

STATE OF OHIO
THE STATE MEDICAL BOARD OF OHIO
65 SOUTH FRONT STREET
SUITE 510
COLUMBUS, OHIO 43266-0315

April 15, 1988

Philip Emmert, D.P.M.
509 Fort Street
Marietta, Ohio 45750

Dear Doctor Emmert:

Please find enclosed a certified copy of the Entry of Order; the Report and Recommendation of Mark E. Kouns, Attorney Hearing Examiner, State Medical Board of Ohio; an excerpt of the March 9, 1988 Minutes of the State Medical Board, and an excerpt of the Minutes of the Board, meeting in regular session on April 13, 1988, including Motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal may be taken to the Franklin County Court of Common Pleas only.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO



Henry G. Cramblett, M.D.
Secretary

HGC:em

Enclosures

CERTIFIED MAIL NO. P 746 510 364
RETURN RECEIPT REQUESTED

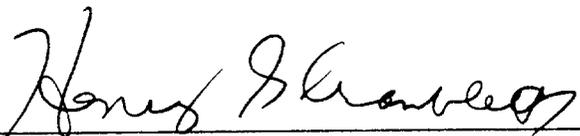
STATE OF OHIO
THE STATE MEDICAL BOARD OF OHIO
65 SOUTH FRONT STREET
SUITE 510
COLUMBUS, OHIO 43266-0315

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Mark E. Kouns, Attorney Hearing Examiner, State Medical Board; and attached excerpt of Minutes of the State Medical Board, meeting in regular session on March 9, 1988 and April 13, 1988, including Motions approving and confirming said Report and Recommendation as the Findings and Order of the State Medical Board, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Philip Emmert, D.P.M., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.

(SEAL)


Henry G. Cramblett, M.D.
Secretary

April 15, 1988

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

PHILIP EMMERT, D.P.M.

*

ENTRY OF ORDER

This Order came on for consideration before the State Medical Board of Ohio the 9th day of March, 1988 and the 13th day of April, 1988.

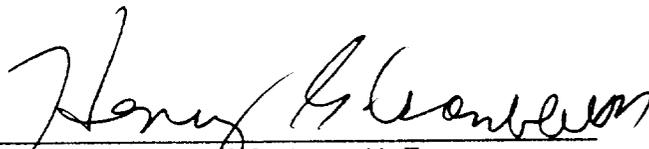
Upon the Report and Recommendation of Mark E. Kouns, Attorney Hearing Examiner, State Medical Board, in this matter designated pursuant to R.C. 4731.23, a true copy of which is attached hereto and incorporated herein, and upon approval and confirmation by vote of the Board on April 13, 1988, the following Order is hereby entered on the Journal of the State Medical Board for the 13th day of April, 1988.

It is hereby ORDERED:

1. That the application for reinstatement to practice podiatric medicine and surgery filed with the State Medical Board of Ohio by Philip Emmert, D.P.M., on August 25, 1986, be DENIED.
2. Philip Emmert, D.P.M., shall not at any time in the future be eligible to either apply for or obtain licensure to practice podiatric medicine and surgery or its related branches in the State of Ohio.

This Order shall become effective upon final action by the State Medical Board of Ohio as provided by law.

(SEAL)


Henry G. Cranbrett, M.D.
Secretary

April 15, 1988

Date

'88 FEB -4 P4:02

REPORT AND RECOMMENDATION
IN THE MATTER OF PHILIP EMMERT, D.P.M.

The Matter of Philip Emmert, D.P.M., (hereinafter referred to as the Respondent) came on for hearing before me, Mark E. Kouns, Attorney Hearing Examiner, for the State Medical Board of Ohio (hereinafter referred to as the Board), on the 5th day of January, 1988, pursuant to the provisions of Chapters 4731. and 119., of the Ohio Revised Code.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Mode of Conduct

During the course of the hearing, the Rules of Evidence were relaxed so as to afford both the State and the Respondent wide latitude in the offering of evidence as well as inquiring of the witnesses through both direct and cross-examination.

II. Basis for Hearing

By letter of April 8, 1987, the Board notified Respondent that it proposed to determine whether to limit, revoke, suspend, refuse to register or reinstate his certificate to practice podiatry or to reprimand or place him on probation based upon allegations that he continued to practice podiatry after his certificate to practice had been suspended by operation of law; that he had been convicted of the crime of practicing podiatry without a certificate; and that he had kept his podiatry office in a littered and unsanitary state, contrary to and in violation of Sections 4731.22(B)(16), 4731.22(B)(10) (as in effect prior to March 17, 1987), and 4731.22(B)(6), respectively, of the Ohio Revised Code.

III. Appearance of Counsel

- A. On behalf of the State of Ohio: Anthony J. Celebrezze, Jr., Attorney General of Ohio, by Cheryl J. Nester, Esq., Assistant Attorney General.
- B. On behalf of the Respondent: Philip Emmert, D.P.M., pro se.

IV. Testimony Heard

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A. Presented by the State

1. Philip Emmert, D.P.M., as upon cross-examination

B. Presented by the Respondent

1. Philip Emmert, D.P.M.

V. Exhibits Offered, Admitted and Examined

A. Presented by the State

1. State's Exhibit #1: A copy of the April 8, 1987, citation letter issued from the Board to the Respondent advising the latter of the allegations made against him, of the Board's intention to consider the same and of his right to request a hearing under the provisions of Chapter 119., of the Ohio Revised Code.
2. State's Exhibit #2: A copy of a Memorandum dated May 8, 1987, from John W. Rohal, Assistant Director of the Board, to Wanita J. Sage, Attorney Hearing Examiner, memorializing a telephone call received by Mr. Rohal from the Respondent during which Respondent requested a hearing.
3. State's Exhibit #3: A copy of a May 8, 1987, letter from Wanita J. Sage, Attorney Hearing Examiner to Respondent acknowledging Respondent's May 8, 1987, telephone call to the offices of the Board, advising Respondent that his formal hearing had been initially scheduled for May 21, 1987, at 1:00 P.M., and thereafter advising the Respondent that the initial hearing had been continued to a date to be determined and announced in the future.
4. State's Exhibit #4: A copy of a September 3, 1987, letter from the undersigned Attorney Hearing Examiner to the Respondent notifying the latter that his formal hearing had been set for Tuesday, January 5, 1988, at 10:00 A.M. in the offices of the Board.

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5. State's Exhibit #5: (a composite consisting of numerous pages) A copy of the Respondent's application for renewal of his license to practice podiatric medicine together with supporting documentation and related correspondence filed with the Board on August 25, 1986.
6. State's Exhibit #6: (consisting of two pages) A certified copy of the Complaint filed in the Municipal Court of Marietta, Ohio (Case No. 86-CRB-590) on June 24, 1986, charging Respondent with practicing podiatry without a certificate from the Board, together with a certified copy of the docket entries of the Court.
7. State's Exhibit #7: A copy of a certificate dated June 16, 1986, and signed by Henry G. Cramblett, M.D., Secretary of the Board, certifying that a careful examination of the Board's records by the Secretary revealed that the Respondent had been issued a Certificate to practice podiatric medicine on August 8, 1950, and further that Respondent's Certificate to practice had expired December 31, 1979.
8. State's Exhibit #8: A photograph taken June 17, 1986, of the treatment room located in Respondent's office.
9. State's Exhibit #9: A photograph taken June 17, 1986, of the whirlpool room located in Respondent's office.
10. State's Exhibit #10: A photograph taken June 17, 1986, of the x-ray room and lavatory located in Respondent's office.
11. State's Exhibit #11: A copy of a form captioned Voluntary Retirement From The Practice Of Podiatry signed by Respondent and dated June 17, 1986.

B. Presented by the Respondent

The Respondent offered no exhibits at the hearing.

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FINDINGS OF FACT

1. The State Medical Board of Ohio has jurisdiction over both the Respondent and the subject matter involved in the instant proceedings.

(This fact is established by reference to State's Exhibits #1, #2, #4 and #5, together with the testimony of the Respondent at page 7, line 11 through page 9, line 11, inclusive, of the transcript).

2. Respondent was first licensed to practice podiatric medicine in Ohio on August 8, 1950. Respondent's license to practice podiatric medicine in Ohio expired on December 31, 1979. After the expiration of his license on December 31, 1979, Respondent continued to practice podiatric medicine in the State of Ohio through June 17, 1986, the date on which Respondent last saw a patient.

(These facts are established by reference to State's Exhibits #5 and #7, as well as the testimony of Respondent at page 10, line 1 through line 10; at page 12, line 21 through page 13, line 21; and at page 24, line 23 through page 25, line 9, inclusive of the transcript).

3. On June 17, 1986, during the course of a visit to his office by a member of the Board's investigative staff, Respondent signed a Voluntary Retirement From The Practice Of Podiatry form.

(This fact is established by reference to State's Exhibit #11, together with the testimony of Respondent at page 18, line 21 through page 19, line 13, inclusive of the transcript).

4. On July 18, 1986, after having entered a plea of no contest, Respondent was convicted in the Municipal Court of Marietta, Ohio, of practicing podiatry without a certificate from the Board, in violation of Section 4731.60 of the Revised Code, said offense being a misdemeanor of the fourth degree.

(These facts are established by reference to State's Exhibit #6 and the testimony of Respondent at page 19, line 10 through line 22, inclusive of the transcript).

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On August 25, 1986, Respondent filed with the Board an Application For Reinstatement Of Certificate To Practice Podiatric Medicine & Surgery form.

(This fact is established by reference to State's Exhibit #5).

6. Respondent's office was located within the same building as his home. Respondent did not use many free-standing instruments in his practice. Respondent's normal practice was to sterilize instruments in his home by boiling them in a pan. Thereafter, Respondent would wrap the instruments in a towel and transport them from the section of the building constituting his home to the section where the office was located where the instruments would remain until used.

(These facts are established by the testimony of Respondent at page 12, line 1 through line 20, and at page 15, line 5 through page 16, line 4, inclusive of the transcript).

7. On June 17, 1986, the conditions in Respondent's treatment room were such that the instruments used by Respondent in various procedures were placed in an exposed fashion on a towel which towel was located on a cabinet top littered with numerous other items.

(These facts are established by reference to the testimony of Respondent at page 14, line 10 through page 16, line 4, inclusive of the transcript, as well as by reference to and observation of the condition of the treatment room as depicted in the photograph marked State's Exhibit #8).

8. Respondent's whirlpool room on June 17, 1986, was in a littered and unsanitary state with wet towels piled on the floor one upon another in close proximity to the chair where the patients were to sit. Further, shoe boxes and an old pair of shoes were positioned near the patient chair.

(These facts are established by reference to the testimony of Respondent at page 16, line 5 through page 17, line 7, inclusive of the transcript together with reference to and observation of the condition of the whirlpool room as depicted in the photograph marked State's Exhibit #9).

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9.

On June 17, 1986, Respondent's x-ray room and the lavatory adjacent thereto were in a littered and unsanitary state as evidenced by State's Exhibit #10. The only entrance to Respondent's x-ray room was through the lavatory. In the immediate area of the x-ray room Respondent had established a receptacle area for storing papers and empty boxes prior to putting the same in the trash. Respondent also used the area immediately adjacent to the x-ray room as a place to store plaster and boxes.

(These facts are established by reference to the testimony of Respondent at page 17, line 7 through page 18, line 16, inclusive of the transcript together with observation of the photograph marked State's Exhibit #10).

CONCLUSIONS OF LAW

Based upon the facts as previously found herein and upon application of the same to the provisions of Sections 4731.22(B)(6); 4731.22(B)(10) (as in effect prior to March 17, 1987); and 4731.22(B)(16) of the Ohio Revised Code, the Attorney Hearing Examiner concludes and so holds that:

1. Respondent's conduct in continuing to engage in the practice of podiatric medicine from January 1, 1980 through June 17, 1986, when his certificate to practice the same had previously expired, constitutes a violation of Section 4731.22(B)(16) of the Ohio Revised Code.
2. Respondent's conviction on July 18, 1986, in the Municipal Court of Marietta, Ohio for violating Section 4731.60 of the Ohio Revised Code, constitutes a violation of Section 4731.22(B)(10) of the Ohio Revised Code as in effect prior to March 17, 1987.
3. Respondent's conduct in maintaining his podiatry office in a littered and unsanitary state constitutes a departure from, and failure to conform to minimal standards of care of similar practitioners under the same or similar circumstances, constitutes a violation of Section 4731.22(B)(6), of the Ohio Revised Code.

STATE OF OHIO
MEDICAL BOARD

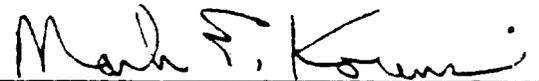
PROPOSED ORDER

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It is hereby ORDERED that:

1. The Application for Reinstatement To Practice Podiatric Medicine & Surgery filed with the State Medical Board of Ohio by Philip Emmert, D.P.M., on August 25, 1986, be DENIED.
2. Philip Emmert, D.P.M., shall not at any time in the future be eligible to either apply for or obtain licensure to practice podiatric medicine and surgery or its related branches in the State of Ohio.

This ORDER shall become effective upon final action by the State Medical Board of Ohio as provided by law.



Mark E. Kouns
Attorney Hearing Examiner

EXCERPT FROM THE MINUTES OF APRIL 13, 1988

REPORTS AND RECOMMENDATIONS

Ms. Nester left the meeting at this time.

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Dr. Stephens asked if each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of Doyle E. Campbell, M.D., Jack E. Markel, D.N., Philip Emmert, D.P.M., Michael D. Cerny, D.O., Stanley D. Wissman, M.D., Thomas J. Markoski, D.O., A. Michael Broennle, M.D., Judith A. Wolfe, M.D., Henry E. Montoya, M.D., Minoo Pedroem, M.D., David H. Procter, M.D., Maruthi Vadapalli, M.D., Gregory A. George, M.D., Mark P. Namey, D.O., Edwin N. Cook, D.O., and Alfred L. Stanford, M.D. A roll call was taken:

ROLL CALL:	Dr. Kaplansky	- aye
	Dr. Rothman	- aye
	Dr. Rauch	- abstain
	Mr. Albert	- aye
	Dr. O'Day	- aye
	Ms. Rolfes	- aye
	Mr. Jost	- aye
	Dr. Stephens	- aye

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REPORT AND RECOMMENDATION IN THE MATTER OF PHILIP EMMERT, D.P.M.

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DR. ROTHMAN MOVED TO APPROVE AND CONFIRM MR. KOUNS' FINDINGS OF FACT AND CONCLUSIONS IN THE MATTER OF PHILIP EMMERT, D.P.M. MR. ALBERT SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Kaplansky	- aye
	Dr. Rothman	- aye
	Dr. Rauch	- abstain
	Mr. Albert	- aye
	Dr. O'Day	- aye
	Ms. Rolfes	- aye
	Mr. Jost	- aye

The motion carried.

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EXCERPT FROM THE MINUTES OF APRIL 13, 1988
REPORT AND RECOMMENDATION IN THE MATTER OF PHILIP EMMERT, D.P.M.
Page 2

MR. ALBERT MOVED TO APPROVE AND CONFIRM MR. KOUNS PROPOSED ORDER IN THE MATTER OF PHILIP EMMERT, D.P.M. DR. ROTHMAN SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Kaplansky	- aye
	Dr. Rothman	- aye
	Dr. Rauch	- abstain
	Mr. Albert	- aye
	Dr. O'Day	- aye
	Ms. Rolfes	- aye
	Mr. Jost	- aye

The motion carried.

Dr. Lancione	- aye
Dr. Barnes	- aye
Dr. Kaplansky	- nay
Dr. Rothman	- nay
Dr. Rauch	- aye
Mr. Albert	- nay
Dr. O'Day	- nay
Ms. Rolfes	- nay
Mr. Jost	- nay

The motion failed.

A roll call vote was taken on Ms. Rolfes' motion:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Lancione	- nay
	Dr. Barnes	- aye
	Dr. Kaplansky	- aye
	Dr. Rothman	- aye
	Dr. Rauch	- nay
	Mr. Albert	- aye
	Dr. O'Day	- aye
	Ms. Rolfes	- aye
	Mr. Jost	- aye

The motion carried.

Mr. Costantini, Ms. Thompson, and Mr. Dilling left the meeting at this time.

REPORT AND RECOMMENDATION IN THE MATTER OF PHILIP EMMERT, D.P.M.

Dr. Stephens stated that the Board staff has been unable to properly serve Dr. Emmert with a copy of the Report and Recommendation, and asked for a motion to table this matter.

MR. JOST MOVED TO TABLE THE REPORT AND RECOMMENDATION IN THE MATTER OF PHILIP EMMERT, D.P.M. DR. O'DAY SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- aye
	Dr. Lancione	- aye
	Dr. Barnes	- aye
	Dr. Kaplansky	- aye
	Dr. Rothman	- aye
	Dr. Rauch	- aye
	Mr. Albert	- aye
	Dr. O'Day	- aye
	Ms. Rolfes	- aye
	Mr. Jost	- aye

The motion carried.

REPORT AND RECOMMENDATION IN THE MATTER OF PHILIP JARVIS, M.D.

Dr. Barnes stated that he will abstain from discussion and voting in this matter because he knows Dr. Jarvis well.

Dr. Stephens stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and order in the above matter. No objections were voiced by Board Members present.

Dr. Stephens asked if there were any questions concerning the proposed findings of fact in the above matter. There were none.

Dr. Stephens asked if there were any questions concerning the proposed conclusions in the above matter. There were none.

MS. ROLFES MOVED TO APPROVE AND CONFIRM MS. SAGE'S FINDINGS OF FACT AND CONCLUSIONS IN THE MATTER OF PHILIP E. JARVIS, M.D. DR. KAPLANSKY SECONDED THE MOTION.

Dr. Rauch noted that in the last paragraph of her conclusion, Ms. Sage indicates that Dr. Jarvis' impairment is pertinent to the Board's consideration of appropriate sanction. He stated that this was inconsistent with her comments regarding Dr.

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43266-0315

April 8, 1987

Philip Emmert, D.P.M.
509 Fort Street
Marietta, Ohio 45750

Dear Doctor Emmert:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice podiatry or to reprimand or place you on probation for one or more of the following reasons:

1. Your certificate to practice podiatry in Ohio was suspended by operation of law on or about January 1, 1980, based on your failure to comply with the registration requirements of Section 4731.281, Ohio Revised Code. You continued to practice podiatry in Ohio while your certificate was suspended from on or about January 1, 1980 until on or about June 17, 1986.

Such acts in the above paragraph (1), 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)(16), Ohio Revised Code, to wit: Section 4731.60, Ohio Revised Code, practicing podiatry without a certificate.

2. On or about July 18, 1986, you were convicted in the Marietta, Ohio, Municipal Court of one count of violating Section 4731.60, Ohio Revised Code, practicing podiatry without a certificate. Said conviction constitutes a misdemeanor.

Such conviction in the above paragraph (2) constitutes "conviction of a misdemeanor committed in the course of his practice", as that clause is used in Section 4731.22(B)(10), Ohio Revised Code.

STATE OF OHIO
THE STATE MEDICAL BOARD

Page Two
Philip Emmert, D.P.M.

April 8, 1987

3. On or about June 17, 1986, your podiatry office was observed by an investigator of the State Medical Board to be in a littered, unsanitary state, with food, soiled rags, and other refuse lying on the floor. The equipment and instruments did not appear to be maintained in a sterile manner, and no sterilizing equipment was present. When the Board's investigator inquired where you sterilize your equipment, you responded that you sometimes take instruments into your house and boil them.

Your maintenance of your office and instruments, as described in the above paragraph (3), constitutes "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established", as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

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

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing made within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice podiatry or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,

Henry G. Cramblett

Henry G. Cramblett, M.D.
Secretary

HGC:caa

enclosures

CERTIFIED MAIL RECEIPT NO. P 026 072 644
RETURN RECEIPT REQUESTED