

FILED  
IN THE COURT OF APPEALS OF OHIO COURT OF APPEALS  
FRANKLIN CO. OHIO

TENTH APPELLATE DISTRICT 2006 FEB 14 PM 3:22

CLERK OF COURTS

David A. Hoxie, M.D.,	:	
	:	
Appellant-Appellant,	:	
	:	No. 05AP-681
v.	:	(C.P.C. No. 04CVF07-7441)
	:	
Ohio State Medical Board,	:	(REGULAR CALENDAR)
	:	
Appellee-Appellee.	:	

JUDGMENT ENTRY

For the reasons stated in the opinion of this court rendered herein on February 14, 2006, appellant's assignments of error are overruled, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs shall be assessed against appellant.

FRENCH, J., KLATT, P.J., and DESHLER, J.

By Judith L. French  
Judge Judith L. French

DESHLER, J., retired of the Tenth Appellate District, assigned to active duty under authority of Section 6(C), Article IV, Ohio Constitution.

DEAN B. HIRMAN  
FEB 16 2006  
SERVICES SECTION

ON COMPUTER 12

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

David A. Hoxie, M.D.,	:	
Appellant-Appellant,	:	
v.	:	No. 05AP-681 (C.P.C. No. 04CVF07-7441)
Ohio State Medical Board,	:	(REGULAR CALENDAR)
Appellee-Appellee.	:	

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O P I N I O N

Rendered on February 14, 2006

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*Collis, Smiles & Collis, LLC, Elizabeth Y. Collis, and Terri-Lynne B. Smiles, for appellant.*

*Jim Petro, Attorney General, and Kyle C. Wilcox, for appellee.*

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APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} David A. Hoxie, M.D. ("appellant") appeals from the decision of the Franklin County Court of Common Pleas, which affirmed a decision by the State Medical Board of Ohio ("appellee") that permanently revoked appellant's license to practice medicine in Ohio.

{¶2} This appeal arises from a June 11, 2003 notice of hearing, which advised appellant that appellee intended to take action on his certificate to practice medicine and surgery in the state of Ohio. R.C. 4731.22 authorizes appellee to revoke or suspend a certificate for the commission of specified acts relating generally to an individual's fitness to practice medicine.

{¶3} Upon appellant's request, appellee held a hearing. Appellant was the first witness to testify. Appellant testified that he is a physician licensed to practice medicine in Ohio and Virginia. He was operating a family practice in Waverly, Ohio, and was also serving as the Pike County Coroner, an elected position.

{¶4} Appellee's counsel questioned appellant concerning his applications to practice in Ohio and Virginia, and his application for registration with the Drug Enforcement Administration ("DEA"). Appellee submitted copies of appellant's applications.

{¶5} On or about January 20, 1995, appellant submitted an application for a license to practice medicine in Virginia. Appellant checked "No" to question number 8, which asked:

Have you ever been convicted of a violation of/or pled Nolo Contendere to any federal, state, or local statute, regulation or ordinance, or entered into any plea bargaining relating to a felony or misdemeanor? (Excluding traffic violations, except convictions for driving under the influence.)

On September 21, 1995, the Commonwealth of Virginia Board of Medicine granted appellant a certificate.

{¶6} On or about October 13, 1995, appellant submitted an application for registration to the DEA. Appellant checked "NO" to question number 4(b), which asked:

Has the applicant ever been convicted of a crime in connection with controlled substances under State or Federal law?

{¶7} On July 1, 1996, appellant submitted an application for a certificate to practice medicine in Ohio. Appellant checked "NO" to question number 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?

{¶8} Counsel for appellee also questioned appellant concerning his deposition before board staff in April 2003. In that deposition, appellant stated that he had been arrested in the state of California 10 to 15 times, all for minor traffic offenses. He also had denied that he had been arrested for possessing marijuana, possessing phencyclidine ("PCP"), driving under the influence of drugs or alcohol or being under the influence of PCP. He denied that he had ever been placed on probation, and he denied that he had ever been in a drug rehabilitation program.

{¶9} Counsel for appellee then questioned appellant at length concerning certified copies of records held by the state of California. These records indicated that appellant had been arrested or detained by the Los Angeles Police Department multiple times in the 1970s and 1980s: (1) on December 15, 1973, for possessing marijuana; (2) on September 19, 1978, for possessing PCP; (3) on July 11, 1981, for driving under the influence of alcohol and/or drugs; (4) on August 7, 1983, for driving under the influence and possession of PCP; (5) on January 26, 1984, for driving under the influence of PCP; and (6) on September 25, 1984, for driving under a suspended license.

{¶10} Appellant also presented additional evidence relating to the August 7, 1983 arrest. That evidence consisted of: (1) a copy of a fingerprint card, which includes information identifying appellant and references to the arrest, charge, and final disposition; (2) an untitled document indicating first pleas of not guilty to three charges and final pleas of "NOLO" to two charges, a sentence of probation, and a subsequent violation and revocation of probation; (3) a Probation Flash Notice dated December 26, 1983, indicating that appellant's probation would expire on November 29, 1985, and referencing "1000.2PC DRUG/DIVERSION"; and (4) a Probation Flash Notice dated July 31, 1984, indicating appellant's status as "Probation/Diversion Terminated[.]"

{¶11} In response to appellee's questions about the records, appellant verified the accuracy of virtually all the identifying information contained in them, e.g., his name, address, birth date, physical description, and car. However, he adamantly denied ever being arrested for, charged with, convicted of, or placed on probation or diversion for any charges relating to anything other than traffic violations. For example, as to the December 12, 1973 arrest, the following discussion occurred:

THE EXAMINER: On the first page there is a charge and it says "P-o-s-s-m-a-r-j" and there is a code number. If we looked up that code number and it was for possessing marijuana, you would still dispute the fact?

THE WITNESS: Absolutely. I dispute the fact that I was ever arrested for anything in relation to drugs. And we can save time because that's my answer to all of this. I've never been arrested for anything other than traffic-related failure to appear offenses.

THE EXAMINER: Despite - -

THE WITNESS: Despite all of this.

THE EXAMINER: - - this has possession of marijuana?

THE WITNESS: Exactly. Absolutely, yes.

THE EXAMINER: Okay.

BY [appellee's counsel]:

Q. And just so we are clear, the officer's narrative then who explains everything that happened, you are stating none of that happened and that the officer made this up, I guess, for lack of a better word?

A. I suppose so. Right. Yes, I would say that.

(Tr. at 49-50.)

{¶12} Upon questioning concerning each of the California documents, appellant similarly denied the accuracy of the substantive portion of each record, including the reporting officers' detailed, handwritten explanations of the arrest or detention. When asked to explain the discrepancy between the records and his testimony, appellant surmised that the Los Angeles Police Department had fabricated the documents.

{¶13} As to allegations that he prescribed medication for a family member, appellant admitted that he had prescribed medication for his wife. He explained that he had not thoroughly understood the board's rules concerning prescriptions for family members, and he stated that, given his current understanding, he would not prescribe scheduled substances to a family member.

{¶14} As to allegations that he post-dated prescriptions, appellant admitted that he sometimes post-dated prescriptions for the convenience of his patients. When asked whether he was admitting that the subject prescriptions were "illegal" or "not within compliance of the law[,]" appellant replied, "Yes, sir." (Tr. at 100.)

{¶15} Appellee also presented the testimony of Kevin Randolph Beck, a former investigator for appellee. As part of his investigation of appellant, Beck spoke with an

officer of the Ross County Sheriff's Office, who ran a background check on appellant. According to Beck, that check revealed that appellant had been arrested several times in California. Beck also testified that he and DEA Agent Dawn Valerie Mitchell interviewed appellant in March 2002, concerning his criminal history, applications to practice medicine in Ohio and Virginia, and application for DEA registration. During that interview, according to Beck, appellant denied ever being arrested for anything related to alcohol or controlled substances. Beck also testified that, when asked why it took appellant 10 years to obtain his undergraduate degree, appellant stated that he had been in jail. Upon questioning by appellant's counsel, Beck stated that he was not familiar enough with drug diversion programs to say whether placement in a diversion program would result in a conviction.

{¶16} Appellee also presented the testimony of DEA Agent Mitchell. Mitchell testified that she had conducted a criminal check of appellant using the National Criminal Information Center ("NCIC") and that the check revealed appellant had been arrested for possessing controlled substances and for being under the influence of controlled substances. Mitchell stated that she had asked DEA Investigator Dwight A. Cokely to obtain the arrest records. Mitchell confirmed that, after she received and reviewed the records, she interviewed appellant. She testified that she asked appellant if he had ever been arrested, charged or convicted for anything relating to controlled substances and that appellant had denied ever being arrested, charged, convicted or placed on probation for anything related to controlled substances. She also testified that, while appellant stated that he had a California driver's license, the investigation determined that he had had a driver's license, but it had been suspended in New York,

Virginia, and Michigan. In response to a question from appellant's counsel concerning whether the records included a record of any court conviction, Mitchell stated: "Not a record from a courthouse that says the Superior Court, no." (Tr. at 135.)

{¶17} Appellee submitted the affidavit of DEA Investigator Cokely for the purpose of explaining the California documents. However, the hearing examiner sustained an objection by appellant and struck a portion of the affidavit. As admitted, the affidavit simply identifies Cokely as a former DEA investigator and states that Cokely was contacted by a Columbus DEA agent, asked to obtain the records, and asked to interview the keeper of those records.

{¶18} Finally, appellee presented evidence of a DEA administrative proceeding. The evidence included the findings and recommendations of an administrative law judge, who found a basis to revoke appellant's DEA registration, but did not indicate a final decision on the matter by the DEA.

{¶19} The hearing examiner thereafter issued a detailed report and recommendation, which recommended that appellee permanently revoke appellant's license. Specifically, the hearing examiner found the evidence sufficient to conclude that appellant had been convicted of one misdemeanor count of being under the influence of a controlled substance (PCP) and to one count of driving under the influence of the controlled substance (PCP) stemming from his August 7, 1983 arrest. Accordingly, the hearing examiner found that he had given false answers in his Ohio, Virginia, and DEA applications. The hearing examiner also found that appellant had given false answers concerning his criminal history in the March 2002 interview and the April 2003 deposition. As to that criminal history, the hearing examiner gave detailed

descriptions of the arrest reports. In particular, she found that appellant had been arrested, but not charged, for his December 1973 actions; arrested for his September 1978 actions; detained, but not arrested, for his July 1981 actions; arrested, charged, convicted, and placed on probation for his August 1983 actions; and detained, but not arrested, for his January 1984 actions. Finally, the hearing examiner found that appellant had inappropriately prescribed medication to a family member and post-dated prescriptions for three patients. Based on these factual findings, the hearing examiner concluded that appellant's actions constituted nine violations supporting revocation under R.C. 4731.22: "fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board" under R.C. 4731.22(A); publishing a "false, fraudulent, deceptive, or misleading statement" under R.C. 4731.22(B)(5); "[m]aking a false, fraudulent, deceptive, or misleading statement \* \* \* in securing or attempting to secure any certificate to practice or certificate of registration issued by the board" under R.C. 4731.22(B)(5); "[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed" under R.C. 4731.22(B)(12), i.e., falsification under R.C. 2921.13; "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed" under R.C. 4731.22(B)(10), i.e., perjury under R.C. 2921.11; "[f]ailure to cooperate in an investigation conducted by the board" under R.C. 4731.22(B)(34); "violating or attempting to violate, directly or indirectly \* \* \* any provisions of this chapter or any rule promulgated by the board" under R.C. 4731.22(B)(20), i.e., Ohio Adm.Rule 4731-11-04(B); "violating or attempting to violate \* \* \* any provisions of this chapter or any rule

promulgated by the board" under R.C. 4731.22(B)(20), i.e., Ohio Adm.Rule 4731-11-08; and "[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed" under R.C. 4731.22(B)(12), i.e., R.C. 3719.06.

{¶20} Appellee thereafter approved and confirmed the hearing examiner's proposed findings. Appellee issued an order permanently revoking appellant's certificate to practice medicine and surgery in the state of Ohio.

{¶21} Appellant appealed appellee's order to the court of common pleas. Upon review, the court found that appellee's order is supported by reliable, probative, and substantial evidence and is in accordance with law. Appellant timely appealed to this court, where he raises two assignments of error:

Assignment of Error 1:

The Court of Common Pleas abused its discretion in upholding the Medical Board's Order to permanently revoke Dr. Hoxie's license in light of a complete absence of evidence in support of the Medical Board's allegations.

Assignment of Error 2:

The Court of Common Pleas erred in upholding the Medical Board's order to permanently revoke Dr. Hoxie's license without a finding of intent to deceive or mislead the Medical Board or other government agencies.

{¶22} In an administrative appeal, pursuant to R.C. 119.12, the trial court reviews an order to determine whether it is supported by reliable, probative, and substantial evidence and is in accordance with the law. In applying this standard, the court must "give due deference to the administrative resolution of evidentiary conflicts." *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 111.

{¶23} The Ohio Supreme Court has defined reliable, probative, and substantial evidence as follows:

\* \* \* (1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) "Substantial" evidence is evidence with some weight; it must have importance and value.

(Footnotes omitted.) *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571.

{¶24} On appeal to this court, the standard of review is more limited. Unlike the court of common pleas, a court of appeals does not determine the weight of the evidence. *Rossford Exempted Village School Dist. Bd. of Edn. v. State Bd. of Edn.* (1992), 63 Ohio St.3d 705, 707. In reviewing the court of common pleas' determination that the board's order was supported by reliable, probative, and substantial evidence, this court's role is limited to determining whether the court of common pleas abused its discretion. *Roy v. Ohio State Med. Bd.* (1992), 80 Ohio App.3d 675, 680. The term abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. However, on the question of whether the board's order was in accordance with the law, this court's review is plenary. *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.* (1992), 63 Ohio St.3d 339, 343.

{¶25} In his first assignment of error, appellant asserts "a complete absence of evidence in support of" appellee's allegations. We disagree.

{¶26} Appellant asserts first that appellee had insufficient evidence to conclude that appellant had committed a practice-related misdemeanor by making false statements during the March 2002 interview. Specifically, appellant cites appellee's failure to submit a court record of conviction and asserts the unreliability of the records that were submitted.

{¶27} We acknowledge, as appellee acknowledged, the absence of a final court record of conviction. As appellee notes, however, this and other Ohio courts have allowed evidence other than a certified judgment of conviction to prove a prior offense, even in a criminal setting. See, e.g., *City of Middleburg Hts. v. D'Ettorre* (2000), 138 Ohio App.3d 700; *State v. Perkins* (June 22, 1998), Madison App. No. CA97-10-047; *Cleveland Metro. Park Dist. v. Schillinger* (Sept. 4, 1997), Cuyahoga App. No. 71512; *City of Columbus v. Malinchak* (Mar. 29, 1988), Franklin App. No. 87AP-1038. Here, the testimony and certified records that were submitted are reliable, substantial, and probative evidence that a conviction occurred. Taken together, the disposition sheet and the probation flash notices sufficiently identify the charges filed, the pleas made, and the final disposition. In addition, the January 26, 1984 arrest report states that appellant was on probation at that time and the probation would expire on November 29, 1985. And, the testimony of DEA Agent Mitchell, who reviewed the NCIC database and the records, supports the presence of a conviction. Therefore, the trial court did not abuse its discretion in determining that there was evidence of a conviction.

{¶28} Furthermore, these and the additional arrest records support the trial court's finding of evidence sufficient to support appellee's finding that appellant lied in the March 2002 interview and the April 2003 deposition when he stated that he had

never been arrested. Appellant cites to the lack of evidence to explain the documents. While such evidence might have been helpful, it was by no means necessary for an understanding of the documents.

{¶29} First, law enforcement investigation reports are generally admissible, even in judicial settings where the rules of evidence apply. *Felice's Main Street, Inc. v. Liquor Control Comm.*, Franklin App. No. 01AP-1405, 2002-Ohio-5962, citing Evid.R. 803(6), 803(8). "The rationale behind permitting such evidence is that such routine reports have a very high indicia of reliability." *Husnia, Inc. v. Liquor Control Comm.* (June 24, 1999), Cuyahoga App. No. 74216. Appellant does not argue here that the records were inadmissible.

{¶30} Second, appellant himself added to the reliability of the records. He verified all of the significant identifying information contained within the documents, including his name, physical description, social security number, birth date, address, and car.

{¶31} Third, for the most part, these records are self-explanatory. They include multiple pages of detailed, handwritten narrative by the arresting officers, lab reports, diagrams, and detailed, corroborating notations concerning appellant's criminal history. The August 7, 1983 report, for example, is eight pages long, with a completed one-page breathalyzer test checklist attached. It includes a three-and-a-half-page narrative concerning the arrest, appellant's actions and statements, and the names and serial numbers of the officers involved. Given such detail, appellant's blanket assertion of unreliability is inaccurate.

{¶32} Finally, the hearing examiner's careful review of each record accounted for any limitations, e.g., the absence of an indication of a final disposition or the presence of a certification that appellant had been detained, not arrested. Given appellant's adamant denial of the circumstances surrounding virtually all of the arrests and detentions, and his assertion that the Los Angeles Police Department fabricated them, it was reasonable for the hearing officer, appellee, and the trial court to conclude that appellant's testimony was not credible. It is not our role to second-guess that credibility determination nor, given the strength of the documentary evidence here, are we inclined to do so. *Graor v. State Med. Bd.*, Franklin App. No. 04AP-72, 2004-Ohio-6529 (trial court review includes appraisal of evidence as to witnesses' credibility), citing *Lies v. Veterinary Med. Bd.* (1981), 2 Ohio App.3d 204, 207; and *Andrews v. Bd. of Liquor Control* (1955), 164 Ohio St. 275, 280.

{¶33} Appellant also argues that the evidence does not support appellee's finding that appellant failed to cooperate in the investigation. Appellant notes that he responded to appellee's subpoenas and interrogatories and answered appellee's deposition questions. R.C. 4731.22(B)(34) authorizes appellee to revoke a certificate for "[f]ailure to cooperate in an investigation conducted by the board under division (F) of this section, including \* \* \* failure to answer truthfully a question presented by the board at a deposition or in written interrogatories[.]" Having concluded that appellee and the trial court correctly determined that appellant gave false answers during the March 2002 interview and the April 2003 deposition, we find sufficient support for appellee's finding that appellant did not cooperate in its investigation.

{¶34} For all of these reasons, we overrule appellant's first assignment of error.

{¶35} In his second assignment of error, appellant asserts that appellee's order is invalid because appellee did not find that appellant intended to deceive or mislead appellee. In appellant's view, he did not hide his encounters with police and revealed what he believed to be the truth about them, i.e., his arrests were related to traffic violations or a neighbor's complaint about noise. In support, appellant cites this court's decisions in *In re Wolfe* (1992), 82 Ohio App.3d 675, 687; *Rajan v. State Med. Bd. of Ohio* (1997), 118 Ohio App.3d 187; and *Webb v. State Med. Bd. of Ohio* (2001), 146 Ohio App.3d 621. We find, however, that appellant's reliance on these prior decisions is misplaced.

{¶36} In *Wolfe*, we found that an applicant's "technically inaccurate" statements and "inept" disclosures did not support a finding of intentional deceit. *Wolfe* at 687. In *Rajan*, we found that the hearing examiner failed to make findings of fact with regard to any evidence that the appellant acted with the intent to deceive or mislead. In *Webb*, we found that there was a finding by the hearing examiner that the appellant's misrepresentations to the board were unintentional. Here, appellant's testimony goes well beyond technically inaccurate statements, inept disclosures or unintentional misrepresentations. In contrast to the individuals at issue in the cited cases, appellant disclosed nothing about drug-related offenses or arrests and then repeatedly denied that the events had even occurred. The hearing examiner made detailed findings concerning the evidence and appellant's actions, and found that appellant had provided false answers on his Ohio, Virginia, and DEA applications in the March 2002 interview and in the April 2003 deposition. Thus, the hearing examiner, appellee, and the trial court reasonably inferred appellant's intent from the surrounding circumstances. See

*Graor*, citing *Hayes v. State Med. Bd. of Ohio* (2000), 138 Ohio App.3d 762, 770.

Therefore, we overrule appellant's second assignment of error.

{¶37} Having overruled appellant's first and second assignments of error, we affirm the decision of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

KLATT, P.J., and DESHLER, J., concur.

DESHLER, J., retired of the Tenth Appellate District, assigned to active duty under authority of Section 6(C), Article IV, Ohio Constitution.

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Approved:

*approved  
via  
telephone*

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IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

DAVID A. HOXIE, |  
Appellant, | CASE NO. 04CVF-07-7441  
vs. | JUDGE FRYE  
STATE MEDICAL BOARD OF OHIO, |  
Appellee. |

NUNC PRO TUNC ENTRY

On May 12, 2005, the Court issued a Decision on the merits of Administrative Appeal. On page 9 of that Decision, the Court wrote, "However, the Court notes that the revocation was not permanent." That sentence shall be stricken from that Decision in its entirety.

**IT IS SO ORDERED.**

  
RICHARD A. FRYE, JUDGE

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COMMON PLEAS COURT  
IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
2005 MAY 13 CIVIL DIVISION

DAVID A. HOXIE, CLERK OF COURTS I

Appellant,

1 CASE NO. 04CVF-07-7441

vs.

1 JUDGE FRYE

STATE MEDICAL BOARD OF OHIO,

1 MAGISTRATE PHELPS-WHITE

Appellee.

1

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DECISION ON THE MERITS OF ADMINISTRATIVE APPEAL

Rendered this 12<sup>th</sup> day of May, 2005

FRYE, J.

This case came before this Court upon an administrative appeal filed by David A. Hoxie, M.D. (Appellant), on July 19, 2004. Appellant is appealing the order issued by the State Medical Board (the "Board") mailed on July 19, 2004. The order of the Board permanently revoked Appellant's certificate to practice medicine and surgery within the state of Ohio.

In reviewing the certified record filed with this Court, this Court must determine whether the Order of the Board was supported by reliable, probative and substantial evidence and whether the order is in accordance with the law

HEALTH & HUMAN

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pursuant to R.C. 119.12, which governs administrative appeals. R.C. 119.12 provides that this Court must affirm Appellee's order if it finds that the order is supported by reliable, probative, and substantial evidence and is in accordance with the law. <sup>1</sup>"Reliable" evidence has been defined as evidence that is dependable and can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. <sup>2</sup>"Probative" evidence is evidence that tends to prove the issue in question and it must be relevant in determining the issue. <sup>3</sup>"Substantial" evidence is evidence with some weight and it must have importance and value.<sup>4</sup>

Appellant contends that the order was not supported by reliable, probative and substantial evidence. Specifically, Appellant sets forth four assignments of error. First, Appellant argues that the Board erred by relying solely upon the arrest records to conclude that Appellant was convicted of a controlled substance offense. Second, Appellant argues that the arrest records are unreliable. Third, he argued that the arrest records were not probative of a conviction. Fourth, he contends that there was no evidence that the patients for whom Appellant prescribed medication were in danger.

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1. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St. 2d 108, 407 N.E. 2d 1265.  
2. *Our Place, Inc. v. Ohio Liquor Control Commission* (1992), 63 Ohio St. 3d 570, 589 N.E. 2d 1303.  
3. *Id.*  
4. *Id.*

Appellant was issued a notice of hearing dated June 11, 2003. In that notice, Appellant was advised that the Medical Board intended to determine whether, inter alia, to permanently revoke his certificate to practice medicine for violating several provisions of R.C. 4731.22; specifically, R.C. 4731.22(A), R.C. 4731.22(B)(2), (3), (5), (6) (12), (10),(20) and (35).

The record revealed that on January 8, 1985, Appellant entered a no contest plea to one misdemeanor count of being under the influence of a controlled substance, PCP and one misdemeanor count of driving under the influence, which resulted from a 1983 arrest and a March 9, 1984 probation revocation.

On July 1, 1996, Appellant answered "no" to question 17 on his Ohio application to practice medicine in which he was asked whether he had ever been "convicted or found guilty of a violation of federal law, state law, or municipal ordinance other than a minor traffic offense."

On January 20, 1995, Appellant also answered "no" to question number 8 on his application for a license to Practice Medicine/Osteopathy in Virginia in which he was asked whether he had ever been convicted of a violation of/or pled Nolo Contendere to any federal, state, or local statute, regulation or ordinance, or entered into any plea bargaining relating to a felony or misdemeanor?"

In addition, on October 13, 1995, Appellant answered "no" on his application for Registration to the Drug Enforcement Administration to the

question of whether he had ever been convicted of a crime in connection with controlled substances under State or Federal Law.

The record further revealed that on March 1, 2002, Appellant was interviewed by a DEA Diversion Investigator. During the interview, he was asked whether he had ever been arrested, charged, or put on probation for anything related to controlled substances. Appellant answered "No". However, records indicated that Appellant was arrested on December 15, 1973 for marijuana possession, he was arrested on September 19, 1978 for PCP possession. On August 7, 1983, he was arrested and charged for being under the influence of PCP and driving under the influence of PCP. Again, there is the conviction of January 8, 1985 where Appellant pled no contest to being under the influence of PCP and for driving under the influence of PCP, which resulted from his arrest in August of 1983 and his probation revocation in March 9, 1984.

Furthermore, according to the record, Appellant was deposed by the staff of the Ohio Medical Board on April 11, 2003. During that deposition, Appellant was asked whether he had ever been arrested for possession of marijuana, for possession of PCP or for being under the influence of PCP. Appellant was also asked whether he had ever been on probation for any criminal charge, granted any kind of diversion related to any criminal charge, and/or convicted of any crime no

matter how trivial. Appellant answered "no" to these questions. However, as previously set forth in the decision herein, the record revealed otherwise

The Board issued an order revoking Appellant's certificate on the basis that Appellant's answers to questions on his Ohio application, his Virginia application, his DEA application and his responses to the questions posed by the DEA investigators and the Board's staff regarding arrests and conviction relating to controlled substances constitute a violation of several provisions of Ohio law.

The Board has the authority to revoke a certificate "to a person found by the board to have committed fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board."<sup>5</sup>

The Board shall also revoke an individual's certificate to practice for "making a false, fraudulent, deceptive, or misleading statement in \*\*\*attempting to secure any certificate to practice or certificate of registration issued by the board<sup>6</sup>. The statute defines "false, fraudulent, deceptive, or misleading statement" as a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or

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<sup>5</sup>. R.C. 4731.22(A).

<sup>6</sup>. R.C. 4731.22(B)(5)

implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.”<sup>7</sup>

An administrative hearing was held before a hearing examiner for the Board. Upon consideration of the evidence, the hearing examiner found that Appellant failed to truthfully answer the questions regarding drug related arrests and conviction of any kind by the Board’s staff during the deposition in violation of R.C. 4731(B)(35). Appellant also violated R.C. 4731.22(B)(10) by committing perjury, which is a felony as defined by R.C. 2921.11. It was further found that Appellant committed a misdemeanor in the course of practice by failing to truthfully answer the questions of the DEA Diversion Investigator regarding any arrests and charges or probation for controlled substance offenses. Appellant’s answers constituted falsification as defined by R.C. 2921.13, which is a violation of R.C. 4731.22(B)(12).

The record revealed not only that Appellant falsely and deceptively answered questions regarding his arrests and conviction relating to controlled substances, but the hearing examiner determined that Appellant failed to comply with OAC 4731-11-04(B) and 4731-11-08 when he prescribed the controlled substance known as anorectics to a family member in violation of R.C. 4731.22(B)(20). Appellant also violated the statute when he issued postdated

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<sup>7</sup>. R.C. 4731.22(B)(5).

prescriptions to three patients, which was in violation of R.C. 3719.06(C). Pursuant to R.C. 3719.99(E), a violation of R.C. 3719.06 is a misdemeanor offense and constitutes a violation of R. C. 4731.22(B)(12).

The Board reviewed the Report and Recommendation of the Hearing Examiner and voted to permanently revoke Appellant's certificate to practice medicine and surgery in the State of Ohio. In the instant appeal, Appellant takes issue with the reliability of the arrest records and contends that the Board relied solely upon the arrest records to demonstrate that Appellant had a conviction. The record is replete with certified copies of records from the state of California. The certification denotes authenticity. Appellant contends that the records were inaccurate, yet he confirms the personal data on the records, such as his name, his date of birth, his address, his social security number, and the vehicles described in the records.<sup>8</sup> Appellant admits to the personal information stated on the arrest records, but claims that the remaining portion of the records reflecting arrests for possession of being under the influence of a controlled substance as being fabricated and false. The Board was not convinced by this argument and neither is the Court.

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<sup>8</sup> . See Transcript before Ohio State Medical Board Hearing Examiner dated April 8, 2004 pages 35 through 65.

The record contains a certified copy of an arrest record dated August 7, 1983.<sup>9</sup> Appellant confirmed the address and acknowledged the vehicle described in the record. A disposition sheet reflects that on January 8, 1985, Appellant entered a nolo contendere plea to possession of PCP. Appellant was sentenced and placed on probation. On March 17, 1988, Appellant violated his probation, which was subsequently revoked and Appellant was sentenced to thirty days in jail. Appellant acknowledged the August 7, 1983 arrest, but he denies entering a plea, receiving probation and serving jail time.

Appellant admits that he has been arrested, but according to him, he was arrested for minor traffic offenses and not controlled substance related offenses. The certified records indicate otherwise. The records demonstrate that Appellant was not only arrested on a number of occasions, but each time he was arrested for an offense relating to controlled substances.

Contrary to Appellant's assertion, the Board did not rely solely upon arrest records. There were certified copies of disposition and probation records. This Court agrees that arrest records are not probative of a conviction. But the disposition records and the probation flash notices are evidence of a conviction.

Appellant's claim that the records were unreliable is baseless. Appellant could confirm the personal information on the records, including the vehicles he

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<sup>9</sup>. See State's Exhibit 5-A.

was driving at the time of the arrest. The only aspect of the reports that Appellant does not admit to is that which confirms that the nature of the arrests related to being under the influence or possession of a controlled substance.

As for the patient care issues, Appellant admits prescribing anorectics to his wife. He further acknowledged that he did not follow the guidelines set forth the code and that he was unaware of the prohibition of physicians prescribing medication to a family member except in an emergency. Furthermore, Appellant does not deny that he issued post-dated prescriptions to three other patients. His only response was that there was no evidence that the patients were in any danger and that they were not safe. Appellant's ignorance of all rules governing his conduct as a physician is not justification for violating the statute. The Board may permanently revoke Appellant's certification for failing to conform to the minimal standards of care whether or not actual injury to a patient is established.<sup>10</sup>

The Board reviewed the evidence, the Report and Recommendation of the Hearing Examiner, the Objections, and Appellant's affidavit and determined that the Appellant's license to practice medicine should be revoked. However, this Court notes that the revocation was not permanent.

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<sup>10</sup> . R.C. 4731.22(B)(6).

This Court must defer to the trier of fact for resolution of factual questions and may not substitute its judgment for that of the Board<sup>11</sup>. Upon careful review of the record, this Court finds that the order of the State Medical Board is supported by reliable, probative, and substantial evidence and is in accordance with the law. The order of the Board is hereby **AFFIRMED**.

Counsel for Appellee shall prepare and submit an appropriate journal entry to the Court in accordance with Local Rule 25.01

  
JUDGE RICHARD FRYE

Copies to:

Kevin R. Conners, Esq.  
VORYS, SATER, SEYMOUR & PEASE, L.L.P.  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008  
Counsel for Appellant

Kyle C. Wilcox, Esq.  
Assistant Attorney General  
30 East Broad Street, 26<sup>th</sup> Floor  
Columbus, Ohio 43215  
Counsel for Appellee

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<sup>11</sup> . *Angelkovski v. Buckeye Potato Chips* (1980), 11 Ohio App. 3d 159,161.

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

STATE OF OHIO

Defendant,

v.

DAVID A. HOXIE, M.D.

Plaintiff.

Case No. 04CVF07-7441

Judge Miller

06 JUL 27 PM 2:03  
MEDICAL BOARD FILE

**ORDER**

Upon application of Appellant David A. Hoxie, M.D. and for good cause shown, the Order of the State Medical Board of Ohio, permanently revoking the Medical Certificate of David A. Hoxie, M.D. is hereby stayed pursuant to R.C. 119.12 pending this Court's decision on the merits of this appeal.

**JUDGE NODINE MILLER**

Judge Nodine Miller

06 JUL 27 AM 10:37  
CLERK OF COURTS  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO

2004 JUL 27 P 4: 06

STATE MEDICAL BOARD  
OF OHIO

BEFORE THE STATE MEDICAL BOARD OF OHIO

DAVID A. HOXIE, M.D.  
PO Box 645  
Waverly, OH 45690

Appellant,

v.

OHIO STATE MEDICAL BOARD  
77 South High Street, 17th Floor  
Columbus, Ohio 43266-0315,

Appellee.

04CVF07 7441

FILED  
COMMON PLEAS COURT  
HAMILTON CO. OHIO  
04 JUL 19 AM 11:15  
CLERK OF COURTS

O.R.C. § 119.12 NOTICE OF APPEAL

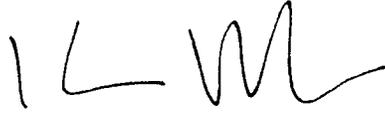
Pursuant to Section 119.12 of the Ohio Revised Code, David A. Hoxie, M.D., through undersigned counsel, hereby gives notice of his appeal of the Ohio State Medical Board's Order issued July 14, 2004, and presumably mailed on or about July 15, 2004 (a true and accurate copy of which is attached hereto as Exhibit A). Dr. Hoxie appeals that Order on the following grounds:

1. It is not supported by reliable, probative and substantial evidence; and,
2. It is not in accordance with the law, including but not limited to the Ohio and United States Constitutions.
3. For these reasons, and for every error raised by Dr. Hoxie in the disciplinary proceeding below, the Medical Board's Order must be reversed and vacated.

OHIO STATE MEDICAL BOARD

JUL 26 2004

Respectfully submitted,



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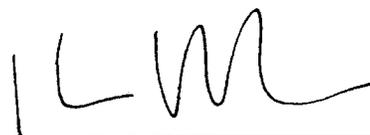
Kevin R. Conners (0042012)  
Vorys, Sater, Seymour & Pease LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, OH 43216-1008  
(614) 464-6343  
(614) 719-4665 FAX  
Counsel for Appellant,  
David A. Hoxie, M.D.

OHIO STATE MEDICAL BOARD

JUL 26 2004

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Notice of Appeal was filed with the Court of Common Pleas of Franklin County, Ohio, and served by regular U.S. mail upon Kyle Wilcox, Assistant Attorney General, Health and Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3428, counsel for the Ohio State Medical Board, this 19<sup>th</sup> day of July, 2004.



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Kevin R. Connors

OHIO STATE MEDICAL BOARD

JUL 26 2004



# State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: [www.med.ohio.gov](http://www.med.ohio.gov)

July 14, 2004

David A. Hoxie, M.D.  
194 E. Emmitt Avenue  
Waverly, OH 45690-1334

Dear Doctor Hoxie:

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 July 14, 2004, 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 must be taken to the Franklin County Court of Common Pleas.

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. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 7000 0600 0024 5150 2839  
RETURN RECEIPT REQUESTED

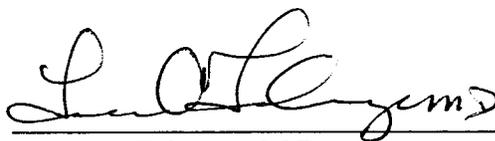
Cc: Kevin R. Connors, Esq.  
CERTIFIED MAIL NO. 7000 0600 0024 5150 2815  
RETURN RECEIPT REQUESTED

*Mailed 7-15-04*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 14, 2004, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner 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 David A. Hoxie, 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.



\_\_\_\_\_  
Lance A. Talmage, M.D.  
Secretary

(SEAL)

\_\_\_\_\_  
July 14, 2004  
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

\*

\*

DAVID A. HOXIE, M.D.

\*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on July 14, 2004.

Upon the Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner, designated in this Matter 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 certificate of David A. Hoxie, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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

(SEAL)



Lance A. Talmage, M.D.  
Secretary

July 14, 2004

Date

2004 JUN 18 P 1:09

**REPORT AND RECOMMENDATION  
IN THE MATTER OF DAVID A. HOXIE, M.D.**

The Matter of David A. Hoxie, M.D., was heard by Sharon W. Murphy, Esq., Hearing Examiner for the State Medical Board of Ohio, on April 8, 2004.

**INTRODUCTION**

**I. Basis for Hearing**

- A. By letter dated June 11, 2003, the State Medical Board of Ohio [Board] notified David A. Hoxie, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action on allegations that Dr. Hoxie had submitted false or fraudulent answers in his applications for licensure in Ohio and Virginia, in an application for registration with the Drug Enforcement Administration [DEA], in an interview by the DEA; and in a deposition by the Board. In addition, the Board based its proposed action on allegations that Dr. Hoxie had inappropriately prescribed controlled substances to one patient, and that he had post-dated prescriptions to three patients. Finally, the Board alleged that the factual allegations against Dr. Hoxie constitute a number of violations of Ohio law. Accordingly, the Board advised Dr. Hoxie of his right to request a hearing in this matter. (State's Exhibit 1A).
- B. On July 11, 2003, Kevin R. Conners, Esq., submitted a written hearing request on behalf of Dr. Hoxie. (State's Exhibit 1B).

**II. Appearances**

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.
- B. On behalf of the Respondent: Kevin R. Conners, Esq.

**EVIDENCE EXAMINED**

**I. Testimony Heard**

Presented by the State

- A. David A. Hoxie, M.D., as if on cross-examination
- B. Kevin Randolph Beck
- C. Dawn Valerie Mitchell

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A through 1Y: Procedural exhibits.
2. State's Exhibit 2: Copy of The State Medical Board of Ohio's First Set of Interrogatories Directed to David A. Hoxie, M.D.
3. State's Exhibit 3: Copy of the transcript of an April 11, 2003, deposition of Dr. Hoxie by the Board.
4. State's Exhibit 4: Certified copies of documents regarding Dr. Hoxie maintained by the State of California Department of Justice.
5. State's Exhibits 5A through 5F: Certified copies of documents regarding Dr. Hoxie maintained by the Los Angeles Police Department.
6. State's Exhibit 6: Certified copies of documents regarding Dr. Hoxie maintained by the Commonwealth of Virginia Board of Medicine.
7. State's Exhibit 7: Certified copies of documents regarding Dr. Hoxie maintained by the Board.
- \* 8. State's Exhibit 8: Copies of Dr. Hoxie's patient records for Patient 1.
9. State's Exhibit 9: An April 20, 2003, letter to the Board from Kevin R. Connors, Esq., with attachment. [Note: The Hearing Examiner redacted a patient name post-hearing.]
10. State's Exhibit 10: Certified copy of an affidavit of Dr. Hoxie with attachments.
- \* 11. State's Exhibit 11: Copies of prescriptions written by Dr. Hoxie.
12. State's Exhibit 12: Copy of Dr. Hoxie's Drug Enforcement Administration [DEA] Registration application.
13. State's Exhibit 13: Affidavit of Dwight A. Cokely.
14. State's Exhibit 14: Copy of annotated version of Section 11550, California Code.
- \* 15. State's Exhibit 16: Confidential Patient Key.

16. State's Exhibit 17: Copy of the Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge in the Matter of David A. Hoxie, M.D., before the DEA.
17. State's Exhibit 18: State's Closing Arguments.
18. State's Exhibit 19: State's Rebuttal Closing Arguments.

B. Presented by the Respondent

1. Respondent's Exhibit A: Transcript of the August 26, 2003, hearing regarding Dr. Hoxie before the DEA.
2. Respondent's Exhibit C: Copy of the Respondent's Motion to Request an Extension of Time to File Closing Argument.
3. Respondent's Exhibit D: Respondent's Closing Argument

**PROFFERED EXHIBITS**

1. State's Exhibit 13A: See Procedural Matters, paragraph 1.
2. Respondent's Exhibit B: See Procedural Matters, paragraph 2.

**PROCEDURAL MATTERS**

1. At hearing, the State introduced an affidavit, which, in part, purported to interpret California criminal documents. The Respondent objected, in part, because the Respondent did not have an opportunity to examine the witness; the Hearing Examiner sustained the objection. See Hearing Transcript at 125-129. Therefore, paragraph 3 of State's Exhibit 13 was stricken before the exhibit was admitted to the record. A copy of the unredacted affidavit will be proffered on behalf of the State as State's Exhibit 13A.
2. The hearing record in this matter was held open to give the Respondent an opportunity to submit additional evidence. Two documents were timely submitted; copies were provided to the State for review. The State did not object to one exhibit, a transcript of the August 26, 2003, hearing regarding Dr. Hoxie before the United States of America Department of Justice Drug Enforcement Administration [DEA], so long as a copy of the Administrative Law Judge's report in that matter was also admitted to the record. Accordingly, the transcript was admitted to the record as Respondent's Exhibit A and the Administrative Law Judge's report was admitted as State's Exhibit 17.

Nevertheless, the State objected to the second exhibit, an affidavit purporting to interpret California criminal documents in a manner similar to the paragraph stricken from State's Exhibit 13A. The Hearing Examiner sustained the objection. A copy of the affidavit will be proffered on behalf of the Respondent as Respondent's Exhibit B.

3. At hearing, the Respondent objected to the admission of certified copies of documents regarding Dr. Hoxie maintained by the State of California Department of Justice Bureau of Criminal Information and Analysis and by the Los Angeles Police Department. The Hearing Examiner overruled the objections. Moreover, as noted above, both parties objected to portions of affidavits made by persons purporting to interpret those documents and the Hearing Examiner sustained those objections.

Nevertheless, post-hearing, the Respondent submitted a transcript of an August 26, 2003, DEA hearing regarding Dr. Hoxie. During that hearing, in which Dr. Hoxie was represented by Mr. Connors, a DEA Diversion Investigator testified that he had interviewed the Keeper of the Records for the California Bureau of Records regarding the meaning of notations in criminal documents relating to Dr. Hoxie. The Administrative Law Judge admitted the testimony over the Respondent's objection. See Respondent's Exhibit A at 12-50. Despite the fact that the Respondent requested its admission, the Hearing Examiner gave little weight to that testimony in preparing this Report and Recommendation.

4. At the close of the hearing, the parties agreed to submit written closing arguments. Pursuant to a schedule set forth by the Hearing Examiner, the final written argument was filed on June 15, 2004. The parties' written closing arguments were admitted to the record as State's Exhibit 18, Respondent's Exhibit D, and State's Exhibit 19. The hearing record closed at that time.

### **SUMMARY OF THE EVIDENCE**

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

#### **General Background**

1. David A. Hoxie, M.D., attended the University of California at Los Angeles, intermittently, from 1976 through 1986. Dr. Hoxie attained his medical degree in 1993 from Howard University Medical School in Washington, D.C. He completed the first year of a general surgery residency at North Shore University Hospital – Cornell University in Manhasset, New York, in 1994. Dr. Hoxie attended the University of Michigan School of Public Health from September 1995 through December 1996. Dr. Hoxie testified that he had completed the course but that he does not have a degree. (Hearing Transcript [Tr.] at 20-21; State's Exhibit [St. Ex.] 7 at 3, 20, 22-23).

After leaving the University of Michigan, Dr. Hoxie worked at the Chillicothe Correctional Institution. In December 1997, Dr. Hoxie opened a practice in Waverly, Ohio. Dr. Hoxie practices family and occupational medicine in Waverly; he also serves as the Pike County Coroner. Dr. Hoxie does not hold any hospital privileges. (Tr. at 18, 22-23; St. Ex. 3 at 17-20).

Dr. Hoxie is licensed to practice medicine and surgery in Ohio and Virginia. (Tr. at 19; St. Ex. 3 at 16-17).

### **Evidence and Testimony Regarding Provision of False or Fraudulent Information**

2. Records maintained and certified by the Los Angeles Police Department [LAPD] and/or the State of California Department of Justice Bureau of Criminal Information and Analysis reveal the following:
  - a. On December 15, 1973, in Los Angeles, California, Dr. Hoxie was arrested for possession of marijuana, a controlled substance. The police report states that officers heard loud music and noise coming from Dr. Hoxie's apartment. Officers went to the apartment and found Dr. Hoxie and others inside. The officers also noted a strong odor of marijuana and found marijuana and a variety of drug paraphernalia. Dr. Hoxie was nineteen years old at that time. (St. Ex. 5C).

Although Dr. Hoxie was arrested for possession of marijuana, the charges were later rejected by the Deputy District Attorney. The police documents contain a notation of, "Unable to connect where house contained many people." (St. Ex. 5C at 5).
  - b. On September 19, 1978, Dr. Hoxie was arrested by the LAPD for possession of phencyclidine [PCP], a controlled substance. He was also arrested due to a number of outstanding warrants for his arrest. The police report states that officers found Dr. Hoxie driving erratically and committing numerous traffic violations. The officers stopped Dr. Hoxie. In the car, officers found "a piece of a 'Sherman' cigarette and was emitting a strong ether odor resembling PCP or 'angel dust.'" A "narco ban" test for PCP was positive. There is no indication as to the final disposition of the arrest. Dr. Hoxie was twenty-four years old at that time. (St. Ex. 5D).
  - c. On July 11, 1981, Dr. Hoxie was detained by the LAPD for driving under the influence of alcohol and drugs. (St. Ex. 5E). The "Driving-Under-the-Influence Arrest Report" states that Dr. Hoxie's speech was thick and slurred and that he was falling and unsteady on his feet. The report further states that the officers noted "an odor resembling ether emitting from [Dr. Hoxie's] breath and clothing. Ether is known to both officers as one of the chemical agents used to make PCP." (St. Ex. 5E at 4).

Dr. Hoxie was taken to a local hospital for a drug evaluation. Dr. Hoxie reported to the evaluating physician that he has smoked two PCP cigarettes. (St. Ex. 5E at 5).

Dr. Hoxie was released four days later. The police record contains a "Certificate of Release," which states that, "The taking into custody of Hoxie, David on 7-11-81 was a detention only and not an arrest." The Certificate of Release cites a section of the California Penal Code, which states, in part,

(B) Any peace officer may release from custody, instead of taking such person before a magistrate, any person arrested without a warrant, whenever:

(1) He is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested.

\* \* \*

(3) The person was arrested only for being under the influence of a narcotic, drug, or restricted dangerous drug and such person is delivered to a facility or hospital for treatment and no further proceedings are desirable.

(C) Any record of arrest of a person released pursuant to paragraphs (1) and (3) of subdivision (B) shall include a Record of Release. Thereafter, such arrest shall not be deemed an arrest, but a detention only.

(St. Ex. 5E at 8).

- d. On August 7, 1983, Dr. Hoxie was arrested by the LAPD. Dr. Hoxie was charged with being under the influence of PCP, a misdemeanor in violation of Section 11550(b), California Health and Safety Code, and with driving under the influence of PCP, a misdemeanor in violation of Section 23152(a), California Vehicle Code. Dr. Hoxie was twenty-nine years old at that time. (St. Ex. 4 at 3, 4; St. Ex. 5A).

The police report indicates that Dr. Hoxie had been involved in a traffic accident, after driving south in a north bound lane. After the accident, Dr. Hoxie fell to the ground several times because he was unable to stand up. He was screaming, talking rapidly, and perspiring heavily. He had an ataxic gait and a rapid pulse. The officers described him as non-coherent and disoriented. Moreover, the officers noted a strong odor of a chemical resembling PCP on Dr. Hoxie's breath. In Dr. Hoxie's car, the officers found a "1/4 stick of Sherm dipped in PCP." Dr. Hoxie admitted that he had been smoking marijuana, and his breath tested 0.04% and

0.05% alcohol. The officers arrested him for possession of PCP and driving under the influence. (St. Ex. 5A at 4-8).

- e. On November 30, 1983, based on the August 7, 1983, arrest for being under the influence of PCP, Dr. Hoxie was granted diversion with a two-year term of probation. The probation was scheduled to terminate on November 29, 1985. (St. Ex. 4 at 5).
  - f. On January 26, 1984, Dr. Hoxie was again detained by the LAPD for suspicion of being under the influence of PCP. He also had a blood alcohol level of 0.06%. Dr. Hoxie was released the following day and a Certificate of Release states that he had been detained but not arrested. (St. Ex. 4 at 4-6; St. Ex. 5B, St. Ex. 5E; St. Ex. 5F at 1-2).
  - g. On March 9, 1984, Dr. Hoxie's diversion probation was terminated. (St. Ex. 4 at 6).
  - h. On September 25, 1984, Dr. Hoxie was arrested for driving with a suspended drivers license. The officers found that there were outstanding warrants for Dr. Hoxie's arrest, and he was taken into custody. (St. Ex. 5F at 3-4).
  - i. On January 8, 1985, Dr. Hoxie pled nolo contendere to one misdemeanor count of being under the influence of a controlled substance, PCP, and to driving under the influence of a controlled substance, PCP, resulting from his August 1983 arrest and the March 9, 1984, revocation of his diversion probation. Dr. Hoxie was convicted of the crimes and was sentenced to a term of incarceration, possibly stayed, and a term of probation. (St. Ex. 4 at 4-6; St. Ex. 5A).
  - j. On March 17, 1988, Dr. Hoxie violated his probation and it was revoked. Dr. Hoxie was sentenced to serve thirty days in jail. (St. Ex. 4 at 4).
3. On or about January 20, 1995, Dr. Hoxie submitted an Application for a License to Practice Medicine/Osteopathy [Virginia Application] to the Commonwealth of Virginia Board of Medicine [Virginia Board]. (St. Ex. 6). In the Virginia Application, Dr. Hoxie answered, "No," to question number 8, which asked the following:

Have you ever been convicted of a violation of/or pled Nolo Contendre to any federal, state, or local statute, regulation or ordinance, or entered into any plea bargaining relating to a felony or misdemeanor? (Excluding traffic violations, except convictions for driving under the influence.)

(St. Ex. 6 at 3). On September 21, 1995, the Virginia Board granted Dr. Hoxie's request for licensure and granted him a certificate. (St. Ex. 6 at 9).

4. On or about October 13, 1995, Dr. Hoxie submitted an Application for Registration to the Drug Enforcement Administration [DEA]. In the DEA registration application, Dr. Hoxie answered, "No," to question number 4(b), which asked the following:

Has the applicant ever been convicted of a crime in connection with controlled substances under State or Federal law?

(St. Ex. 12 at 2).

5. On July 1, 1996, Dr. Hoxie submitted an Application for Certificate – Medicine or Osteopathic Medicine [Ohio Application] to the Board. (St. Ex. 7). In the "Additional Information" section of his Ohio Application Dr. Hoxie answered, "No," to question number 17, which asked the following:

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?

(St. Ex. 6 at 11).

6. On April 11, 2003, Dr. Hoxie was deposed by Board staff. (St. Ex. 3). During the deposition, Dr. Hoxie was asked whether he had ever been arrested for possession of marijuana, for possession of PCP, or for being under the influence of PCP. He was also asked if he had ever been placed on probation for any criminal charge; granted any kind of diversion related to any criminal charge; and/or convicted of any crime, no matter how trivial. Dr. Hoxie responded, "No," to each of these questions. (St. Ex. 3 at 69-73).
7. Investigator Kevin Randolph Beck testified at hearing on behalf of the State. Investigator Beck testified that he is currently on active duty in the military assigned to the 445<sup>th</sup> Operations Support Squadron, Wright Patterson Air Force Base, in Ohio. Prior to being activated by the military, however, Investigator Beck had been employed as an investigator for the Board. (Tr. at 104-105).

Investigator Beck testified that, as part of his duties as an investigator for the Board, he had been assigned to investigate complaints against Dr. Hoxie. Investigator Beck further testified that, on March 1, 2002, he and Dawn Valerie Mitchell, an investigator for the DEA, had interviewed Dr. Hoxie at Dr. Hoxie's office. (Tr. at 105-106).

Investigator Beck testified that, prior to interviewing Dr. Hoxie, Investigator Beck had been aware through a Law Enforcement Assistance Data Services [LEADS] review that Dr. Hoxie had been arrested several times in California. Investigator Beck stated that, during the interview, Dr. Hoxie had been asked if he had ever been arrested for any crime related to controlled substances. Investigator Beck stated that Dr. Hoxie had denied any such arrest. Dr. Hoxie also denied ever having been charged with driving under the influence of drugs or alcohol. He further denied ever having been convicted of a crime in

connection with controlled substances. Dr. Hoxie admitted that he may have been arrested for traffic offenses. (Tr. at 107-109, 113).

Finally, Investigator Beck testified that he had asked Dr. Hoxie why it had taken him ten years to complete his undergraduate degree. Investigator Beck stated that Dr. Hoxie had told him that it had taken so long because he had been in jail. (Tr. at 109).

8. Investigator Dawn Valerie Mitchell testified at hearing on behalf of the State. Investigator Mitchell testified that she is employed as a diversion investigator for the DEA. Investigator Mitchell further testified that she had accompanied Investigator Beck to the interview of Dr. Hoxie on March 1, 2002. Investigator Mitchell added that, prior to the interview, she had learned that Dr. Hoxie had answered, "No," to the questions regarding convictions on his application for DEA registration. Investigator Mitchell had also researched Dr. Hoxie in the DEA's National Criminal Information Center, where she had found verification that Dr. Hoxie had been arrested for possession of controlled substances and for being under the influence of controlled substances in California. (Tr. at 117-120; St. Ex. 12).

Investigator Mitchell testified that, during the interview of Dr. Hoxie, she had asked Dr. Hoxie a number of questions regarding criminal convictions. She stated that, in response to those questions, Dr. Hoxie had denied ever having been arrested, charged, or put on probation for any crime involving controlled substances. He also denied ever having been arrested for being under the influence of drugs or ever having been under the influence of drugs at the time of an arrest. Dr. Hoxie admitted only to having been arrested for traffic offenses. (Tr. at 123-124, 135-136).

Investigator Mitchell further testified that she had witnessed Dr. Hoxie tell Investigator Beck that it had taken Dr. Hoxie many years to finish his undergraduate education because he had been "in and out of jail; that those were his younger days and he was in and out of jail and that is why it took him so long to graduate." She added that Dr. Hoxie had also stated that his stints in jail had been related to traffic violations only. (Tr. at 124-125).

Finally, Investigator Mitchell testified that she had asked Dr. Hoxie to surrender his DEA registration card. Dr. Hoxie stated that he would first investigate the criminal records in California. (Tr. at 134).

9. Dr. Hoxie testified at hearing that he had been arrested ten to fifteen times and that each arrest had been for a charge of failure to appear for a minor traffic violation. Dr. Hoxie denied that he had ever been arrested for possession of marijuana, possession of PCP, or driving under the influence of drugs or alcohol. He further denied ever having used PCP or having been placed on probation. Dr. Hoxie added that the longest time he has ever spent in jail is twelve days and that he had been placed in jail only for traffic violations. (Tr. at 30-33).

Dr. Hoxie further denied that he had been arrested for possession of marijuana on December 15, 1973. He acknowledged that he had been detained on that date, but stated that it had been for making noise only. He stated he had had some friends at his apartment and that there had been a complaint of noise. He added that he had been charged with disturbing the peace, and that he had been released with no further action. Dr. Hoxie adamantly denied that he had ever been "arrested for anything in relation to drugs." Dr. Hoxie concluded that the police officer had "made up" the evidence of marijuana and drug paraphernalia. (Tr. at 43-51; St. Ex. 5C).

Dr. Hoxie was also questioned regarding the September 19, 1978, arrest for possession of PCP. Dr. Hoxie testified that he does not remember the incident but acknowledged that the police report states that he had been arrested for possession of a controlled substance. Dr. Hoxie added that, "you will find that there was most certainly a traffic warrant." (Tr. at 51-54; St. Ex. 5D).

Regarding the July 11, 1981, detention for driving under the influence of alcohol and drugs, Dr. Hoxie denied that he had been involved. Dr. Hoxie made this denial despite the police report which includes his correct name, his address, the car that he owned, his California drivers license number, and his birth date. Dr. Hoxie further denied that he had ever smoked PCP or that he had stated to a physician that he had smoked two PCP cigarettes. (Tr. at 57-61; St. Ex. 5E).

Similarly, regarding the August 7, 1983, arrest for being under the influence of PCP and driving under the influence of PCP, Dr. Hoxie denied any involvement. He made the denial despite the police report listing his name, the place where he lived and worked, and the car that he owned. (Tr. at 61-64; St. Ex. 5A).

Dr. Hoxie was questioned regarding the January 26, 1984, detention for suspicion of being under the influence of PCP. Dr. Hoxie testified that, despite the fact that the police report lists his full name, David Albert Hoxie, his correct height and weight, his correct birthday, and his correct address and place of employment, he had not been arrested for possession of PCP. Moreover, Dr. Hoxie testified that he does not recall being involved in an accident at that time. (Tr. at 36-42; St. Ex. 5B).

Dr. Hoxie admitted that he may have been arrested for driving without a license on September 25, 1984. (Tr. at 64-45; St. Ex. 5F at 3-4).

Finally, Dr. Hoxie denied that he had pled nolo contendere to possession of PCP and driving under the influence of PCP. He also denied that he had been put on probation or diversion or that he had violated probation or diversion. Dr. Hoxie further denied that he had served thirty days in jail. (Tr. at 71-73; St. Ex. 4).

10. Dr. Hoxie testified at hearing and during his deposition before Board staff that the LAPD had lied about him in their reports. Dr. Hoxie testified that the LAPD are known to "write

things that are totally untrue and fabricated.” He further testified that he believes that the LAPD keeps a template of language to use in police reports based on a profile of the arrestee. (Tr. at 69; St. Ex. 3 at 104-109).

11. Dr. Hoxie testified that the transcript of his April 11, 2003, deposition contained several errors. He stated that they were not errors of transcription, but that they were alterations. (Tr. at 66-68). When asked who may have altered it, Dr. Hoxie stated,

I don't know. This is the property of the State Medical Board of Ohio. I don't know. Maybe Randy Beck altered it or someone, you know, someone involved on the State Medical Board of Ohio side of all this. I didn't do it.  
\* \* \* I think that the State may do whatever they need to do to prove a point whether it's a fact or not.

(Tr. at 68-69).

12. On August 26, 2003, the DEA held a hearing before an administrative law judge in the Matter of David A. Hoxie, M.D. The purpose of the hearing was to determine whether the DEA should revoke Dr. Hoxie's DEA Certificate of Registration. The action was based on allegations that Dr. Hoxie had “materially falsified DEA Applications for Registration.” (Respondent's Exhibit A at 4).

On April 7, 2004, the Administrative Law Judge issued a Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge. (St. Ex. 17). In that document, the Administrative Law Judge found that Dr. Hoxie had been convicted of crimes in connection with controlled substances and that Dr. Hoxie had materially falsified his DEA application by denying such convictions. (St. Ex. 17 at 14-15). In determining whether to recommend the revocation of Dr. Hoxie's DEA Certificate of Registration, the Administrative Law Judge wrote as follows:

The conviction that the Government has proven happened over twenty years ago. Had the Respondent taken responsibility for his application falsification at hearing, and had he made assurances he would not engage in such dishonest conduct in the future, then I would find the passage of time weighs in his favor. However, by choosing to remain silent, the Respondent has not taken this opportunity to convince the DEA of his integrity and intent to rectify these acts of material falsification. Thus, I conclude that the DEA would be justified in revoking the Respondent's DEA Certificate of Registration based on his past dishonesty and the lack of assurances from him that he will conduct registrant responsibilities with the integrity needed for a physician handling controlled substances.

(St. Ex. 17 at 16). [Note: The hearing record does not include any information regarding the final decision of the DEA regarding Dr. Hoxie's Certificate of Registration.]

**Evidence and Testimony Regarding Dr. Hoxie's Prescribing to Patients 1 through 4**

13. Dr. Hoxie prescribed controlled substance anorectics to Patient 1, a family member, as follows:

<b>Date</b>	<b>Quantity</b>	<b>Drug</b>	<b>Schedule</b>
02/08/02	21	Adipex	IV
11/13/02	14	Adipex	IV
02/09/03	14	Adipex	IV

(Tr. at 90-92; St. Ex. 8 at 1b, 2, 3, 5).

14. Dr. Hoxie testified that Patient 1 is a family member. Dr. Hoxie further testified that he had prescribed Adipex, a controlled substance anorectic, to Patient 1. Dr. Hoxie testified that he had kept a medical record of the care he provided to her, which included prescription log of the medications he prescribed to Patient 1. (Tr. at 78-81; St. Ex. 8 at 1b).

There is no indication in the medical record that, prior to initiating treatment of Patient 1 with controlled substance anorectics, Dr. Hoxie had determined that Patient 1, "had made a substantial effort to lose weight in a treatment program utilizing a regimen of weight reduction based on caloric restriction, nutritional counseling, behavior modification, or exercise, without the use of controlled substances, and that said treatment had been ineffective." (St. Ex. 8) (See also Ohio Adm.Code 4731-11-04 [B]).

Dr. Hoxie testified that, at the time he prescribed Adipex to his wife, he had not been as familiar with the rules for prescribing controlled substance anorectics as he should have been. He stated that he has since learned that controlled substance anorectics should not be used as a primary means of weight loss, and that a physician must educate the patient regarding exercise, personal behavior, and diet. (Tr. at 84).

Dr. Hoxie acknowledged that he had not been comprehensive enough in documenting his discussions with Patient 1. He stated that he had discussed diet and exercise on numerous occasions with Patient 1, but that he had not documented all of those discussions. He pointed to a few examples of discussions regarding diet. The first took place on January 20, 1999, when Dr. Hoxie wrote, "Tries to practice preventive behaviors." Dr. Hoxie testified that the notation indicates that he had discussed diet, exercise, and preventive health behaviors. The second example took place on January 10, 2003. On that date, Dr. Hoxie had documented, "difficult to convince her that the fast food after school snacks that she partakes with her children are a large contributor to her weight control problem." (Tr. at 84-85, 88; St. Ex. 8 at 2-3, 7).

Dr. Hoxie further noted that, on February 8, 2002, he had documented a body mass index [BMI] of 27. Dr. Hoxie had not documented any co-morbid factors. He acknowledged that Ohio law requires that, to prescribe controlled substance anorectics to a patient, the patient's BMI must be thirty or above, unless the physician also documents co-morbid factors. (Tr. at 85-86; St. Ex. 8 at 5). Dr. Hoxie also noted in the medical record for that date that he had provided Patient 1 with dietary educative material and adjunctive phentermine. (St. Ex. 8 at 5).

Moreover, Dr. Hoxie testified that, at the time he prescribed to his wife, he had not been aware that Ohio law prohibits prescribing to family members unless in an emergency situation. Dr. Hoxie acknowledged that, when he prescribed for his wife, it had not been during an emergency other than "to maintain peace in the home." (Tr. at 89-90).

15. Dr. Hoxie acknowledged that Ohio law requires that a physician date a prescription on the day that the physician writes the prescription. He added that to write a prescription today but date it for a later date is known as post-dating the prescription. (Tr. at 92-93).

Dr. Hoxie admitted that he had issued postdated prescriptions to Patients 2, 3 and 4, as follows:

Date Issued	Date on Prescription	Patient	Drug	Schedule
Sometime prior	07/26/01	4	Lortab 5/500	III
Sometime prior	07/26/01	4	Valium	IV
On or about 11/20/02	12/20/02	2	Percocet	II
On or about 11/20/02	12/20/02	3	Percocet	II

(Tr. at 92-100; St. Ex. 10, 11, 16). Dr. Hoxie testified that, at the time he wrote the prescriptions, he had not realized that post-dating prescriptions is a violation of the law. (Tr. at 93-94).

#### FINDINGS OF FACT

1. The evidence is sufficient to conclude that, on January 8, 1985, David A. Hoxie, M.D., pled nolo contendere to one misdemeanor count of being under the influence of a controlled substance, phencyclidine [PCP], and to one misdemeanor count of driving under the influence of a controlled substance, PCP, resulting from his August 1983 arrest and the March 9, 1984, revocation of his probation. Dr. Hoxie was convicted of those offenses.
  - a. On or about July 1, 1996, Dr. Hoxie submitted an Application for Certificate – Medicine or Osteopathic Medicine [Ohio Application] to the Board. In the

“Additional Information” section of the Ohio Application, Dr. Hoxie falsely answered, “No,” to question number 17, which asked the following:

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?

- b. On or about January 20, 1995, Dr. Hoxie submitted an Application for a License to Practice Medicine/Osteopathy [Virginia Application] to the Board of Medicine, Commonwealth of Virginia. In the Virginia Application, Dr. Hoxie falsely answered, “No,” to question number 8, which asked the following:

Have you ever been convicted of a violation of/or pled Nolo Contendere to any federal, state, or local statute, regulation or ordinance, or entered into any plea bargaining relating to a felony or misdemeanor? (Excluding traffic violations, except convictions for driving under the influence.)

- c. On or about October 13, 1995, Dr. Hoxie submitted an Application for Registration to the Drug Enforcement Administration [DEA]. Dr. Hoxie falsely answered, “No,” to question number 4(b) of the DEA Application, which asked the following:

Has the applicant ever been convicted of a crime in connection with controlled substances under State or Federal law?

2. On March 1, 2002, Dr. Hoxie was interviewed by a DEA Diversion Investigator. During the interview, Dr. Hoxie was asked whether he had ever been arrested, charged, or put on probation for anything related to controlled substances. Dr. Hoxie answered, “No,” to these questions. Nevertheless, the evidence supports a conclusion that his answers to those questions were false, for the following reasons:

- a. On December 15, 1973, Dr. Hoxie was arrested for possession of marijuana, a controlled substance.

Although Dr. Hoxie denied that he had been arrested for possession of marijuana, he acknowledged that the police did remove him from his apartment for making too much noise, and charged him with disturbing the peace. He also testified that the police had “made up” the allegations of having found marijuana and drug paraphernalia in his apartment. Dr. Hoxie’s testimony regarding the arrest supports a conclusion that the arrest did take place. However, his arguments that the police had falsified the report are not convincing.

- b. On September 19, 1978, Dr. Hoxie was arrested for possession of a controlled substance, PCP.

- c. On August 7, 1983, Dr. Hoxie was arrested for and charged with being under the influence of a controlled substance, PCP, and with driving under the influence of a controlled substance, PCP.

Dr. Hoxie acknowledged that the police report certified by the Los Angeles Police Department lists Dr. Hoxie's full name, the place where he lived and worked, and the car that he owned. Although Dr. Hoxie argues that an arrest report is not sufficient proof that an arrestee committed the offense in question, it is highly probative evidence that the arrestee was, in fact, arrested for the offense in question.

- d. On January 8, 1985, Dr. Hoxie pled nolo contendere to one misdemeanor count of being under the influence of a controlled substance, PCP, and to one misdemeanor count of driving under the influence of a controlled substance, PCP, resulting from his August 1983 arrest and the March 9, 1984, revocation of his probation. Dr. Hoxie was convicted those offenses.
3. On April 11, 2003, Dr. Hoxie was deposed by Board staff. Dr. Hoxie was asked whether he had ever been arrested for possession of marijuana, for possession of PCP, or for being under the influence of PCP. He was also asked if he had ever been on probation for any criminal charge, granted any kind of diversion related to any criminal charge, and/or convicted of any crime, no matter how trivial. Dr. Hoxie answered, "No," to these questions. Nevertheless, the evidence supports a conclusion that his answers to those questions were false, for the following reasons.
- a. On December 15, 1973, Dr. Hoxie was arrested for possession of marijuana.
  - b. On September 19, 1978, Dr. Hoxie was arrested for possession of PCP.
  - c. On August 7, 1983, Dr. Hoxie was arrested for being under the influence of PCP.
  - d. On November 30, 1983, Dr. Hoxie was granted drug diversion and placed on probation in relation to the August 7, 1983, arrest for being under the influence of PCP.
  - e. On January 8, 1985, Dr. Hoxie was convicted of being under the influence of PCP.
4. Dr. Hoxie prescribed controlled substance anorectics to Patient 1, a family member, as follows:

Date	Quantity	Drug	Schedule
02/08/02	21	Adipex	IV
11/13/02	14	Adipex	IV
02/09/03	14	Adipex	IV

Prior to initiating his treatment of Patient 1 with controlled substance anorectics, Dr. Hoxie failed to determine and/or failed to document that Patient 1 had made a substantial effort to lose weight in a treatment program utilizing a regimen of weight reduction based on caloric restriction, nutritional counseling, behavior modification, or exercise, without the use of controlled substances, and that said treatment had been ineffective.

Further, in his treatment of Patient 1 with controlled substance anorectics, Dr. Hoxie failed to determine and/or failed to document in his records that Patient 1 had a Body Mass Index [BMI] of at least thirty, or a BMI of at least twenty-seven with comorbid factors. Further, Dr. Hoxie failed to document any justification for prescribing controlled substances to Patient 1 that would constitute an emergency.

5. Dr. Hoxie issued postdated prescriptions to Patients 2, 3 and 4, as follows:

Date Issued	Date on Prescription	Patient	Drug	Schedule
Sometime prior	07/26/01	4	Lortab 5/500	III
Sometime prior	07/26/01	4	Valium	IV
On or about 11/20/02	12/20/02	2	Percocet	II
On or about 11/20/02	12/20/02	3	Percocet	II

#### CONCLUSIONS OF LAW

1. The conduct of David A. Hoxie, M.D., as set forth in the Findings of Fact 1.a, 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, as in effect prior to March 9, 1999.
2. The conduct of Dr. Hoxie, as set forth in Findings of Fact 1, constitutes “publishing a false, fraudulent, deceptive, or misleading statement,” as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, as in effect prior to March 9, 1999.
3. The conduct of Dr. Hoxie, as set forth in Findings of Fact 2 and 3, constitutes “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,” as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.
4. The conduct of Dr. Hoxie, as set forth in Findings of Fact 2, constitutes “[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of

the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 2921.13, Ohio Revised Code, Falsification.

5. The conduct of Dr. Hoxie, as set forth in Findings of Fact 3, constitutes “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2921.11, Ohio Revised Code, Perjury.
6. The conduct of Dr. Hoxie, as set forth in Findings of Fact 3, constitutes “[f]ailure to cooperate in an investigation conducted by the board under division (F) of this section, including \* \* \* failure to answer truthfully a question presented by the board at a deposition or in written interrogatories,” as those clauses are used in Section 4731.22(B)(35), Ohio Revised Code.
7. The conduct of Dr. Hoxie, as set forth in Findings of Fact 4, constitutes “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-04(B), Ohio Administrative Code. Pursuant to Rule 4731-11-04(D), Ohio Administrative Code, as in effect on and after June 30, 2000, violation of Rule 4731-11-04, Ohio Administrative Code, also violates Sections 4731.22(B)(2), (3) and (6), Ohio Revised Code.
8. The conduct of Dr. Hoxie, as set forth in Findings of Fact 4, constitutes “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-08, Ohio Administrative Code, as in effect from November 11, 1998, through March 14, 2001, and since March 15, 2001.
9. The conduct of Dr. Hoxie, as set forth in Findings of Fact 5, constitutes “[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 3719.06, Ohio Revised Code, Authority of Licensed Health Professional; Contents of Prescription. Pursuant to Section 3719.99, Ohio Revised Code, violation of Section 3719.06, Ohio Revised Code, constitutes a misdemeanor offense.

\* \* \* \* \*

The hearing record amply supports a conclusion that Dr. Hoxie has intentionally misrepresented his criminal history in a variety of official documents and proceedings. Even if, as argued by the Dr. Hoxie, the conviction records should not have been admitted to the hearing record or should

not have been given any evidentiary weight, there is ample evidence that Dr. Hoxie had been arrested for possession of a controlled substance on numerous occasions. Dr. Hoxie continues to deny these arrests, although they are clearly documented in certified police documents. As noted by the State in its Closing Argument,

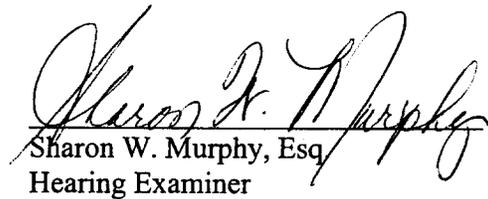
[The] preposterous position [taken] by Dr. Hoxie lacks any credibility. By failing to take responsibility for his prior conduct, by attempting to conceal his past record from the Ohio Board, by repeatedly lying during interviews with DEA and Board investigators, and by continuing this pattern of deception during deposition and in the instant hearing, Dr. Hoxie has demonstrated that he is not trustworthy and cannot handle the responsibility of licensure in Ohio. His lack of credibility would make it impossible for the Board to regulate Dr. Hoxie in any meaningful way. His prescribing practices, while clearly incorrect in the cases at hand, could potentially be addressed by remedial courses. However, his complete lack of candor and the character traits he has exhibited throughout this process, make it clear that he cannot practice medicine in Ohio. For the protection of the public, he should have his license revoked.

#### PROPOSED ORDER

It is hereby ORDERED that:

The certificate of David A. Hoxie, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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

  
Sharon W. Murphy, Esq.  
Hearing Examiner



# State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: [www.med.ohio.gov](http://www.med.ohio.gov)

## EXCERPT FROM THE DRAFT MINUTES OF JULY 14, 2004

### REPORTS AND RECOMMENDATIONS

Ms. Sloan announced that the Board would now consider the findings and orders appearing on the Board's agenda. She asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Jeremy Amps, M.D.; Robert A. Berkman, M.D.; Jeremy John Burdge, M.D.; David A. Hoxie, M.D.; Jeffrey Thomas Jones, P.A.; Tom Reutti Starr, M.D.; and Karen Ann Vossler, M.T. A roll call was taken:

ROLL CALL:

Mr. Albert	- aye
Dr. Egner	- aye
Dr. Talmage	- aye
Dr. Bhati	- aye
Dr. Buchan	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Dr. Davidson	- aye
Dr. Robbins	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye
Ms. Sloan	- aye

Ms. Sloan 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. Egner	- aye
Dr. Talmage	- aye
Dr. Bhati	- aye
Dr. Buchan	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Dr. Davidson	- aye
Dr. Robbins	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye

Ms. Sloan - aye

Ms. Sloan noted that, in accordance with the provision in Section 4731.22(F)(2), 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 these matters.

Ms. Sloan stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

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

.....  
DAVID A. HOXIE, M.D.  
.....

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF DAVID A. HOXIE, M.D. DR. BUCHAN SECONDED THE MOTION.**  
.....

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.



# State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: [www.state.oh.us/med/](http://www.state.oh.us/med/)

June 11, 2003

David A. Hoxie, M.D.  
300 Bricker Road  
Waverly, OH 45690

Dear Doctor Hoxie:

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, permanently 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) In or about 1985, you pled nolo contendere to one misdemeanor count of Section 11550(b), California Health and Safety Code, Under the Influence of a Controlled Substance, to wit: phencyclidine, and were convicted of that violation.
  - (a) On or about July 1, 1996, you submitted an Application for Certificate – Medicine or Osteopathic Medicine [Ohio Application] to the State Medical Board of Ohio [Ohio Board]. The “Additional Information” section of your Ohio Application includes the instruction that, should you answer “YES” to any question, “you are required to furnish complete details, including date, place, reason and disposition of the matter. All affirmative answers must be thoroughly explained on a separate sheet of paper. You must submit copies of all relevant documentation, such as court pleadings, court or agency orders, and institutional correspondence or orders” (emphasis in the original). In that “Additional Information” section of your License Application you answered “NO” to question number 17, which asks the following:

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, you were convicted as noted above.

- (b) On or about January 20, 1995, you submitted an Application for A License to Practice Medicine/Osteopathy [Virginia Application] to the Board of Medicine, Commonwealth of Virginia. You answered “NO” to question number 8 of the Virginia Application, which asks the following:

*Mailed 6-12-03*

Have you ever been convicted of a violation of/ or pled Nolo Contendre to any federal, state, or local statute, regulation or ordinance, or entered into any plea bargaining relating to a felony or misdemeanor? (Excluding traffic violations, except convictions for driving under the influence.)

In fact, you pled nolo contendere and were convicted as noted above.

- (c) On or about October 13, 1995, you submitted an Application for Registration [DEA Application] to the Drug Enforcement Administration. You answered "NO" to question number 4(b) of the DEA Application, which asks the following:

Has the applicant ever been convicted of a crime in connection with controlled substances under State or Federal law?

In fact, you were convicted as noted above.

- (2) On or about March 1, 2002, you were interviewed by a DEA Diversion Investigator. You were asked whether you had ever been: arrested for anything related to controlled substances; charged with driving under the influence of drugs and alcohol; convicted of a crime in connection with controlled substances under state or federal law; and/or placed on probation. You answered no to all four questions. In fact, in Los Angeles, California:
- (a) on or about December 15, 1973, you were arrested for possession of marijuana, a controlled substance;
  - (b) on or about September 19, 1978, you were arrested for possession of a controlled substance, to wit: phencyclidine;
  - (c) on or about August 7, 1983, you were arrested for and charged with being under the influence of a controlled substance, to wit: phencyclidine, and with driving under the influence of a controlled substance, to wit, phencyclidine;
  - (d) in or about 1985, you were convicted of being Under the Influence of a Controlled Substance, to wit: phencyclidine; and
  - (e) in or about 1985, you were placed on probation for a charge of being under the influence of a controlled substance, to wit: phencyclidine.
- (3) On or about April 11, 2003, you were deposed by Board staff. You were asked whether you had ever been: arrested for possession of marijuana; arrested for possession of PCP; arrested for being under the influence of PCP; on probation for any criminal charge; granted any kind of diversion related to any criminal charge;

and/or convicted of any crime, no matter how trivial. You responded no to each of the above questions. In fact, in Los Angeles, California:

- (a) on or about December 15, 1973, you were arrested for possession of marijuana;
  - (b) on or about September 19, 1978, you were arrested for possession of a controlled substance;
  - (c) on or about August 7, 1983, you were arrested for being under the influence of a controlled substance, to wit: phencyclidine;
  - (d) in or about 1983 or 1984, you were granted drug diversion;
  - (e) in or about 1985, you were placed on probation for a charge of being under the influence of a controlled substance, to wit: phencyclidine; and
  - (f) in or about 1985, you were convicted of being under the influence of a controlled substance, to wit: phencyclidine.
- (4) You prescribed controlled substance anorectics to Patient 1, a family member (as identified on the attached Patient Key- Key confidential to be withheld from public disclosure) as follows:

<b>Date</b>	<b>Quantity</b>	<b>Drug</b>	<b>Schedule</b>
02/08/00	21	Adipex	IV
11/13/02	14	Adipex	IV
02/09/03	14	Adipex	IV

Prior to initiating your treatment of Patient 1 with controlled substance anorectics, you failed to determine and/or you failed to document that Patient 1 had made a substantial effort to lose weight in a treatment program utilizing a regimen of weight reduction based on caloric restriction, nutritional counseling, behavior modification, or exercise, without the use of controlled substances, and that said treatment had been ineffective.

Further, in your treatment of Patient 1 with controlled substance anorectics, you failed to determine and/or you failed to document in your records that Patient 1 had a Body Mass Index [BMI] of at least thirty, or a BMI of at least twenty-seven with comorbid factors. Further, you failed to document any justification for prescribing controlled substances to Patient 1 that would constitute an emergency.

- (5) You issued postdated prescriptions to Patients 2, 3 and 4 (as identified on the attached Patient Key- Key confidential to be withheld from public disclosure) as follows:

<b>Date Issued</b>	<b>Date on Prescription</b>	<b>Patient</b>	<b>Drug</b>	<b>Schedule</b>
On or about 07/22/01	07/26/01	4	Lortab 5/500	III
On or about 07/22/01	07/26/01	4	Valium	IV
On or about 11/20/02	12/20/02	2	Percocet	II
On or about 11/20/02	12/20/02	3	Percocet	II

Your acts, conduct, and/or omissions as alleged in paragraph (1)(a) 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, as in effect prior to March 9, 1999.

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, as in effect prior to March 9, 1999.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (2) and (3) above, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute "[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 2921.13, Ohio Revised Code, Falsification.

Further, your acts, conduct, and/or omissions as alleged in paragraph (3) above, individually and/or collectively, constitute "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2921.11, Ohio Revised Code, Perjury.

Further, your acts, conduct, and/or omissions as alleged in paragraph (3) above, individually and/or collectively, constitute a "[f]ailure to cooperate in an investigation conducted by the board under division (F) of this section, including ... failure to answer truthfully a question

presented by the board at a deposition or in written interrogatories,” as those clauses are used in Section 4731.22(B)(35), Ohio Revised Code.

Further, your acts, conduct, and/or omissions that occurred prior to June 30, 2000, as alleged in paragraph (4) above, individually and/or collectively, constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: 4731-11-04 (C), Ohio Administrative Code. Pursuant to Rule 4731-11-04(E), Ohio Administrative Code, as in effect prior to June 30, 2000, violation of Rule 4731-11-04, Ohio Administrative Code, also violates Sections 4731.22(B)(2), (3) and (6), Ohio Revised Code.

Further, your acts, conduct, and/or omissions that occurred on or after June 30, 2000, as alleged in paragraph (4) above, individually and/or collectively, constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: 4731-11-04 (B), Ohio Administrative Code. Pursuant to Rule 4731-11-04(D), Ohio Administrative Code, as in effect on and after June 30, 2000, violation of Rule 4731-11-04, Ohio Administrative Code, also violates Sections 4731.22(B)(2), (3) and (6), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (4) above, individually and/or collectively, constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: 4731-11-08, Ohio Administrative Code, as in effect from November 11, 1998, through March 14, 2001, and since March 15, 2001.

Further, your acts, conduct, and/or omissions as alleged in paragraph (5) above, individually and/or collectively, constitute “[c]ommission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 3719.06, Ohio Revised Code, Authority of Licensed Health Professional; Contents of Prescription. Pursuant to Section 3719.99, Ohio Revised Code, violation of Section 3719.06, Ohio Revised Code, constitutes a misdemeanor offense.

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 days of the time of mailing of this notice.

You are further advised that, if you timely request a hearing, 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.

David A. Hoxie, M.D.

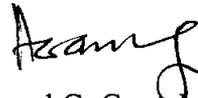
Page 6

In the event that there is no request for such hearing received within thirty 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, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.  
Secretary

AGG/blt  
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5148 0830  
RETURN RECEIPT REQUESTED

cc: Kevin R. Conners, Esq.  
52 East Gay Street  
Columbus, OH 43216-1008

CERTIFIED MAIL # 7000 0600 0024 5148 0823  
RETURN RECEIPT REQUESTED

FINAL APPEALABLE ORDER

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

DAVID A HOXIE, M.D.

Appellant,

v.

STATE MEDICAL BOARD OF OHIO

Appellee.

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TERMINATION NO. 10  
BY [Signature]

Case No. 04CV 7441

JUDGE FRYE

**JUDGMENT ENTRY AFFIRMING THE STATE MEDICAL BOARD'S  
JULY 14, 2004 ORDER PERMANENTLY REVOKING  
APPELLANT'S LICENSE TO PRACTICE MEDICINE AND SURGERY IN OHIO**

This case is before the Court upon the appeal, pursuant to R.C. 119.12, of the July 14, 2004 Order of the State Medical Board of Ohio which permanently revoked Appellant, David A. Hoxie, M.D.'s license to practice medicine and surgery in Ohio. For the reasons stated in the decision of this Court rendered on May 12, 2005, and filed on May 13, 2005 which decision and May 20, 2005 Nunc Pro Tunc Entry are incorporated by reference as if fully rewritten herein, it is hereby:

FILED  
COMMON PLEAS COURT  
FRANKLIN CO., OHIO  
JUL 14 2005  
PM 4:03  
CLERK OF COURTS - CV

ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of Appellee, State Medical Board of Ohio, and the July 14, 2004 Order of the State Medical Board in the matter of David A. Hoxie, M.D., is hereby AFFIRMED.

Costs to Appellant.

IT IS SO ORDERED.

[Signature of Richard A. Frye]

JUDGE RICHARD A. FRYE

\_\_\_\_\_  
Date



FILED  
COMMON PLEAS COURT  
IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
2005 MAY 13 CIVIL DIVISION

DAVID A. HOXIE, CLERK OF COURTS I

Appellant,

I CASE NO. 04CVF-07-7441

vs.

I JUDGE FRYE

STATE MEDICAL BOARD OF OHIO,

I MAGISTRATE PHELPS-WHITE

Appellee.

I

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DECISION ON THE MERITS OF ADMINISTRATIVE APPEAL

Rendered this 12<sup>th</sup> day of May, 2005

FRYE, J.

This case came before this Court upon an administrative appeal filed by David A. Hoxie, M.D. (Appellant), on July 19, 2004. Appellant is appealing the order issued by the State Medical Board (the "Board") mailed on July 19, 2004. The order of the Board permanently revoked Appellant's certificate to practice medicine and surgery within the state of Ohio.

In reviewing the certified record filed with this Court, this Court must determine whether the Order of the Board was supported by reliable, probative and substantial evidence and whether the order is in accordance with the law

HEATH & LITMAN

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CIVIL DIVISION

pursuant to R.C. 119.12, which governs administrative appeals. R.C. 119.12 provides that this Court must affirm Appellee's order if it finds that the order is supported by reliable, probative, and substantial evidence and is in accordance with the law. <sup>1</sup>"Reliable" evidence has been defined as evidence that is dependable and can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. <sup>2</sup>"Probative" evidence is evidence that tends to prove the issue in question and it must be relevant in determining the issue. <sup>3</sup>"Substantial" evidence is evidence with some weight and it must have importance and value.<sup>4</sup>

Appellant contends that the order was not supported by reliable, probative and substantial evidence. Specifically, Appellant sets forth four assignments of error. First, Appellant argues that the Board erred by relying solely upon the arrest records to conclude that Appellant was convicted of a controlled substance offense. Second, Appellant argues that the arrest records are unreliable. Third, he argued that the arrest records were not probative of a conviction. Fourth, he contends that there was no evidence that the patients for whom Appellant prescribed medication were in danger.

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1. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St. 2d 108, 407 N.E. 2d 1265.

2. *Our Place, Inc. v. Ohio Liquor Control Commission* (1992), 63 Ohio St. 3d 570, 589 N.E. 2d 1303.

3. *Id.*

4. *Id.*

Appellant was issued a notice of hearing dated June 11, 2003. In that notice, Appellant was advised that the Medical Board intended to determine whether, inter alia, to permanently revoke his certificate to practice medicine for violating several provisions of R.C. 4731.22; specifically, R.C. 4731.22(A), R.C. 4731.22(B)(2), (3), (5), (6) (12), (10),(20) and (35).

The record revealed that on January 8, 1985, Appellant entered a no contest plea to one misdemeanor count of being under the influence of a controlled substance, PCP and one misdemeanor count of driving under the influence, which resulted from a 1983 arrest and a March 9, 1984 probation revocation.

On July 1, 1996, Appellant answered "no" to question 17 on his Ohio application to practice medicine in which he was asked whether he had ever been "convicted or found guilty of a violation of federal law, state law, or municipal ordinance other than a minor traffic offense."

On January 20, 1995, Appellant also answered "no" to question number 8 on his application for a license to Practice Medicine/Osteopathy in Virginia in which he was asked whether he had ever been convicted of a violation of/or pled Nolo Contendere to any federal, state, or local statute, regulation or ordinance, or entered into any plea bargaining relating to a felony or misdemeanor?"

In addition, on October 13, 1995, Appellant answered "no" on his application for Registration to the Drug Enforcement Administration to the

question of whether he had ever been convicted of a crime in connection with controlled substances under State or Federal Law.

The record further revealed that on March 1, 2002, Appellant was interviewed by a DEA Diversion Investigator. During the interview, he was asked whether he had ever been arrested, charged, or put on probation for anything related to controlled substances. Appellant answered "No". However, records indicated that Appellant was arrested on December 15, 1973 for marijuana possession, he was arrested on September 19, 1978 for PCP possession. On August 7, 1983, he was arrested and charged for being under the influence of PCP and driving under the influence of PCP. Again, there is the conviction of January 8, 1985 where Appellant pled no contest to being under the influence of PCP and for driving under the influence of PCP, which resulted from his arrest in August of 1983 and his probation revocation in March 9, 1984.

Furthermore, according to the record, Appellant was deposed by the staff of the Ohio Medical Board on April 11, 2003. During that deposition, Appellant was asked whether he had ever been arrested for possession of marijuana, for possession of PCP or for being under the influence of PCP. Appellant was also asked whether he had ever been on probation for any criminal charge, granted any kind of diversion related to any criminal charge, and/or convicted of any crime no

matter how trivial. Appellant answered "no" to these questions. However, as previously set forth in the decision herein, the record revealed otherwise

The Board issued an order revoking Appellant's certificate on the basis that Appellant's answers to questions on his Ohio application, his Virginia application, his DEA application and his responses to the questions posed by the DEA investigators and the Board's staff regarding arrests and conviction relating to controlled substances constitute a violation of several provisions of Ohio law.

The Board has the authority to revoke a certificate "to a person found by the board to have committed fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board."<sup>5</sup>

The Board shall also revoke an individual's certificate to practice for "making a false, fraudulent, deceptive, or misleading statement in \*\*\*attempting to secure any certificate to practice or certificate of registration issued by the board<sup>6</sup>. The statute defines "false, fraudulent, deceptive, or misleading statement" as a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or

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<sup>5</sup>. R.C. 4731.22(A).

<sup>6</sup>. R.C. 4731.22(B)(5)

implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.”<sup>7</sup>

An administrative hearing was held before a hearing examiner for the Board. Upon consideration of the evidence, the hearing examiner found that Appellant failed to truthfully answer the questions regarding drug related arrests and conviction of any kind by the Board’s staff during the deposition in violation of R.C. 4731(B)(35). Appellant also violated R.C. 4731.22(B)(10) by committing perjury, which is a felony as defined by R.C. 2921.11. It was further found that Appellant committed a misdemeanor in the course of practice by failing to truthfully answer the questions of the DEA Diversion Investigator regarding any arrests and charges or probation for controlled substance offenses. Appellant’s answers constituted falsification as defined by R.C. 2921.13, which is a violation of R.C. 4731.22(B)(12).

The record revealed not only that Appellant falsely and deceptively answered questions regarding his arrests and conviction relating to controlled substances, but the hearing examiner determined that Appellant failed to comply with OAC 4731-11-04(B) and 4731-11-08 when he prescribed the controlled substance known as anorectics to a family member in violation of R.C. 4731.22(B)(20). Appellant also violated the statute when he issued postdated

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<sup>7</sup>. R.C. 4731.22(B)(5).

prescriptions to three patients, which was in violation of R.C. 3719.06(C). Pursuant to R.C. 3719.99(E), a violation of R.C. 3719.06 is a misdemeanor offense and constitutes a violation of R. C. 4731.22(B)(12).

The Board reviewed the Report and Recommendation of the Hearing Examiner and voted to permanently revoke Appellant's certificate to practice medicine and surgery in the State of Ohio. In the instant appeal, Appellant takes issue with the reliability of the arrest records and contends that the Board relied solely upon the arrest records to demonstrate that Appellant had a conviction. The record is replete with certified copies of records from the state of California. The certification denotes authenticity. Appellant contends that the records were inaccurate, yet he confirms the personal data on the records, such as his name, his date of birth, his address, his social security number, and the vehicles described in the records.<sup>8</sup> Appellant admits to the personal information stated on the arrest records, but claims that the remaining portion of the records reflecting arrests for possession of being under the influence of a controlled substance as being fabricated and false. The Board was not convinced by this argument and neither is the Court.

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<sup>8</sup> . See Transcript before Ohio State Medical Board Hearing Examiner dated April 8, 2004 pages 35 through 65.

The record contains a certified copy of an arrest record dated August 7, 1983.<sup>9</sup> Appellant confirmed the address and acknowledged the vehicle described in the record. A disposition sheet reflects that on January 8, 1985, Appellant entered a nolo contendere plea to possession of PCP. Appellant was sentenced and placed on probation. On March 17, 1988, Appellant violated his probation, which was subsequently revoked and Appellant was sentenced to thirty days in jail. Appellant acknowledged the August 7, 1983 arrest, but he denies entering a plea, receiving probation and serving jail time.

Appellant admits that he has been arrested, but according to him, he was arrested for minor traffic offenses and not controlled substance related offenses. The certified records indicate otherwise. The records demonstrate that Appellant was not only arrested on a number of occasions, but each time he was arrested for an offense relating to controlled substances.

Contrary to Appellant's assertion, the Board did not rely solely upon arrest records. There were certified copies of disposition and probation records. This Court agrees that arrest records are not probative of a conviction. But the disposition records and the probation flash notices are evidence of a conviction.

Appellant's claim that the records were unreliable is baseless. Appellant could confirm the personal information on the records, including the vehicles he

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<sup>9</sup>. See State's Exhibit 5-A.

was driving at the time of the arrest. The only aspect of the reports that Appellant does not admit to is that which confirms that the nature of the arrests related to being under the influence or possession of a controlled substance.

As for the patient care issues, Appellant admits prescribing anorectics to his wife. He further acknowledged that he did not follow the guidelines set forth the code and that he was unaware of the prohibition of physicians prescribing medication to a family member except in an emergency. Furthermore, Appellant does not deny that he issued post-dated prescriptions to three other patients. His only response was that there was no evidence that the patients were in any danger and that they were not safe. Appellant's ignorance of all rules governing his conduct as a physician is not justification for violating the statute. The Board may permanently revoke Appellant's certification for failing to conform to the minimal standards of care whether or not actual injury to a patient is established.<sup>10</sup>

The Board reviewed the evidence, the Report and Recommendation of the Hearing Examiner, the Objections, and Appellant's affidavit and determined that the Appellant's license to practice medicine should be revoked. However, this Court notes that the revocation was not permanent.

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<sup>10</sup>. R.C. 4731.22(B)(6).

This Court must defer to the trier of fact for resolution of factual questions and may not substitute its judgment for that of the Board<sup>11</sup>. Upon careful review of the record, this Court finds that the order of the State Medical Board is supported by reliable, probative, and substantial evidence and is in accordance with the law. The order of the Board is hereby **AFFIRMED**.

Counsel for Appellee shall prepare and submit an appropriate journal entry to the Court in accordance with Local Rule 25.01

  
JUDGE RICHARD FRYE

Copies to:

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Counsel for Appellee

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<sup>11</sup>. *Angelkovski v. Buckeye Potato Chips* (1980), 11 Ohio App. 3d 159,161.