



STATE MEDICAL BOARD OF OHIO

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

June 16, 1995

James M. Sinard, M.D.
500 Retreat Lane
Powell, OH 43065

Dear Doctor Sinard:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Esq., 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 14, 1995, including a Motion 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

Thomas E. Gretter, M.D.
Secretary

TEG:em
Enclosures

CERTIFIED MAIL RECEIPT NO. P 741 124 599
RETURN RECEIPT REQUESTED

cc: R. Aaron Miller, Esq.

Certified Mail No. P 741 124 600
Return Receipt Requested

Mailed 6-22-95



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 R. Gregory Porter, Attorney Hearing Examiner, State Medical Board; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on June 14, 1995, including a Motion 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 James M. Sinard, 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)

Thomas E. Gretter, M.D.
Secretary

6/15/95

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

*

*

JAMES MICHAEL SINARD, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 14th day of June, 1995.

Upon the Report and Recommendation of R. Gregory Porter, Hearing Examiner, Medical Board, in this matter designated pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the 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:

1. That the certificate of Dr. James Michael Sinard, M.D., to practice medicine and surgery in Ohio shall be **SUSPENDED** for a period of one (1) year. Such suspension is stayed, subject to the following **PROBATIONARY** terms, conditions, and limitations for a period of at least three (3) years:
 - a. Dr. Sinard shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
 - b. Dr. Sinard shall submit quarterly declarations under penalty of falsification pursuant to Section 2921.13, Ohio Revised Code, stating whether or not there has been compliance with all the provisions of probation.
 - c. Dr. Sinard shall appear in person for interviews before the full Board or its designated representative at three (3) month intervals, or as otherwise requested by the Board.
 - d. Dr. Sinard shall institute and continue counseling with the Center for Marital & Sexual Health, Inc., or with a psychiatrist approved by the Board, at such intervals as are deemed appropriate by the counselor or treating psychiatrist, but not less than once per month, until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the counselor or approved treating psychiatrist. Dr. Sinard shall ensure that these reports are forwarded to the Board on a quarterly basis, or as otherwise directed by the Board.

- e. In the event that Dr. Sinard should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Sinard must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
4. If Dr. Sinard violates probation in any respect, the Board, after giving Dr. Sinard notice and the opportunity to be heard, may set aside the stay order and impose the suspension of Dr. Sinard's certificate.
5. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Sinard's certificate will be fully restored.

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



Thomas E. Gretter, M.D.
Secretary

(SEAL)

6/15/95

Date

REPORT AND RECOMMENDATION
IN THE MATTER OF JAMES MICHAEL SINARD, M.D.

The matter of James Michael Sinard, M.D., came on for hearing before me, R. Gregory Porter, Esq., Hearing Examiner for the State Medical Board of Ohio, on February 21, 1995.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated March 9, 1994 (State's Exhibit 1), the State Medical Board notified James Michael Sinard, M.D., that it proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board alleged that on or about October 13, 1993, Dr. Sinard was disciplined by the Michigan Board of Medicine based on Dr. Sinard's admission that he violated his "general duty, consisting of negligence or failure to exercise due care." The Board also alleged that on or about July 14, 1992, Dr. Sinard was found guilty of one misdemeanor count of assault and battery committed in the course of practice, which arose from the performance of unauthorized medical examinations while Dr. Sinard was a third year resident. Such acts, conduct, and/or omissions, individually and/or collectively, allegedly constituted: "the limitation, revocation or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority for an action that would also have been a violation of this chapter, except for nonpayment of fees,' as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, to wit: (B)(6)(a)" and/or "a plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice,' as that clause is used in Section 4731.22(B)(11), Ohio Revised Code."

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

- B. By letter received by the Board on March 15, 1994 (State's Exhibit 2), Dr. Sinard requested a hearing.

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Ann B. Strait, Assistant Attorney General.
- B. On behalf of Respondent: Although a notice of appearance was filed by R. Aaron Miller, Esq., as Dr. Sinard's representative (State's Exhibit 6), and Dr. Sinard was apprised at hearing of his right to be represented by

counsel, Dr. Sinard appeared at hearing on his own behalf without counsel.

EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State

James M. Sinard, M.D., as if upon cross-examination

B. Presented by Respondent:

1. James M. Sinard, M.D
2. Thomas H. Hartranft, M.D.

II. Exhibits Examined

In addition to State's Exhibits 1, 2, and 6, noted above, the following exhibits were identified and admitted into evidence in this Matter:

A. Presented by the State:

1. State's Exhibit 3: March 17, 1994 letter to James M. Sinard, M.D., from the Board, advising that a hearing initially set for March 29, 1994 was postponed pursuant to Section 119.09, Ohio Revised Code.
2. State's Exhibit 4: March 21, 1994 letter to Dr. Sinard from the Board scheduling the hearing for August 12, 1994.
3. State's Exhibit 5: June 22, 1994 letter from R. Aaron Miller, Esq., to the Board, requesting a list of the State's witnesses and documents.
4. State's Exhibit 7: The parties' July 25, 1994 Joint Motion for Continuance of Administrative Hearing.
5. State's Exhibit 8: August 2, 1994 Entry granting the parties' Motion for Continuance, and rescheduling the hearing for October 27, 1994.
6. State's Exhibit 9: Respondent's October 24, 1994 Motion for Continuance of Administrative Hearing.
7. State's Exhibit 10: October 26, 1994 Entry rescheduling the hearing to February 21, 1995, for administrative reasons.

8. **State's Exhibit 11:** Collection of documents from the Michigan Department of Commerce, Bureau of Occupational and Professional Regulation, consisting of an October 20, 1993 cover letter, and certified copies of the following: October 13, 1993 Consent Order between Dr. Sinard and the Michigan Board of Medicine; December 16, 1992 Administrative Complaint; and September 16, 1993 Stipulation. (9 pp.)
9. **State's Exhibit 12:** Excerpt from the Michigan Public Health Code, including Section 16221(a).
10. **State's Exhibit 13:** Collection of documents from the State of Michigan 15th Judicial District, Ann Arbor, regarding Case No. CR-92 1441, *State of Michigan v. James Michael Sinard*, including a Register of Actions, Deferred sentence contract, and Motion/Order of Nolle Prosequi. (4 pp.)
11. **State's Exhibit 14:** March 19, 1993 letter from Dr. Sinard to the State's representative, in which Dr. Sinard presented some of his arguments. (3 pp.)
12. **State's Exhibit 15:** April 29, 1994 letter from Dr. Sinard to the Secretary of the State Medical Board, in which Dr. Sinard presented some of his arguments. (2 pp.)
13. **State's Exhibit 16:** May 9, 1994 letter from Richard Minter, M.D., to the Board, regarding Dr. Minter's treatment of Dr. Sinard; copies of four letters regarding Dr. Sinard from Dr. Minter to various Michigan authorities were attached, as was an envelope postmarked May 13, 1994. (5 pp.)
- * 14. **State's Exhibit 17:** Police report from the University of Michigan Department of Public Safety, regarding Dr. Sinard; a September 7, 1994 cover letter was attached. (24 pp.)
- * 15. **State's Exhibit 18:** Copy of May 25, 1992 letter, purportedly from the University of Michigan's House Officers Association, to a medical student who shall be referred to as "Pat" for purposes of confidentiality. (2 pp.)
- * 16. **State's Exhibit 19:** September 19, 1994 report from the Center for Marital & Sexual Health, Inc., to the State's representative, regarding Dr. Sinard. (10 pp.)
- * 17. **State's Exhibit 20:** November 14, 1994 amended report from the Center for Marital & Sexual Health, Inc., to the State's

representative, regarding Dr. Sinard; fax cover sheet from Attorney Miller to the State's representative was attached. (10 pp.)

- * NOTE: THOSE EXHIBITS LISTED ABOVE WITH AN ASTERISK (*) HAVE BEEN SEALED TO PROTECT CONFIDENTIALITY.

B. Presented by the Respondent

1. Respondent's Exhibit A: March 29, 1994 letter in support of Dr. Sinard from Thomas H. Hartranft, M.D.; an envelope postmarked March 29, 1994 was attached.

III. Post-Hearing Exhibits

On the Hearing Examiner's own motion, the following additional exhibits are admitted to the record:

- A. Board Exhibit A: March 28, 1995 Entry reopening the hearing record until April 28, 1995, and requesting that briefs be filed by the parties. (5 pp.)
- B. Board Exhibit B: April 28, 1995 Brief of the State, with attachments. (26 pp.)
- C. Board Exhibit C: April 21, 1995 Brief of Respondent, James M. Sinard, M.D., with cover letter and attachment. (6 pp.)
- D. Board Exhibit D: Excerpt and title page from Black's Law Dictionary, Abridged 5th Ed. (1983), including the definition of "nolle prosequi." (2 pp.)

PROCEDURAL MATTERS

On March 28, 1995, the hearing record was reopened in order to obtain written briefs from the parties. These briefs were timely filed and admitted into evidence, and the hearing record in this Matter closed again on April 28, 1995.

SUMMARY OF THE EVIDENCE

All transcripts of testimony and exhibits, whether or not specifically referred to hereinafter, were thoroughly reviewed and considered by the Hearing Examiner prior to his findings and recommendations in this Matter.

1. James Michael Sinard, M.D., is a general and vascular surgeon who practices in Columbus, Ohio. Dr. Sinard obtained his undergraduate degree from Harvard University in 1982 and his M.D. from the University of Michigan Medical School in 1986. Dr. Sinard completed a six-year surgical residency at

the University of Michigan in 1992. His fourth year, 1989 to 1990, was research; the rest was clinical. (Tr. 17-18) He moved to Columbus in August 1992. (Tr. 32)

Dr. Sinard obtained his Ohio certificate in the Spring of 1992, just before the events giving rise to this Matter took place. (Tr. 58)

2. Dr. Sinard testified that he had a long-standing interest in human anatomy. When he was a fourth-year resident, he had the opportunity to direct an anatomy course for fourth-year medical students, with an emphasis on the clinical aspect of anatomy. The course was very successful. Dr. Sinard began putting together a review that he hoped might eventually be made part of the course syllabus. The review was based on his anatomy notes which he had used since medical school. (Tr. 19-20) He wanted to "incorporate surface anatomic features so they could be correlated with underlying ... anatomy. It was my perception that a major deficiency of medical education was correlating what you see with what's really underneath there, and I had hoped that by incorporating pictures of human subjects that I could potentially illustrate those points." (Tr. 21)

Dr. Sinard testified that he had to do the photographic work himself due to financial constraints. He needed a model. An associate gave him the name of a medical student who posed for some pictures for \$10 per hour. Later, Dr. Sinard was given the name of another medical student who Dr. Sinard knew. This student, referred to as "Pat" to protect his confidentiality, posed for a series of pictures in the spring of 1991. Because of his prior acquaintance with Dr. Sinard, he did this voluntarily at no charge. (Tr. 22) However, Pat was "very reluctant to provide poses of his perineum and anus, and I did not try and pressure him into doing that." (Tr. 23) Dr. Sinard found this somewhat surprising, since Pat had previously been a paid subject for experiments that involved invasive monitoring such as sigmoidoscopy. (Tr. 24-25; 36-37)

Dr. Sinard lost contact with Pat for several months, then, during the year 1991 to 1992, they became reacquainted. Pat was a fourth-year medical student and assigned to Dr. Sinard's floor. Pat was working on a study and needed some help obtaining patients. Dr. Sinard assisted him in obtaining patients over a period of several months. Around this time, Pat asked Dr. Sinard how his review was going. Dr. Sinard gave him or shared with him a copy of the review, which included some pictures that Pat had posed for. Dr. Sinard testified Pat informed him that he would be willing to provide some additional pictures if they were needed. Because Dr. Sinard was to graduate soon and move to Columbus, he was anxious to complete as much of the work as he could. However, he recalled that Pat had been reluctant to provide poses of the anus and perineum, which Dr. Sinard considered important to the completion of his review. Dr. Sinard thought Pat's reluctance to pose for these pictures

was a result of their social acquaintance, which was apparently just a casual, nodding acquaintance on the hospital floors. (Tr. 23-25; 35-36)

Dr. Sinard came up with a plan that he thought would relieve Pat's inhibitions or anxiety by putting their relationship on a different plane—Dr. Sinard would create a situation in which he would perform a physical examination on Pat. The result, Dr. Sinard surmised, would be a "breach of inhibitions" that would afterward permit Pat to be more comfortable about posing for these pictures. (Tr. 25)

Dr. Sinard was aware that Pat was going to be attending the anesthesia residency program at the University of Michigan Hospitals. (State's Exhibit 15) "Under false pretext," Dr. Sinard sent a letter to Pat, on University of Michigan stationery, which appeared to be from the House Officers Association at the University of Michigan. (Tr. 25, 38; State's Exhibit 14) The letter stated that obtaining health insurance would be facilitated by having a head-to-toe physical examination performed, including a rectal examination using sigmoidoscopy. (Tr. 38, 39; State's Exhibit 17, p. 4) A blank form was included with the letter that said that a house officer above a level 5 at University of Michigan Hospital could perform the examination. (State's Exhibit 17, p. 4) Dr. Sinard was at that time a level 6 house officer. (State's Exhibit 17, p. 9) Dr. Sinard testified "because of my frequent interactions with him I was confident that he would ask me to provide that." (Tr. 26) Within a couple of weeks, Pat asked Dr. Sinard to perform the exam. (Tr. 26) "The examination was performed and that included a sigmoidoscopy in the hospital. It was a professionally done exam making sure no improprieties were taken." (Tr. 26) Dr. Sinard filled out the form and told Pat that he would turn it in for him. After Pat left, Dr. Sinard threw the form away. (Tr. 41) This examination occurred on May 9, 1992. (State's Exhibit 17, p. 5)

About two weeks following the exam, Dr. Sinard spoke with Pat. Pat expressed interest in providing more pictures for Dr. Sinard's review. This time, Pat posed for the pictures of the perineum and anus. (Tr. 42)

Unfortunately, when Dr. Sinard got the photos back from the developer, they were of inferior quality and not usable in his project. (Tr. 43) Rather than ask Pat if he would let him retake the pictures, Dr. Sinard repeated his previous ruse. (Tr. 26-27, 43) He sent a second letter to Pat on University of Michigan stationery. This letter, dated May 25, 1992, stated that there was an error on the previous form, which required rigid sigmoidoscopy to 15 cm. "If you have already had your endoscopy to 15 cm," the letter said, "a repeat examination to 25 cm must be done in order to begin employment and receive the health benefits provided by the HOA." (State's Exhibit 18) A form to be filled out and signed by the examining physician was attached. (State's Exhibit 18) Dr. Sinard testified that he hoped "to follow the same pattern which I had previously done to make him consent to having a second series of pictures taken." (Tr. 27) "I was concerned that the window of opportunity to try and

obtain those pictures may have passed." (Tr. 43-44) Dr. Sinard thought that "repeating that portion of the examination" would gain raise Pat's comfort level, increasing the chance that he would consent to a second round of photographs. (Tr. 43)

According to the police report, Pat was already suspicious about the first physical exam, and had spoken with residents and the president of the House Officers Association. He was told that no physical exam was required, and that the House Officers Association did not send out any letters requiring one. When he received the second letter, on June 4, 1992, it further heightened his suspicions regarding who was sending the letters, and why. He suspected Dr. Sinard. On June 7, 1992, Pat received a call at his home from Dr. Sinard. After discussing an unrelated matter, Pat told Dr. Sinard about the second letter. Although he never asked Dr. Sinard to perform the second examination, Dr. Sinard offered to do so without hesitation. They agreed to do the second exam on June 10, 1992. Before the second exam, however, Pat went to the police. (State's Exhibit 17, pp. 5-6)

When Pat appeared for the second examination, he was accompanied by University of Michigan police. The police confronted Dr. Sinard. That evening, he denied having written the letters. (Tr. 27, 47-48) The next morning, however, Dr. Sinard met again with the police. He admitted writing the letters, and told them basically the same information that he related to the Board at the present hearing. (State's Exhibit 17, pp. 12-13; Tr. 28, 49)

Dr. Sinard has not spoken with Pat since being confronted by the police. He wanted to, "because his reaction was not at all what I ever envisioned it to be or ever intended it to be." (Tr. 47) Dr. Sinard was disturbed by the fact that Pat thought that someone was playing a joke on him, or was sexually assaulted. (Tr. 46-47, 48, 60-61) "It was never meant to be a joke or a malicious or a slanderous attack against him." (Tr. 60)

3. On June 17, 1992, a Complaint was filed against Dr. Sinard in the State of Michigan, 15th Judicial District Court, charging Dr. Sinard with two counts of Criminal Sexual Conduct, felonies of the third degree. (State's Exhibit 13; State's Exhibit 19, p. 3)

On July 14, 1992, with Pat's consent as well as that of the prosecutor, the two felony counts were dismissed. Dr. Sinard pleaded no contest to a new misdemeanor count of assault and battery. He was placed in what was alternatively referred to by the Court as a "Deferred Sentencing Program" (State's Exhibit 13, p. 3) and a "Diversion Program" (State's Exhibit 13, p. 2, 8-25-92 Entry) for nine months, from August 25, 1992 until May 25, 1993, subject to certain terms and conditions. Among the conditions imposed, Dr. Sinard was required to perform 108 hours of volunteer work, pay costs of \$300.00, and "meet with Dr. DeZura and follow through with any recommendation for therapy..." (State's Exhibit 13, p. 3)

On June 15, 1993, upon the motion of the prosecutor for a *nolle prosequi*, the case against Dr. Sinard was dismissed. (State's Exhibit 13, p.4)

Dr. Sinard was sued by Pat in a civil action that settled in December 1993. (Tr. 33)

4. By Administrative Complaint dated December 16, 1992, the State of Michigan Board of Medicine charged Dr. Sinard with violation of three sections of the Michigan Public Health Code. The Michigan Board alleged that he violated Section 16221(a) by violating a "general duty, consisting of negligence or failure to exercise due care;" Section 16221(b)(i) by failing "to conform to the minimal standards of acceptable and prevailing practice;" and Section 16221(b)(v) by being "convicted of a misdemeanor adversely affecting the Respondent's ability to practice in a safe and competent manner." (State's Exhibit 11, pp. 5-6) By Stipulation dated September 16, 1993, Dr. Sinard admitted violation of a general duty, Section 16221(a). (State's Exhibit 11, p. 8-9) On October 13, 1993, Dr. Sinard and the Michigan Board entered into a Consent Order whereby the Michigan Board found that Dr. Sinard had violated Section 16221(a). He was reprimanded and placed on probation for two years. Dr. Sinard was required to visit regularly with a mental health professional, who was to report quarterly to the Michigan Board concerning, among other things, Dr. Sinard's ability to practice medicine with "reasonable skill and safety to patients." (State's Exhibit 11, pp. 2-4; quote from p. 3)
5. Richard Minter, M.D., a psychiatrist who practices in Dublin, Ohio, provided psychiatric care to Dr. Sinard as required by the Michigan District Court and the Michigan Board. Dr. Minter treated Dr. Sinard from September 1992 through September 1993. Dr. Minter reported finding no evidence of significant psychiatric disorder in Dr. Sinard, and stated that Dr. Sinard was cooperative in therapy. He attributed the conduct that gave rise to Dr. Sinard's legal problems as "the result of an error in judgment, not the result of mental instability (such as psychosis, mood disorder, or substance abuse) or character pathology (such as sociopathic or narcissistic personality disorder)." (State's Exhibit 16; quote from March 29, 1993 letter from Dr. Minter to Howard C. Marderosian)
6. Dr. Sinard's employer was aware of Dr. Sinard's conduct, and his resulting legal problems, before Dr. Sinard came on board. Thomas H. Hartranft, M.D., testified at the present hearing on behalf of Dr. Sinard. Dr. Hartranft and his associates were looking for someone to join their three-man practice. They extended an offer to Dr. Sinard, which he accepted, prior to the events in question. After Dr. Sinard got into trouble, he called his prospective employer and told them about it. (Tr. 68-69) "Our first reaction was sort of the heck with him," Dr. Hartranft testified. (Tr. 69) After speaking with Dr. Sinard regarding the matter, and checking into his background further, they decided to go ahead and hire him. Dr. Hartranft testified that Dr. Sinard has done an

outstanding job, both as a surgeon and working with residents. He has been offered a partnership with the practice, which Dr. Hartranft stated would not have occurred if there were any "lingering difficulties." (Respondent's Exhibit A (quote); Tr. 69-71)

7. Dr. Sinard was suspended from his residency for three weeks as a result of these events, but was permitted to graduate. (State's Exhibit 20, p. 3) He was recommended for board certification in surgery. (Tr. 32) He has passed both the oral and written exams. (Tr. 58)
8. At the request of both parties and upon the suggestion of the Secretary of the Board, Dr. Sinard underwent an evaluation at the Center for Marital & Sexual Health, Inc., in the Center's Program for Professionals. (State's Exhibits 7, 19, and 20) Dr. Sinard's wife participated in the evaluation. The Center generated two written reports following the evaluation. The first, dated September 19, 1994 (State's Exhibit 19), was superseded by an amended report dated November 14, 1994 (State's Exhibit 20). The amended report differs from the original in that it deleted the last sentence of the second-to-last section entitled "PFP's Answers to the Questions," which had stated that the Center did not recommend that Dr. Sinard be monitored or restricted. The Final Recommendation was also changed. (State's Exhibits 19 and 20)

The Center concluded that Dr. Sinard does not suffer from a major mental illness, or sexual deviance. Nevertheless, Dr. Sinard is very strong-willed and determined, and can be insensitive to the feelings of others when in pursuit of a goal. "The nature of the problem appears to be rooted in a narcissistic personality configuration that manifests itself in a single minded pursuit of goals with little or no regard at times to the feelings of others." (State's Exhibit 20, quote at p. 8 of report) The Center did not conclude that there was any serious problem relating to Dr. Sinard's professional competence, although his "insensitivities and his single minded narcissism are worrisome." (State's Exhibit 20, p. 8) The Center suggested that he "would benefit from a therapy that focuses on his narcissism and its implications for the quality of both his professional and personal life." The Center further suggested that quarterly monitoring by the Center, including contacting Dr. Sinard's superior by telephone, would be prudent. (State's Exhibit 20, quote at p. 9 of report)

9. There was evidence that Dr. Sinard had not been entirely forthcoming regarding the subject events with the Center, and with the State's Representative. In communications with these parties, he failed to mention the second letter that he sent to Pat. (State's Exhibits 14 and 20) Dr. Sinard denied that he purposefully intended to hide the existence of the second letter. (Tr. 49-50; 51-52)

Dr. Sinard testified that he still has his Michigan license, but did not pay the renewal fee because he does not plan on returning there. He stated that the Michigan license will lapse in about one and one-half years. (Tr. 58-59)

Dr. Sinard stated that he is sorry about what happened. He testified that he has never wanted to do anything other than practice medicine, and believes that he is a good doctor. He has learned from this experience. (Tr. 60-66) He testified that he will never forget what happened; "it's left a major scar on my professional career." (Tr. 61)

FINDINGS OF FACT

1. On or about October 13, 1993, Dr. Sinard entered into a Consent Order with the Michigan Board of Medicine. He was reprimanded, placed on probation for two years and ordered to visit a mental health professional on a regular basis. The Michigan Order was based on Dr. Sinard's admission that he violated his "general duty, consisting of negligence or failure to exercise due care."
2. On or about July 14, 1992, in the 15th District Court, State of Michigan, Dr. Sinard pled "no contest" to the misdemeanor offense of assault and battery, and was referred to the probation department. On August 25, 1992, he was placed on what was alternatively called a "Diversion Program" and "Deferred Sentencing Program" for a period of nine months, subject to certain terms and conditions. On June 15, 1993, on the motion of the prosecuting attorney for a *nolle prosequi*, the case against Dr. Sinard was dismissed.

LEGAL ISSUES

Concerning Finding of Fact #2, above, the Hearing Examiner requested briefs from the parties "on the issue of whether or not Dr. Sinard's Michigan plea of 'no contest' and subsequent referral to the Deferred Sentencing Program constituted 'a plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice,' as that language is used in Section 4731.22(B)(11), Ohio Revised Code." (Board Exhibit A) In reviewing the evidence and the briefs of the parties, the Hearing examiner must conclude that the state has not met its burden of proving this violation.

In his brief, the Respondent argued that Dr. Sinard offered a plea of "no contest" to the assault and battery charge. The plea was not accepted by the Court, nor did the Court enter a finding of guilt against Dr. Sinard. Dr. Sinard was referred to a Deferred Sentencing Program, which he completed. Afterward, the charge to which Dr. Sinard had offered his plea of "no contest" was dismissed. The Hearing Examiner finds each of these contentions supported by State's Exhibit 13, the State's primary exhibit on this issue. There is nothing contained in State's Exhibit 13 that would indicate that the Court accepted Dr. Sinard's plea or entered a finding of guilt against him. It is particularly noteworthy that the charge against Dr. Sinard was ultimately dismissed on a motion by the prosecution for a *nolle prosequi*. This is a legal device whereby a prosecutor requests that an action be dismissed on the basis

that the state no longer desires to pursue the action. Such a request would be inappropriate if a court had previously made a finding of guilt in the action.

The State's brief was based largely upon an assumption that the Court had accepted Dr. Sinard's "no contest" plea. As previously mentioned, there is nothing in the evidence to support this argument. There is also nothing in the evidence to suggest that the Court inquired regarding the appropriateness of the plea, which the State convincingly argued would be required of the Court before a plea of "no contest" could be accepted. The State further argued that Section 28.1131, Michigan Statutes Annotated, applied to Dr. Sinard's criminal case, and that Dr. Sinard had not been placed in diversion. Such was clearly not the case, and is contradicted by State's Exhibit 13. Section 28.1131(2), M.S.A., applies to *delayed* sentencing, whereby the Court may postpone sentencing following a conviction, and order a pre-sentence investigation to give a defendant an opportunity for probation. Dr. Sinard was placed on a *Deferred Sentencing Program*, which was also referred to in court records as a diversion program.

CONCLUSIONS OF LAW

1. It was undisputed that Dr. Sinard falsified a letter from the University of Michigan Hospitals House Officers Association in order to deceive a medical student into requesting a physical examination, including sigmoidoscopy, which he did not need. Dr. Sinard performed this exam, and attempted to deceive the student into subjecting himself to another sigmoidoscopy exam. This conduct was part of a scheme of Dr. Sinard's to complete an anatomy review. The person who was intended to benefit from the examination performed and the second exam planned was Dr. Sinard, not the patient. As set forth in Finding of Fact #1, above, the acts, conduct, and/or omissions of Dr. Sinard, individually and/or collectively, constitute "[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)(a), Ohio Revised Code.

Based upon a review of the evidence, and after weighing the credibility of Dr. Sinard's testimony at hearing, the Hearing Examiner concludes that there was no element of sexual misconduct underlying Dr. Sinard's behavior.

2. For the reasons previously set forth above under the subject heading "Legal Issues," the evidence is not sufficient to support a conclusion that the acts, conduct, and/or omissions of Dr. Sinard constitute "[a] plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

PROPOSED ORDER

It is hereby ORDERED:

1. That the certificate of Dr. James Michael Sinard, M.D., to practice medicine and surgery in Ohio shall be **SUSPENDED** for a period of one (1) year. Such suspension is stayed, subject to the following **PROBATIONARY** terms, conditions, and limitations for a period of at least three (3) years:
 - a. Dr. Sinard shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
 - b. Dr. Sinard shall submit quarterly declarations under penalty of falsification pursuant to Section 2921.13, Ohio Revised Code, stating whether or not there has been compliance with all the provisions of probation.
 - c. Dr. Sinard shall appear in person for interviews before the full Board or its designated representative at three (3) month intervals, or as otherwise requested by the Board.
 - d. Dr. Sinard shall institute and continue counseling with the Center for Marital & Sexual Health, Inc., or with a psychiatrist approved by the Board, at such intervals as are deemed appropriate by the counselor or treating psychiatrist, but not less than once per month, until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require quarterly reports from the counselor or approved treating psychiatrist. Dr. Sinard shall ensure that these reports are forwarded to the Board on a quarterly basis, or as otherwise directed by the Board.
 - e. In the event that Dr. Sinard should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Sinard must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
4. If Dr. Sinard violates probation in any respect, the Board, after giving Dr. Sinard notice and the opportunity to be heard, may set aside the stay order and impose the suspension of Dr. Sinard's certificate.
5. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Sinard's certificate will be fully restored.

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



R. Gregory Porter
Attorney Hearing Examiner

STATE MEDICAL BOARD

2010-09-14 10:43



STATE MEDICAL BOARD OF OHIO

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

EXCERPT FROM THE DRAFT MINUTES OF JUNE 14, 1995

REPORTS AND RECOMMENDATIONS

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

Dr. Garg noted that the matters of Mustafa Feroze, M.D., and James Miller, D.O., which were initially scheduled for consideration this month, would be considered at a later time. He asked that Board members retain their copies of the hearing records in these cases until such time as they are considered.

Dr. Garg asked whether each member of the Board received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Dewey Mays, Jr., M.D.; William G. Conrad, M.D.; Russell William Fiel, D.O.; James R. Holt, D.O.; Emil E. Pogorelec, D.O.; Jovencio L. Raneses, M.D.; James Michael Sinard, M.D.; Mahendra K. Tandon, M.D.; and Jose A. Torres, M.D. A roll call was taken:

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

Dr. Garg 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. Stienecker	- aye

Dr. Egner	- aye
Dr. Agresta	- aye
Dr. Buchan	- aye
Ms. Noble	- aye
Mr. Sinnott	- aye
Dr. Heidt	- aye
Dr. Steinbergh	- aye
Dr. Garg	- 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. Dr. Gretter did not serve as Secretary in the above-named cases. Mr. Albert did not serve as Supervising Member in the matter of Russell William Fiel, D.O.

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

.....
Dr. Gretter joined the meeting at this time.

Dr. Garg asked whether Dr. Gretter had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Dewey Mays, Jr., M.D.; William G. Conrad, M.D.; Russell William Fiel, D.O.; James R. Holt, D.O.; Emil E. Pogorelec, D.O.; Jovencio L. Raneses, M.D.; James Michael Sinard, M.D.; Mahendra K. Tandon, M.D.; and Jose A. Torres, M.D. Dr. Gretter indicated that he had.

Dr. Garg asked whether Dr. Gretter 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. Dr. Gretter stated that he does understand.

.....
REPORT AND RECOMMENDATION IN THE MATTER OF JAMES MICHAEL SINARD, M.D.

.....
DR. AGRESTA MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JAMES MICHAEL SINARD, M.D. DR. GRETTER SECONDED THE MOTION.

EXCERPT FROM THE DRAFT MINUTES OF JUNE 14, 1995
IN THE MATTER OF JAMES MICHAEL SINARD, M.D.

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

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

The motion carried.



STATE MEDICAL BOARD OF OHIO

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

March 9, 1994

James Michael Sinard, M.D.
777 West State Street # 481
Columbus, OH 43215

Dear Doctor Sinard:

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 October 13, 1993, you entered into a Consent Order with the Michigan Board of Medicine (a copy of the Consent Order is attached hereto and incorporated herein). Under the Consent Order, you were reprimanded, placed on probation for a period of two (2) years and required to visit a mental health practitioner on a regular basis. The Order was based on your admission that you violated your general duty, consisting of negligence or failure to exercise due care.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "the limitation, revocation or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that would also have been a violation of this chapter, except for nonpayment of fees," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, to wit: (B)(6)(a).

- (2) On or about July 14, 1992, you were found guilty of one count of assault and battery, a misdemeanor in the course of practice. The acts underlying your conviction included conducting unauthorized medical examinations while you were a third year resident at the University of Michigan Hospital.

Mailed 3/10/94

James Michael Sinard, M.D.

March 9, 1994

Your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute "a plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

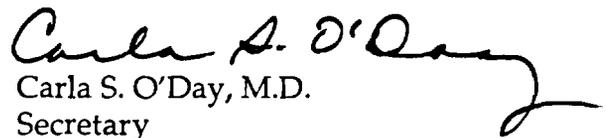
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing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


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

CSO:jmb
Enclosures:

CERTIFIED MAIL #P 348 885 291
RETURN RECEIPT REQUESTED

State of Michigan
Ingham County

We certify that the foregoing is a true copy
of the original on file in the offices of the
Department of Commerce — Bureau of Occu-
pational and Professional Regulation — Office
of Legal Resources.

STATE OF MICHIGAN
DEPARTMENT OF COMMERCE
BUREAU OF OCCUPATIONAL AND PROFESSIONAL REGULATION
BOARD OF MEDICINE

Paul E. Hess 10/24/93
~~10/24/93~~

In the Matter of
JAMES M. SINARD, M.D.

CONSENT ORDER AND STIPULATION

STATE MEDICAL BOARD
OF MICHIGAN
93 OCT 22 PM 3:11

CONSENT ORDER

WHEREAS, an administrative complaint was filed with this Board on December 16, 1992, charging James M. Sinard, M.D., hereafter Respondent, with having violated section 16221(a), (b)(i) and (b)(v) of the Public Health Code, 1978 PA 368, as amended; MCL 333.1101 et seq; MSA 14.15(1101) et seq; and

WHEREAS, Respondent has admitted by stipulation submitted herewith that the facts alleged in the aforesaid complaint pertaining to violation of section 16221(a) are true and constitute violation of section 16221(a) of the Public Health Code, supra, as set forth in said complaint; and

WHEREAS, the Board has reviewed said stipulation and, based upon the matters asserted therein, agrees that the public interest is best served by resolution of the outstanding complaint; now, therefore,

IT IS HEREBY FOUND that the allegations of fact set forth in the aforesaid complaint which pertain to section

16221(a) of the Public Health Code, supra, are true and constitute violation of section 16221(a) of the Public Health Code, supra, as set forth in said complaint.

Accordingly,

IT IS HEREBY ORDERED that the allegations pertaining to violations of sections 16221(b)(i) and (b)(v) of the Public Health Code, supra, shall be and hereby are DISMISSED.

IT IS FURTHER ORDERED that for the aforesaid violation of section 16221(a) of the Public Health Code, supra, Respondent shall be and hereby is REPRIMANDED.

IT IS FURTHER ORDERED that for the aforesaid violation of the Public Health Code, supra, Respondent shall be and hereby is placed on PROBATION for a period of two (2) years, commencing on the effective date of this order. The terms and conditions of said probation are as follows:

A. Respondent shall secure and see on a regular professional basis a qualified mental health practitioner who shall be mutually acceptable to Respondent and the Board, and who shall be provided a copy of this order. Said mental health practitioner shall submit to the Board quarterly reports indicating the number and frequency of Respondent's visits, Respondent's status, and Respondent's ability to practice the health profession with reasonable skill and safety to patients. The initial report shall be submitted to the Board at the end of the third month of probation, and subsequent reports shall be submitted every third month thereafter until Respondent is released from treatment or the period of probation is terminated, whichever first occurs. If, however, at any time said mental health practitioner finds that Respondent has a mental or physical disability which renders Respondent unable to practice the

profession with reasonable skill and safety to patients, said mental health practitioner shall immediately submit a report to the Board which shall include such findings and related information.

IT IS FURTHER ORDERED that the timely filing of the reports as herein required shall be Respondent's responsibility, and the failure to file said reports within the time limitations herein provided shall be deemed a violation of an order of the Board.

IT IS FURTHER ORDERED that the aforesaid reports shall be mailed to the Board, c/o Compliance Section, Legal Resources Division, Bureau of Occupational & Professional Regulation, Department of Commerce, P.O. Box 30018, Lansing, Michigan 48909.

IT IS FURTHER ORDERED that this order shall be effective on the date signed by the Board as set forth below.

Signed by the Board this 13 day of October, 1993.

MICHIGAN BOARD OF MEDICINE

By Philip M. Wenzel

I hereby approve the above order as to form and substance.

James M. Sinard
James M. Sinard, M.D.
Respondent

STIPULATION

NOW COME the respective parties to stipulate and agree as follows:

1. The allegations of fact contained in the aforesaid complaint pertaining to violation of section 16221(a) are true and constitute violation of section 16221(a) of the Public Health Code, supra.

2. Respondent understands and intends that by signing this stipulation Respondent is waiving the right pursuant to the Public Health Code, supra, the rules promulgated thereunder, and the Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCL 24.201 et seq; MSA 3.560(101) et seq, to require the People to prove the charges set forth in the administrative complaint by presentation of evidence and legal authority, and to appear with an attorney and such witnesses as Respondent may desire to present a defense to said charges before the Board or its authorized representative.

3. The Board's conferee in this matter, John A. Ingold, M.D., may participate freely in any deliberations of the Board regarding acceptance of this proposed consent order and stipulation, and may relate to the Board any knowledge and views of the case acquired by said conferee.

4. The foregoing consent order is approved by the respective parties and may be entered as the final order of the Board in said cause.

5. The foregoing proposal is conditioned upon its acceptance by the Board, the parties expressly reserving the right to further proceedings without prejudice should the consent order be rejected.

AGREED TO BY:

Howard C. Marderosian
Howard C. Marderosian (P-17080)
Assistant Attorney General
Attorney for the People
Dated: 9/16/93

AGREED TO BY:

James M. Sinard, M.D.
James M. Sinard, M.D.
Respondent

State of Ohio)
County of Franklin) ss

On the 2nd day of September, 1993, before me, a Notary Public in and for said county, appeared James M. Sinard, M.D., who, upon oath, states that he has read the foregoing consent order and stipulation by him subscribed, that he knows the contents thereof to be true, and that the signing of said consent order and stipulation is his free act and deed.

Phea S. Schnabel
Notary Public, FRANKLIN County
State of OHIO
My Commission expires 10-1-97

This is the last and final page of a consent order and stipulation in the matter of James M. Sinard, M.D., pending before the Michigan Board of Medicine and consisting of five (5) pages, this page included.