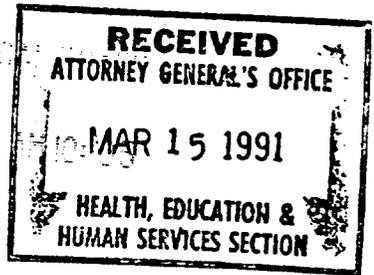


STATE MEDICAL BOARD
 IN THE COURT OF APPEALS OF OHIO
 TENTH APPELLATE DISTRICT



Lemuel E. Stewart, D.P.M., :
 Appellant-Appellee, :
 v. :
 State of Ohio, State Medical Board, :
 Appellee-Appellant. :

No. 89AP-721

(ACCELERATED CALENDAR)

O P I N I O N

Rendered on March 12, 1991



Office of the Attorney General
 State of Ohio

Route slip

To Lauren Huber
 To Rej. Ct. 7 appeals
 To Lemuel Stewart
 Of _____ Date 3/19/91

LARD E. BARTEL,

MS. RACHEL L.

Pleas Court.

- Please:
- Call me on this.....[]
 - See me on this.....[]
 - Prepare reply for Attorney General's signature.....[]
 - Furnish information for reply.....[]
 - Reply directly on the Attorney General's behalf.....[]
 - Take action you deem appropriate.....[]
 - Per conversation.....[]
 - As requested.....[]
 - For your information.....[]
 - Comment.....[]
 - Note and return.....[]
 - Note and file.....[]

Remarks:

the Franklin County Common
 the State Medical Board of
 at the board's decision was
 e evidence to support its
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 ric medicine.
 ounty Common Pleas Court.

From J. S. [Signature] Phone _____

As a result of Stewart's failure to comply with R.C. 4731.281 by not applying for a certificate of registration and paying the required filing fee, the board began proceedings against Stewart for practicing podiatry without a license, ultimately resulting in the board's refusal to accept Stewart's application for license restoration, and further prohibition against future license applications. Stewart appealed this decision to the Franklin County Common Pleas Court, which reversed the order of the board and ordered "**** that Dr. Stewart's application for restoration of his certificate to practice podiatric medicine be approved." It is that decision of the common pleas court from which this appeal arises.

The first assignment of error states:

"I. The court of common pleas erred by requiring evidence of intent when R.C. 4731.281 does not require intent."

The trial court made essentially three findings that there was reliable, substantial and probative evidence to support a finding that Stewart's conduct was negligent in that he let seven years pass without filing the necessary application and paying the required fees; that there was not reliable, substantial and probative evidence to support the board's findings that Stewart's actions were "blatant and unmitigated"; and that there was not reliable, substantial and probative evidence to support a finding that Stewart lacks "good moral character," as required under R.C. 4731.08. The trial court did not analyze Stewart's intent or lack thereof; only whether there was evidence to

support the board's findings. R.C. 4731.22 sets out grounds and modes of discipline for doctors of podiatric medicine and must be read in pari materia with R.C. 4731.281, which requires certain continuing education credits on a periodic basis, and R.C. 4731.222, which is part of the statutory scheme for reissuance of licenses under circumstances such as apply to Stewart. In reviewing the record before it, the trial court found considerable reliable, substantial and probative evidence in the record below on which to make its findings and order that the board's order lacked the necessary basis of reliable, substantial and probative evidence.

Appellant's first assignment of error is overruled.

The second assignment of error states:

"The lower court erred in reversing the order of the State Medical Board when it is [sic] expressly found reliable, probative and substantial evidence that the appellant practiced podiatry while his license was suspended."

This assignment of error is intertwined with the first. Each of the relevant statutes must be read in pari materia, in suspension cases, and of particular relevance is R.C. 4731.222, which applies to license reinstatements where the license is inactive more than two years, the situation in which Stewart is situated. Under the statute, the board might have required Stewart to pass a test to show that he still had the requisite knowledge to practice his profession. The board did not feel this necessary, however, and further did not make any findings that would put Stewart under the ambit of R.C.

4731.22(B)(1 through 17), which deals with reprehensible conduct justifying revocation of a license. The trial court recognized this, and further recognized that no situation existed which would permanently preclude Stewart from ever applying for reinstatement. The trial court's ruling applied the statutes even-handedly and in context with the entire statutory scheme dealing with reinstatements. The record below contains sufficient evidence of a reliable, substantial and probative nature to support the order of the trial court.

Appellant's second assignment of error is overruled.

Both assignments of error are overruled, and the judgment of the Franklin County Common Pleas Court is affirmed.

Judgment affirmed.

WHITESIDE and REILLY, JJ., concur.

REILLY, J., retired of the Tenth Appellate District, sitting and hearing the appeal pursuant to active duty prior to his retirement, and assigned to active duty under authority of Section 6(C), Article IV, Ohio Constitution, subsequent to his retirement.

BRAME, J., of the Vinton County Common Pleas Court, sitting by assignment in the Tenth Appellate District.

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE MEDICAL BOARD OF OHIO,
Appellant,
vs.
LEMUEL E. STEWART, D.P.M.,
Appellee.

CASE NO. 88CV-08-5280

89 JUN 12 PM 3:31

MOTION FOR STAY OF
EXECUTION OF JUDGMENT

Now comes the Appellee, by and through counsel, and moves this Honorable Court for an order staying execution of the judgment entered herein on May 15, 1989. A Memorandum in Support of this Motion is attached hereto and made a part hereof.

Respectfully submitted,

ANTHONY J. CELEBREZZE, JR.
Attorney General


RACHEL L. BELENKER (BEL34)
Assistant Attorney General
1680 State Office Tower
30 East Broad Street
Columbus, Ohio 43266-0410
(614) 466-8600

MEMORANDUM IN SUPPORT

On April 28, 1989, this Honorable Court entered its judgment herein. This judgment held that the State Medical Board (hereafter Board) did not have reliable, substantial and probative evidence to support a finding that Dr. Stewart's actions were "blatant and unmitigated violations of law," or a failure of good moral character, but did find reliable, substantial and probative evidence to support a finding of negligent conduct on the part of Dr. Stewart. The State Medical Board of Ohio intends to seek appeal of such decision to the Tenth District Court of Appeals.

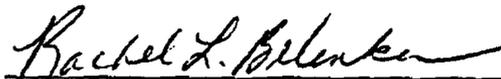
This Court has reversed the Board's Order but pursuant to R.C. 4731.61 the Board must still vote with the approval of at least six (6) board members to grant Dr. Stewart's application for restoration of his podiatric license. Presently, Dr. Stewart has no license to practice podiatry in the State of Ohio because his license expired and has not been restored.

The State Medical Board respectfully requests this Honorable Court stay its judgment pending appeal in order that the Board not be required to vote on Dr. Stewart's application at its next meeting. This will prevent needless time and expense on the part of the State in the event the Court of Appeals reverses this Court's decision and will not unduly burden Dr. Stewart since he has not held a license to practice podiatry in the State of Ohio since 1980.

Therefore, the State Medical Board respectfully requests this Honorable Court issue a stay of its judgment herein, pending the outcome of an appeal.

Respectfully submitted,

ANTHONY J. CELEBREZZE, JR.
Attorney General



RACHEL L. BELENKER (BEL34)
Assistant Attorney General
1680 State Office Tower
30 East Broad Street
Columbus, Ohio 43266-0410
(614) 466-8600

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion for Stay of Execution of Judgment was sent via regular United States Mail this 12th day of June, 1989 to Willard E. Bartel, Miller, Stillman & Bartel, 1610 Euclid Avenue, Cleveland, Ohio 44115.



RACHEL L. BELENKER
Assistant Attorney General

6356S

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

LEMUEL E. STEWART, D.P.M.

Appellant,

-vs-

STATE MEDICAL BOARD OF OHIO

Appellee.

) CASE NO. 88 CV 08 5280
)
) JUDGE DANA A. DESHLER
)
)
)
) JUDGMENT ENTRY
)
)

The above captioned matter came before this Honorable Court on an appeal raised by Dr. Lemuel E. Stewart, D.P.M. (Appellant) of an order rendered by the Ohio State Medical Board (Appellee). Said order had denied Appellant's application for restoration of his certificate to practice podiatric medicine and further prohibited him from applying in the future.

For the reason set forth in the Court's decision of April 28, 1989, the Board order is reversed.

WHEREFORE, this Court hereby directs that Dr. Stewart's application for restoration of his certificate to practice podiatric medicine be approved.

IT IS SO ORDERED.

DATED: _____

JUDGE DANA A. DESHLER

APPROVED:

Willard E. Bartel
WILLARD E. BARTEL
Attorney for Appellant

Rachel Belenker
RACHEL BELENKER (per phone consent)
Attorney for Appellee

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IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

LEMUEL E. STEWART, D.P.M.)	CASE NO.:
1611 Harvard Avenue)	
Cleveland, Ohio 44128)	JUDGE:
)	
Appellant)	
)	
-vs-)	
)	
STATE OF OHIO)	<u>NOTICE OF APPEAL</u>
The State Medical Board of Ohio)	
65 South Front Street)	
Suite 510)	
Columbus, Ohio 43266)	
)	
Appellee)	

Now comes Appellant, Dr. Lemuel E. Stewart, D.P.M., by and through counsel, and hereby appeals to the Court of Common Pleas, Franklin County, Ohio from the decision of the State Medical Board of Ohio dated July 15, 1988. Appellee denied Appellant's application for restoration of his certificate to practice podiatric medicine or surgery in Ohio and further prohibited Appellant from making said application in the future.

1. Appellant, Dr. Lemuel E. Stewart ("Dr. Stewart"), is a resident of Cleveland, Cuyahoga County, Ohio and an applicant for restoration of his certificate to practice podiatric medicine under the provisions of Section 4731, Revised Code of Ohio, hereinafter referred to as the Statute.

2. Appellee, State of Ohio, State Medical Board of Ohio ("Medical Board"), is the adjudicatory agency charged with the duty of determining the restoration of said certificate under the Statute.

3. Jurisdiction in this matter is founded upon Section 119.12, Revised Code of Ohio.

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4. On May 26, 1988, Appellee's leasing examiner, Wanita J. Sage, conducted a hearing concerning Dr. Stewart's application for restoration of said certificate. Appellee had alleged that Dr. Stewart had not renewed said certificate and continued to practice during a time period (January 1, 1980 until April 7, 1988) when his certificate was suspended by operation of law.

5. Despite certain mitigating factors and Dr. Stewart's exemplary service to both the podiatry and Black communities, Appellee's hearing examiner proposed that Dr. Stewart's application for restoration be denied and that he further be prohibited from applying for licensure in the future (revocation). The Appellee Medical Board adopted their hearing examiner's proposal on July 15, 1988, (See Exhibit "A"), despite objections made by the Appellant. (See Exhibit "B").

6. Appellant has exhausted all administrative remedies available to him.

7. Said determinations by the Appellee were clearly erroneous, inappropriate and unduly harsh.

8. Certain mitigating factors which were not given full credence by the appellees are as follows:

(a) Appellee State Medical Board in 1979 had a customary practice of mailing renewal notices and reminders when registration fees are not received. Appellee then converted to a computer system. Dr. Stewart never received a renewal notice in 1979 for the registration period beginning January 1, 1980. There was no intent by Dr. Stewart not to pay the registration fee, he just plain and simply overlooked it.

(b) After 1980 and until 1987, Dr. Stewart experienced a very difficult period in his life. He

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had to overcome a bout with alcoholism, an illness which strikes all walks of life. He was able to overcome this illness in 1981.

(c) Unfortunately, Dr. Stewart was caught up in the podiatry malpractice crisis which came about because of the Family Foot Care Center indictments. Although Dr. Stewart never worked for this center, the scandal brought about a myriad of podiatric malpractice cases in Northern Ohio. During the time period referenced in Paragraph four (4), Dr. Stewart did fail to pay said registration fee. However, this failure was not done with any indifference toward the medical profession, rather because of inadvertance.

(d) During the time period referenced in Paragraph four (4), Dr. Stewart even fulfilled his Medical Education Credits. In fact, Dr. Stewart had earned substantially more credits than required by the Appellee. (See Exhibit "C").

(E) Dr. Stewart did not intend to break any law. After the Appellee had notified him on October 20, 1987 that his certificate had expired, he arranged for other practioners to be in his office to see patients and perform surgeries. Appellee has also alleged that Dr. Stewart wrote prescriptions during this time period. However, Dr. Stewart had always felt that having these other podiatrists in his office would satisfy the Appellee regarding any continuing violations.

(f) The Appellee's hearing examiner inappropriately lead the Medical Board to believe that Dr. Stewart "flouted" the law. This is simply not the case. Dr. Stewart at no time believed he was in violation of the law or in violation of any regulation established by the Medical Board.

9. Appellee's revocation of Dr. Stewart's certificate will result in the loss of a very important service to his community. Dr. Stewart is one of the very few Black podiatrists in the community. His patients have come to rely on the dedicated care and treatment he has provided in the Harvard area of Cleveland since 1965. Full credence was not given to this fact despite

JUL 28 1988

numerous endorsements of Dr. Stewart's abilities by members of the Cleveland Medical Community. (See Exhibit "D").

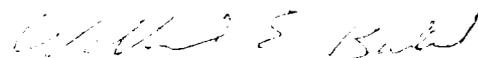
Appellee Medical Board has applied an inappropriate, unduly harsh and grossly unfair punishment to Dr. Stewart. Dr. Stewart has provided competent, dedicated care to his patients throughout his career. He is a well respected man in the community. Podiatry has been Dr. Stewart's life. At age 51, permanent suspension of Dr. Stewart's license by the Appellee would be devastating to the appellant, his family and the community he serves. Permanent revocation is too harsh a punishment under the circumstances.

WHEREFORE, Appellant Dr. Stewart prays the court for judgment:

1. Reviewing Appellee's final determination in the matter set forth above.
2. On such review setting aside and reversing the decision.
3. Determining that Appellant Dr. Stewart's application for restoration of his certificate to practice podiatric medicine and surgery in Ohio be approved.
4. Remanding this motion to Appellee with instructions to take such further action as may be required by law on the basis of this court's determination ; and
5. Granting Appellant Dr. Stewart such further relief as the court deems just and proper.

Respectfully submitted,

MILLER, STILLMAN & BARTEL



WILLARD E. BARTEL
1610 Euclid Avenue
Cleveland, Ohio 44115
(216) 861-6000

Attorneys for Appellant

JUL 28 1988

CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Appeal has been forwarded to Appellee, State of Ohio, The State Medical Board of Ohio, 65 South Front Street, Suite 510, Columbus, Ohio, by OVERNIGHT MAIL, this _____ day of July, 1988.

Willard E. Bartel

WILLARD E. BARTEL

Attorney for Appellant

JUL 28 1988

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

July 15, 1988

Lemuel E. Stewart, D.P.M.
16611 Harvard Avenue
Cleveland, Ohio 44128

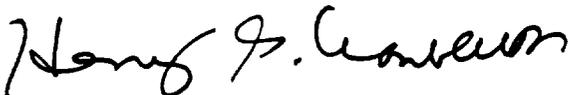
Dear Doctor Stewart:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on July 13, 1988, including Motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board.

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

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

THE STATE MEDICAL BOARD OF OHIO


Henry G. Cramblett, M.D.
Secretary

HGC:em

Enclosures

CERTIFIED MAIL NO. P 746 510 418
RETURN RECEIPT REQUESTED

cc: Willard E. Bartel, Esq.

CERTIFIED MAIL NO. P 746 510 419
RETURN RECEIPT REQUESTED

Mailed 7/20/88

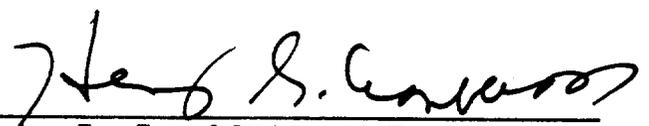
STATE OF OHIO
THE STATE MEDICAL BOARD OF OHIO
65 SOUTH FRONT STREET
SUITE 510
COLUMBUS, OHIO 43266-0315

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board; and attached excerpt of Minutes of the State Medical Board, meeting in regular session on July 13, 1988, including Motions approving and confirming said Report and Recommendation as the Findings and Order of the State Medical Board, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Lemuel E. Stewart, D.P.M., as it appears in the Journal of the State Medical Board of Ohio.

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

(SEAL)


Henry G. Cramblett, M.D.
Secretary

July 15, 1988

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

LEMUEL E. STEWART, D.P.M.

*

ENTRY OF ORDER

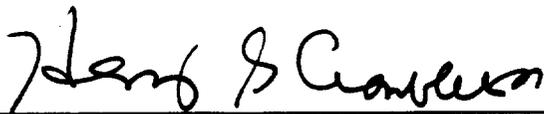
This matter came on for consideration before the State Medical Board of Ohio the 13th day of July, 1988.

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

It is hereby ORDERED:

1. That Lemuel E. Stewart's application for restoration of his certificate to practice podiatric medicine or surgery in Ohio shall be and is hereby DENIED.
2. Further, Lemuel E. Stewart shall not at any time in the future either apply for or obtain licensure to practice medicine or surgery or its related branches in the State of Ohio.

(SEAL)



Henry G. Cramblett, M.D.
Secretary

July 15, 1988

Date

JUN 23 1988

REPORT AND RECOMMENDATION
IN THE MATTER OF LEMUEL E. STEWART, D.P.M.

The Matter of Lemuel E. Stewart, D.P.M., came on for hearing before me, Wanita J. Sage, Esq., Hearing Examiner for the State Medical Board of Ohio, on May 26, 1988.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Mode of Conduct

During the course of this hearing, rules of evidence were relaxed to allow both the State and the Respondent latitude in introducing evidence and examining witnesses.

II. Basis for Hearing

A. By letter of January 13, 1988 (State's Exhibit #1), the State Medical Board notified Lemuel E. Stewart, D.P.M., that it proposed to take disciplinary action against or to refuse to reinstate his certificate to practice podiatric medicine and surgery in Ohio. The Board alleged that Dr. Stewart's certificate to practice podiatry in Ohio had been suspended by operation of law on January 2, 1980, due to his failure to comply with the registration requirements of Section 4731.281, Ohio Revised Code, and that Dr. Stewart had thereafter continued to practice podiatry through at least October 20, 1987. The Board charged that Dr. Stewart's acts constituted the practice of podiatry without a certificate in violation of Section 4731.60, Ohio Revised Code, and subjected him to disciplinary action pursuant to Section 4731.61, Ohio Revised Code. The Board further alleged that Dr. Stewart's acts constituted violation of the following provisions of the Medical Practice Act:

1. Section 4731.22(B)(20), Ohio Revised Code (and corresponding provisions of law in effect prior to March 17, 1987):
"Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board", to wit: Section 4731.60, Ohio Revised Code.
2. With regard to acts occurring on or after March 17, 1987, Section 4731.22(B)(12), Ohio Revised Code: "Commission of an act that constitutes a misdemeanor in this State regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice", to wit: Sections 4731.60 and 4731.99(B), Ohio Revised Code, "Practice of Podiatry Without a Certificate", a misdemeanor of the fourth degree.

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The Board further advised Dr. Stewart that pursuant to Section 4731.222, Ohio Revised Code, the Board, before restoring to good standing a certificate which has been in a suspended or inactive state for more than two years, may require the applicant to submit to an oral or written examination or both, to determine his present fitness to practice; may require the applicant to obtain additional training and to pass an examination upon completion of such training; and may restrict or limit the extent, scope, or type of practice of the applicant. Dr. Stewart was advised of his right to request a hearing in this matter.

- B. By letter received by the State Medical Board on February 1, 1988 (State's Exhibit #2), Willard E. Bartel, Esq., requested a hearing on behalf of Dr. Stewart.

III. Appearance of Counsel

- A. On behalf of the State of Ohio: Anthony J. Celebrezze, Jr., Attorney General, by Rachel L. Belenker, Assistant Attorney General
- B. On behalf of the Respondent: Willard E. Bartel, Esq.

IV. Testimony Heard

- A. Presented by the State
1. Debra Lynn Jones, Chief of C.M.E., Records, and Renewal, State Medical Board
 2. Thomas Shane, Investigator, State Medical Board
 3. Lemuel E. Stewart, Jr., D.P.M., as on cross-examination
- B. Presented by the Respondent
1. Lemuel E. Stewart, D.P.M.

V. Exhibits Examined

In addition to those listed above, the following exhibits were identified and admitted into evidence in this matter:

- A. Presented by the State
1. State's Exhibit #3: February 2, 1988, letter to Willard E. Bartel, Esq., from the State Medical Board advising that a hearing initially set for February 9, 1987, was postponed pursuant to Section 119.09, Ohio Revised Code.

2. State's Exhibit #4: March 17, 1988, letter to Willard E. Bartel, Esq., from the State Medical Board scheduling the hearing for May 26, 1988.
3. State's Exhibit #5: May 24, 1988, certificate of the Secretary, State Medical Board, stating that examination of the Board's records revealed that Dr. Stewart's podiatry certificate had been suspended on January 2, 1980, and had not been reissued.
4. State's Exhibit #6: State Medical Board's record of Dr. Stewart's license renewal activities from 1965 through 1977.
5. State's Exhibit #7: January 28, 1981, "Register of Renewal File by Status for Status Code 51", including Dr. Stewart's name and address. Status Code 51 was identified at hearing as designating inactive status.
6. State's Exhibit #8: Dr. Stewart's November 16, 1987, Application for Restoration of Certificate to Practice Podiatric Medicine and Surgery.
7. State's Exhibit #9: Excerpts from the yellow pages of Cleveland area telephone directories showing Dr. Stewart's listing as a podiatrist for the years 1980-81, 1982-83, 1983-84, and 1987-88.
8. State's Exhibit #10: Prescriptions written by Dr. Stewart on October 12, December 1, and December 21, 1987, and investigator's log listing these prescriptions.
9. State's Exhibit #10A: Two prescriptions written by Dr. Stewart on December 20, 1984; a prescription written by him on September 16, 1985; and investigator's log listing these prescriptions.
10. State's Exhibit #11: Prescription written by Dr. Stewart on October 27, 1987, and investigator's log listing this prescription.
11. State's Exhibit #12: Prescriptions written by Dr. Stewart on April 24, June 1, July 3, June 29, July 9, September 21, and September 8, 1987, and investigator's log listing these prescriptions.
12. State's Exhibit #13: Prescriptions written by Dr. Stewart on August 25 and July 18, 1986; two prescriptions written by him on July 11, 1986; and investigator's log listing these prescriptions.
13. State's Exhibit #14: Computer listing of medications dispensed during 1987 by a pharmacy, identified at hearing as Revco, upon prescriptions written by Dr. Stewart.

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14. State's Exhibit #15: Prescription written by Dr. Stewart on April 7, 1988, and investigator's log listing this prescription.

B. Presented by the Respondent

1. Respondent's Exhibit A: 13 letters of support from friends and colleagues of Dr. Stewart and documents with regard to C.M.E. credits completed by Dr. Stewart.

FINDINGS OF FACT

1. Lemuel E. Stewart, D.P.M., was issued a certificate to practice podiatric medicine and surgery in Ohio in 1965. Although he had complied with registration requirements for all previous registration periods since 1965, Dr. Stewart failed to apply for a certificate of registration and failed to pay applicable registration fees as required under Section 4731.281, Ohio Revised Code, for the registration period commencing January 1, 1980, or for any registration period thereafter, until on November 16, 1987, he submitted to the State Medical Board an application for restoration of his certificate to practice podiatric medicine and surgery.

These facts are established by the testimony of Dr. Stewart (Tr. at 79-81 and throughout), the testimony of Debra Jones (Tr. at 22-28, 41-43), and State's Exhibits #5 through #8.

2. Despite the fact that he admittedly became aware in 1980 that his license had "expired" (Tr. at 94-95), Dr. Stewart continued to practice podiatric medicine or surgery at his office at 16611 Harvard Avenue, Cleveland, Ohio, during the period from January 1, 1980, until at least April 7, 1988. Dr. Stewart continued to practice even after October 20, 1987, when he was advised by Mr. Shane, a State Medical Board investigator, that his continued practice of podiatry would be in violation of the law, and after January 13, 1988, when the State Medical Board cited him for violations related to unlawful practice.

These facts are established by the testimony of Thomas Shane (Tr. at 46-62), the testimony of Dr. Stewart (Tr. at 70-74, 93-102, 104-110), and State's Exhibits #9 through #15.

3. During the period from January 1, 1980, through 1987-88, Dr. Stewart advertised or announced himself as a practitioner of podiatry by his listing in the yellow pages of the Cleveland area telephone directories.

This fact is established by State's Exhibit #9.

JUN 23 1988

CONCLUSIONS

Section 4731.281, Ohio Revised Code, requires every doctor of podiatric medicine licensed to practice podiatric medicine or surgery in Ohio to apply at designated intervals to the State Medical Board for a certificate of registration and to pay a registration fee. This Section states, in pertinent part, "Failure of any certificate holder to register and comply with this section shall operate automatically to suspend his certificate to practice, and the continued practice after the suspension of the certificate to practice shall be considered as practicing without a license." This Section also states that failure to receive an application for registration from the Board shall not excuse any practitioner from the requirements contained in this section.

Therefore, pursuant to Section 4731.281, Dr. Stewart's certificate to practice podiatric medicine or surgery in Ohio was suspended by operation of law as of January 1, 1980. Not only did Dr. Stewart continue to practice after the suspension of his certificate, but also did so knowing that he was violating the law of this State. His testimony establishes that he became aware of this suspension in 1980, yet failed to remedy the situation and knowingly continued to practice for over seven years without a license. Dr. Stewart persisted in his unlawful practice, even after a State Medical Board investigator specifically told him on October 20, 1987, that his continuing to practice would be in violation of the law. Seven days later, on October 27, 1987, Dr. Stewart wrote the prescription included in State's Exhibit #11, an act clearly constituting the practice of medicine as defined under Section 4731.34, Ohio Revised Code. Further, the April 7, 1988, prescription included in State's Exhibit #15 clearly shows that Dr. Stewart continued to practice even after he had received the Board's January 13, 1988, letter setting forth allegations against him and had requested a hearing in this matter. Dr. Stewart's actions constitute flagrant flouting of both the laws of this State and the regulatory authority of this Board.

Although Dr. Stewart attempted to show mitigating factors, these simply do not hold up under close scrutiny. His claim that he failed to receive his renewal notice in 1978 does not provide a valid excuse, under either the law (Section 4731.281) or the facts of this case, which show that he became aware in 1980 of the expiration of his license. His claim of impairment by alcohol was accompanied by his declaration that he had not had a drink since September 1, 1981. His financial and legal problems, while unfortunate, cannot excuse his failure to register as required over a period of nearly eight years. In fact, he testified that the last malpractice claim against him had been dismissed in September, 1987; yet, he did not apply for restoration of his license until November, nearly a month after the visit by the Medical Board investigator.

Although Dr. Stewart stated at hearing that he had stopped practicing "by himself" after October 20, 1987 (Tr. at 71), he later testified that he had asked when he came to the Medical Board on November 15, 1987, whether it would be acceptable to bring another practitioner into his office so that he could "make a living" (Tr. at 101). The prescription records show that he had continued to practice during the period between October 20 and November 15, 1987. Even after that, Dr. Stewart's signature on prescriptions rebuts his unsupported claim that he was "practicing under supervision." Furthermore, the prohibitions of Section 4731.60, Ohio Revised Code, would not permit practice by an unlicensed podiatrist, even under supervision. In any event, Dr. Stewart cannot show mitigation by virtue of his unilateral decision to continue his unlicensed and, thus, unlawful practice "under supervision." While Dr. Stewart characterized his actions as merely logistical error (Tr. at 102), they are blatant and unmitigated violations of law.

The acts, conduct, and/or omissions of Lemuel E. Stewart, D.P.M., as set forth in Findings of Fact #1 through #3, above, constitute violations of:

1. Section 4731.60, Ohio Revised Code: "No person shall practice podiatry without a certificate from the State Medical Board; no person shall advertise or announce himself as a practitioner of podiatry without a certificate from the Board; no person shall open or conduct an office or other place for such practice without a certificate from the Board; no person shall conduct an office in the name of some person who has a certificate to practice podiatry; and no person shall practice podiatry after a certificate has been revoked, or if suspended, during the time of such suspension."
2. Section 4731.22(B)(20), Ohio Revised Code, and corresponding provisions of law as in effect prior to March 17, 1987: "Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board", to wit: Section 4731.60, Ohio Revised Code.
3. With regard to Dr. Stewart's acts which occurred on or after March 17, 1987, Section 4731.22(B)(12), Ohio Revised Code: "Commission of an act that constitutes a misdemeanor in this State regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice." Under Section 4731.99(B), Ohio Revised Code, violation of Section 4731.60 constitutes commission of a misdemeanor of the fourth degree on a first offense, and on each subsequent offense, a misdemeanor of the first degree.

In the event the Board determines that Dr. Stewart is entitled to restoration of his certificate to practice podiatric medicine or surgery, Dr. Stewart, whose certificate has been suspended for more than two years, would be subject to the provisions of Section 4731.222, Ohio Revised Code. This Section, which permits the Board to impose terms and conditions for restoration to determine present fitness for practice, states, "The Board shall consider the moral background and the activities of the applicant during the period of suspension or inactivity, in accordance with Section 4731.08 of the Revised Code."

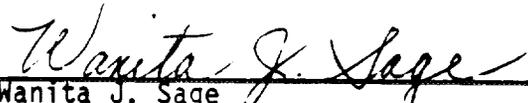
* * * * *

The Board's disciplinary guidelines indicate revocation as a minimum penalty for practice during suspension. In Dr. Stewart's case, where the length of his suspension requires that he apply for restoration, the equivalent penalty would be permanent foreclosure from restoration of his certificate. This action would seem appropriate in that Dr. Stewart's knowing violation of the laws of this State and his disregard for the authority of his regulatory Board demonstrate his inability to furnish satisfactory proof of good moral character, as required under Section 4731.08, Ohio Revised Code, for issuance of a certificate.

PROPOSED ORDER

It is hereby ORDERED that:

1. Lemuel E. Stewart's application for restoration of his certificate to practice podiatric medicine or surgery in Ohio shall be and is hereby DENIED.
2. Further, Lemuel E. Stewart shall not at any time in the future either apply for or obtain licensure to practice medicine or surgery or its related branches in the State of Ohio.



Wanita J. Sage
Attorney Hearing Examiner

EXCERPT FROM THE MINUTES OF JULY 13, 1988

REPORTS AND RECOMMENDATIONS

Dr. Stephens advised that the Findings and Orders appearing on this day's agenda are those in the matters of Dr. William F. Clayton, Jr., Dr. Stuart M. Berger, Dr. Steven M. Kordis, Dr. Michael Henry Frankel, Dr. Donald Jacob, Dr. Robert A. Thomas, Dr. Lemuel Stewart, Dr. Thomas DiMauro and Dr. Arnaldo Roldan-Roldan.

He further advised that since distribution of the Board's agenda materials, the Board had received objections in the matters of Dr. Jacob and Dr. Roldan-Roldan, which appear in each Member's table file. Time was given to the Board to review these documents.

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Dr. Stephens asked if each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections in the matters of Dr. Stuart M. Berger, Dr. Steven M. Kordis, Dr. Michael Henry Frankel, Dr. Robert A. Thomas, Dr. Lemuel Stewart and Dr. Thomas DiMauro. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- aye
	Dr. Gretter	- aye
	Dr. Agresta	- aye
	Dr. Rothman	- aye
	Dr. Rauch	- aye
	Mr. Albert	- aye
	Dr. O'Day	- aye
	Ms. Rolfes	- nay
	Mr. Jost	- aye
	Dr. Stephens	- aye

Ms. Rolfes stated she had not read the materials regarding Dr. Thomas DiMauro; otherwise her vote is aye.

.....

REPORT AND RECOMMENDATION IN THE MATTER OF LEMUEL STEWART, D.P.M.

Dr. Stephens stated that objections have been filed in this matter and appear in the agenda materials. Ms. Sage was the Hearing Examiner in the above matter.

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

MR. ALBERT MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF LEMUEL STEWART, D.P.M. DR. ROTHMAN SECONDED THE MOTION.

Mr. Jost stated he was very disturbed about this case, because Dr. Stewart had practiced podiatry without a license for a considerable length of time.

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A roll call vote was taken:

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

The motion carried.

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

January 13, 1988

Lemuel E. Stewart, D.P.M.
16611 Harvard Avenue
Cleveland, Ohio 44128

Dear Doctor Stewart:

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 podiatric medicine and surgery or to reprimand or place you on probation for one or more of the following reasons:

- (1) Your certificate to practice podiatry in Ohio was suspended by operation of law on January 2, 1980, based on your failure to comply with the registration requirements of Section 4731.281, Ohio Revised Code. During the period beginning on or about January 2, 1980 and continuing through at least October 20, 1987, you practiced podiatry, advertised or announced yourself as a practitioner of podiatry, and opened or conducted an office or other place for such practice in Ohio while your certificate remained suspended based on your continuing failure to comply with the registration requirements of Section 4731.281, Ohio Revised Code.

Such acts in the above paragraph (1), individually and/or collectively, constitute the practice of podiatry without a certificate, in violation of Section 4731.60, Ohio Revised Code. Pursuant to Section 4731.61, Ohio Revised Code, the Medical Board may revoke, limit, suspend, refuse to register or reinstate a certificate, or reprimand or place on probation the holder of a certificate, for violations of Section 4731.60, Ohio Revised Code.

Further, such acts in the above paragraph (1), individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board", as that clause is used in Section 4731.22(B)(20), Ohio Revised Code (Section 4731.22 (B)(16), Ohio Revised Code as in effect on and after August 27, 1982 and prior to March 17, 1987; Section 4731.22 (B)(17), as in effect prior to August 27, 1982), to wit: Section 4731.60, Ohio Revised Code.

STATE OF OHIO
THE STATE MEDICAL BOARD

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Lemuel Stewart, D.P.M.

January 13, 1988

Further, such acts in the above paragraph (1) which occurred on and after March 17, 1987, individually and/or collectively, constitute "commission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice", as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, as in effect on and after March 17, 1987, to wit: Sections 4731.60 and 4731.99(B), Ohio Revised Code, practice of podiatry without a certificate, a misdemeanor of the fourth degree.

Further, pursuant to Section 4731.222, Ohio Revised Code, the State Medical Board, before restoring to good standing a certificate which has been in a suspended or inactive state for any cause for more than two years, may require the applicant to submit to an oral or written examination, or both, to determine his present fitness to practice; may require the applicant to obtain additional training and to pass an examination upon completion of such training and may restrict or limit the extent, scope, or type of practice of the applicant.

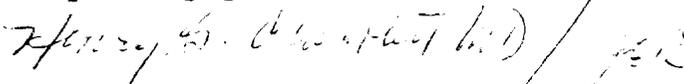
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, that request must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or 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 podiatric medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Henry G. Cramblett, M.D.
Secretary

HGC:caa

enclosures

CERTIFIED MAIL RECEIPT NO. P 026 073 403
RETURN RECEIPT REQUESTED