D., was heard by Sharon W. Murphy, Esq., Attorney Hearing Examiner for the State Medical Board of Ohio, on April 9, 1996.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated December 6, 1995, the State Medical Board of Ohio [Board] notified Morley V. Somersall, M.D., that it proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio based on one or more of the following allegations:

On August 1, 1994, Dr. Somersall signed an application for the renewal of his certificate to practice medicine and surgery in Ohio. Dr. Somersall answered "No" to the question "at any time since signing your last application for renewal of your certificate, have you had any disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio?" However, on or about May 5, 1994, the State of New York, Department of Health, State Board for Professional Medical Conduct, [New York Board] issued a Notice of Hearing and Statement of Charges against Dr. Somersall, which initiated a disciplinary process. Moreover, the New York Board held a prehearing conference on June 27, and two days of hearing occurred on July 6 and 7, 1994.

The Board asserted that Dr. Somersall's conduct 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." In addition, the Board alleged that Dr. Somersall's conduct constitutes "[t]he 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."

In addition, the Board advised Dr. Somersall of his right to request a hearing in this matter. (State's Exhibit 1).

- B. On January 3, 1996, Dr. Somersall filed a written hearing request. (State's Exhibit 2).

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Lili C. Kaczmarek, Assistant Attorney General.
- B. On behalf of Respondent: Dr. Somersall, having been apprised of his right to be represented by counsel, appeared on his own behalf.

EVIDENCE EXAMINED

I. Testimony Heard

Presented by Respondent: Morley V. Somersall, M.D.

II. Exhibits Presented

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

1. State's Exhibit 3: Copy of January 4, 1996, letter to Dr. Somersall from the Board, notifying him that a hearing had been scheduled for January 17, 1996, but further advising that the hearing had been postponed pursuant to Section 119.09, Ohio Revised Code
2. State's Exhibit 4: Copy of January 11, 1996, letter to Dr. Somersall from the Board, scheduling the hearing for April 9, 1996. (2 pp.)
3. State's Exhibit 5: Copy of Dr. Somersall's application for renewal of his certificate to practice medicine and surgery in Ohio, signed August 1, 1994.
4. State's Exhibit 6: Certified copies of the Determination and Order and other documents pertaining to the action of the New York State Board for Professional Medical Conduct against Dr. Somersall. (26 pp.) (Note: Pages numbered by Hearing Examiner).
5. State's Exhibit 7: Copy of an August 9, 1995, letter to the Board from the American Medical Association regarding Dr. Somersall.

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6. State's Exhibit 8: Copies of a January 31, 1992, letter to Dr. Somersall from the Board requesting additional information regarding Dr. Somersall's licensure application, and Dr. Somersall's February 6, 1992, letter in response. (4 pp.)

B. Presented by Respondent

Respondent's Exhibit A: Copies of documents pertaining to Dr. Somersall's original application for licensure to practice medicine and surgery in Ohio. (26 pp.) (Note: Pages numbered by Hearing Examiner).

SUMMARY OF THE EVIDENCE

All exhibits and transcripts of testimony, even if not specifically mentioned, were thoroughly reviewed and considered by the Attorney Hearing Examiner prior to preparing this Report and Recommendation.

1. Morley V. Somersall, M.D., completed undergraduate studies at the College of the Virgin Islands, St. Thomas, and at Lincoln University, Oxford, Pennsylvania. Dr. Somersall then obtained a Doctor of Medicine degree from Howard University, Washington, D.C., in 1973. (Transcript [Tr.] at 22; Respondent's Exhibit [Resp. Ex.] A at 9).

Dr. Somersall completed a one year internship at Brookdale Hospital in Brooklyn, New York. He then completed one year of a pathology residency at Montefiore Hospital in Bronx, New York. Dr. Somersall then completed a second internship, within the Obstetrics/Gynecology Department at Sydenham Hospital in Manhattan, New York in June 1976. Subsequently, Dr. Somersall practiced general medicine in Virginia for six months, and in Iowa for six months. Thereafter, in 1983, Dr. Somersall completed a residency program in Obstetrics and Gynecology at the Erie County Medical Center in Buffalo, New York. Dr. Somersall maintained a private practice in New York through, at least, 1991. He currently practices obstetrics and gynecology in Ohio through the Cleveland Neighborhood Health Services. (Tr. at 21-23; Resp. Ex. A at 2, 19-20).

Dr. Somersall was Board Certified in Obstetrics and Gynecology in 1990. (State's Exhibit [St. Ex.] 6 at 6). Dr. Somersall testified that he holds active certificates to practice medicine in Ohio and New York. He further testified that he holds inactive certificates to practice in Iowa and Virginia. (Tr. at 23-24).

2. On September 25, 1991, Dr. Somersall submitted a Request for Application Forms to the Board. Thereafter, on October 7, 1991, he submitted an Application for Medical & Osteopathic Licensure [Application]. (Resp. Ex. A at 9, 13). In the Application,

Question 11 asked "Have you ever been notified of any charges or complaints filed against you with any board, bureau, department, agency, or other body with respect to a professional license?" Dr. Somersall answered "Yes," and added "Complaint filed, NY March '89, No charges." (Resp. Ex. A at 14).

On January 31, 1992, the Board requested that Dr. Somersall provide additional information regarding three questions in the application. Regarding Question 11, Dr. Somersall replied "In 1989, I was told by a patient that there would be a complaint against me as well as other doctors about a treated patient, but up to now, there were no charges made against me." (St. Ex. 8).

3. On May 5, 1994, the State of New York, Department of Health, State Board for Professional Medical Conduct, [New York Board] filed a Statement of Charges against Dr. Somersall. The New York Board alleged that Dr. Somersall had practiced medicine with negligence, incompetence, gross negligence, gross incompetence, and excessive treatment in his care and treatment of five patients. (St. Ex. 6 at 16-21). The patient who was the basis for the 1989 complaint was also one of the five patients at issue in the New York action. (Tr. at 17-18).

A prehearing conference was held on June 27, 1994. Hearing dates occurred July 6 and 7, August 23 and 24, and October 17, 1994. (St. Ex. 6 at 4).

On December 5, 1994, the New York Board issued a Determination and Order, which sustained some of the charges, but not others. The New York Board determined that:

All of the incidents charged in the Statement of Charges occurred during 1987 and 1988 when Respondent was employed at Delaware Valley Hospital, Walton, New York. His employment at Delaware Valley Hospital was very soon after he had completed his residency in obstetrics and gynecology and he has admitted his lack of experience at that time.

While at Delaware Valley Hospital, the Respondent had not peers at the facility with whom he could consult and was in fact far removed from anyone with whom he could discuss problems as they arose.

(St. Ex. 6 at 14). The New York Board ordered that Dr. Somersall be Censured and Reprimanded. (St. Ex. 6 at 15).

4. On or about August 1, 1994, Dr. Somersall submitted an application for renewal of his license to practice medicine and surgery in Ohio. On application form, Dr. Somersall answered "No," to Question 5, which asked "At any time since the signing of your last application for renewal of your certificate have you . . . [h]ad any

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disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio?" (St. Ex. 5).

5. At hearing, Dr. Somersall testified that he had not intended to mislead the Board. He further testified that he had been informed by the New York Board that the investigation was confidential, and that he need not divulge any information about it "until the matter was over." (Tr. at 7).

Moreover, Dr. Somersall testified that he did not have a copy of his original application when he completed the renewal form. However, he believed he had been honest on both forms. (Tr. at 24-25). He stated that he had read the question on the renewal form to mean "had any action been finalized." Since he believed that he had disclosed the initial complaint in the original application, Dr. Somersall stated that he did not realize he should divulge any more information until final determination had been made. Dr. Somersall readily admitted at hearing that he had not read the question carefully and that he had answered it incorrectly. (Tr. at 19-21).

FINDINGS OF FACT

1. On October 7, 1991, Dr. Somersall submitted an Application for Medical & Osteopathic Licensure to the Board. Dr. Somersall answered "Yes" to the question "Have you ever been notified of any charges or complaints filed against you with any board, bureau, department, agency, or other body with respect to a professional license?" Dr. Somersall added "Complaint filed, NY March '89, No charges."
2. On or about May 5, 1994, the State of New York, Department of Health, State Board for Professional Medical Conduct issued a Notice of Hearing and Statement of Charges against Dr. Somersall. Moreover, the New York Board held a prehearing conference on June 27, and two days of hearing occurred on July 6 and 7, 1994.
3. On August 1, 1994, Dr. Somersall signed an application for the renewal of his certificate to practice medicine and surgery in Ohio. Dr. Somersall answered "No" to the question "at any time since signing your last application for renewal of your certificate, have you had any disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio.?"
4. Dr. Somersall's testimony that he mistakenly believed he had appropriately interpreted and answered Question 11 on the renewal application is credible. Accordingly, the evidence presented is insufficient to find that Dr. Somersall intended a fraudulent deception.

CONCLUSIONS

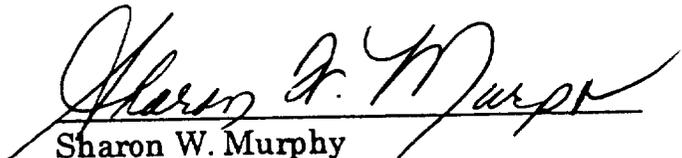
1. Dr. Somersall's failure to provide accurate information regarding the action initiated by the State of New York, Department of Health, State Board for Professional Medical Conduct constitutes "misrepresentation . . . in applying for or securing any license or certificate issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code.
2. Dr. Somersall's conduct also constitutes "publishing a false [and] misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.
3. The evidence presented is insufficient to support a conclusion that Dr. Somersall's conduct constitutes a violation of Section 4731.22(B)(8), Ohio Revised Code.

PROPOSED ORDER

It is hereby ORDERED that:

Morley V. Somersall, M.D., is hereby REPRIMANDED.

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


Sharon W. Murphy
Attorney Hearing Examiner



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EXCERPT FROM THE DRAFT MINUTES OF JUNE 12, 1995

REPORTS AND RECOMMENDATIONS

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

Dr. Stienecker 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: Theresa E. Boyd, M.D.; John F. Clement, M.D.; John N. Figel, M.D.; Noel A. Guanzon, M.D.; Charles R. Olaf, D.O.; Beth J. Scherer, M.T.; Morley V. Somersall, M.D.; and Subhash A. Vyas, M.D.

A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Gretter	- aye
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Ms. Noble	- aye
	Mr. Sinnott	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Dr. Stienecker	- aye

Dr. Stienecker asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Gretter	- aye
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye

Ms. Noble	- aye
Mr. Sinnott	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye
Dr. Stienecker	- aye

In accordance with the provision in Section 4731.22(C)(1), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of this matter.

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 MORLEY V. SOMERSALL, M.D.

.....

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF MORLEY V. SOMERSALL, M.D. DR. BHATI SECONDED THE MOTION.

.....

A vote was taken on Dr. Steinbergh's motion to approve and confirm:

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Gretter	- abstain
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Ms. Noble	- aye
	Mr. Sinnott	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.



STATE MEDICAL BOARD OF OHIO

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December 6, 1995

Morley V. Somersall, M.D.
3978 Crestview, S.E.
Warren, OH 44484

Dear Doctor Somersall:

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 August 1, 1994, you signed the application for the renewal of your certificate to practice medicine and surgery in Ohio. You responded "No" to Question 5, which asks, "(a)t any time since signing your last application for renewal of your certificate have you had any disciplinary action taken or initiated against you by any state licensing board other than the State Medical Board of Ohio?"

In fact, on or about May 5, 1994, the State of New York, Department of Health, State Board for Professional Medical Conduct issued a Notice of Hearing and Statement of Charges against you, initiating the disciplinary process.

In addition, a pre-hearing conference was held on June 27, 1994, and the first two days of hearing took place on July 6 and 7, 1994.

Your acts, conduct, and/or omissions as alleged in paragraph (1) 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 (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.

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Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "(t)he 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.

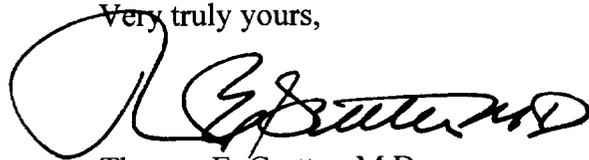
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing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



Thomas E. Gretter, M.D.
Secretary

TEG/bjm
Enclosures

CERTIFIED MAIL # P 348 886 998
RETURN RECEIPT REQUESTED