



STATE MEDICAL BOARD OF OHIO

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

December 6, 1996

Robert G. Sperry, M.D.
900 Greenway Court
Miamisburg, Ohio 45342-6428

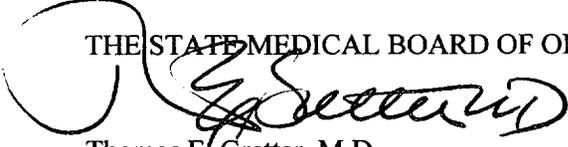
Dear Doctor Sperry:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on December 4, 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 to 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 152 982 935
Return Receipt Requested

cc: Glenn F. Alban, Esq.
Kelly M. Morgan, Esq.

Certified Mail Receipt No. P 152 982 936
Return Receipt Requested

Mailed 12-9-96



STATE MEDICAL BOARD OF OHIO

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CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on December 4, 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 Robert G. Sperry, 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)

A handwritten signature in cursive script, appearing to read "T. E. Gretter, M.D.", written over a horizontal line.

Thomas E. Gretter, M.D.
Secretary

12/4/96

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

*

*

ROBERT GEORGE SPERRY, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 4th day of December, 1996.

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 that the allegations against Robert George Sperry, M.D., as specified in the State Medical Board's notice of opportunity for hearing letter dated February 14, 1996, are DISMISSED.

Thomas E. Gretter, M.D.
Secretary

(SEAL)

12/4/96

Date

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

The Matter of Robert George Sperry, M.D., was heard by R. Gregory Porter, Esq., Attorney Hearing Examiner for the State Medical Board of Ohio, on August 26, 1996.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated February 14, 1996 (State's Exhibit 1), the State Medical Board notified Robert George Sperry, 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 June 21, 1993, [Dr. Sperry] filed an Application for a Certificate to practice medicine and surgery in Ohio. Subsequently, in reliance upon [Dr. Sperry's] certification to the truthfulness of [his] statements in this application, [he] was issued a license to practice medicine and surgery in Ohio. However, in the above Application, [Dr. Sperry] answered "No" to the following question in the section entitled, "Additional Information—Medicine or Osteopathic":

"17. Have you ever been convicted or found guilty of a violation of federal law, state law, or municipal ordinance other than a minor traffic violation?"

In fact, on or about September 24, 1991, in the Municipal Court, Clermont County, Ohio, [Dr. Sperry was] convicted of DWI (Driving While under the Influence), in violation of Section 4511.19, Ohio Revised Code.

The Board alleged that Dr. Sperry's acts, conduct, and/or omissions, individually and/or collectively, constituted "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the Board," as that clause is used in Section 4731.22(A), Ohio Revised Code"; "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code"; and/or "a

failure to furnish satisfactory proof of good moral character as required by Section 4731.08, Ohio Revised Code.”

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

- B. By letter received by the State Medical Board on March 8, 1996 (State's Exhibit 2), Dr. Sperry requested a hearing.

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Patrick W. Beatty, Assistant Attorney General.
- B. On behalf of the Respondent: Kelly M. Morgan, Esq., and Glenn F. Alban, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

- A. Presented by the State

No witnesses were presented.
- B. Presented by the Respondent

Robert George Sperry, M.D.

II. Exhibits Examined

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

- A. Presented by the State
 - 1. State's Exhibit 3A: March 8, 1996, letter to Dr. Sperry from the Board, advising that a hearing had been set for March 22, 1996, but further advising that the hearing had been postponed pursuant to Section 119.09, Ohio Revised Code.

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2. State's Exhibit 3B: May 21, 1996, Entry granting the Respondent's May 16, 1996, motion for continuance, and rescheduling the hearing for August 26, 1996.
3. State's Exhibit 4: March 14, 1996, letter to Dr. Sperry from the Board, scheduling the hearing for May 23, 1996. (2 pp.)
4. State's Exhibit 5: Collection of documents from the Pierce Township Police Department (Clermont County, Ohio) consisting of the following: certified copy of two traffic citations, number 5147 and 5148, dated September 21, 1991; certified copy of a traffic crash report dated September 21, 1991; and a copy of a BAC Verifier Test Report Form dated September 21, 1991. (4 pp.) (Note: The first page of this exhibit was removed and will be held for the State as a proffer.) (Further note: The pages of this exhibit were numbered by the Hearing Examiner.)
5. State's Exhibit 6: Collection of documents from the Ohio Bureau of Motor Vehicles, consisting of the following: copy of Abstract Driver Record for Robert G. Sperry; copy of criminal dockets dated September 24, 1991, in the case of *Pierce Township v. Robert G. Sperry*; and certification letter dated January 23, 1996.
6. State's Exhibit 7: Copy of Dr. Sperry's application for a certificate to practice medicine and surgery in Ohio. (14 pp.) (Note: The pages of this exhibit were numbered by the Hearing Examiner.)

B. Presented by the Respondent

1. Respondent's Exhibit A: Dr. Sperry's application for a certificate to practice medicine and surgery in Maryland. (10 pp.) (Note: The pages of this exhibit were numbered by the Hearing Examiner.)
2. Respondent's Exhibit B: Letter of support for Dr. Sperry from Dr. Sperry's residency director, Edward T. Bope, M.D.
3. Respondent's Exhibit C: Not admitted, but held as proffered material for the Respondent.

III. Post-Hearing Admissions to the Record

On the Hearing Examiner's own motion, the following additional exhibit is hereby admitted to the record:

Board Exhibit A: Respondent's May 16, 1996, Motion for Continuance of Hearing. (3 pp.)

PROCEDURAL MATTERS

1. The first page of State's Exhibit 5 was removed and will be held as proffered material for the State.
2. Respondent's Exhibit C was not admitted and will be held as proffered material for the Respondent.

SUMMARY OF THE EVIDENCE

All transcripts of testimony and exhibits, whether or not specifically referred to hereinafter, were thoroughly reviewed and considered by the Attorney Hearing Examiner prior to preparing this Report and Recommendation.

1. On June 21, 1993, the State Medical Board of Ohio [Board] received an application to practice medicine and surgery in the State of Ohio from Robert George Sperry, M.D. In the section of the application entitled "Additional Information—Medicine or Osteopathic Medicine," Dr. Sperry answered "No" to question 17 which asked: "Have you ever been convicted or found guilty of a violation of federal law, state law, or municipal ordinance other than a minor traffic violation?" (State's Exhibit [St. Ex.] 1, p. 13)

Dr. Sperry received his certificate to practice medicine and surgery in Ohio in 1993. (Transcript page [Tr.] 19)

2. On or about September 21, 1991, Dr. Sperry was cited for speeding and for operating a motor vehicle while under the influence of alcohol. An accident report prepared by a Pierce Township policeman indicated that Dr. Sperry lost control of his car and hit an embankment. Dr. Sperry's car was damaged and he had minor visible injuries. No other vehicles or passengers were involved. Dr. Sperry was tested for alcohol via a breath test and his alcohol level was determined to be .168 grams of alcohol per 210 liters of breath. (St. Ex. 5)

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3. On or about September 24, 1991, Dr. Sperry appeared before the Clermont County Court concerning his traffic citations. The Court's docket sheet for Dr. Sperry's speeding offense, Case Number 1300, indicated that Dr. Sperry was convicted and fined \$25 plus \$23 costs. Concerning Dr. Sperry's alleged DUI, violation of Section 4511.19(A)(1), Ohio Revised Code, Case Number 1301, the Court's docket sheet indicated that Dr. Sperry was fined \$250 plus \$37 costs. Dr. Sperry was sentenced to 180 days in jail, less 177 days, and placed on non-reporting probation for three years. Dr. Sperry testified that he spent three days in a weekend intervention program. In addition, Dr. Sperry's driver's license was suspended for 180 days. (St. Ex. 6; Tr. 26) However, it is worth noting that the "Convicted" box on the docket sheet for Case number 1301 was not checked, and there was no further information recorded concerning Dr. Sperry's plea or the Court's findings concerning Dr. Sperry's DUI charge. (St. Ex. 6)

An abstract of Dr. Sperry's driving record obtained from the Ohio Bureau of Motor Vehicles on January 23, 1996, indicated that Dr. Sperry was convicted on September 24, 1991, in the Clermont County Court, Case Number 1961301, of "DUI-Alcohol/Liquor," and carried six points on his driving record as a result. (St. Ex. 6)

4. Concerning his September 24, 1991, court appearance, Dr. Sperry testified that he wanted to plead guilty to the offenses to get the matter over with. Dr. Sperry stated that he had not consulted with an attorney concerning the matter, and was not represented by an attorney in court. Dr. Sperry testified that, prior to appearing before the judge, he discussed his case with the prosecutor. (Tr. 24-25)

Dr. Sperry further testified that, when asked by the judge for a plea, Dr. Sperry responded that he "would like to plead guilty." The prosecutor then interrupted and said, "Wait a minute, Your Honor. We would ask for a plea of no contest." This was followed by a discussion in what Dr. Sperry described as "legal speak" between the prosecutor and the judge. At the present hearing, Dr. Sperry testified that "I'm not a lawyer and I don't remember what they said, but it was my understanding at the time that the prosecutor had intervened for me and had reduced what he was prosecuting." Dr. Sperry testified that his case was finished that day and that he did not have to make any further court appearances. (Tr. 24-26)

5. Dr. Sperry acknowledged at the present hearing that he had too much to drink before the accident. Dr. Sperry stated that he was "drowning his sorrows"

concerning some family tragedies, namely the death of his mother, and his father's heart attack that occurred about three weeks before the incident. Dr. Sperry further stated that he is aware that drinking was an inappropriate response to these problems, and testified that this will never happen again. Dr. Sperry testified that he does not have an alcohol dependency problem. (Tr. 21-22)

6. Concerning Dr. Sperry's response to question 17 on his application for an Ohio certificate, Dr. Sperry testified that he answered the question truthfully. Dr. Sperry further testified that he first questioned whether or not he had been convicted. Second, Dr. Sperry noted that, in the legal sense, DUI is a "minor or misdemeanor crime." Dr. Sperry stated that the question concerns the entire range of criminal offenses, and, in that context, his DUI offense, a misdemeanor, fell into the category of minor rather than major crime. Moreover, the fine was \$250, there was no jail time, and the court time lasted about three to five minutes. (Tr. 28-30, 34-36)
7. Dr. Sperry testified that he answered "Yes" to a question on his application for a Maryland certificate that asked: "Have you had a plea of guilty, nolo contendere, conviction, or receipt of probation before judgment for an alcohol or controlled dangerous substance offense, including but not limited to driving while under the influence of alcohol or controlled dangerous substances?" Dr. Sperry stated that the Maryland question was very specific concerning driving a car under the influence. (Resp. Ex. A, p. 6; Tr. 31-33, 38-39)

LEGAL ISSUES

1. Ohio has a set of rules governing the procedure to be followed by its courts in traffic cases, namely, the Traffic Rules. However, Traffic Rule 20 provides that the Rules of Criminal Procedure apply in instances where no procedure is specifically prescribed in the Traffic Rules. Because there is no Traffic Rule concerning judgments of conviction, Rule 32(B), Rules of Criminal Procedure, which concerns judgments of conviction, applies to traffic cases.

Rule 32(B), Rules of Criminal Procedure, states, in part, that "[a] judgment of conviction shall set forth the plea, the verdict or findings, and the sentence." In Dr. Sperry's case, the docket sheet for the DUI offense lists only a sentence; the plea is not specified, and there is no record of the court's finding, although there is space on the form for these items of information. Therefore, it is not a proper judgment of conviction under Rule 32(B).

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2. The Respondent argued that the term "minor offense" is synonymous with the term "petty offense." The term "petty offense" is defined in both the Traffic Rules and the Rules of Criminal Procedure as an offense for which the penalty prescribed by law is confinement for six months or less. The offense which Dr. Sperry was charged with, Driving under the influence of alcohol or drugs, Section 4511.19(A)(1), carried with it a maximum term of confinement of not more than six months. (Sections 4511.99(A)(1) and 2929.21(B)(1), Ohio Revised Code) Therefore, the Respondent argued, DUI falls under the category of "minor traffic violation" as that clause was used in question 17 of the Ohio application.

The term "minor traffic violation" is not defined in Ohio law. However, the term itself would appear to confine itself to the spectrum of traffic violations. Although DUI may be a petty offense when placed in the spectrum of criminal offenses—which includes crimes such as murder, arson, and robbery—in the spectrum of traffic violations, DUI is not minor. Unlike offenses such as speeding or running a stop sign, Ohio law provides for mandatory sentencing and license suspension for a DUI conviction. Therefore, in the context of question 17, a conviction for DUI would require the applicant to answer "Yes."

FINDINGS OF FACT

As discussed above in Legal Issues 1, which is incorporated herein by reference, the evidence is insufficient to support a finding that, on or about September 24, 1991, in the Clermont County Court, Robert George Sperry, M.D., was convicted of DUI, Driving while under the influence of alcohol or drugs, in violation of Section 4511.19, Ohio Revised Code.

CONCLUSIONS OF LAW

As set forth in the Findings of Fact, the evidence presented in this Matter is insufficient to conclude that the acts, conduct, and/or omissions of Robert George Sperry, M.D., individually and/or collectively, constituted: "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the Board," as that clause is used in Section 4731.22(A), Ohio Revised Code"; "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code"; and/or "a failure to furnish satisfactory proof of good moral character as required by Section 4731.08, Ohio Revised Code."

PROPOSED ORDER

It is hereby ORDERED that the allegations against Robert George Sperry, M.D., as specified in the State Medical Board's notice of opportunity for hearing letter dated February 14, 1996, are DISMISSED.

A handwritten signature in black ink, appearing to read 'R. Gregory Porter', written over a horizontal line.

R. Gregory Porter
Attorney Hearing Examiner



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EXCERPT FROM THE DRAFT MINUTES OF DECEMBER 4, 1996

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: Hans E. Gartner, M.T.; John Charles Guidi, M.T.; James Photiadis, M.D.; Jeffrey C. Spencer, M.D.; Robert George Sperry, M.D.; and Alan Weiner, D.P.M.

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

Mr. Sinnott indicated that he did not read the materials with respect to Dr. Weiner, and he would therefore be abstaining from taking part in the discussion and vote.

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.

.....
REPORT AND RECOMMENDATION IN THE MATTER OF GEORGE SPERRY, M.D.

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

.....
A vote was taken on Dr. Garg'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
Mr. Sinnott	- aye
Dr. Garg	- 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

February 14, 1996

Robert George Sperry, M.D.
1854 Willoway Circle S.
Columbus, OH 43220

Dear Doctor Sperry:

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 June 21, 1993, you filed an Application for a Certificate to practice medicine and surgery in Ohio. Subsequently, in reliance upon your certification of the truthfulness of your statements in this Application, you were issued a license to practice medicine and surgery in Ohio. However, in the above Application, you answered "No" to the following question in the section entitled, "Additional Information-Medicine or Osteopathic":

"17. Have you ever been convicted or found guilty of a violation of federal law, state law, or municipal ordinance other than a minor traffic violation?"

In fact, on or about September 24, 1991, in the Municipal Court, Clermont County, Ohio, you were convicted of DWI (Driving While under the Influence), in violation of Section 4511.19, Ohio Revised Code.

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.

Mailed 2/15/96

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute a failure to furnish satisfactory proof of good moral character as required by Section 4731.08, Ohio Revised Code.

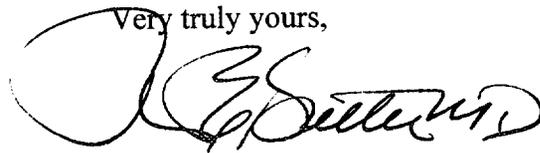
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing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

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 348 887 270
RETURN RECEIPT REQUESTED

rev.2/15/95