



IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

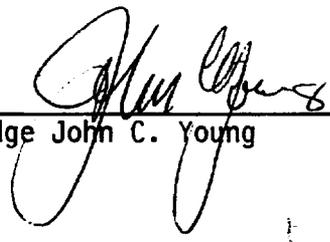
HEALTH - 10/10/98
MAY 12 1998
SERVICES SECTION

J. Philip Davidson, D.P.M., :
Appellant, :
v. : No. 97APE08-1036
The State Medical Board of Ohio, : (REGULAR CALENDAR)
Appellee. :

JOURNAL ENTRY OF JUDGMENT

For the reasons stated in the opinion of this court rendered herein on May 7, 1998, 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.

YOUNG, TYACK & PETREE, JJ.

By  _____
Judge John C. Young

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IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

J. Philip Davidson, D.P.M., :
Appellant, :
v. : No. 97APE08-1036
The State Medical Board of Ohio, : (REGULAR CALENDAR)
Appellee. :

O P I N I O N

Rendered on May 7, 1998

*Graff & Associates, L.P.A., Douglas E. Graff and
David M. Abromowitz, for appellant.*

*Betty D. Montgomery, Attorney General, and Anne Berry
Strait, for appellee.*

APPEAL from the Franklin County Court of Common Pleas.

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YOUNG, J.,

Appellant, J. Philip Davidson, D.P.M., appeals from a July 14, 1997 judgment of the Franklin County Court of Common Pleas, affirming the December 3, 1996 order of appellee, The State Medical Board of Ohio ("the board"), suspending appellant's license to practice podiatry.

On August 5, 1994, appellant pled "no contest" to a misdemeanor count of obstructing official business, namely of separating and/or removing patient

billing sheets from patient medical records which were subpoenaed regarding an investigation into alleged medical insurance fraud. On August 9, 1995, the board sent appellant a letter, pursuant to R.C. 119.07, giving notice of opportunity for a hearing, indicating that the board proposed to take action against his license. The board's notice letter stated as its reasons for instituting such action the following:

"On or about August 5, 1994, in the Municipal Court of Franklin County, Ohio, you were adjudged guilty of one count of obstructing official business, in violation of Section 2921.31, Ohio Revised Code, a misdemeanor of the second degree. Such conviction was based on your removal of certain documents from patient files demanded to be produced by a Franklin County Grand Jury subpoena. The acts underlying this conviction were committed in the course of practice."

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The letter further informed appellant that:

"Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute '(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice,' as that clause is used in Section 4731.22(B)-(11), Ohio Revised Code.

"Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute '(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor involving moral turpitude,' as that clause is used in Section 4731.22(B)(13), Ohio Revised Code.

"Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in

the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

"In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to *** limit, revoke, [or] suspend *** your certificate to practice podiatry ***."

Appellant, through retained counsel, filed his request for a hearing on September 11, 1995, three days after the deadline for such filing. On October 11, 1995, the board met and discussed appellant's case without consideration of the evidence, and not in accordance with this court's decision in *Goldman v. State Med. Bd. of Ohio* (1996), 110 Ohio App.3d 124, 128-129. The Board issued its order revoking appellant's license to practice podiatry in Ohio on October 12, 1995. Appellant appealed the board's decision to the court of common pleas pursuant to R.C. 119.12. The trial court reversed the board's order and remanded the case back to the board for a hearing in accordance with the *Goldman* decision, (*Goldman* hearing), at which the state would be responsible for placing enough evidence on the record to support any subsequent action taken by the board. (Trial court decision 6/11/96 at 2.)

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Upon remand, the board held a *Goldman* hearing at which it presented nineteen exhibits, which provided documentation of the case, as well as the testimony of the chief investigator for the Attorney General office's investigation into the allegation of medical insurance fraud against appellant. The

investigator testified that his department had filed a complaint against appellant for obstructing official business in connection with the matter, and that appellant had pled "no contest" to the misdemeanor charge. Because of his previous waiver of hearing, and in accordance with the *Goldman* decision, appellant was not permitted to present evidence or testify at the hearing. After hearing the evidence the board ordered, on November 10, 1996, that appellant's license to practice podiatry be suspended for a period of not less than six months. Appellant appealed the board's order to the Franklin County Court of Common Pleas, which reviewed the appeal and affirmed the board's order. This

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Appellant raises the three following assignments of error on appeal:

"I. THE COMMON PLEAS COURT ERRED IN UPHOLDING THE GOLDMAN HEARING PROCESS, AS APPLIED TO APPELLANT, WHICH DENIED APPELLANT'S RIGHTS TO DUE PROCESS GUARANTEED BY OHIO STATUTORY AND CASE LAW AS WELL AS THE MINIMUM REQUIREMENTS OF THE UNITED STATES AND OHIO CONSTITUTIONS.

"II. THE COURT ERRED IN UPHOLDING THE BOARD'S DETERMINATION THAT APPELLANT'S NO CONTEST PLEA TO A MISDEMEANOR CHARGE OF OBSTRUCTING OFFICIAL BUSINESS WAS A 'MISDEMEANOR COMMITTED IN THE COURSE OF PRACTICE' AS THAT PHRASE IS USED IN R.C. §4731.22[B](11).

"III. THE COURT ERRED IN UPHOLDING THE BOARD'S DETERMINATION THAT APPELLANT'S NO CONTEST PLEA TO A MISDEMEANOR CHARGE OF OBSTRUCTING OFFICIAL BUSINESS WAS A 'MISDEMEANOR INVOLVING MORAL TURPITUDE' AS THAT PHRASE IS USED IN R.C. §4731.22[B](13)."

Appellant seeks review of the trial court's decision affirming the board's order to suspend his podiatry license. In the matter of *In re Ghali* (1992), 83 Ohio App.3d 460, 465-466, this court held that:

"In reviewing a decision of an administrative agency, pursuant to R.C. 119.12, the court of common pleas must determine whether the decision is supported by reliable, probative and substantial evidence and is in accordance with law. *Arlen v. State* (1980), 61 Ohio St.2d 168 ***. In determining whether the board's order was supported by reliable, probative and substantial evidence, the trial court was required to give due deference to the decision of the board since that body was in the best position to review and weigh the evidence presented. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108 ***. When reviewing an order of the court of common pleas which determined an appeal from an administrative agency based upon the manifest weight of the evidence, this court's scope of review is limited to determining whether the common pleas court abused its discretion. *Lorain City Bd. of Edn. v. State Emp. Relations Bd.* (1988), 40 Ohio St.3d 257 ***. An abuse of discretion connotes more than an error of judgment; it implies a decision which is without a reasonable basis or on which it is clearly wrong. *Angelkovski v. Buckeye Potato Chips Co.* (1983), 11 Ohio App.3d 159 ***."

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See, also, *Midwestern College of Massotherapy v. Ohio State Medical Bd.* (1996), 110 Ohio App.3d 677.

The term abuse of discretion "implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. Unless the board's decision is unsupported by the evidence, "the common pleas court must affirm the order and may not reverse, vacate or modify the order." *Kuzas v. Ohio State Medical Bd.* (1990), 67 Ohio App.3d 147,

150. "[I]f the penalty imposed is within the scope of the authority granted to the administrative agency, the judiciary cannot reverse, vacate or modify it." *Id.*

In his first assignment of error, appellant argues that the trial court erred in its determination that, on remand, the board's *Goldman* hearing: (1) presented sufficient evidence upon which to render its decision to suspend appellant's license, (2) was an adjudication in accordance with statutory provisions and the *Goldman* decision, and (3) satisfied the statutory and constitutional notice and procedural requirements due appellant. Namely, appellant contends that it was error for the board not to permit appellant to offer evidence or present argument on his behalf at the second hearing, even though appellant and his counsel were permitted to attend the hearing. (Appellant's brief at 3-4.) In *Goldman*, this court held that:

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*** [S]omething more than reliance on the preliminary investigative reports of the agency must be considered by the board before a license may be revoked such as in this case. The procedural safeguards which would make any hearing meaningful may not require a full adversarial and evidentiary proceeding, but some sort of reliable evidentiary review, including the sworn testimony of the investigator, as well as a more considered review of the circumstances of the case, would be needed to fulfill the requirement for a hearing under R.C. 4731.22.

"Under the above-stated resolution of this issue, there remains the further question of whether appellant, having waived his appearance before the board through his non-response to the notice of hearing originally issued in this case, may yet appear at further proceed-

ings on remand. The factual conclusion of the court of common pleas was that appellant had proper notice of his opportunity for a hearing, and we decline to disturb that conclusion upon appeal. It would then follow that appellant had concomitantly waived his right to appear at further hearings on this matter and the board may proceed with further adjudication in his absence, so long as it more substantially complies with the procedural safeguards implicit and explicit in R.C. 119. See *Korn v. Ohio State Med. Bd.* (1988), 61 Ohio App.3d 677. ***" *Id.* at 129.

In order to satisfy the requirements set forth in *Goldman*, a hearing need not be a full adversarial or evidentiary proceeding. However, there must be some sort of review of the circumstances of the case and of reliable evidence more than the investigative report alone, and the evidence must include the sworn testimony of the investigator. An appellant who initially waives his right to appear at the hearing has concomitantly waived his right to appear at further hearings on the matter. A board may proceed with its hearings in the absence of appellant as long as the procedural safeguards provided pursuant to 119 are complied with. *Id.*

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Appellant first contends that the board failed to prove the charges against him by a preponderance of the evidence presented, and that the trial court erred in affirming the board's order in this regard. Appellant argues that the board's record, as compiled, does not provide reliable, substantial and probative evidence to support the board's charges and order. (Appellant's brief at 5-7.) At appellant's hearing, the board presented nineteen exhibits which provided documentation of the case, including the complaint filed against him in

the Franklin County Municipal Court. The board also heard testimony from the chief investigator regarding the allegations of medical insurance fraud for which appellant's billing records were subpoenaed. The investigator testified that his department had filed a complaint against appellant for obstructing official business in connection with the matter, and that appellant had pled "no contest" to the misdemeanor charge.

The Ohio Supreme Court has held that the "commission alone shall be responsible for the evaluation of the weight and credibility of the evidence before it." *State ex rel. Burley v. Coil Packing, Inc.* (1987), 31 Ohio St.3d 18, 20-21. Determining whether an agency order is supported by sufficient evidence is essential to the review of a medical board's order, courts must accord due deference to the board's interpretation of the technical and ethical requirements of its profession." *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621. Upon review, the trial court concluded that "the Board's Order of November 13, 1996 is supported by reliable, probative and substantial evidence." (Trial court decision 6/18/97 at 8.) From the record, this court finds that the trial court did not abuse its discretion in determining that the board based its findings on reliable, probative evidence substantial enough to support the board's charges in accordance with the *Goldman* provisions regarding the review of evidence and circumstances of the case.

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Appellant next argues that the board's hearing was not a proper adjudicatory hearing as required by R.C. 4731.22(B), but was merely an "evidentiary" hearing which denied appellant his due process rights as provided by R.C. 119 and both the Ohio and United States Constitutions. (Appellant's brief at 9-10.) Adjudication is defined as a "determination by the highest or ultimate authority of an agency of the rights, duties, privileges, benefits, or legal relationships of a specified person." R.C. 119.01(D). As has been stated above, the board heard evidence at the hearing from which it determined the rights of appellant regarding suspension of his license. This court finds that the hearing was an adjudication in accordance with the provisions of R.C. 119 and 4731.22.

Appellant further contends that the notice provisions for a hearing were not followed pursuant to R.C. 119.07. The record, however, indicates that appellant did receive notice from the board regarding the hearing (Goldman hearing notice 8/1/96.) In this notice, the board referenced the August 9, 1995 hearing notice, in which, pursuant to R.C. 119.07, appellant was informed of his right to a hearing, afforded an opportunity for a hearing prior to the issuance of the board's order, apprised of the charges or reasons for the action against him, informed of the law or rule directly involved, and presented with a statement informing appellant that he was entitled to a hearing at which he may attend and/or be represented by counsel if he requested such a hearing within thirty days of the time of mailing the notice. *Tripodi v. Liquor Control Comm.*

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(1970), 21 Ohio App.2d 110. The notice was mailed to appellant by certified mail, return receipt requested. (Medical Board letter 8/9/95.)

R.C. 119.06 provides in part that a person be afforded "an opportunity for a hearing *** in accordance with sections 119.01 to 119.13." Such opportunity was provided appellant by the board in its August 9, 1995 letter. R.C. 119.07 provides that a person is entitled to a hearing before the board "if he requests it within thirty days of the time of mailing the notice." One can conclude, by the language of the statute, that a person who does not timely request a hearing may not be entitled to such hearing. The board notified appellant, in its August 9, 1995 letter, that "[i]n the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, [or] suspend *** your certificate to practice podiatry."

Appellant concedes that the process due him in such a matter is "an opportunity to be heard." (Appellant's brief at 12, citing *Mathews v. Eldridge* (1976), 424 U.S. 319.) A person is afforded the requirements of due process in an agency adjudicatory hearing where the person is given "clear and actual notice of the reasons for the termination in sufficient detail to [permit the person to] present evidence relating to them, notice of the names of those who made allegations against the [person] and the specific nature and basis for the charges, a reasonable time and opportunity to present testimony, and a hearing

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before an impartial board or tribunal." *Korn v. Ohio State Medical Bd.* (1988) 61 Ohio App.3d 677, 685.

Appellant was given proper notice of the hearing and of the charges against him. An adjudicatory hearing was held to review evidence and determine appellant's rights. Finally, appellant was afforded the opportunity to participate in the hearing at a reasonable time. The fact that appellant was afforded the opportunity to appear at the hearing does not mandate that he be permitted to appear once he waives such opportunity. By his inaction, appellant waived his right to present evidence on his behalf, or to be represented by counsel at the board's adjudication. See *Goldman* at 129.

This court has held that where proper notice has been given and a hearing was timely requested, the board did not violate "appellant's constitutional rights in proceeding with the hearing in appellant's absence" where appellant failed to attend. *Reed v. Ohio State Medical Bd.* (1988) 40 Ohio App.3d 124, 126. As in *Reed*, where appellant's absence at his hearing was not error although a hearing was requested, this court finds that a board may also proceed in the absence of a person who does not timely request a hearing. See *Goldman*. Appellant had retained counsel in August 1995, and although his counsel had timely prepared a request for a hearing to be delivered to the board, he did not mail it or have it delivered until September 11, 1995, three days after the time had expired for such filing. (Affidavit of Kevin P. Byers, counsel for appellant.) The neglect of a party's attorney will generally be imputed to the

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party for purposes of timely filing. *GTE Automatic Electric v. ARC Industries* (1976), 47 Ohio St.2d 146, 152. Had the board conducted its initial hearing in accordance with *Goldman*, appellant would not have suffered a violation of his due process rights when the hearing proceeded in his absence. See *Reed* at 126.

Further, this court has held that appellant's waiver of his original hearing concomitantly waives his right to appear at subsequent hearings in the matter. *Goldman* at 129. Appellant apparently seeks on remand that which he initially waived. If appellant is not prejudiced by his absence at the initial hearing, he is not prejudiced by his inability to appear at subsequent hearings on remand. The board does not owe appellant more process than is due.

Appellant argues that he must be afforded the opportunity to present testimony by an expert in evidence in his defense. This court again notes that appellant was afforded the right to do so, yet waived this right. Pursuant to the provisions of the *Goldman* decision, the board is under obligation only to review reliable evidence and consider the circumstances of the case. The board reviewed the testimony of the investigator and nineteen exhibits before it came to its determination that, by virtue of his misdemeanor conviction for violating R.C. 2921.31, appellant was in violation of R.C. 4731.22(B)(11) and (13), and subject to license suspension. This court finds that the trial court did not err or abuse its discretion in affirming the board's order. Appellant's first assignment of error is overruled.

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Regarding appellant's second and third assignments of error, this court notes that, pursuant to R.C. 4731.22(B), the medical board may vote to suspend appellant's license for "one or more of the following reasons," which reasons include a "plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed" in the course of practice and/or involving moral turpitude. See R.C. 4731.22(B)(11) and (13). The board is, therefore, authorized to suspend appellant's license to practice podiatry upon a finding that appellant's actions meet only one of the above criteria.

Appellant, in his second assignment of error, argues that appellant's misdemeanor actions did not occur in the course of his podiatry practice, and the trial court erred in upholding the board's decision that it did so occur. As the record indicates, appellant pled "no contest" to a charge of obstructing official business. Appellant was adjudged guilty of the charge, a violation of R.C. 2921.31, and convicted of a misdemeanor of the second degree. The board found that appellant's plea of guilty to the misdemeanor charge, namely removing billing sheets from medical records which were requested pursuant to a Grand Jury's investigation into medical insurance billing fraud, constituted a violation of R.C. 4731.22(B)(11). The Revised Code section in question provides that "[a] plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice" is sufficient grounds to permit the board, "pursuant to an adjudicatory hearing under Chapter 119. of the Revised Code ***

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[to] limit, revoke, or suspend a certificate" to practice, in this case, podiatry. R.C. 4731.22(B)(11).

Appellant contends that the practice of podiatry, as defined by R.C. 4731.51, consists of "the medical, mechanical and surgical treatment of ailments of the foot," and that podiatry practice does not include the creation of patient medical files or the billing for medical services, which are performed during appellant's "office practice." (Appellant's brief at 21.) Appellant appears to argue that the practice of podiatry is separate and distinct from the "office practice" of billing for those podiatric services rendered to patients.

Appellate court has held in *Higginbotham v. Perez* (Sep. 6, 1994), Franklin App. No. 93AP-12-1711, unreported (1994 Opinions 4046), that operative reports are indeed part of a physician's practice. *Id.* at 4053. We have further held that "fraudulent billing is a fraud committed in the course of practice." *Roy v. Ohio State Med. Bd.* (1992), 80 Ohio App.3d 675, 682. "Numerous jurisdictions have held that disciplinary sanctions, including the penalty of revocation, may be imposed against a medical practitioner even though the conduct which is the subject of the sanction does not involve the ability of the physician to competently treat patients." *Id.* at 684. The board correctly determined that the removal of the subpoenaed billing documents from patient files constituted actions within the course of appellant's podiatry practice.

R.C. 4731.34 defines one who practices podiatry as:

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"[a] person *** practicing *** podiatry *** who *** diagnoses *for compensation* of any kind, or prescribes, advises, recommends, administers, or dispenses *for compensation* of any kind, direct or indirect, a drug or medicine, appliance, mold or cast, application, operation, or treatment, of whatever nature, for the cure or relief of a wound, fracture or bodily injury, infirmity, or disease ***." (Emphasis added.)

From the language of the statute, the receipt of compensation of any kind in return for podiatric services is considered part of the definition of the practice of podiatry.

Appellant pled guilty to a misdemeanor charge of obstructing official business, involving the removal of billing documents from patient files under investigation. (Appellant's brief at 1.) The finding that appellant's act of separating billing records from patient files was committed in the course of practice was supported by probative, reliable and substantial evidence in accordance with the law. The trial court did not abuse its discretion in upholding the board's determination that such action was performed in the course of appellant's practice, and the violation falls squarely within the provisions of R.C. 4731.22(B)(11). Appellant's second assignment of error is overruled.

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In his third assignment of error, appellant contends that his misdemeanor actions did not involve moral turpitude, and the trial court erred in upholding the board's decision to that effect. Appellant argues that moral turpitude is characterized by "'baseness, vileness, or the depravity in private and social duties which man owes to his fellow man, or to society in general,'"

and that "[s]uch acts must be measured against the accepted standards of morality, honesty, and justice prevailing upon the community's collective conscience."

(See appellant's brief at 23.) See, also, *Disciplinary Counsel v. Burkhart* (1996), 75 Ohio St.3d 188, 191. Appellant argues that an independent review of the circumstances underlying appellant's actions is necessary to determine if they involve moral turpitude. (Appellant's brief at 24.)

Appellant contends that his actions of separating billing sheets from medical records do not constitute fraud, but only obstruction of official business. (Appellant's reply brief at 1.) We disagree. Actual fraud is defined as comprising:

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*** deceit, artifice, trick, design, some direct and active operation of the mind; it includes cases of the intentional and successful employment of any cunning, deception, or artifice used to circumvent or cheat another. It is something said, done, or omitted by a person with the design of perpetrating what he knows to be a cheat or deception *** [o]r, as otherwise defined, it is an act *** which, if generally permitted, would be prejudicial to the public welfare ***." Black's Law Dictionary (6 Ed.1991) 456.

Appellant's misdemeanor conviction of obstructing official business, in violation of R.C. 2921.31, stems from an investigation by the Ohio Attorney General's office of appellant's alleged billing for podiatric services not rendered (trial court decision 6/18/97 at 3), which can be described generally as billing practices that, if generally permitted, would be prejudicial to the public welfare, or by definition fraudulent. Appellant's plea of "no contest"

to charges of obstructing an official investigation into insurance fraud, with a resulting conviction on those charges, satisfies the definition of fraud. Appellant can, therefore, be said to have been found guilty of some fraudulent activity.

Moral turpitude is generally defined as an:

**** [a]ct or behavior that gravely violates moral sentiment or accepted moral standards of [the] community and is a morally culpable quality held to be present in some criminal offenses as distinguished from others. **** Black's Law Dictionary (6 Ed.1991) 698.

The Roy court, *supra*, held that a "plea of guilty to offenses *** involving improper payments was related to [the] practice of [the medical] profession." *Id.* at 684. In speaking of a board's imposition of sanctions for the fraudulent acts, the Roy court further held that the:

**** concerns with protecting the integrity of the profession and protecting the public are not unrelated. *** As an interest of the state, however, preserving professionalism is not an end in itself. Rather, it is an instrumental end pursued in order to serve the state's legitimate interest in promoting and protecting the public welfare. To perform their professional duties effectively, physicians must enjoy the trust and confidence of their patients. Conduct that lowers the public's esteem for physicians erodes that trust and confidence, and so undermines a necessary condition for the profession's execution of its vital role in preserving public health through medical treatment and advice." *Id.* at 684-685.

The act of "obstructing official business," in violation of a statutory law, can be considered to be an act or behavior that violates moral

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sentiment or accepted moral standards of the community, and by the standards set forth above, would appear to be a morally culpable quality of fraudulent activity. Therefore, we find that the trial court did not abuse its discretion in upholding the board's determination that appellant's misdemeanor conviction of violating R.C. 2921.31 involved moral turpitude. Appellant's third assignment of error is overruled.

For the foregoing reasons, appellant's assignments of error are overruled and the judgment of the trial court is affirmed.

Judgment affirmed.

TYACK and PETREE, JJ., concur.

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IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

J. PHILIP DAVIDSON, D.P.M.,
3200 Belmont Ave
Youngstown, Ohio 44505-1862
Appellant,

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vs.

STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th Floor
Columbus, Ohio 43215
Appellee.

Case No. 96-CVF 12 9486

Judge B. Pfeiffer

NOTICE OF APPEAL

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Notice is hereby given that J. Philip Davidson, D.P.M. Appellant, hereby appeals to the Court of Appeals of Franklin County, Ohio Tenth Appellate District from the DECISION AFFIRMING THE ORDER OF THE STATE MEDICAL BOARD, entered in this action on the 18th day of June 1997.

Respectfully submitted,

HEALTH & HUMAN

JUL 15 1997

SERVICES SECTION

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Notice of Appeal was sent via regular United States Mail this 7 th day of July, 1997 to Anne Strait, Assistant Attorney General, Health and Human Services Section, 30 E. Broad St., 26th Floor, Columbus, OH 43266-0410.

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IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

J. PHILIP DAVIDSON, D.P.M.,
3200 Belmont Ave
Youngstown, Ohio 44505-1862

97APE07

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Appellant,

Case No. 96-CVF 12 9486

vs.

Judge B. Pfeiffer

STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th Floor
Columbus, Ohio 43215

Appellee.

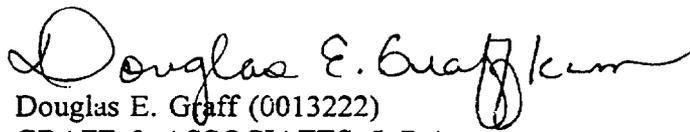
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DOCKETING STATEMENT

This appeal should be assigned to the accelerated calendar.

The administrative hearing record was filed with the trial court.

Respectfully submitted,



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

FINAL APPEALABLE ORDER

J. PHILIP DAVIDSON, D.P.M.

CASE NO. 96CVF12-9486

Appellant,

JUDGE PFEIFFER

vs.

THE STATE MEDICAL BOARD OF
OHIO,

Appellee.

TERMINATION NO. 18
BY RB 7-3-97

**JUDGMENT ENTRY
AFFIRMING THE DECEMBER 3, 1996
ORDER OF THE STATE MEDICAL BOARD**

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
JUL 11 AM 9:10
CLERK OF COURTS

This case is before the Court upon the appeal, pursuant to R.C. 119.12, of the December 3, 1996 order of the State Medical Board of Ohio. For the reasons stated in the decision of this Court filed on June 19, 1997, which decision is incorporated by reference as if fully rewritten herein, it is hereby

ORDERED, ADJUDGED AND DECREED that judgment is hereby entered in favor of Appellee, State Medical Board of Ohio, and the December 3, 1996 order of the State Medical Board in the matter of J. Philip Davidson, D.P.M. is hereby AFFIRMED. Costs to Appellant.

IT IS SO ORDERED.

STATE MEDICAL BOARD
OF OHIO
JUL 11 9:32

DATE

BEVERLY Y. PFEIFFER, JUDGE

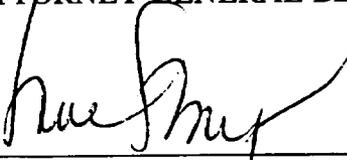
APPROVED:



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Attorneys for Appellee, State Medical Board of Ohio

RECEIVED
JUN 28 1997
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IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

J. PHILIP DAVIDSON, D.P.M.,

]

Appellant,

]

CASE NO. 96CVF12-9486

vs.

]

JUDGE PFEIFFER

STATE MEDICAL BOARD OF OHIO,

]

Appellee.

]

DECISION AFFIRMING THE ORDER OF
THE STATE MEDICAL BOARD

Rendered this 18th day of June, 1997.

PFEIFFER, J.

The above-captioned case is presently before the Court on administrative appeal pursuant to R.C. 119.12, from a December 3, 1996 Entry of Order of State Medical Board of Ohio. The Order confirmed, with modification, the Hearing Examiner's Report and Recommendation, and ordered that Appellant's license to practice podiatric medicine in Ohio be suspended for a period of not less than six (6) months. The order contained conditions for reinstatement.

This administrative appeal is before the Court for a second time, having been remanded to the Board in Case No. 95CVF11-7731. In that decision, this Court affirmed that Appellant had waived his participation in the adjudicatory hearing process by his failure to request a hearing within thirty (30) days of notice, as required by R.C. 119.07. The Court reversed and remanded the matter to the Board holding:

... it is incumbent upon the State of Ohio to present enough evidence at the adjudicatory hearing, whether or not the

97 JUN 19 PM 9:50
STATE MEDICAL BOARD OF OHIO
CLEVELAND, OHIO

physician is there to rebut it, to meet the substantial, reliable and probative test.

This Court further noted that the

. . . Franklin County Court of Appeals has addressed this very problem in Goldman v. Ohio State Medical Board, Franklin App. No. 95 APE10-1358, unreported, decided 3-29-96. In that case, the Court determined that where the physician missed his opportunity for hearing because his notice was filed too late or not at all that the State would still be responsible for placing enough evidence on the record to support any subsequent action taken by the Board . . .

Pursuant to the Court's prior decision, the board sent a notice to Appellant on August 1, 1996 which it referred to as a "courtesy notice of the Goldman hearing" and stated that he would not be permitted to offer evidence or argument. The notice further stated that the case regarding the issues addressed in its August 9, 1995 notice of opportunity for hearing, to which Appellant had not timely responded, would be presented to a Hearing Examiner on August 29, 1996. Those issues are stated in the August 9, 1995 notice as follows:

- (1) On or about August 5, 1994, in the Municipal Court of Franklin County, Ohio, you were adjudged guilty of one count of obstructing official business, in violation of Section 2921.31, Ohio Revised Code, a misdemeanor of the second degree. Such conviction was based on your removal of certain documents from patient files demanded to be produced by a Franklin County Grand Jury subpoena. The acts underlying this conviction were committed in the course of practice.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "(a) plea of guilty to, or in a judicial finding guilt of,

a misdemeanor involving moral turpitude, as that clause is used in Section 4731.22(B)(13), Ohio Revised Code.

The Hearing Examiner prefaced the presentation of evidence as follows:

The purpose of this proceeding is to give the Board information about this matter in lieu of the adversarial hearings which would have occurred if Dr. Davidson had requested a hearing in this matter.

The State presented nineteen (19) exhibits which provided a documentary trail of the case as well as the testimony of the chief investigator for the Health Care Section of the Ohio Attorney General's Office. He testified concerning the investigation of the allegation of billing for services not provided, that billing information was removed from records that had been subpoenaed and that this information was necessary for the investigation. He further testified that the Department filed a complaint for obstructing official business and, as part of a settlement, Dr. Davidson entered a plea of no contest to that charge. See pages 16-17 of the transcript.

The Hearing Examiner concluded the hearing as follows:

As I noted, Respondent will not have the right to file objections to the written report pursuant to the nature of this hearing. Respondent is not participating in the matter and had an opportunity to request a hearing when the citation letter was first written.

Since Respondent did not do so, this hearing is simply a matter of offering the Board an opportunity to review the evidence compiled by the State.

(Transcript p. 19).

The Board met and considered the Hearing Examiner's Report and Recommendation on November 13, 1996. Dr. Davidson's counsel proffered objections and the Board adopted the recommendation, with modification, by a vote of seven (7) members with two (2) abstentions.

It must first be considered whether the above-described hearing comported with the Goldman case requirements which led this Court to remand the case at hand. The Court of Appeals in the Goldman case noted that the Board did not “. . . appear to have entertained any testimony or reviewed any evidence at this point, and there is no transcript or other record of the Board’s proceeding on this occasion other than the minutes contained in the record.” p.2 This description equally described the case at hand when it was remanded to the Board.

The Goldman decision held that a question of law was presented as to the nature and sufficiency of the hearing. It further held that the Board may not proceed in a summary manner although the party had waived the R.C. 119.07 “opportunity for hearing” by failing to request it within thirty (30) days.

It directed that:

From a due process standpoint, something more than reliance on the preliminary investigative reports of the agency must be considered by the Board before revocation of a license may be effected such as in this case. The procedural safeguards which would make any hearing meaningful may not require a full adversarial and evidentiary proceeding, but some sort of reliable evidentiary review, including the sworn testimony of the investigator, as well as a more considered review of the circumstances of the case, would be needed to fulfill the requirement for a hearing under R.C. 4731.22.

Under the above-stated resolution of the issue, there remains the further question of whether appellant, having waived his appearance before the Board through his non-response to the notice of hearing originally issued in this case, may yet appear at further proceedings on remand. The factual conclusion of the court of common pleas was that appellant had proper notice of his opportunity for a hearing and we decline to disturb that conclusion upon appeal. It would then follow that appellant had concomitantly waived his right to appear at further hearings on this matter and the Board may proceed with further adjudication in his absence, so long as it more substantially complies with the procedural safeguards

implicit and explicit in R.C. Chapter 119. See Korn v. Ohio State Medical Bd. (1988), 61 Ohio App.3d 677.

The issues raised by Appellant are as follows:

1. The Goldman Hearing process, as applied to Appellant, denied Appellant's rights to due process guaranteed by the United States and Ohio Constitutions.
2. The Board erred in determining that Appellant's no contest plea to a misdemeanor charge of obstructing official business was a "misdemeanor committed in the course of practice" as that phrase is used in O.R.C. § 4731.22(B)(11).
3. The Board erred in determining that Appellant's no contest plea to a misdemeanor charge of obstructing official business was a "misdemeanor involving moral turpitude" as that phrase is used in O.R.C. § 4731.22(B)(13).

In arguing that Appellant was denied his due process rights by the Goldman hearing process, as applied by the Board, it is stated at page 8 of Appellant's brief, that, "Neither the Goldman decision nor Judge Pfeiffer's remand order precluded Dr. Davidson or his counsel from participation in the hearing." It is further stated that ". . . both courts did not preclude the ability for the licensee to participate in the hearing required to be held. Dr. Davidson attempted such participation but was denied."

This Court intended, in its remand, to follow the language of the Goldman decision that appellant had ". . . waived his right to appear at further hearings in this matter and the Board may proceed with further adjudication in his absence . . ." To the extent that clarification is necessary, this Court interpreted the Goldman decision to hold and so held, itself, that Dr. Davidson waived and thereby could not exercise his right to rebut evidence at the hearing.

It is further contended that Dr. Davidson must have notice and the opportunity to defend and that a waiver of this must be a knowing waiver.

This is not a case where Dr. Davidson has knowingly waived his rights, or has slumbered on his rights while the process continued. Dr. Davidson hired counsel to request a hearing and defend against the Board's allegations. Dr. Davidson's prior counsel's failure to timely request a hearing should not deprive Dr. Davidson of the opportunity to appear at the hearing required to be held under the statute. (see, O.R.C. 4731.22)

The issue of a party's lawyer's failure to timely file an answer in GTE v. ARC (1976), 47 Ohio St. 2d 146. The fourth syllabus states:

As a rule, the neglect of a party's attorney will be imputed to the party for the purposes of Civ. R. 60(B). (Link v. Wabash R.R. Co., 370 U.S. 626, followed.)

The Ohio Supreme Court stated, at page 152:

There is certainly no merit to the contention that dismissal of petitioner's claim because of his counsel's unexcused conduct imposes an unjust penalty on the client. Petitioner voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent. Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have notice of all facts, notice of which can be charged upon the attorney.

In Appellant's argument, by brief, that due process has been denied to Dr. Davidson, reference is made to the adequacy of hearing as discussed in Mathews v. Eldridge (1976), 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18. That case, however, does not refer to the waiver of a hearing. Neither is waiver of a hearing discussed in Korn v. State Medical, (1988), 117 Ohio St. 102, 157 N.E. 388 which is also referenced in support of Dr. Davidson's claim to the right

to offer evidence and argument upon remand. Two cases cited by Appellant do refer to waiver of a hearing upon failure to request it within thirty (30) days. These cases, however, do not support the claim of a right to offer evidence and argument by the licensee upon remand although they call for a hearing of evidence as does the Goldman decision. See Simon v. State Board of Chiropractic Examiners (December 27, 1993), Franklin C.P. No. 90CVF10-7754, unreported (attached to Dr. Davidson's brief as Exhibit D), and Fink v. Ohio State Dental Board (June 19, 1992), Montgomery C.P. No. 91-5493, unreported (attached to Dr. Davidson's brief as Exhibit E).

The directive of the Goldman decision precludes evidence and argument by or for the licensee upon remand. To permit otherwise would render meaningless the statute's time limits for requesting hearing. If that is not the intent of the Court of Appeals, the issue can be decided by it upon appeal of this case or of the Goldman case, itself, which was appealed back to this Court on June 6, 1997 in Case No. 97 CVF06-5968.

Appellant further asserts that The Board erred in determining that Dr. Davidson's no contest plea to a misdemeanor charge of obstructing official business was a "misdemeanor committed in the course of practice" as that phrase is used in R.C. 4731.22 (B)(11). The investigation which was taking place in this case was of alleged medicaid fraud. The grand jury had subpoenaed Dr. Davidson's records to determine whether such fraud had been committed through billing for services not rendered. The billing records which were removed by Dr. Davidson were essential to making that determination. The billing of patients and of their sources of payment for medical treatment is clearly a part of the practice of a health-related profession and a breach of ethics related thereto casts a negative reflection on the

medical profession as a whole. It was, therefore, a misdemeanor committed in the course of practice for which the Board could take action.

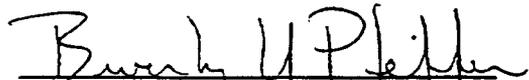
Dr. Davidson lastly asserts that his removal of billing records that had been subpoenaed by the grand jury was not a misdemeanor involving moral turpitude under R.C. 4731.22 (B)(13). The Ohio Supreme Court described "moral turpitude" in Disciplinary Counsel v. Burckhart (1996), 75 Ohio St. 3d 188, at 190-191 as follows:

Acts of moral turpitude, although not subject to exact definition, are characterized by 'baseness, vileness, or the depravity in private and social duties which man owes to his fellow man, or to society in general.' Such acts must be measured against the accepted standards of morality, honesty and justice prevailing upon the community's collective conscience, as distilled by a similarly principled judiciary. And, where it is not a statutorily defined element of the charged offense, moral turpitude is a separate issue from the finding of guilt in a criminal proceeding. Thus, proof of a criminal conviction is generally not conclusive of the issue of moral turpitude, which required consideration of all the circumstances surrounding the illegal conduct.

There is a strong public interest in how the high cost of medical treatment can be met. The Board, in monitoring the conduct of individual practitioners, must represent "the community's collective conscience" in this regard. A social duty is owed by the practitioners to aid in preserving the public trust that dishonesty will not force medical costs even higher. A perceived breach of that trust should be treated as an act of moral turpitude by the Board as it is defined above by the Ohio Supreme Court.

This Court concludes that the Board's Order of November 13, 1996 is supported by reliable, probative and substantial evidence and that it is in accordance with law. It is, therefore, AFFIRMED.

Appellant's counsel shall prepare and submit an entry pursuant to Local Rule 25.01 by June 30, 1997.


BEVERLY Y. PFEIFFER, JUDGE

Appearances:

David M. Abromowitz, Esq.

Douglas E. Graff, Esq.

Counsel for Appellant

Anne B. Strait , Esq.

Counsel for Appellee

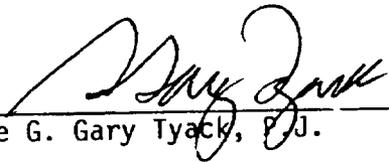
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IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

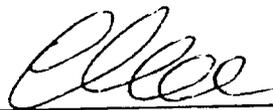
J. Philip Davidson, D.P.M., :
Appellant-Appellant, :
v. : No. 97APE01-112
State Medical Board of Ohio, : (ACCELERATED CALENDAR)
Appellee-Appellee. :

JOURNAL ENTRY OF DISMISSAL

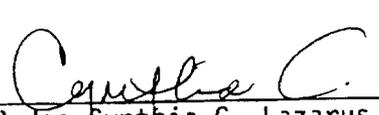
Appellant has filed a notice of appeal from an order of the trial court denying a motion for suspension of an order of the State Medical Board of Ohio. The trial court order is not a final appealable order. Accordingly, appellant's motion for a stay of the administrative order is denied and this appeal is *sua sponte* dismissed for lack of a final appealable order.



Judge G. Gary Tyack, P.J.



Judge Michael L. Close



Judge Cynthia C. Lazarus

cc: Douglas E. Graff
Betty D. Montgomery, AG
Anne B. Strait, AAG

FILED
COURT OF APPEALS
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JENNIFER D. ODDI
CLERK OF COURTS

FW

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

J. PHILIP DAVIDSON, D.P.M.
Appellant,

v.

STATE MEDICAL BOARD OF OHIO,
Appellee.

Case No. 96 CVF12 9486

Judge B. Pfeiffer

ENTRY

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
97 JAN 27 AM 11:03
CLERK OF COURTS

This matter came before the on the application of Appellant, J. Philip Davidson, D.P.M., for a Stay of Enforcement of this court's DECISION AND ENTRY DENYING APPELLANT'S MOTION FOR SUSPENSION OF AGENCY ORDER, FILED DECEMBER 12, 1996 which Order failed to grant Appellant a Stay of Enforcement of the November 15, 1996 Order of the State Medical Board of Ohio. Appellant has filed a Notice of Appeal of the Decision with this Court.

The Appellants motion for Stay is hereby ~~GRANTED~~ DENIED.

Date

Beverly Y. Pfeiffer
BEVERLY Y. PFEIFFER, JUDGE

Copies:

Douglas E. Graff
Attorney for Appellant

Anne Strait
Attorney for Appellee

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
97 JAN 27 AM 8:24
CLERK OF COURTS

FILED
COMMON PLEAS COURT
IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

J. Philip Davidson, D.P.M., 97 JAN 16 PM 2:59

Appellant, ~~J. Philip Davidson~~ No. 96CVF-12-9486
CLERK OF COURTS
-v- : JUDGE PFEIFFER

State Medical Board of Ohio :

Appellee. :

DECISION AND ENTRY DENYING APPELLANT'S MOTION FOR
SUSPENSION OF AGENCY ORDER, FILED DECEMBER 12, 1996

Rendered this 16th day of January, 1997

PFEIFFER J.

This matter is before the Court upon motion of Appellant, filed December 12, 1996, for an order suspending The State Medical Board of Ohio's (the "Board") order adopted on November 13, 1996. The motion is opposed. Appellant has also filed a motion requesting that this matter be set for oral hearing. The Court finds the briefs submitted by the parties adequately address the issues presented herein, and therefore finds said request not well-taken and DENIED.

By Notice of Appeal filed December 7, 1996, Appellant appeals the order of the Board, wherein Appellant's podiatric license was suspended for a minimum period of six months, with specified requirements for reinstatement and a subsequent five-year probation period. Such order took effect on or about January 3, 1997 and Appellant now moves for judicial suspension of the order pending resolution of the instant appeal, pursuant to R.C. 119.12. The record reflects that in 1994, Appellant pled no contest to a misdemeanor violation of R.C. 2921.31, Obstructing Official

Business. The Board based its order on a finding that this violation constituted a judicial finding of guilt of a misdemeanor committed in the course of practice under R.C. 4731.22(B)(11), and a misdemeanor involving moral turpitude under R.C. 4731.22(B)(13).

R.C. 119.12 provides in relevant part, as follows:

The filing of a notice of appeal shall not automatically operate as a suspension of the order of an agency. * * *

* * * In the case of an appeal from the state medical board or chiropractic examining board, the court may grant a suspension and fix its terms if it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order pending determination of the appeal and the health, safety, and welfare of the public will not be threatened by suspension of the order. * * *

Appellant asserts that as a solo practitioner he will suffer unusual hardship consisting of certain disastrous financial loss, loss of property associated with his practice, loss of three trained employees, as well as loss of his standing in the community, if the suspension is not granted. Appellant's affidavit states that his practice of podiatric medicine is the sole source of income for him and his family and the loss of his license will force the close of his practice, causing disastrous financial and personal consequences to him and his family.

The Court is not persuaded that Appellant's claim of injury to his practice and loss of income constitutes "unusual hardship" as contemplated in R.C. 119.12. See State Medical Board v. Alsleben (March 17, 1980), Summit C.P. No. CV80-3-0614, unreported. Therefore, upon consideration of the memorandum submitted, the Court finds that Appellant has failed to meet his burden of proving

unusual hardship.

With respect to protection of public health, safety and welfare the Court finds that such may be threatened if a stay of the Board's order is granted. The underlying basis for the Board's action was Davidson's alteration of patient records. Such action is a threat to public welfare.

Based on the foregoing, the Court finds Appellant's motion for suspension not well-taken and DENIED.


BEVERLY Y. PFEIFFER, JUDGE

Copies to:

Douglas E. Graff
Counsel for Appellant

Anne Strait
Counsel for Defendant

Copied to: ROB, WLS,
LL, HO, EC, TP, LE,
Original to JWR to file

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

95 DEC -6 PM 5: 14

J. PHILIP DAVIDSON, D.P.M.,
3200 Belmont Ave.
Youngstown, OH 44505-1862

Appellant,

vs.

STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th floor
Columbus, OH 43266-0315

Appellee.

Case No. 96-_____

Judge _____

95 DEC 12 9 48 6

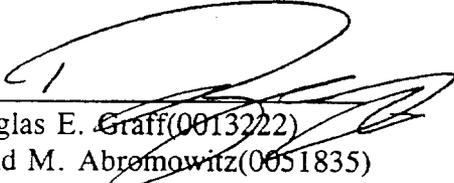
CLERK OF COURTS
95 DEC -6 PM 4: 59
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO

NOTICE OF APPEAL
PURSUANT TO O.R.C. § 119.12

Appellant, J. Philip Davidson, D.P.M., by and through his attorney hereby gives Notice of Appeal to the Common Pleas Court of Franklin County, Ohio from the Entry of Order of the State Medical Board of Ohio attached hereto as Exhibit A, In the Matter of J. Philip Davidson, D.P.M. a copy of which Entry of Order was mailed to the Appellant on the 3rd day of December, 1996. Appellant contends that the Entry of Order appealed from is not on grounds within the statutory jurisdiction of the State Medical Board and that the Entry of Order is not supported by reliable, probative, and substantial evidence and is not otherwise in accordance with the law.

Further, and without limiting the generality of the foregoing, Appellant contends that the Entry of Order and the related investigation and hearing conducted by the Board violated the protection afforded to the Appellant pursuant to the Constitution of the State of Ohio and the Constitution of the United States including, without limitation, the due process protections thereof.

Respectfully submitted,
GRAFF & ASSOCIATES, L.P.A.

By 
Douglas E. Graff(0013222)
David M. Abramowitz(0051835)
604 East Rich Street, Suite 2100
Columbus, Ohio 43215
(614) 228-5800
Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Notice of Appeal Pursuant to O.R.C. § 119.12 was personally delivered to the State Medical Board of Ohio, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0315, this 6th day of December, 1996.



Douglas E. Graff(0013222)
David M. Abramowitz(0051835)
604 East Rich Street, Suite 2100
Columbus, Ohio 43215
(614) 228-5800
Attorneys for Appellant



STATE MEDICAL BOARD OF OHIO

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

November 15, 1996

Jerome P. Davidson, D.P.M.
3200 Belmont Avenue
Youngstown, Ohio 44505

Dear Doctor Davidson:

Please find enclosed certified copies of the Entry of Order; the Report of Goldman Hearing and Recommendation of Sharon W. Murphy, Esq., Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 13, 1996, including Motions approving and confirming the Findings of Fact, amending the Conclusions of Law of the Hearing Examiner, and adopting an amended Order.

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

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

THE STATE MEDICAL BOARD OF OHIO

Thomas E. Gretter, M.D.
Secretary

TEG:em
Enclosures

CERTIFIED MAIL RECEIPT NO. P 152 982 831
RETURN RECEIPT REQUESTED

Mailed 12-3-96



STATE MEDICAL BOARD OF OHIO

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

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Sharon W. Murphy, Esq., Attorney Hearing Examiner, State Medical Board; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 13, 1996, including Motions approving and confirming the Findings of Fact, amending the Conclusions of Law of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Jerome P. Davidson, 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.

Thomas E. Gretter, M.D.
Secretary

(SEAL)

11/20/96

Date



STATE MEDICAL BOARD OF OHIO

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

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

JEROME P. DAVIDSON, D.P.M.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 13th day of November, 1996.

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

1. The certificate of Jerome P. Davidson, D.P.M., to practice podiatric medicine and surgery in the State of Ohio shall be suspended for an indefinite period of time, but not less than six (6) months.
2. The State Medical Board shall not consider reinstatement of Dr. Davidson's certificate to practice unless and until all of the following minimum requirements are met:
 - a. Dr. Davidson shall submit an application of reinstatement accompanied by appropriate fees.
 - b. Dr. Davidson shall provide documentation of successful completion of at least ten (10) hours of coursework approved by the Board, dealing with professional ethics. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the biennial registration period(s) in which they are completed.
 - c. In the event that Dr. Davidson has not been engaged in the active practice of podiatric medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section

4731.222, Ohio Revised Code, to require additional evidence of Dr. Davidson's fitness to resume practice.

3. Upon reinstatement, Dr. Davidson's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
 - a. Dr. Davidson shall obey all federal, state, and local laws, and all rules governing the practice of podiatric medicine in Ohio.
 - b. Dr. Davidson shall not request modification of the terms, conditions, or limitations of this probation for at least one year after imposition of these probationary terms, conditions, and limitations.
 - c. Dr. Davidson shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of probation. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which the probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
 - d. Dr. Davidson shall appear in person for quarterly interviews before the full Board or its designated representative, or as otherwise directed by the Board.

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. Although the Board will normally give Dr. Davidson written notification of scheduled appearances, it is Dr. Davidson's responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Davidson shall immediately submit to the Board a written request to be notified of his next scheduled appearance.

- e. At the time of submission of each renewal application for each biennial registration period occurring during the period of probation, Dr. Davidson shall submit acceptable documentation of Category I Continuing Medical Education credits completed. At least ten hours of such C.M.E. for each registration period, to be approved in advance by the Board or its designee, shall relate to the violations found in this matter.
- f. Within thirty (30) days of reinstatement, Dr. Davidson shall submit for the Board's prior approval the name of a monitoring physician, who is certified in the areas of quality assurance and utilization review, who shall review Dr. Davidson's patient charts and shall submit a written report of such review to the Board on a quarterly basis. Such chart review may be done on a random basis, with the number of charts

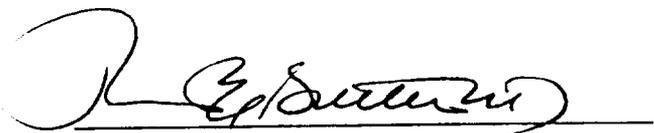
Jerome P. Davidson, D.P.M.

reviewed to be determined by the Board. It shall be Dr. Davidson's responsibility to ensure that the monitoring physician's quarterly reports are submitted to the Board on a timely basis. In the event that the approved monitoring physician becomes unable or unwilling to so serve, Respondent shall immediately so notify the Board in writing and shall make arrangements for another monitoring physician as soon as practicable.

- g. In the event that Dr. Davidson should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Davidson must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
- h. If Dr. Davidson violates probation in any respect, the Board, after giving Dr. Davidson notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of Dr. Davidson's certificate.

- 4. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Davidson's certificate will be fully restored.

This Order shall become effective thirty (30) days from the date of mailing of notification of approval by the State Medical Board of Ohio. In the thirty (30) day interim, Dr. Davidson shall not undertake the care of any patient not already under his care.



Thomas E. Gretter, M.D.
Secretary

(SEAL)

11/20/96

Date

REPORT OF GOLDMAN HEARING AND RECOMMENDATION IN THE MATTER OF JEROME P. DAVIDSON, D.P.M.

The Matter of Jerome P. Davidson, D.P.M., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio, on August 29, 1996.

INTRODUCTION

I. Basis for Goldman Hearing

- A. By letter dated August 9, 1995, the State Medical Board of Ohio [Board] notified Jerome P. Davidson, D.P.M., that the Board intended to determine whether to impose disciplinary action against his certificate to practice podiatric medicine and surgery in the State of Ohio. The Board proposed this action for one or more of the following reasons:

The Board alleged that Dr. Davidson's guilty plea, and the conduct upon which it was based, constitutes "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code." The Board further alleged that these acts constituted "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor involving moral turpitude," as that clause is used in Section 4731.22(B)(13), Ohio Revised Code." (State's Exhibit 1).*

- B. Pursuant to Chapter 119., Ohio Revised Code, the Board advised Dr. Davidson of his right to request a hearing in this matter. (State's Exhibit 1).* Nevertheless, Dr. Davidson failed to request a hearing in a timely manner. Accordingly, on October 12, 1995, the Board entered an Order revoking Dr. Davidson's certificate to practice podiatric medicine and surgery. (State's Exhibits 8, 9).* Dr. Davidson appealed the Board's Order. (State's Exhibit 10).*

On June 11, 1995, the Franklin County Court of Common Pleas issued a Decision Reversing the Order of the State Medical Board. In its opinion, the court remanded this matter to the Board "for a hearing at which the State must present evidence of the underlying facts which led to Dr. Davidson's conviction," consistent with the court's decision in *Douglas S. Goldman, C.T. v. State Medical Board of Ohio* (March 29, 1996), Franklin App. No. 95APE10-1358, unreported. (State's Exhibit 15* at 4; State's Exhibit 16). Accordingly, on August 1, 1996, the Board notified Dr. Davidson that, on August 29, 1996, the Board would hold a *Goldman* hearing, during which the State would present evidence regarding Dr. Davidson's criminal conviction. (State's Exhibit 17).

(Note: Exhibits marked with an asterisk [*] have had some portions of the text redacted pursuant to the decision of the Franklin County Municipal Court, In the Matter of the Application for the Sealing of the Records of J. Philip Davidson, and to the Opinion of the Attorney General, No. 93-038, November 16, 1993.)

II. Appearances

On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Anne B. Strait, Assistant Attorney General.

EVIDENCE EXAMINED

I. Testimony Heard

Jeffrey Rossi

II. Exhibits Examined

In addition to State's Exhibits 1, 10, and 15-17, noted above, the following exhibits were identified by the State and admitted into evidence:

- A. State's Exhibit 2: Copy of an August 10, 1995, letter to Dr. Davidson from the Board.
- B. State's Exhibit 3: Copy of a September 11, 1995, letter to the Board from Kevin P. Byers, Esq., requesting a hearing in this matter.
- * C. State's Exhibit 4: September 27, 1995, memorandum to the Board members regarding Dr. Davidson's untimely request for a hearing.

- D. State's Exhibit 5: Respondent's September 15, 1995, Motion For Acceptance of the September 11, 1995. Written Hearing Request. (7 pp.)
- * E. State's Exhibit 6: State's October 3, 1995. Memorandum In Opposition To Respondent's Motion For Acceptance of the September 11, 1995. Written Hearing Request. (6 pp.)
- F. State's Exhibit 7: Respondent's October 5, 1995. Reply To the State's Memorandum in Opposition. (3 pp.)
- * G. State's Exhibit 8: Certified copy of the October 11 and 12, 1995. Board meeting minutes concerning Dr. Davidson. (7 pp.)
- * H. State's Exhibit 9: Copy of October 13, 1995, letter to Dr. Davidson from the Board, with attached Findings, Order and Journal Entry approved and confirmed by the Board on October 12, 1995. (6 pp.)
- * I. State's Exhibit 11: Copy of Entry Granting Appellant Davidson's Motion for Suspension of Agency Order Filed November 3, 1995, in *J. Philip Davidson, DPM v. State Medical Board of Ohio*, Franklin C.P. No. 95CVF11-7731. (2 pp.)
- J. State's Exhibit 12: Copy of Entry Granting Appellant's Motion for Continued Suspension of Agency Order filed January 10, 1996, in *Davidson v. State Medical Board*.
- K. State's Exhibit 13: Copy of Respondent's Motion To Extend Stay of Suspension, filed May 13, 1996, in *Davidson v. State Medical Board*. (4 pp.)
- L. State's Exhibit 14: Copy of May 13, 1996, Entry granting Dr. Davidson's motion to extend the suspension of the Board's Order in *Davidson v. State Medical Board*.
- * M. State's Exhibit 18: Certified copy of a Complaint against Dr. Davidson, filed August 5, 1994, in the Franklin County Municipal Court, Case No. 18257/94. (3 pp.)
- N. State's Exhibit 19: Copy of Entry filed November 17, 1995, in the Franklin County Municipal Court, In the Matter of the Application for the Sealing of the Records of J. Philip Davidson.

(Note: Exhibits marked with an asterisk [*] have had some portions of the text redacted pursuant to the decision of the Franklin County Municipal Court, In the

Matter of the Application for the Sealing of the Records of J. Philip Davidson, and
to the Opinion of the Attorney General, No. 93-038, November 16, 1993.)

SUMMARY OF THE EVIDENCE

1

2.

3. On November 17, 1995, the Franklin County Municipal Court filed an Entry finding, among other things, that (a) Dr. Davidson was a first offender at the time (b) no further criminal charges had been filed against Dr. Davidson, and (c) Dr. Davidson had been rehabilitated to the satisfaction of the court. Accordingly, the court sealed all records pertaining to the criminal conviction of Dr. Davidson. (St. Ex. 19).

FINDINGS OF FACT

CONCLUSIONS OF LAW

1. Dr. Davidson's guilty plea, and the conduct upon which it was based, constitutes "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.
2. The conduct of Dr. Davidson, and the resulting guilty plea, constitute "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor involving moral turpitude," as that clause is used in Section 4731.22(B)(13), Ohio Revised Code.

PROPOSED ORDER

It is hereby ORDERED that:

1. The certificate of Jerome P. Davidson, D.P.M., to practice podiatric medicine and surgery in the State of Ohio shall be suspended for an indefinite period of time, but not less than one year.
2. The State Medical Board shall not consider reinstatement of Dr. Davidson's certificate to practice unless and until all of the following minimum requirements are met:

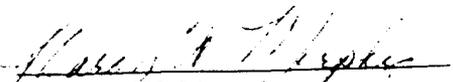
- a. Dr. Davidson shall submit an application for reinstatement, accompanied by appropriate fees.
 - b. Dr. Davidson shall provide documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee, but shall not be less than ten hours. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the biennial registration period(s) in which they are completed.
 - c. In the event that Dr. Davidson has not been engaged in the active practice of podiatric medicine and surgery for a period in excess of two years prior to application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Davidson's fitness to resume practice.
3. Upon reinstatement, Dr. Davidson's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
- a. Dr. Davidson shall obey all federal, state, and local laws, and all rules governing the practice of podiatric medicine in Ohio.
 - b. Dr. Davidson shall not request modification of the terms, conditions, or limitations of this probation for at least one year after imposition of these probationary terms, conditions, and limitations.
 - c. Dr. Davidson shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of probation. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which the probation becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
 - d. Dr. Davidson shall appear in person for quarterly interviews before the full Board or its designated representative, or as otherwise directed by the Board.

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. Although the Board will normally give Dr. Davidson written notification of scheduled appearances, it is Dr. Davidson's responsibility to know when personal appearances will occur. If he does not receive written notification from the Board by the end of the month in which the appearance should have occurred, Dr. Davidson shall immediately submit to the Board a written request to be notified of his next scheduled appearance.

- e. At the time of submission of each renewal application for each biennial registration period occurring during the period of probation, Dr. Davidson shall submit acceptable documentation of Category I Continuing Medical Education credits completed. At least ten hours of such C.M.E. for each registration period, to be approved in advance by the Board or its designee, shall relate to the violations found in this matter.
- f. Within thirty (30) days of reinstatement, Dr. Davidson shall submit for the Board's prior approval the name of a monitoring physician, who is certified in the areas of quality assurance and utilization review, who shall review Dr. Davidson's patient charts and shall submit a written report of such review to the Board on a quarterly basis. Such chart review may be done on a random basis, with the number of charts reviewed to be determined by the Board. It shall be Dr. Davidson's responsibility to ensure that the monitoring physician's quarterly reports are submitted to the Board on a timely basis. In the event that the approved monitoring physician becomes unable or unwilling to so serve, Respondent shall immediately so notify the Board in writing and shall make arrangements for another monitoring physician as soon as practicable.
- g. In the event that Dr. Davidson should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Davidson must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
- h. If Dr. Davidson violates probation in any respect, the Board, after giving Dr. Davidson notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of Dr. Davidson's certificate.

4. Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Davidson's certificate will be fully restored.

This Order shall become effective thirty (30) days from the date of mailing of notification of approval by the State Medical Board of Ohio. In the thirty (30) day interim, Dr. Davidson shall not undertake the care of any patient not already under his care.


Sharon W. Murphy
Attorney Hearing Examiner



STATE MEDICAL BOARD OF OHIO

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

EXCERPT FROM THE DRAFT MINUTES OF NOVEMBER 13, 1996

REPORTS AND RECOMMENDATIONS

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

Dr. Stienecker asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Archie W. Bedell, M.D., and Walter Woodhouse, M.D.; Thomas J. Delliquadri, M.T.; Atul S. Goswami, M.D.; Robert D. Kukla, M.D.; Gregory Spencer Mynko, M.D.; Adam George Paoni, D.O.; and the hearing records and reports of *Goldman* hearings and recommendations on the following: Alexis Medical Center; Robert H. Bell, M.D. & The Orthopaedic Surgeons, Inc.; Jerome P. Davidson, D.P.M.; Larry S. Fields, M.D., John H. Darnell, Jr., M.D., and Robert J. Thomas, M.D., of the Family Medicine Center; Rose A. Gowdey & the Potomac Massage Training Institute; James A. Johnson, D.O.; Jeffrey R. Kontak, M.D. & The Wadsworth-Rittman Area Family Practice, Inc.; Dewey O. Mays, Jr., M.D.; Teresita Morales, M.D.; Charles W. Nadolski; Muhammad Najjar, M.D.; Sanjiv S. Patel, M.D.; Susan W. Perlman, M.D.; Lakshmanaraju S. Raju, M.D.; Swaroop Rani, M.D.; Neil Alan Shank, D.O.; and Darrell K. Wells, M.D.

A roll call was taken:

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

Dr. Heidt stated that he did not read the hearing record in the matter of Archie W. Bedell, M.D., and Walter Woodhouse, M.D.

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

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

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

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

.....

REPORT OF GOLDMAN HEARING AND RECOMMENDATION IN THE MATTER OF JEROME P. DAVIDSON, D.P.M.

Dr. Stienecker stated that Dr. Davidson's counsel, Mr. Douglas Graff, has requested permission for a court reporter to be present during the Board's consideration of Dr. Davidson's case. Dr. Stienecker reminded Mr. Graff that the Board's minutes serve as the official record of its proceedings. He further reminded Mr. Graff that he is required to submit a copy of the court reporter's transcript to the Board.

Mr. Graff stated that he understands and will do so without objection.

Dr. Stienecker noted that objections have been submitted on behalf of Dr. Davidson. However, as stated previously, pursuant to the decision of the Tenth District Court of Appeals in Douglas S. Goldman, C.T., v. State Medical Board of Ohio, Dr. Davidson has waived his right to appear before the Board, and has waived his right to file objections by not timely requesting a hearing. Dr. Stienecker stated that the Board will, however, hold the objections as a proffer. Further, for the same reason, the Board will not entertain a motion to accept Mr. Graff's request to address the Board on behalf of Dr. Davidson.

Dr. Stienecker 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.

Mr. Graff asked for the Board's attention.

Dr. Stienecker ruled Mr. Graff out of order.

Mr. Graff stated that he has a motion before the Board that is separate from Dr. Davidson's appearance at the hearing. He asked that the Board have the opportunity to review the objections as filed and asked that the Board rule on his motion as to whether or not he has the opportunity to speak. Neither of these are within the hearing process that was held in front of the Hearing Examiner. Dr. Davidson did appear at the hearing and was not called, and that is the right that the Goldman hearing decision says that he has waived. He has not waived his right to file objections and he has not waived his right to have Mr. Graff appear on his behalf. Mr. Graff asked that the Board rule on these for the purpose of Dr. Davidson's appeal, and that a voice, or recorded, vote be taken on each of the motions.

Dr. Stienecker stated that he intends to rule on Mr. Graff's motion at this time, and he does not allow Mr. Graff's discussion or presentation before the Board.

Mr. Graff stated that it takes the vote of three members of the Board to allow him to speak. It is not a ruling by the Chair.

Dr. Stienecker again ruled Mr. Graff out of order.

Mr. Graff stated that he presumes Dr. Stienecker thinks that he is, but he asked that, under the statutory authority of Ohio Revised Code 4731.23(C), he have the opportunity to put that motion before the members of the Board. If the Board chooses not to allow him to speak, as provided by statute, and he does not get three votes, then he would be out of order.

Dr. Stienecker asked Ms. Strait to respond.

Ms. Strait stated that she believes Mr. Graff is out of order. He has been told by Dr. Stienecker that he is out of order. He has also been told the Board's interpretation of the Goldman decision, and she doesn't believe that at this point it would be appropriate for her to respond. He has already been ruled out of order, and he should sit down.

Dr. Stienecker ordered Mr. Graff to sit down.

Mr. Graff thanked Dr. Stienecker for the opportunity to bring this to the Board's attention.

MR. SINNOTT MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JEROME P. DAVIDSON, D.P.M. DR. GARG SECONDED THE MOTION.

Dr. Stienecker asked whether there were any questions or comments concerning the proposed findings of fact, conclusions and order in the above matter.

DR. GARG MOVED THAT CONCLUSIONS #1 AND #2 IN THE MATTER OF JEROME P. DAVIDSON, D.P.M., BE AMENDED BY SUBSTITUTING THE WORDS "ADJUDICATION OF GUILT" FOR "GUILTY PLEA." DR. BHATI SECONDED THE MOTION. A vote was taken:

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

The motion carried.

DR. HEIDT MOVED TO AMEND PARAGRAPH 1 OF THE PROPOSED ORDER IN THE MATTER OF JEROME P. DAVIDSON, D.P.M., BY SUBSTITUTING THE FOLLOWING:

1. The certificate of Jerome P. Davidson, D.P.M., to practice podiatric medicine and surgery in the State of Ohio shall be suspended for an indefinite period of time, but not less than six (6) months.

HE FURTHER MOVED TO AMEND PARAGRAPH 2(b) BY SUBSTITUTING THE FOLLOWING:

- a. Dr. Davidson shall provide documentation of successful completion of a course of at least ten (10) hours of course work, approved by the Board, dealing with professional ethics. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the biennial registration period(s) in which they are completed.

DR. BHATI SECONDED THE MOTION. A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Gretter	- abstain
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye

Mr. Sinnott	- aye
Dr. Garg	- aye

The motion carried.

DR. BHATI MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF JEROME P. DAVIDSON, D.P.M. DR. HEIDT SECONDED THE MOTION. A vote was taken:

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

The motion carried.

Mr. Graff asked that the Board accept his motion and objections as a proffer, for purposes of appeal.

Dr. Stienecker reminded Mr. Graff that he had already been advised that the objections would be accepted as a proffer.

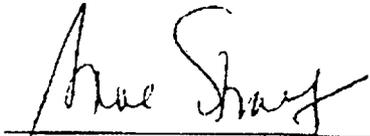
APPROVED:



Douglas E. Graff (0013222)
James L. Dye (0062140)
GRAFF & ASSOCIATES, L.P.A.
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Attorneys for Appellant, Harjit S. Bharmota, M.D.

ATTORNEY GENERAL BETTY MONTGOMERY



Anne Berry Strait (0012256)
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Health & Human Services Section
30 East Broad Street, 26th floor
Columbus, Ohio 43215-3428

Attorneys for Appellee, State Medical Board of Ohio

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IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY
CIVIL DIVISION

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JESSE D. ODDI
CLERK OF COURTS

J. PHILIP DAVIDSON, M.D.]	
Appellant,]	
vs.]	CASE NO. 95CVF11-7731
STATE MEDICAL BOARD OF OHIO,]	JUDGE PFEIFFER
Appellee.]	

DECISION REVERSING THE ORDER OF
THE STATE MEDICAL BOARD

Rendered this 10th day of June, 1996.

Pfeiffer, J.

This case is before the Court on an *ORC 119.12* appeal from the Order of the State Medical Board (the Board) revoking Appellant's license to practice podiatry.

On August 9, 1995, the Board sent Dr. Davidson a notice of opportunity for hearing letter indicating that the Board proposed to take action against his license based on the following facts:

On or about August 5, 1994, in the Municipal Court of Franklin County, Ohio, you were adjudged guilty of one count of obstructing official business, in violation of Section 2921.31, Ohio Revised Code, a misdemeanor of the second degree. Such conviction was based on your removal of certain documents from patient files demanded to be produced by a Franklin County Grand Jury subpoena. The acts underlying this conviction were committed in the course of practice.

The Board went on to notify Dr. Davidson that this act violated the Medical Practice Act in the following respects:

Your acts, conduct and/or omissions as alleged in paragraph (1) above, individually and/or collectively constitute "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor involving moral turpitude, "as (sic) that clause is used in Section 4731.22(B)(13), Ohio Revised Code.

The letter further informed Dr. Davidson that he must request a hearing within thirty (30) days of the date of mailing of the letter and that if he does not request a hearing the Board may act against his license regardless. The letter contains a handwritten notation that it was mailed on August 9, 1995. The certified mail receipt indicates that it was mailed August 9 and the return shows service on Dr. Davidson on August 11, 1995.

Dr. Davidson filed his request for hearing on September 11, 1995, three days late. Although he requested the Board to consider his request anyway, the Board declined to do so, holding that there was no jurisdiction outside the thirty day window.

On October 11, 1995, the Board met and discussed Dr. Davidson's case. During that discussion, it was apparent that the Board members were concerned that they did not have enough information to make an informed decision as to what action, if any, to take against Appellant's license. The minutes reflect the following concerns:

"Dr. Steinecker stated that it is difficult for him to come up with an appropriate order when he really doesn't know what was involved in this case. He doesn't know how the conviction impacts on Dr. Davidson's practice or anything else."

"Dr. Steinbergh agreed that this is not any easy case upon

which to make a decision."

"Dr. Steinecker stated that the Board doesn't know whether or not the records Dr. Davidson doctored were from one of his patient cases."

"Dr. Agresta stated that the Board has a minimum penalty it can impose and a maximum penalty. Since the Board doesn't know exactly what transpired, he is assuming the worst. For that reason, he feels revocation is justified. It is unfortunate that Dr. Davidson filed his hearing request late, preventing the Board from making a decision based on the actual facts of the case."

"Dr. Heidt stated that he is very uneasy judging this man without knowing the details of the case. To revoke a license with no more information that (sic) the Board has is absurd, and he won't do it. A suspension would wake Dr. Davidson up so that the Board can find out what's going on."

"Dr. Steinbergh stated that the Board would need to list probationary terms, and it doesn't know how to apply them in this case."

"Dr. Bhati stated that the Board doesn't know the true situation about this case."

The matter was tabled and reconsidered the following day with Dr. Agresta's renewed motion to revoke carrying by a vote of six to three.¹

It is apparent that the Board had no idea what specific conduct resulted in the conviction. The Board's attitude was "if we revoke, he will appeal, and maybe then we will find out what this was all about." That does not constitute substantial, reliable and probative evidence as required by *Our Place, Inc. v. Ohio Liquor Control Commission* (1992), 63 Ohio St. 3d 570 and its progeny. The Franklin County Court of Appeals has addressed this very problem in *Goldman v. Ohio State Medical Board, Franklin*

¹It had failed the day before.

App. No. 95APE10-1358, unreported, decided 3-29-96. In that case, the Court determined that where the physician missed his opportunity for hearing because his notice was filed too late or not at all that the State would still be responsible for placing enough evidence on the record to support any subsequent action taken by the Board since **ORC 4731.22** requires an "adjudicatory hearing". In that case, the Board at least had investigative reports which the Board in the instant case did not. To revoke and gather the facts later is unlawful.

This is not to say that Dr. Davidson must be afforded a hearing. Clearly, he did not file his request on a timely basis² and has thereby waived his presence at the hearing. Instead, it is incumbent upon the State of Ohio to present enough evidence at the adjudicatory hearing, whether or not the physician is there to rebut it, to meet the substantial, reliable and probative test. The evidence in the record presented herein falls way short of that burden and this revocation resulted from nothing more than a shot in the dark.

For the foregoing reasons, and based largely on *Goldman, supra*, this case is **REVERSED** and **REMANDED** to the Board for hearing at which the State must present evidence of the underlying facts which led to Dr. Davidson's conviction or forego the proposed action against his license. Costs to Appellee.

²The notice letter was clearly mailed on August 9, as evidenced by the proof of mailing stamp from the post office attached to the notice. Therefore, Appellant's argument that it may not have been mailed until August 10, making the request for hearing timely, is meritless.

Counsel for Appellant shall prepare and submit an appropriate Judgment Entry reflecting this Decision no later than June ^{BP}25, 1996.


BEVERLY Y. PFEIFFER, JUDGE

Appearances:

Douglas E. Graff, Esq.
James L. Dye, Esq.
Attorneys for Appellant

Lili C. Kaczmarek, Esq.
Attorney for Appellee

IN THE FRANKLIN COUNTY, OHIO COMMON PLEAS COURT

J. PHILIP DAVIDSON, D.P.M.

Appellant,

v.

STATE MEDICAL BOARD OF OHIO,

Appellee.

Case No. 95 CVF 11-7731
Judge B. Pfeiffer

MOTION TO EXTEND STAY OF SUSPENSION

Appellant, J. Phillip Davidson, D.P.M., respectfully moves this Court pursuant to Revised Code Section 119.12 for an Order extending the stay suspending the October 19, 1995 Adjudication Order issued by the Appellee, Ohio State Medical Board, pending the determination of this Appeal as the Order will place an unusual hardship upon the Appellant if it is executed during the Appeal of this matter. The stay is currently scheduled to expire, Tuesday, May 14, 1996.

A Memorandum in Support is attached hereto.

Respectfully Submitted,



Douglas E. Graff (0013222)
James L. Dye (0062140)
GRAFF & ASSOCIATES
604 E. Rich Street, Suite 2100
Columbus, Ohio 43215
(614) 228-5800

FILED
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
96 MAY 13 AM 11:33
CLERK OF COURTS

STATE MEDICAL BOARD
OF OHIO
97 MAY 20 PM 1:39

MEMORANDUM IN SUPPORT

By Joint Agreement, the parties, by and through their Attorneys, stipulated to the following revised Briefing Schedule:

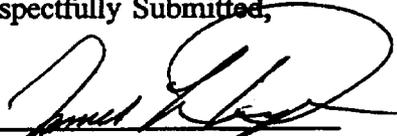
FILING OF APPELLANT'S BRIEF	4/19/96
FILING OF APPELLEE'S BRIEF	5/10/96
FILING OF APPELLANT' REPLY BRIEF AND NON-ORAL HEARING DATE	5/17/96

The parties have none-the-less completed the briefing of this case with Appellant's reply brief being filed with this Court, May 9, 1996. During the briefing stage, Counsels for Appellant and Appellee vigorously attempted informal settlement of this matter, with a possible agreement being reached May 8, 1996. On May 9, 1996, in Executive session, the State Medical Board refused the settlement which had been tentatively offered by Counsel for Appellee. On Saturday, May 11, 1996, Counsel for Appellant received a letter stating that the settlement was declined and that any attempts to extend the stay as currently in place would be opposed.

Counsel for Appellant has recently taken over the instant action and has vigorously pursued both informal settlement as well as the within appeal. As Appellant has filed his Reply brief and this matter is now able to be determined on the merits, and as Appellant was lead to believe in good faith that this matter would be amicably settled among the parties, Appellant respectfully requests this Court to extend the stay suspending the October 19, 1995 Adjudication Order, pending final outcome of the within matter.

STATE MEDICAL BOARD
OF OHIO
97 MAY 20 PM 1:39

Respectfully Submitted,



Douglas E. Graff (0013222)
James L. Dye (0062140)
GRAFF & ASSOCIATES
604 E. Rich Street, Suite 2100
Columbus, Ohio 43215
(614) 228-5800

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon Lili C. Kaczmarek, Assistant Attorney General, 30 East Broad Street, 26th Floor, Columbus, Ohio, 43266-0410, Attorney for Appellee, State Medical Board of Ohio, by U.S. ordinary mail, postage prepaid, on the 13TH of May, 1996.



James L. Dye

STATE MEDICAL BOARD
OF OHIO
97 MAY 20 PM 1:40

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

J. Philip Davidson, DPM,
Appellant

v.

The State Medical Board of Ohio
Appellee.

*

CASE NO. 95 CVF 11-7731

*

JUDGE B. PFEIFFER

*

Appeal from the State Medical Board of Ohio

ENTRY GRANTING APPELLANT'S MOTION FOR
CONTINUED SUSPENSION OF AGENCY ORDER

This Matter came on for determination of Appellant's unopposed January 4, 1996, motion for extension of the existing suspension order.

The Court finds the particular facts supporting the Suspension Order of November 14, 1995, remain unchanged and the motion is not presented for dilatory or other improper motive.

THEREFORE, for good cause shown, it is hereby ORDERED, ADJUDGED, and DECREED, that the November 14, 1995, Suspension Order shall remain effective until the determination of this appeal or until May 14, 1996, whichever occurs first. No further extensions shall be granted.

Appellant's counsel shall notify this Court, in writing, within twenty-four (24) hours of receipt of the final Medical Board decision on the Appellant's license restoration application.

SO ORDERED

B. Y. Pfeiffer
BEVERLY Y. PFEIFFER, JUDGE

CLERK OF COURT
JAN 10 AM 10:35
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO

Copies to:

Kevin P. Byers
Counsel for Appellant

Lili C. Kaczmarek
Counsel for Appellee

The court document for this date cannot be found in the records of the Ohio State Medical Board.

Please contact the Franklin County Court of Common Pleas to obtain a copy of this document. The Franklin County Court of Common Pleas can be reached at (614) 462-3621, or by mail at 369 S. High Street, Columbus, OH 43215.

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

J. PHILIP DAVIDSON, DPM, :
Appellant, : CASE NO. 95CVF11-7731
-v- : JUDGE PFEIFFER

STATE MEDICAL BOARD OF OHIO, :
Appellee. :

STATE MEDICAL BOARD OF OHIO
95 NOV 20 PM 2:32
CLERK OF COURT

ENTRY GRANTING APPELLANT DAVIDSON'S
MOTION FOR SUSPENSION OF AGENCY ORDER
FILED NOVEMBER 3, 1995

This matter is before the Court on Appellant's Motion for Suspension of Agency Order filed November 3, 1995. The motion is opposed.

Appellant seeks an order suspending appellee's order revoking his license to practice podiatric medicine. Such order will take effect November 18, 1995. Pursuant to R.C. 119.12 a court may suspend a board order pending appeal if unusual hardship to the appellant is demonstrated and the health, safety and welfare of the public is not threatened.

Appellant's license to practice podiatric medicine was revoked based upon a conviction of a second degree misdemeanor, obstructing justice. The basis of the conviction was appellant not producing complete patient files to a grand jury. No hearing was held before the board due to appellant's failure to timely request a hearing. Counsel for the parties have advised the Court that appellant is presently seeking to have his license restored. It has been represented that upon resolution of that matter, the

instant appeal will be dismissed. Appellant apparently is a sole practitioner and employs three individuals. Based upon the particular facts, a conditional stay is GRANTED and the board's order effective November 18, 1995 is suspended for a period of sixty (60) days.


BEVERLY Y. PFEIFFER, JUDGE

Copies to:

Kevin P. Byers
Counsel for Appellant

Lili C. Kaczmarek
Counsel for Appellant

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

J. Philip Davidson, DPM,
Appellant

v.

The State Medical Board of Ohio
Appellee.

*

CASE NO. _____

*

*

JUDGE _____

*

Appeal from the State Medical Board of Ohio

APPELLANT'S NOTICE OF APPEAL

Pursuant to RC 119.12, notice is hereby given that Appellant, J. Philip Davidson, DPM, appeals the decision and order of the State Medical Board dated October 12, 1995, certified on October 19, 1995 and mailed on October 19, 1995 (copy attached as *Exhibit A.*) The Medical Board order is not supported by the necessary quantum of reliable, probative and substantial evidence nor is it in accordance with law.

Respectfully submitted,

KEVIN P. BYERS CO., L.P.A.

KPBYS

Kevin P. Byers 0040253
The LeVeque Tower
50 West Broad Street, Suite 4300
Columbus, Ohio 43215-3310
614.228.6283 Fax 228.6425

Attorney for J. Philip Davidson, DPM

STATE MEDICAL BOARD
RECEIVED
OCT 20 1995
3:57 PM

Certificate of Service

I certify that the original of the foregoing *Notice of Appeal* was filed this 3rd day of November, 1995, with the State Medical Board, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0315 via hand delivery and a true copy was hand delivered to Assistant Attorney General Lili C. Kaczmarek, Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3428.

KPB-1-25
Kevin P. Byers

KEVIN P. BYERS CO., L.P.A. . . . 50 West Broad Street, Suite 4300
Columbus, Ohio 43215-3310 . . . (614) 228-6283

STATE MEDICAL BOARD
NOV 3 1995
95 NOV -3 PM 3:57



STATE MEDICAL BOARD OF OHIO

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

October 13, 1995

Jerome P. Davidson, D.P.M.
3200 Belmont Avenue
Youngstown, OH 44505

Dear Doctor Davidson:

Please find enclosed a certified copy of the Findings, Order and Journal Entry approved and confirmed by the State Medical Board meeting in regular session on October 12, 1995.

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.

Very truly yours,

Thomas E. Gretter, M.D.
Secretary

TEG:em
Enclosures

CERTIFIED MAIL RECEIPT NO. P 741 124 545
RETURN RECEIPT REQUESTED

cc: Kevin P. Byers, Esc.

CERTIFIED MAIL NO. P 741 124 546
RETURN RECEIPT REQUESTED

Mailed 10-19-95



STATE MEDICAL BOARD OF OHIO

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

CERTIFICATION

I hereby certify that the attached copy of the Findings, Order and Journal Entry, approved by the State Medical Board, meeting in regular session on October 12, 1995, constitute a true and complete copy of the Findings, Order and Journal Entry in the matter of Jerome P. Davidson, 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)

Thomas E. Gretter, M.D.
Secretary

10/19/95

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

JEROME PHILIP DAVIDSON, D.P.M.

*

FINDINGS, ORDER AND JOURNAL ENTRY

This matter came on for consideration after a citation letter was mailed to Jerome Philip Davidson, D.P.M., by the State Medical Board of Ohio on August 9, 1995.

By letter dated August 9, 1995, notice was given to Jerome Philip Davidson, D.P.M., that the State Medical Board intended to consider disciplinary action regarding his license to practice podiatry in Ohio, and that he was entitled to a hearing if such hearing was requested within thirty (30) days of the mailing of said notice. In accordance with Section 119.09, Ohio Revised Code, said notice was sent via certified mail, return receipt requested, to the last known address of Jerome Philip Davidson, D.P.M., that being 3200 Belmont Avenue, Youngstown, Ohio, 44505.

Jerome Philip Davidson, D.P.M., through counsel, responded to the Board's notice and requested a hearing, but such request was not filed in a timely manner, more than thirty (30) days having elapsed since the mailing of the aforesaid notice.

WHEREFORE, for the reasons outlined in the August 9, 1995 letter of notice, which is attached hereto and incorporated herein, it is hereby ORDERED that the license of Jerome Philip Davidson, D.P.M., to practice podiatry in the State of Ohio be REVOKED.

This Order shall become effective thirty (30) days from the date of mailing of notification of approval by the State Medical Board of Ohio.

This Order is hereby entered upon the Journal of the State Medical Board of Ohio for the 12th day of October, 1995, and the original thereof shall be kept with said Journal.



Thomas E. Gretter, M.D.

Secretary

10/19/95

Date

(SEAL)

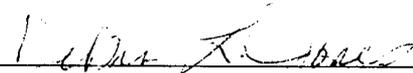
AFFIDAVIT

I, Debra Jones, being duly cautioned and sworn, do hereby depose and say:

- 1) That I am employed by the State Medical Board of Ohio (hereinafter, "The Board")
- 2) That I serve the Board in the position of Chief, Continuing Medical Education, Records, and Renewal;
- 3) That in such position I am the responsible custodian of all public licensee records maintained by the Board pertaining to individuals who have received certificates issued pursuant to Chapter 4731., Ohio Revised Code;
- 4) That I have this day carefully examined the records of the Board pertaining to Jerome Philip Davidson, D.P.M.;
- 5) That based on such examination, I have found the last known address of record of Jerome Philip Davidson, D.P.M., to be:

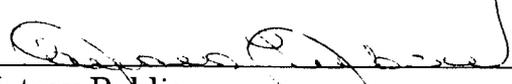
3200 Belmont Avenue
Youngstown, Ohio 44505

- 6) Further, Affiant Sayeth Naught.



Debra L. Jones, Chief
Continuing Medical Education,
Records and Renewal

Sworn to and signed before me, Lauren Lubow, Notary
Public, this 27th day of September, 1995



Notary Public

LAUREN LUBOW, Attorney At Law
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date
Section 147.03 R.C.



STATE MEDICAL BOARD OF OHIO

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

August 9, 1995

Jerome P. Davidson, D.P.M.
3200 Belmont Avenue
Youngstown, OH 44505

Dear Doctor Davidson:

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:

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "(a) plea of guilty to, or a judicial finding of guilt of, a misdemeanor involving moral turpitude," as that clause is used in Section 4731.22(B)(13), Ohio Revised Code.

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

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this

Mailed 8-9-95

Jerome P. Davidson, D.P.M.

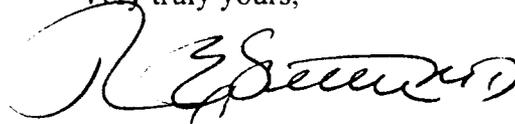
Page 2

agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. E. Gretter, M.D.', written in a cursive style.

Thomas E. Gretter, M.D.

Secretary

TEG/jaw

Enclosures

CERTIFIED MAIL #
RETURN RECEIPT REQUESTED