

COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

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MAY 1 2003

BRENN I. GARRIEL, D.P.M.,

CASE NO. 02CVF06-6968

APPELLANT,

JUDGE O'NEILL

vs.

OHIO STATE MEDICAL BOARD,

APPELLEE.

CLERK OF COURT
MAY 6 AM 9:11
JUDICIAL DEPARTMENT

DECISION ON THE MERITS OF APPEAL

Entered this ____ day of May, 2003.

This action comes before the Court upon appeal by Brenn Garriel from an Order of the Ohio State Medical Board ("Board"), dated June 12, 2002, revoking Appellant's license to practice podiatry. Appellant filed the instant appeal pursuant to R.C. 119.12. Briefs have been filed by the parties and the decision of the Court will be set forth below.

Appellant was notified by the Board by notice dated December 12, 2001 that disciplinary action was to be considered under R.C. 4731.22(B)(22). A hearing was conducted by a Hearing Examiner for the Board on February 28, 2002. A Report and Recommendation was issued April 17, 2002. The recommendation was for revocation and that recommendation was adopted by the Board.

Appellant has assigned two separate errors. It is first asserted that the Appellant did not violate R.C. 4731.22(A) and (B)(5). The basis is Appellant's position that he did not knowingly provide false information on his application for Ohio licensure, specifically to Question 9. Appellant also asserts that there was insufficient evidence to support a finding that Appellant intended to mislead the Board. Appellee has responded to Appellant's assignments of error. The errors will be discussed below.

This Court's review of a decision of an administrative agency, such as the Commission, is governed by R.C. 119.12 and the multitude of cases addressing that section. The most often cited case is that of *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St. 2d 108, 407 N.E.2d 1265. The *Conrad* decision states that in an administrative appeal filed pursuant to R.C. 119.12, the trial court must review the agency's order to determine whether it is supported by reliable, probative and substantial evidence and is in accordance with law. The Court states at pages 111 and 112 that: "In undertaking this hybrid form of review, the Court of Common Pleas must give due deference to the administrative resolution of evidentiary conflicts. For example, when the evidence before the court consists of conflicting testimony of approximately equal weight, the court should defer to the determination of the administrative body, which, as the fact-finder, had the opportunity to observe the demeanor of the witnesses and weigh their credibility. However, the findings of the agency are by no means conclusive. Where the court, in its appraisal of the evidence, determines that there exist legally significant reasons for discrediting certain evidence relied upon by the administrative body, and necessary to its determination, the court may reverse, vacate or modify the administrative order. Thus, where a witness' testimony is internally inconsistent, or is impeached by evidence of a prior inconsistent statement, the court may properly decide that such testimony should be given no weight. Likewise, where it appears that the administrative determination rests upon inferences improperly drawn from the evidence adduced, the court may reverse the administrative order."

The *Conrad* case has been cited with approval numerous times. *Ohio Historical Soc. v. State Emp. Relations Bd.* (1993), 66 Ohio St.3d 466, 471, 613 N.E.2d 591 noted

Conrad and stated that although a review of applicable law is *de novo*, the reviewing court should defer to the agency's factual findings. See *Pons v. State Med. Board* (1993), 66 Ohio St.3d 619.

The specific language of R.C. 4731.22(B)(22) relevant to this appeal states as follows. "(B) The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more of the following reasons: *** (22) Any of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand. ***"

A review of the record establishes the following facts. Appellant received his degree in podiatric medicine in 1991. He was licensed in Pennsylvania, Kansas, and West Virginia in 1995. Appellant obtained temporary licensure in Indiana February 23, 1999. While working in Indiana, Appellant forged two prescriptions by signing another doctor's name. The Indiana Board filed a complaint against Appellant on June 9, 2000. On June 12, 2000 two letters were mailed to Appellant, containing the complaint. One was mailed to an Indianapolis address and one to Appellant's parents' address in Youngstown, Ohio.

Appellant applied for an Ohio license on August 3, 2000. Appellant answered no to Question 3, which questioned whether he had ever resigned, had been dismissed, or been terminated from a practice. This answer was false, as he had been terminated from the Indiana practice. He also answered no to Question 9, which asked about any request to appear before any Board as to any allegations against him. Appellant also failed to list his activities in Indiana where required to account for his time since becoming a podiatrist and also that he had failed to pass a Florida examination.

The Hearing Examiner found Appellant's excuses for his omissions to not be credible. At page 15 of the Hearing Examiner Report, it was stated "Dr. Garriel has employed a pattern of deceit in his relations to the Board."

Appellant has asserted that he did not knowingly give a false answer to Question 9. The Hearing Examiner and the Board concluded otherwise. That question pertained to any requested appearance by a board as to allegations against him. Appellant offers that he was not aware of the Indiana complaint at the time he answered the question. The Hearing Examiner concluded that the mailing of the complaint to his parents' address and the use of that address for personal correspondence cast doubt upon Appellant's claim. Even if the Court were to accept that there was insufficient evidence to support this violation, the other admitted violations would support the Board's action. Appellant stated that his failure to acknowledge dismissal from his Indiana practice was purposefully done. Appellant blamed his wife for the failure to include his Indiana employment and has also asserted that since he held only a temporary license, he believed that it was not necessary to list.

A review of the record provides ample support for the findings and actions of the Board. The Board clearly has the authority to levy the penalty imposed. See *Fehrman v. Ohio DOC*, 141 Ohio App. 3d 503, 2001 Ohio 4225. The Court finds that there is reliable, probative, and substantial evidence to support the Order of the Board and that it is in accordance with law. The Order is hereby AFFIRMED. Counsel for the Board shall prepare and submit a Judgment Entry pursuant to Local Rule 25.01.

Judge Deborah P. O'Neill

Appearances:

Elizabeth Y. Collis
1560 Fishinger Road
Columbus, OH 43221
Attorney for Appellant

Kyle C. Wilcox
Assistant Attorney General
30 East Broad Street, 26th Floor
Columbus, OH 43215-3400
Attorney for Appellee

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE MEDICAL BOARD
OF OHIO

2002 JUN 24 A 11: 18

BRENN I. GARRIEL, D.P.M.
4705 Burkey Road
Youngstown, Ohio 44515
Appellant,

Case No. 02CVF06 6968

vs.

JUDGE ONEILL

STATE MEDICAL BOARD OF OHIO
77 S. High Street, 17th Floor
Columbus, Ohio 43215-6127

Appellee.

FILED
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
JUN 24 AM 11:48
CLERK OF COURTS-CV

NOTICE OF APPEAL

Appellant, Brenn I. Garriel, D.P.M., pursuant to Ohio Revised Code Section 119.12 hereby appeals the final decision of the State Medical Board of Ohio, ("Appellee") which permanently revoked Appellant's license to practice podiatric medicine and surgery in its Adjudication Order (attached hereto) issued on June 12, 2002 and mailed to Appellant on June 14, 2002.

Appellant asserts that the decision of the State Medical Board of Ohio is not

STATE MEDICAL BOARD
OF OHIO
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supported by reliable, probative and substantial evidence and is not in accordance with
law.

Respectfully submitted,



Elizabeth Y. Collis (#0061961)
Law Office of Elizabeth Y. Collis
1560 Fishinger Road
Columbus, Ohio 43221
(614) 488-8692
Fax (614) 488-0270
COUNSEL FOR APPELLANT
Brenn I. Garriel, D.P.M.

Certificate of Service

I certify that the *Notice of Appeal* was served upon Rebecca Albers and Kyle C. Wilcox, Assistants Attorney General, Office of the Ohio Attorney General, Health and Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215 by regular U.S. mail, postage prepaid on June 24, 2002.



Elizabeth Y. Collis



State Medical Board of Ohio

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

June 12, 2002

Brenn I. Garriel, D.P.M.
4705 Burkey Road
Youngstown, OH 44515

Dear Doctor Garriel:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on June 12, 2002, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

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

THE STATE MEDICAL BOARD OF OHIO

Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5146 4564
RETURN RECEIPT REQUESTED

Cc: Kevin P. Byers, Esq.
CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5146 4557
RETURN RECEIPT REQUESTED

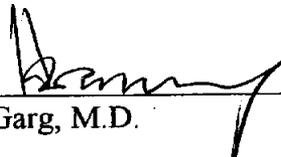
Mailed 6-14-02

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on June 12, 2002, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Brenn I. Garriel, 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)



Anand G. Garg, M.D.
Secretary

June 12, 2002

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

BRENN I. GARRIEL, D.P.M.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on June 12, 2002.

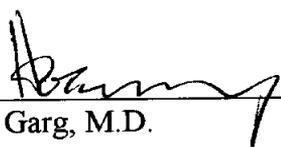
Upon the Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

The certificate of Brenn I. Garriel, D.P.M., to practice podiatric medicine and surgery in Ohio be PERMANENTLY REVOKED.

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

(SEAL)



Anand G. Garg, M.D.
Secretary

June 12, 2002

Date

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**REPORT AND RECOMMENDATION
IN THE MATTER OF BRENN I. GARRIEL, D.P.M.**

The Matter of Brenn I. Garriel, D.P.M., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio, on February 28, 2002.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated December 12, 2001, the State Medical Board of Ohio [Board] notified Brenn I. Garriel, D.P.M., that it had proposed to take disciplinary action against his certificate to practice podiatric medicine and surgery in Ohio. The Board based its proposed action on prior action against Dr. Garriel by the Indiana State Board of Podiatric Medicine [Indiana Board] and Pennsylvania State Board of Podiatry [Pennsylvania Board]. In addition, the Board based its proposed action on the answers provided by Dr. Garriel in his August 3, 2000, application for a certificate to practice podiatry in Ohio.

The Board alleged that the Indiana Board action constitutes “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, as in effect prior to April 10, 2001.”

The Board further alleged that the Pennsylvania Board action constitutes “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.”

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Furthermore, the Board alleged that Dr. Garriel's responses in his application for Ohio licensure constitute "fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board,' as that clause is used in Section 4731.22(A), Ohio Revised Code, [and] '[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,' as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, as in effect prior to April 10, 2001."

Accordingly, the Board advised Dr. Garriel of his right to request a hearing in this matter. (State's Exhibit 1A).

- B. On January 3, 2002, John Stember, Esq., submitted a written hearing request on behalf of Dr. Garriel. (State's Exhibit 1B).

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.
- B. On behalf of the Respondent: Kevin P. Byers, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

Presented by the Respondent

1. Brenn I. Garriel, D.P.M.
2. Diana Garriel

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A-1K: Procedural exhibits.
2. State's Exhibit 2: Certified copies of documents maintained by the Indiana Board of Podiatric Medicine regarding Dr. Garriel. (Note: pages numbered by the Hearing Examiner post-hearing).

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3. State's Exhibit 3: Certified copies of documents maintained by the Commonwealth of Pennsylvania State Board of Podiatry regarding Dr. Garriel.
4. State's Exhibit 4: Certified copy of Dr. Garriel's application for Ohio licensure. (Note: pages numbered by the Hearing Examiner post-hearing).

B. Presented by the Respondent

Respondent's Exhibit A: Copy of a letter from Dr. Garriel addressed to "To Whom It May Concern," submitted to the Board on February 28, 2001.

PROCEDURAL MATTERS

1. In the December 12, 2001, Notice of Opportunity for Hearing, paragraph 3.a., the Board alleged that, on October 11, 2001, the Indiana Board of Podiatric Medicine had filed a Hearing Notice pertaining to the Respondent. Actually, the Indiana Board's Hearing Notice had been filed on October 11, 2000. Nevertheless, the Respondent agreed that the typographical error had not prejudiced him in preparing for the hearing in this matter. See Hearing Transcript at 6.
2. The evidence in this matter concerns, among other things, the Respondent's prescribing to one patient. With the agreement of the parties, the Attorney Hearing Examiner examined the exhibits, and replaced the name of the patient whenever it occurred with "Patient 1." See Hearing Transcript at 58.

SUMMARY OF THE EVIDENCE

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

1. Brenn I. Garriel, D.P.M., testified that he had received his degree in podiatric medicine and surgery from the Ohio College of Podiatric Medicine in 1991. He also stated that, in 1992, he had completed a podiatric medical and surgical residency program at the University of Southern California, Los Angeles County Medical Center. (Hearing Transcript [Tr.] at 15-26).

Dr. Garriel further testified that, after completing his residency program, he relocated to Florida and took the Florida licensing examination. He stated that he did not pass the examination. Dr. Garriel testified that he left Florida and returned to Ohio where his wife

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and parents were living. In 1995, Dr. Garriel obtained podiatric licenses in Pennsylvania, Kansas, and West Virginia. (Tr. at 15-26).

Dr. Garriel testified that, in 1995, he had relocated to Kansas, and spent 2 ½ years practicing podiatry in that state. In approximately 1997, Dr. Garriel relocated to Philadelphia, Pennsylvania, and practiced there. Dr. Garriel testified that, in April 1999, he had left Philadelphia and relocated to Indianapolis, Indiana. At the same time, Dr. Garriel stated that he had purchased a private practice in Pittsburgh, Pennsylvania. Dr. Garriel testified that he had practiced full time in Indianapolis, and part time in Pittsburgh. Dr. Garriel also testified that he had been terminated from his position in Indiana in January 2000. Thereafter, Dr. Garriel had practiced podiatry only in Pittsburgh. Currently, Dr. Garriel is practicing podiatry at the Alma Illery Medical Center in Pennsylvania. (Tr. at 16-25).

2. In August 2000, Dr. Garriel submitted to the Board an application for a certificate to practice podiatry in Ohio. In the application, Dr. Garriel included a document which purported to list his educational and professional background. The answers in this document differed from his testimony at hearing. (State's Exhibit [St. Ex.] 4 at 20-21).

In this document, Dr. Garriel advised that, after finishing his residency, he had worked as a pharmacy technologist in Florida. The document further advised that Dr. Garriel had practiced in Kansas from September 1995 through approximately 1997. In addition, the document advised that, from October 1997 through June 1998, Dr. Garriel had worked as a dialysis technician in Youngstown, Ohio; from July 1998 through April 1999, he had worked as a podiatrist in Philadelphia; and from April 1999 through September 1999, he had worked as a security patrol in Youngstown. Finally, the document advised that, from October 1999 through the time of his application, August 2000, Dr. Garriel had practiced part time at his own podiatric practice in Pittsburgh. (St. Ex. 4 at 20-21).

3. Dr. Garriel's August 2000 application for podiatric licensure also included a section which asked the applicant to list all activities since the time of graduation from podiatric medical school. In this section, Dr. Garriel provided answers which differ from those set out in the document attached to his application and from his testimony at hearing. (St. Ex. 4 at 7-8).

In this section of the application, Dr. Garriel advised that he had practiced in Kansas from 1995 until "Inactive." He further advised that he had practiced in Philadelphia from April 1999 through the "Present" [August 2000] and in Pittsburgh from October 1999 through the "Present." (St. Ex. 4 at 7-8).

4. On February 23, 1999, the Indiana State Board of Podiatric Medicine [Indiana Board] issued to Dr. Garriel a Temporary License to podiatric medicine in Indiana. The temporary permit was to remain effective either until a permanent license was issued or until the Indiana Board disapproved Dr. Garriel's application for permanent licensure. Because

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Dr. Garriel held only a temporary permit, he was not authorized to prescribed controlled substances in Indiana. (St. Ex. 2 at 4, 29). As noted above, Dr. Garriel testified that, in April 1999, he had relocated to Indianapolis to practice podiatry. (Tr. at 18-19).

5. Documents maintained by the Indiana Board indicate that Dr. Garriel was practicing in Indianapolis in the office of James Hilaire, D.P.M. The documents further indicate that, on November 30, 1999, and January 6, 2000, Dr. Garriel issued prescriptions for Hydrocodone/APAP to Patient 1. When issuing these prescriptions, Dr. Garriel forged the signature of Dr. Hilaire. (St. Ex. 2 at 4, 27-28).

In January 2000, the Marion County [Indiana] Sheriff's Department initiated an investigation of the two prescriptions written by Dr. Garriel for Patient 1. The police reports indicate that a detective had been dispatched to a pizza parlor due to a disturbance. At the pizza parlor, the detective found Patient 1, Dr. Garriel, and Angel Patrick, the office manager for Dr. Hilaire's podiatric practice. The police reports further indicate that Ms. Patrick had reported that she had received a telephone call from the local pharmacist earlier that morning, and that the pharmacist had stated that Patient 1 had presented fraudulent prescriptions under the name of Dr. Hilaire. (St. Ex. 2 at 24-25).

According to the police reports, Ms. Patrick reported that, after receiving the phone call from the pharmacist, Ms. Patrick and Dr. Garriel had gone to the pharmacy to see the allegedly fraudulent prescriptions. The pharmacist presented three prescriptions. Two were for hydrocodone, and one was for Ultram. The police reports indicate that Dr. Garriel had admitted writing the prescription for Ultram, but had stated that the prescriptions for hydrocodone were "completely forged." Dr. Garriel further told the detective that he believed that Patient 1 had stolen a prescription pad at the time of Patient 1's November 30, 1999, visit to Dr. Garriel's office. (St. Ex. 2 at 24-25).

The police reports indicate that, after leaving the pharmacy, Dr. Garriel and Ms. Patrick had gone to the pizza parlor where Patient 1 worked. Ms. Patrick accused Patient 1 of having stolen the pad of prescriptions from Dr. Hilaire's office and of forging the two prescriptions. Patient 1 responded that he had not stolen the prescription pads or forged the prescriptions. Patient 1 added that Dr. Garriel had written the two allegedly forged prescriptions, and that Dr. Garriel was "the one in trouble here." (St. Ex. 2 at 24).

Police reports further indicate that, during a second interview by the detective, Dr. Garriel admitted that he had written the two prescriptions for Patient 1. Dr. Garriel further admitted that he had forged the name of Dr. Hilaire without authorization. Moreover, Dr. Garriel admitted that he had not been honest with the detective during the initial investigation because he had known he would be in trouble for writing the prescriptions. (St. Ex. 2 at 26).

The police reports further indicate that the detective had also spoken with Dr. Hilaire. Dr. Hilaire advised that he had not been aware that Dr. Garriel was writing prescriptions or forging his signature. Moreover, Dr. Hilaire had not authorized Dr. Garriel to do so. (St. Ex. 2 at 26).

6. Dr. Garriel testified that he had been fired from Dr. Hilaire's practice in January 2000 as a result of the prescriptions Dr. Garriel had written for Patient 1. (Tr. at 22-23, 32).
7. On June 9, 2000, the Indiana Board filed a Complaint against Dr. Garriel, based on the prescriptions written by Dr. Garriel in the name of Dr. Hilaire. The Complaint includes a Certificate of Service which indicates that a copy of the Complaint was sent to Dr. Garriel by regular mail at an address in Indianapolis. (St. Ex. 2 at 15-20).

On June 12, 2000, the Indiana Board issued a letter advising that a Complaint had been filed against Dr. Garriel, and that the Indiana Board's consideration of Dr. Garriel's application for full licensure had been tabled. A copy of the Complaint was attached to the letter. The Indiana Board sent one copy of the letter, with attachments, to Dr. Garriel at the Indianapolis address, and another copy to Dr. Garriel at his parents' address in Youngstown, Ohio. Dr. Garriel testified that he had instructed the Indiana Board to send his mail to that address because his parents ensured that he received his mail. (Tr. at 79-80; St. Ex. 2 at 15).

8. On or about August 3, 2000, the Board received Dr. Garriel's application for a certificate to practice podiatry in Ohio. With that application, Dr. Garriel submitted an Affidavit and Release which bore Dr. Garriel's notarized signature dated July 17, 2000. The Affidavit and Release stated, in part:

I, Brenn Garriel, D.P.M., hereby certify under oath that I am the person named in this application for a license to practice podiatry in the State of Ohio; that all statements I have or shall make with respect thereto are true, that I am the original and lawful possessor and person named in the various forms and credentials furnished or to be furnished to this Board with respect to my application; and that all documents, forms, or copies thereof furnished or to be furnished with respect to my application are strictly true in every respect.

* * *

I further understand that my application for a license to practice podiatry in the State of Ohio is an ongoing process. I will immediately notify the State Medical Board of Ohio in writing of any changes to the answers to any of the questions contained in the ADDITIONAL INFORMATION section of the application if such a change in an answer is warranted at any time prior to licensure being granted to me by the State Medical Board of Ohio. I further understand that

failure to complete this application as requested by the Board within six months can be considered abandonment of any request for licensure and that any fee I submitted is not refundable nor transferable [emphasis in the original].

* * *

I further understand that issuance of a certificate to practice podiatry in Ohio will be considered on the truth of the statements and documents contained herein or to be furnished, which if false, can subject me to denial of said certificate.

(St. Ex. 4 at 18) (underline added, capitalization in original).

9. In the "Additional Information" section of his application, Dr. Garriel responded "NO" to the following question:

3. Have you ever resigned from, withdrawn from, or terminated, or have you ever been requested to resign from, withdraw from, or otherwise been terminated from, a position with a medical partnership, professional association, corporation, health maintenance organization, or other medical practice organization, either private or public?

(St. Ex. 4 at 9). Dr. Garriel acknowledged that, since he had been terminated from his employment with Dr. Hilaire, the answer to the question should have been "Yes."
(Tr. at 81).

10. In the "Additional Information" section of his application, Dr. Garriel also responded "NO" to the following question:

9. Have you ever been requested to appear before any board, bureau, department, agency, or other body, including those in Ohio, concerning allegations against you?

(St. Ex. 4 at 10). There is no indication that Dr. Garriel notified the Board of the Indiana Board action despite his signing and submitting the Affidavit and Release. (St. Ex. 4).

11. In the "Podiatry Resume of Activities" section of his application, Dr. Garriel was required to list all activities in chronological order from the date of his graduation from podiatric medical school until the time of his application. In his list of activities, Dr. Garriel failed to inform the Board that he had practiced in Indiana from approximately April 1999 through January 2000. (St. Ex. 4 at 7-8).

Dr. Garriel testified that he had failed to mention his practice in Indiana intentionally, because he had known that Dr. Hilaire would not give him a good recommendation. Dr. Garriel stated that if potential employers were to contact Dr. Hilaire, they would probably not hire Dr. Garriel. Therefore, when he completed his Ohio application, he chose to withhold information about his time in Indiana. (Tr. at 53-54). Later, however, Dr. Garriel testified that Indiana had been omitted negligently because his wife had completed the application. (Tr. at 83-84).

12. In the "National Board Examinations Taken" section of the application, Dr. Garriel was asked to "List each and every National Board exam" which he had taken. He was also asked to denote whether he had passed or failed each examination listed. In his response, Dr. Garriel advised only that he had taken Part 1 of the National Board Examination in July 1993 in Ohio, and Part 2 of the National Board Examination in July 1992 in Pennsylvania. He further advised that he had passed both examinations. Nevertheless, Dr. Garriel failed to mention the National Board Examination he had taken and failed in Florida. (St. Ex. 4 at 4).

At hearing, Dr. Garriel acknowledged that he should have included the Florida examination. Dr. Garriel testified that the Florida examination had been omitted due to negligence, because his wife had completed that part of the application form. (Tr. at 55-56).

13. The "Licenses in the United States" section of the application instructed Dr. Garriel to:

List ALL states in which you are or have been licensed to practice podiatry. Indicate the license number, date of issuance, whether or not the license is current, and the basis of licensure (e.g. state board exam, endorsement of another state license, endorsement of diplomate or passing status, PMLexis, etc.)

(St. Ex. 4 at 4) (emphasis in the original). In completing the application, Dr. Garriel listed only West Virginia, Kansas, Pennsylvania and Texas. He failed to list the State of Indiana. (St. Ex. 4 at 4).

Dr. Garriel testified that he had completed this portion of the application himself. However, he stated that he had failed to include Indiana in the list of states in which he had held a license because the license in Indiana had been only a temporary license. Dr. Garriel acknowledged that nothing in the question distinguished between temporary and permanent licenses. (Tr. at 85-86, 91-92).

14. On October 11, 2000, the Indiana Board issued a Hearing Notice to Dr. Garriel, based on the June 2000 Complaint. The Indiana Board sent a copy of the Hearing Notice to Dr. Garriel at his parents' Youngstown address. Dr. Garriel's mother signed the certified mail receipt. (St. Ex. 2 at 10-13; Tr. at 42-43).

15. On November 2, 2000, the Indiana Board filed an Order which continued Dr. Garriel's hearing to February 9, 2001. The Indiana Board sent a copy of the Order to Dr. Garriel at his parents' address. Dr. Garriel's wife signed the certified mail receipt. (St. Ex. 2 at 8, 14; Tr. at 47-48).
16. In a January 4, 2001, letter to the Board, Dr. Garriel's wife advised that Dr. Garriel held licensure in only three states: Pennsylvania, Kansas, and West Virginia. The letter did not mention Dr. Garriel's then-current temporary license to practice in Indiana. (St. Ex. 4 at 3).
17. On February 20, 2001, the Indiana Board filed a Findings of Fact and Order which included the following findings of fact:
 3. On or about November 30, 1999, Respondent forged the signature of his employer, Dr. James Hilaire, without Dr. Hilaire's knowledge or authorization, upon a prescription for controlled substances issued to [Patient 1].
 4. On or about January 6, 2000, Respondent forged the signature of his employer, Dr. James Hilaire, without Dr. Hilaire's knowledge or authorization, upon a prescription for controlled substances issued to [Patient 1].
 5. Both of the prescriptions were for Hydrocodone, a schedule III controlled substance.
 6. Respondent does not have authorization or the required permits to prescribe controlled substances in the State of Indiana.
 7. Respondent was confronted with the above prescriptions by Detective Andy Moley, Marion County Sheriff's Department, on January 13, 2000. Respondent admitted to Detective Moley that he had forged his employer's signature to the two prescriptions in question and Respondent acknowledged that he did not have authorization or the required permits to prescribe controlled substances in the State of Indiana.

(St. Ex. 2 at 3-4). The Indiana Board concluded that Dr. Garriel had "engaged in fraud or material deception in the course of professional services or activities." (St. Ex. 2 at 5). The Indiana Board accepted the surrender of Dr. Garriel's license to practice podiatric medicine in Indiana, and provided that he may not petition for reinstatement for a period of seven years. In addition, the Indiana Board issued a letter of reprimand to Dr. Garriel. (St. Ex. 2 at 5-6).

18. Dr. Garriel testified that the Board had issued to him a license to practice podiatry in Ohio on February 1, 2001. Dr. Garriel acknowledged that, until that date, he had been obligated to inform the Board of any changes to the answers in his application for licensure. (Tr. at 78-79).
19. On September 26, 2001, the Pennsylvania State Board of Podiatry [Pennsylvania Board] filed a Consent Agreement and Order which placed a Public Reprimand on Dr. Garriel's licensure record and required that he pay a civil penalty of \$1,000.00. The Pennsylvania Board Consent Agreement and Order was based upon the Indiana Board's Findings of Fact and Order. (St. Ex. 3).
20. At hearing, Dr. Garriel testified about the events that led to the Indiana Board action. Dr. Garriel testified that he had first seen Patient 1 in November 1999. At that time, Patient 1 had complained of "pain from his foot all the way up." Dr. Garriel testified that Patient 1 had shown Dr. Garriel a prescription from his primary physician for hydrocodone. Patient 1 also told Dr. Garriel that hydrocodone was the only pain medication that helped him. Dr. Garriel examined Patient 1, and prescribed hydrocodone. Dr. Garriel stated he had wanted to help Patient 1, and that he had prescribed hydrocodone because Patient 1 had told him it was the only medication that would help. (Tr. at 25-26).

Dr. Garriel testified that he had aware that he was not authorized to prescribe controlled substances in Indiana. Therefore, in an effort to help Patient 1, Dr. Garriel had signed Dr. Hilaire's name to the prescription. Dr. Garriel testified that Dr. Hilaire had previously given him permission to do so. Dr. Garriel admitted, however, that Dr. Hilaire had denied giving such permission to Dr. Garriel. (Tr. at 28-29, 59-62).

When asked why he had not sent Patient 1 back to the physician who had originally prescribed hydrocodone, Dr. Garriel answered as follows:

Because he told me that - - that's what I asked him too. I said, why do you go back to him - - to me? He told me, because, you know, he run out. And I asked him, why don't you go back to him? He told me, you know, can you - - he didn't really say, you know. I asked him and he said because he didn't refill it.

And I go, Oh, okay. And I said, well, you know, I'll give you some. I said, you know, are you sure it's really painful? Because I examined him and I believe him that he have pain at that time and I want to do something to him at that time to help him alleviate the pain.

(Tr. at 26).

Dr. Garriel testified that Patient 1 had not been seen again until early January 2000. Dr. Garriel further stated that Patient 1 had been seen by Dr. Hilaire and that Dr. Hilaire had ordered hydrocodone for Patient 1 by telephone. Dr. Garriel also testified that, a few days later, on January 6, 2000, Patient 1 had returned and was seen by Dr. Garriel. Dr. Garriel testified that he wrote a second prescription for hydrocodone, and signed Dr. Hilaire's name to it. (Tr. at 30-31).

Dr. Garriel also testified regarding the initiation of the investigation into the prescriptions Dr. Garriel had written for Patient 1. At first, Dr. Garriel testified that that he had not discovered that Dr. Hilaire had also prescribed hydrocodone until after Dr. Garriel wrote the January 6, 2000, prescription. Dr. Garriel stated that, when he discovered that Dr. Hilaire had also ordered hydrocodone, Dr. Garriel had realized that Patient 1 was abusing the drug. Therefore, Dr. Garriel had contacted the pharmacy to cancel his prescription. Nevertheless, the pharmacist had already dispensed the hydrocodone. (Tr. at 30-31).

Dr. Garriel later testified that he had become concerned that Patient 1 was abusing hydrocodone when, a few days after the January 6, 2000, appointment, Patient 1 had failed to return for a follow-up appointment. (Tr. at 34). Even later, Dr. Garriel testified that he had become concerned that Patient 1 was abusing hydrocodone when Patient 1 failed to appear for two follow-up appointments: one after the November 1999 prescription and one after the January 2000 prescription. (Tr. at 93-94).

Dr. Garriel testified that, after he realized that Patient 1 was abusing the hydrocodone, he had instructed Ms. Patrick to contact the pharmacy to ask that the pharmacist not dispense the hydrocodone to Patient 1. Dr. Garriel denied the version of events depicted in the police report which stated that the pharmacist had contacted Ms. Patrick. (Tr. at 65).

Dr. Garriel testified that Ms. Patrick had called the pharmacy at his request, and discovered that the hydrocodone had been dispensed. Dr. Garriel testified that, after Ms. Patrick spoke with the pharmacist, he and Ms. Patrick had gone to the pharmacy. Dr. Garriel testified that the reason he went to the pharmacy was to learn who had dispensed the hydrocodone. (Tr. at 65). Nevertheless, Dr. Garriel later testified that that the reason he had gone to the pharmacy was to discover if the hydrocodone had yet been dispensed. (Tr. at 66). Even later, however, Dr. Garriel testified that that the reason he had gone to the pharmacy was to find out why the pharmacy had dispensed the hydrocodone despite the fact that Dr. Hilaire had ordered hydrocodone for Patient 1 earlier that week. (Tr. at 70-71).

Dr. Garriel stated that, from the pharmacy, he had asked Ms. Patrick to call Detective Moley. Dr. Garriel testified that he had done so due to his belief that Patient 1 had been abusing the hydrocodone. (Tr. at 67, 72-73).

Dr. Garriel testified that he did not know how the detectives had come to believe that Patient 1 had stolen a prescription pad. Dr. Garriel denied that he had accused Patient 1 of

having stolen a prescription pad, as depicted in the police reports. Dr. Garriel stated instead that Ms. Patrick had claimed that Patient 1 had stolen a prescription pad. Dr. Garriel testified that he did not know how Ms. Patrick had come to that conclusion. Dr. Garriel stated that Ms. Patrick must have assumed the prescription pad had been stolen. Dr. Garriel also testified that the detectives had somehow "gotten mixed-up." (Tr. at 32, 62-65). Later, however, Dr. Garriel stated that, despite the fact that he and Ms. Patrick had been at the pharmacy together, Dr. Garriel had not known that Ms. Patrick was claiming that the prescription pads had been stolen. (Tr. at 67-69).

21. Dr. Garriel testified that Detective Moloy later obtained copies of the prescriptions, and confronted Dr. Garriel with the handwriting on the prescriptions. At that point, Dr. Garriel admitted that he had written the prescriptions. (Tr. at 67-68).

Dr. Garriel also acknowledged that, toward the end of the investigation, he had admitted to the detectives that he had lied during the initial part of the investigation. Dr. Garriel conceded that he had lied to the detectives, but stated that he had done so only because he had been afraid and because he had wanted to help Patient 1. (Tr. at 106-107).

Furthermore, Dr. Garriel admitted that he had known that Ms. Patrick had told the detective that Patient 1 had stolen the prescription pads. Dr. Garriel stated that he had told the detective that Patient 1 had not stolen the prescription pads, but the detective had forgotten to write it down in the police report. (Tr. at 98-101). Dr. Garriel later admitted that it may have been Dr. Garriel who suggested that the prescription pad had been stolen because he was afraid it would be discovered that he had forged Dr. Hilaire's signature. (Tr. at 102-106).

22. Dr. Garriel testified that he had not advised the Board of the Indiana Board action when he completed his application for licensure because he had not been aware of the Indiana Board action at that time. Dr. Garriel testified that he had not received a copy of the Indiana Board's June 9, 2000, Complaint. Dr. Garriel acknowledged the certificate of service indicating an address in Indianapolis, but stated that the address was the office of Dr. Hilaire. Dr. Garriel testified that he was no longer employed by Dr. Hilaire at that time, and that Dr. Hilaire's office had not notified him of the letter. (Tr. at 35-37).

Dr. Garriel further testified that he does not recall receiving a copy of the Indiana Board's October 11, 2000, Hearing Notice. Dr. Garriel acknowledged that the Indiana Board had sent one copy of the Hearing Notice to Dr. Hilaire's office, and one copy to Dr. Garriel's parents' home in Youngstown. Dr. Garriel testified that he was living in Pittsburgh at that time. Nevertheless, Dr. Garriel testified that he considers his parents' address his permanent address since he relocates so frequently. (Tr. at 37-42). Dr. Garriel later acknowledged that his mother had signed the certified mail receipt. Dr. Garriel admitted that he may have seen the letter, but insisted that he had not seen it "right away." (Tr. at 42-43, 47).

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Dr. Garriel testified that he cannot recall having received a copy of the November 2, 2000, Order continuing the hearing before the Indiana Board. Dr. Garriel acknowledged that the Indiana Board had sent a copy of the continuance order to his parent's address, and that his wife had signed the certified mail receipt. Nevertheless, Dr. Garriel could not recall whether his wife had told him about the Indiana Board Order. (Tr. at 47-49).

23. Dr. Garriel's wife, Diana Garriel, testified that she could not recall whether she had informed her husband of the November 2, 2000, Indiana Board Order. (Tr. at 110-116).
24. Dr. Garriel testified that, on February 25, 2001, he had sent a letter regarding the Indiana Board action to all of the states in which he was licensed. The Board received a copy of the letter on February 28, 2001. When asked why he had not notified the Board of the Indiana Board action prior to February 28, 2001, Dr. Garriel testified that he had not received any notice of the Indiana Board action prior to that time. (Tr. at 45-47).

FINDINGS OF FACT

1. On February 20, 2001, the Indiana State Board of Podiatric Medicine [Indiana Board] issued a Findings of Fact and Order which accepted the surrender of the temporary certificate to practice podiatric medicine in that state which had been issued previously to Brenn I. Garriel, D.P.M. The Indiana Board further ordered the issuance of a letter of reprimand and stated that Dr. Garriel may not petition for an Indiana license for a period of seven years.

As a basis for its action, the Indiana Board found that, on November 30, 1999, and January 6, 2000, Dr. Garriel had forged the signature of his employer to prescriptions for hydrocodone, a Schedule III controlled substance. Further, the Indiana Board found that on January 13, 2000, at the Marion County [Indiana] Sheriff's Department, Dr. Garriel admitted to these forgeries and acknowledged that he had not had authorization or the required permits to prescribe controlled substances in the State of Indiana.

2. On September 26, 2001, the Pennsylvania State Board of Podiatry [Pennsylvania Board] filed a Consent Agreement and Order which placed a Public Reprimand on Dr. Garriel's record and required that Dr. Garriel pay a civil penalty of \$1,000.00. The Pennsylvania Board Consent Agreement and Order was based upon the Indiana Board's Findings of Fact and Order.
3. On or about August 3, 2000, the Board received Dr. Garriel's application for a certificate to practice podiatric medicine and surgery in Ohio. With that application, Dr. Garriel submitted an Affidavit and Release, with Dr. Garriel's notarized signature. In the Affidavit and Release, Dr. Garriel certified that the statements contained in the application were true. In addition, Dr. Garriel acknowledged that he was responsible to notify the Board "in

writing of any changes to the answers to any of the questions contained in the ADDITIONAL INFORMATION section of the application if such a change in an answer [was] warranted at any time prior to licensure being granted.” Finally, Dr. Garriel acknowledged that the Board’s decision to issue him a certificate to practice podiatric medicine and surgery in Ohio “would be considered on the truth of the statements” contained in the application and, if statements contained in the application were false, the Board might deny licensure to Dr. Garriel.

4. In the “Additional Information” section of his application for licensure in Ohio, Dr. Garriel responded “NO” to the following question:

9. Have you ever been requested to appear before any board, bureau, department, agency, or other body, including those in Ohio, concerning allegations against you?

In fact, prior to Dr. Garriel’s licensure by the Board on February 1, 2001, the Indiana Board had filed the October 11, 2000, Hearing Notice, based upon the June 9, 2000, Complaint against Dr. Garriel. Dr. Garriel’s testimony that he had not received a copy of the Hearing Notice was not credible, particularly since the Hearing Notice had been sent to Dr. Garriel’s permanent address; Dr. Garriel had instructed the Board to send his mail to that address because his parents would ensure that he received his mail; and Dr. Garriel’s mother had signed the certified mail receipt.

5. In the “Podiatry Resume of Activities” section of his application for licensure in Ohio, Dr. Garriel was required to list all of his activities in chronological order from the date of his graduation from podiatric medical school until the time he completed the application. In the completed application, Dr. Garriel omitted the fact that he had been practicing in Indiana on an Indiana temporary license since 1999. Dr. Garriel’s testimony that he had omitted the information because he had known that, “if potential employers were to contact Dr. Hilaire, they would probably not hire Dr. Garriel” is far more aggravating than mitigating. Moreover, his alternative testimony that Indiana had been omitted negligently because his wife had completed the application is simply not believable.
6. The “Licenses in the United States” section of Dr. Garriel’s application for Ohio licensure directed Dr. Garriel to list all states in which he was licensed or had been licensed to practice podiatry. Dr. Garriel failed to list the State of Indiana where he had been granted a temporary license on February 23, 1999. Dr. Garriel’s testimony that he had failed to include Indiana in the list of states in which he had held a license because the license in Indiana had been only a temporary license is not credible. Even Dr. Garriel acknowledged that nothing in the application question distinguished between temporary and permanent licenses.

CONCLUSIONS OF LAW

1. The Findings of Fact and Order of the Indiana State Board of Podiatric Medicine in the matter of Brenn I. Garriel, D.P.M., as described in Findings of Fact 1, constitutes “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, as in effect prior to April 10, 2001.
2. The Consent Agreement and Order of the Pennsylvania State Board of Podiatry in the matter of Dr. Garriel, as described in Findings of Fact 2, constitutes “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.
3. The conduct of Dr. Garriel, as described in Findings of Facts 3 through 6, constitutes “fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board,” as that clause is used in Section 4731.22(A), Ohio Revised Code.
4. The conduct of Dr. Garriel, as described in Findings of Facts 3 through 6, constitutes “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,” as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, as in effect prior to April 10, 2001.

* * * * *

The law is clear that once a violation of R.C. 4731.22(B) has been found, the Board may impose sanctions ranging from dismissal to permanent revocation. The evidence presented in this matter demonstrates that Dr. Garriel has employed a pattern of deceit in his relations with the Board. The evidence further supports a conclusion that, in submitting his application for licensure, Dr. Garriel intended to deceive the Board in order to hide his difficulties in Indiana. In fact, the

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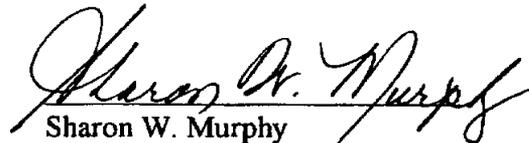
Board issued Dr. Garriel a certificate to practice in this state as a result of his deception. Moreover, even at hearing, Dr. Garriel's testimony was contradictory and incredible. The cumulative effect of Dr. Garriel's fraudulent communications with the Board confirms that he is not amenable to any meaningful regulatory relationship with the Board.

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Brenn I. Garriel, D.P.M., to practice podiatric medicine and surgery in Ohio be PERMANENTLY REVOKED.

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


Sharon W. Murphy
Attorney Hearing Examiner



State Medical Board of Ohio

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

EXCERPT FROM THE DRAFT MINUTES OF JUNE 12, 2002

REPORTS AND RECOMMENDATIONS

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

Dr. Somani 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: Brenn I. Garriel, D.P.M.; Cesar Ruben Hernandez, M.D.; Norman S. Howell, D.O.; and Simon Westacott, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Dr. Somani	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Dr. Somani	- aye

Dr. Somani noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code,

specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

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

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

BRENN I. GARRIEL, D.P.M.

.....

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF BRENN I. GARRIEL, D.P.M. DR. AGRESTA SECONDED THE MOTION.

.....

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

Vote:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye
	Dr. Somani	- aye

The motion carried.



State Medical Board of Ohio

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December 12, 2001

Brenn I. Garriel, D.P.M.
4705 Burkey Road
Youngstown, Ohio 44515

Dear Doctor Garriel:

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

- (1) On or about February 20, 2001, the Indiana State Board of Podiatric Medicine (hereinafter the "Indiana Board") filed a Findings of Fact and Order which accepted the surrender of your Indiana license to practice podiatric medicine. The Indiana Board further ordered the issuance of a letter of reprimand and that you may not petition for an Indiana license for a period of seven (7) years.

The Indiana Board found that on or about November 30, 1999, and again on or about January 6, 2000, you forged the signature of your employer to prescriptions for Hydrocodone, a Schedule III controlled substance. Further, the Indiana Board found that on January 13, 2000, at the Marion Indiana Sheriff's Department, you admitted to these forgeries and acknowledged that you did not have authorization or the required permits to prescribe controlled substances in the State of Indiana.

A copy of the Indiana Board Letter of Reprimand, Findings of Fact and Order and Complaint are attached hereto and incorporated herein.

- (2) On or about October 2, 2001, the Pennsylvania State Board of Podiatry (hereinafter the "Pennsylvania Board") filed a Consent Agreement and Order which placed a Public Reprimand on your licensure Board record and required that you pay a civil penalty of \$1,000.00. The Pennsylvania Board Consent Agreement and Order, a copy of which is attached hereto and incorporated herein, was based upon the Indiana Board Findings of Fact and Order as provided in paragraph one (1) above.
- (3) On or about August 3, 2000, the State Medical Board of Ohio (hereinafter the "Board") received your application for a certificate to practice podiatry in Ohio (hereinafter the "Application"). In reliance on the truthfulness of your submission, you were granted a certificate on or about February 1, 2001. With that application, you submitted an Affidavit and Release, with your signature notarized July 17, 2000, which stated in part:

I, Brenn Garriel, D.P.M., hereby certify under oath that I am the person named in this application for a license to practice podiatry in the State

Mailed 12.13.01

of Ohio; that all statements I have or shall make with respect thereto are true, that I am the original and lawful possessor and person named in the various forms and credentials furnished or to be furnished to this Board with respect to my application; and that all documents, forms, or copies thereof furnished or to be furnished with respect to my application are strictly true in every respect.

* * *

I further understand that my application for a license to practice podiatry in the State of Ohio is an ongoing process. I will immediately notify the State Medical Board of Ohio in writing of any changes to the answers to any of the questions contained in the ADDITIONAL INFORMATION section of the application if such a change in an answer is warranted at time prior to licensure being granted to me by the State Medical Board of Ohio. I further understand that failure to complete this application as requested by the Board within six months can be considered abandonment of any request for licensure and that any fee I submitted is not refundable nor transferable [emphasis in the original].

* * *

I further understand that issuance of a certificate to practice podiatry in Ohio will be considered on the truth of the statements and documents contained herein or to be furnished, which if false, can subject me to denial of said certificate.

* * *

(a) In the "Additional Information" section of your Application you responded "NO" to the following question:

9. Have you ever been requested to appear before any board, bureau, department, agency, or other body, including those in Ohio, concerning allegations against you?

In fact, prior to your licensure by the State Medical Board of Ohio on February 1, 2001, the Indiana Board filed a Hearing Notice October 11, 2001, based upon the June 9, 2000, Complaint resulting in the Indiana Board action in paragraph one (1) above.

(b) In the "Podiatry Resume of Activities" section of your Application you were required to list all activities in chronological order from the date of Podiatry school graduation until the present time.

Prior to your licensure by the State Medical Board of Ohio on or about February 1, 2001, you failed to inform the Board that you had been practicing on an Indiana Board temporary license in Indianapolis, Indiana since 1999.

- (c) The "Licenses in the United States" section of your Application provided "List ALL states in which you are or have been licensed to practice podiatry. Indicate the license number, date of issuance, whether or not the license is current, and the basis of licensure (e.g. state board exam, endorsement of another state license, endorsement of diplomate or passing status, PMLexis, etc.) [emphasis in the original] ***."

You listed only West Virginia, Kansas, Pennsylvania and Texas.

You failed to list the State of Indiana where you had been granted a temporary license on February 23, 1999.

The Indiana Board Findings of Fact and Order, as alleged in paragraph one (1) above, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, as in effect prior to April 10, 2001.

Further, the Pennsylvania Board Consent Agreement and Order, as alleged in paragraph two (2) above, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

Further, your acts, conduct, and/or omissions, as alleged in subparagraphs (3)(a) through (3)(c) above, individually and/or collectively, constitute "fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code.

Further, your acts, conduct, and/or omissions, as alleged in subparagraphs (3)(a) through (3)(c) above, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, as in effect prior to April 10, 2001.

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, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice

Brenn I. Garriel, D.P.M.

Page 4

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

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

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, effective March 9, 1999, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.
Secretary

AGG/jag
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5147 3269
RETURN RECEIPT REQUESTED

1936 Meadow Brook Avenue
Youngstown, OH 44514

CERTIFIED MAIL # 7000 0600 0024 5147 3207
RETURN RECEIPT REQUESTED



STATE OF INDIANA

FRANK O'BANNON, Governor

HEALTH PROFESSIONS BUREAU

402 West Washington Street Room 041
Indianapolis, Indiana 46204
Telephone: (317) 232-2960
Fax: (317) 233-4236
<http://www.ai.org/hpb>
Equal Opportunity Employer

February 19, 2001

Brenn I Garriel D.P.M.
8410 East 21st Street
Indianapolis, IN 46219

RE: Cause Number 2000 PMC 0002
Letter of Reprimand

Dear Dr. Garriel,

This letter of reprimand is the result of a settlement agreement accepted by the Indiana Board of Podiatric Medicine resulting from charges filed by the Office of the Attorney General on June 9, 2000.

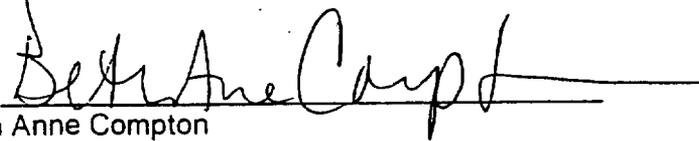
That settlement agreement resulted in the surrender of your license and this letter of reprimand being issued.

The purpose of this reprimand is to stress that licensed podiatrists have an important responsibility to practice within the bounds of conduct that are prescribed by law.

The Findings of Fact and Order filed on February 19, 2001, are attached hereto and incorporated herein as part of this official reprimand.

Sincerely,

INDIANA STATE BOARD OF PODIATRIC MEDICINE

By: 
Beth Anne Compton
Executive Director
Health Professions Bureau

CERTIFIED MAIL RECEIPT #: _____
RETURN RECEIPT REQUESTED

NOV 13 2001

BEFORE THE INDIANA STATE
BOARD OF PODIATRIC MEDICINE
CAUSE NO. 2000 PMC 0002

STATE OF INDIANA,)
)
Petitioner,)
)
v.)
)
BRENN I. GARRIEL, D.P.M.)
Temporary License Number: 0043)
)
Respondent.)

FILED

FEB 20 2001

HEALTH PROFESSIONS
BUREAU

FINDINGS OF FACT AND ORDER

The Indiana State Board of Podiatric Medicine ("Board") held a settlement conference on February 9, 2001, in Room 041 of the Indiana Government Center South, 302 West Washington Street, Indianapolis, Indiana, concerning a disciplinary complaint filed by the State against the podiatric medical license of Brenn I. Garriel, D.P.M. ("Respondent").

The State of Indiana was represented by Deputy Attorney General Shelette Alexander-Veal. Respondent appeared by counsel, Laura Crowley, Indianapolis, Indiana. Richard Sluzewski, Jr. D.P.M. presided over the settlement conference and recommended that the Board accept the settlement proposal as the final order of the Board.

The Board, after considering the evidence and taking official notice of its file in this case, by a vote of 4

-0-0, issues the following Findings of Fact and Order:

FINDINGS OF FACT

1. Respondent is the holder of a temporary permit to practice podiatric medicine in the State of Indiana, holding temporary permit number 0043.
2. Respondent's address on file with the Board is 8410 East 21st Street, Indianapolis, Indiana 46219.
3. On or about November 30, 1999, Respondent forged the signature of his employer, Dr. James Hilaire, without Dr. Hilaire's knowledge or authorization, upon a prescription for controlled substances issued to B. D.
4. On or about January 6, 2000, Respondent forged the signature of his employer, Dr. James Hilaire, without Dr. Hilaire's knowledge or authorization, upon a second prescription for controlled substances issued to B. D.
5. Both of the above prescriptions were for Hydrocodone, a schedule III controlled substance.
6. Respondent does not have authorization or the required permits to prescribe controlled substances in the State of Indiana.
7. Respondent was confronted with the above prescriptions by Detective Andy Moley, Marion County Sheriff's Department, on January 13, 2000. Respondent admitted to Detective Moley that he had forged his employer's signature to the two prescriptions in question and Respondent acknowledged that he did not have authorization or the required permits to prescribe controlled substances in the State of Indiana.

ULTIMATE FINDINGS OF FACT

1. The conduct described above constitutes a violation of Indiana Code §25-1-9-4(1) in that Respondent has engaged in fraud or material deception in the course of professional services or activities.

2. The above violation warrants the imposition of disciplinary sanctions against Respondent's Indiana Podiatric Medicine License.

ORDER

Based upon the above Findings of Fact, the Board issues the following Order:

1. The Board hereby accepts the surrender of Brenn I. Garriel's Indiana license to practice podiatric medicine.

2. Brenn I. Garriel, may not petition for the issuance of an Indiana license to practice podiatric medicine for a period of seven (7) years from the date of this Order.

3. Brenn I. Garriel may not practice the profession of podiatric medicine through any medium whatsoever, I.E.: in person, by phone, by fax, by computer, by mail, verbal or in writing, in the State of Indiana, as it is a criminal offense to engage in this profession without a valid license.

4. Brenn I. Garriel shall notify any and all states where he holds any type of medical or other professional license of this Order and shall provide each such state with a copy of this Order within ten days of receipt thereof.

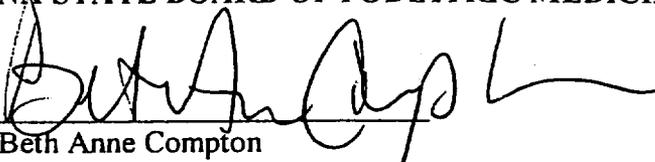
5. Brenn I. Garriel shall answer affirmatively on any application, in Indiana or to any other state, for malpractice insurance or for the issuance or renewal of any type of medical or professional license, permit, or other form of certification, to a question asking

if he has ever been disciplined for actions related to providing medical , professional, or related services.

6. A letter of reprimand shall be issued to Brenn I. Garriel and a copy thereof placed in the permanent file maintained in his name by the Indiana State Board of Podiatric Medicine.

SO ORDERED this 20th day of February 2001.

INDIANA STATE BOARD OF PODIATRIC MEDICINE

By: 
Beth Anne Compton
Executive Director
Health Professions Bureau

copies to:

Brenn I. Garriel
8410 East 21st Street
Indianapolis, IN 46219
BY CERTIFIED MAIL NO.: 7099 3400 0006 4112 4028

Brenn I. Garriel
4705 Burkey Rd.
Youngstown, OH 44515
BY CERTIFIED MAIL NO.: 7099 3400 0006 4112 4141

Laura Crowley
151 N. Delaware, Suite 2025
Indianapolis, IN 46204
fax 624-4561
phone 631-5151

William T. Niemier
Deputy Attorney General
IGCS, 5th Floor
402 W. Washington Street
Indianapolis, IN 46204

BEFORE THE INDIANA STATE
BOARD OF PODIATRIC MEDICINE
CAUSE NO. 2000 PMC 0002

STATE OF INDIANA,)
)
Petitioner,)
)
v.)
)
BRENN I. GARRIEL, D.P.M.)
Temporary License Number: 0043)
)
Respondent.)

FILED

JUN 09 2000

HEALTH PROFESSIONS
BUREAU

COMPLAINT

The State of Indiana ("Petitioner"), by counsel, Karen M. Freeman-Wilson, Attorney General of Indiana by Deputy Attorney General William T. Niemier, pursuant to Indiana Code § 25-1-7-7(a) files its Complaint against Brenn I. Garriel, D.P.M., ("Respondent"), and in support thereof alleges and states:

1. The Attorney General of Indiana is empowered to bring disciplinary complaints in the name of the State of Indiana before the Indiana State Board of Podiatric Medicine ("Board") pursuant to Indiana Code § 25-1-7 et. seq.

2. The Board is charged with the duty and the responsibility of regulating the practice of podiatric medicine pursuant to Indiana Code § 25-29-1-3 et seq.

3. The Board is empowered to hold disciplinary hearings pursuant to Indiana Code 25 and Indiana Code 4-21.5-3 et seq.

4. The Office of Attorney General, Division of Consumer Protection, received a written and signed consumer complaint on this matter on or about February 7, 2000. A copy of said complaint was provided to Respondent. The Division of Consumer Protection conducted a preliminary investigation as to the merits of the complaint, pursuant to Indiana Code § 25-1-7-5(1). Pursuant to Indiana Code § 25-1-7-6, informal negotiation does not apply in this matter. A report was made to the Attorney General by the Director of the Division of Consumer Protection recommending that charges be

FILED

brought against the Respondent's license on June 8, 2000, pursuant to Indiana Code § 25-1-7-7.

COUNT I

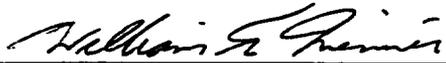
1. Respondent is the holder of a temporary permit to practice podiatric medicine in the State of Indiana, holding temporary permit number 0043.
2. Respondent's address on file with the Board is 8410 East 21st Street, Indianapolis, Indiana 46219.
3. On or about November 30, 1999, Respondent forged the signature of his employer, Dr. James Hilaire, without Dr. Hilaire's knowledge or authorization, upon a prescription for controlled substances issued to B. D.
4. On or about January 6, 2000, Respondent forged the signature of his employer, Dr. James Hilaire, without Dr. Hilaire's knowledge or authorization, upon a second prescription for controlled substances issued to B. D.
5. Both of the above prescriptions were for Hydrocodone, a schedule III controlled substance.
6. Respondent does not have authorization or the required permits to prescribe controlled substances in the State of Indiana.
7. Respondent was confronted with the above prescriptions by Detective Andy Moloy, Marion County Sheriff's Department, on January 13, 2000. Respondent admitted to Detective Moloy that he had forged his employer's signature to the two prescriptions in question and Respondent acknowledged that he did not have authorization or the required permits to prescribe controlled substances in the State of Indiana.
8. The conduct described above constitutes a violation of Indiana Code §25-1-9-4(1) in that Respondent has engaged in fraud or material deception in the course of professional services or activities.

WHEREFORE, Petitioner demands an order against the Respondent, Brenn Garriel, that:

1. Imposes the appropriate disciplinary sanction;
2. Directs Respondent to immediately pay all the cost incurred in the prosecution of this case;
3. Provides any other relief the Board deems just and proper.

Respectfully submitted,

KAREN M. FREEMAN-WILSON
Attorney General of Indiana

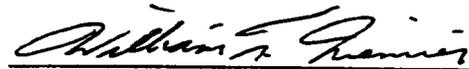
By: 

William T. Niemier
Deputy Attorney General
Attorney No: 15518-49

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing "Complaint" has been served upon the Respondent listed below, by United States mail, first class postage prepaid, on this 9th day of June, 2000:

Brenn I. Garriel
8410 East 21st Street
Indianapolis, IN 46219



William T. Niemier
Deputy Attorney General

Office of the Attorney General
Indiana Government Center South, Fifth Floor
402 West Washington Street
Indianapolis, Indiana 46204-2770
(317) 232-6224

WTN:11051

c. Paragraphs 1 through 4 are incorporated by reference.

d. On or about February 20, 2001, the Indiana State Board of Podiatric Medicine accepted the Voluntary Surrender of the Respondent's license to practice podiatric medicine in the State of Indiana and Reprimanded the Respondent after the Respondent stipulated to violation of Indiana Code §25-1-9-4(1) in that he engaged in fraud or material deception in the course of professional services or activities.

e. True and correct copies of the Complaint, Findings of Fact and Order and Reprimand are collectively attached and incorporated as Exhibit 1.

f. In February 2001 Respondent reported the Indiana action to the Pennsylvania Board, as required by the Indiana Board in its order.

g. A true and correct copy of Respondent's letter reporting this disciplinary action is attached as Exhibit 2.

4. The actions of Respondent, described above, violated the Act at 63 P.S. §42.16(a)(10).

5. The participants consent to issuance of the following Order in settlement of this matter:

a. Respondent violated the Act at 63 P.S. §42.16(a)(10) in that Respondent has had disciplinary action taken against his license by the proper licensing authority of another state.

b. A **PUBLIC REPRIMAND** is placed on Respondent's licensure Board record. After one year elapsed from the imposition of this reprimand, Respondent may petition the Board for the removal of the reprimand from his

permanent record. The Board has sole discretion to determine whether the reprimand should be removed from the Respondent's record.

c. Respondent shall pay a **CIVIL PENALTY** of one thousand dollars (\$1,000) by cashier's check, certified check, U.S. Postal money order or attorney's check, made payable to "Commonwealth of Pennsylvania." Respondent shall return the full Civil Penalty with the signed Consent Agreement.

6. Respondent acknowledges receipt of an Order to Show Cause in this matter. Respondent knowingly and voluntarily waives the right to an administrative hearing in this matter, and to the following rights related to that hearing: to be represented by counsel at the hearing; to present witnesses and testimony in defense or in mitigation of any sanction that may be imposed for a violation; to cross-examine witnesses and to challenge evidence presented by the Commonwealth; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision.

7. This Consent Agreement is between the Commonwealth and Respondent only. Except as otherwise noted, this Agreement is to have no legal effect unless and until the Office of General Counsel approves the contents as to form and legality and the Board issues the stipulated Order.

8. Should the Board not approve this Consent Agreement, presentation to and consideration of this Consent Agreement and other documents and matters by the Board shall not prejudice the Board or any of its members from further participation in the adjudication of this matter. This paragraph is binding on the participants even if the Board does not approve this Consent Agreement.

9. Respondent agrees, as a condition of entering into this Consent Agreement, not to seek modification at a later date of the stipulated Order adopting and implementing this Consent Agreement without first obtaining the express written concurrence of the Prosecution Division.

10. This Agreement contains the whole agreement between the participants. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever, concerning this Agreement.

11. Respondent verifies that the facts and statements set forth in this Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent understands that statements in this Agreement are made subject to the criminal penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.



Bernadette Paul
Prosecuting Attorney
Bureau of Professional and
Occupational Affairs

DATED: 8/17/01



Brenn I. Garriel, D.P.M.
Respondent

DATED: 08/03/01



Health Professions Bureau

402 West Washington Street, Room W041
Indianapolis, Indiana 46204

Telephone (317) 232-2960
Fax (317) 233-4236
<http://www.ai.org/hpb>

April 5, 2001

Department of State
Bureau of Professional and Occupational Affairs
Legal Prosecution/Complaints Office
Attention: George S. Barkos, Legal Assistant
P O Box 2649
Harrisburg PA 17105-2649

To Whom It May Concern:

THIS IS TO CERTIFY THAT: BRENN GARRIEL
BECAME A LICENSED: Podiatrist-Temp License
NUMBER ISSUED: Temp # 0043
ISSUANCE DATE: 02/23/1999
EXPIRATION DATE: 02/09/2001
STATUS: Voluntary Surrender of Temp License-SEE ATTACHED APPLICATION DENIED
BASIS OF LICENSURE: Endorsement
SCHOOL/GRADUATION DATE: OHIO COLLEGE OF PODIATRY 05/31/1991
SOCIAL-SECURITY NUMBER: 285-72-0584
CURRENT ADDRESS OF RECORD: 1936 MEADOW BROOK AVE
YOUNGSTOWN, OH 44514
DATE OF BIRTH: 06/27/1962

If other information is needed, please contact Wade Lowhorn at (317) 233-4422 or Nancy Harper at (317) 233-8789.



BEFORE THE INDIANA STATE
BOARD OF PODIATRIC MEDICINE
CAUSE NO. 2000 PMC 0002

STATE OF INDIANA,)
)
Petitioner,)
)
v.)
)
BRENN I. GARRIEL, D.P.M.)
Temporary License Number: 0043)
)
Respondent.)

FILED

JUN 09 2000

HEALTH PROFESSIONS
BUREAU

COMPLAINT

The State of Indiana ("Petitioner"), by counsel, Karen M. Freeman-Wilson, Attorney General of Indiana by Deputy Attorney General William T. Niemier, pursuant to Indiana Code § 25-1-7-7(a) files its Complaint against Brenn I. Garriel, D.P.M., ("Respondent"), and in support thereof alleges and states:

1. The Attorney General of Indiana is empowered to bring disciplinary complaints in the name of the State of Indiana before the Indiana State Board of Podiatric Medicine ("Board") pursuant to Indiana Code § 25-1-7 et. seq.

2. The Board is charged with the duty and the responsibility of regulating the practice of podiatric medicine pursuant to Indiana Code § 25-29-1-3 et seq.

3. The Board is empowered to hold disciplinary hearings pursuant to Indiana Code 25 and Indiana Code 4-21.5-3 et seq.

4. The Office of Attorney General, Division of Consumer Protection, received a written and signed consumer complaint on this matter on or about February 7, 2000. A copy of said complaint was provided to Respondent. The Division of Consumer Protection conducted a preliminary investigation as to the merits of the complaint, pursuant to Indiana Code § 25-1-7-5(1). Pursuant to Indiana Code § 25-1-7-6, informal negotiation does not apply in this matter. A report was made to the Attorney General by the Director of the Division of Consumer Protection recommending that charges be

brought against the Respondent's license on June 8, 2000, pursuant to Indiana Code § 25-1-7-7.

COUNT I

1. Respondent is the holder of a temporary permit to practice podiatric medicine in the State of Indiana, holding temporary permit number 0043.

2. Respondent's address on file with the Board is 8410 East 21st Street, Indianapolis, Indiana 46219.

3. On or about November 30, 1999, Respondent forged the signature of his employer, Dr. James Hilaire, without Dr. Hilaire's knowledge or authorization, upon a prescription for controlled substances issued to B. D.

4. On or about January 6, 2000, Respondent forged the signature of his employer, Dr. James Hilaire, without Dr. Hilaire's knowledge or authorization, upon a second prescription for controlled substances issued to B. D.

5. Both of the above prescriptions were for Hydrocodone, a schedule III controlled substance.

6. Respondent does not have authorization or the required permits to prescribe controlled substances in the State of Indiana.

7. Respondent was confronted with the above prescriptions by Detective Andy Moloy, Marion County Sheriff's Department, on January 13, 2000. Respondent admitted to Detective Moloy that he had forged his employer's signature to the two prescriptions in question and Respondent acknowledged that he did not have authorization or the required permits to prescribe controlled substances in the State of Indiana.

8. The conduct described above constitutes a violation of Indiana Code §25-1-9-4(1) in that Respondent has engaged in fraud or material deception in the course of professional services or activities.

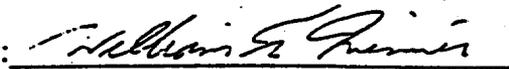
WHEREFORE, Petitioner demands an order against the Respondent, Brenn Garriel, that:

1. Imposes the appropriate disciplinary sanction;
2. Directs Respondent to immediately pay all the cost incurred in the prosecution of this case;
3. Provides any other relief the Board deems just and proper.

Respectfully submitted,

KAREN M. FREEMAN-WILSON
Attorney General of Indiana

By:

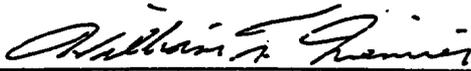


William T. Niemier
Deputy Attorney General
Attorney No: 15518-49

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing "Complaint" has been served upon the Respondent listed below, by United States mail, first class postage prepaid, on this 9th day of June, 2000:

Brenn I. Garriel
8410 East 21st Street
Indianapolis, IN 46219


William T. Niemier
Deputy Attorney General

Office of the Attorney General
Indiana Government Center South, Fifth Floor
402 West Washington Street
Indianapolis, Indiana 46204-2770
(317) 232-6224

WTN:11051

FINDINGS OF FACT

1. Respondent is the holder of a temporary permit to practice podiatric medicine in the State of Indiana, holding temporary permit number 0043.
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ULTIMATE FINDINGS OF FACT

1. The conduct described above constitutes a violation of Indiana Code §25-1-9-4(1) in that Respondent has engaged in fraud or material deception in the course of professional services or activities.

2. The above violation warrants the imposition of disciplinary sanctions against Respondent's Indiana Podiatric Medicine License.

ORDER

Based upon the above Findings of Fact, the Board issues the following Order:

1. The Board hereby accepts the surrender of Brenn I. Garriel's Indiana license to practice podiatric medicine.

2. Brenn I. Garriel, may not petition for the issuance of an Indiana license to practice podiatric medicine for a period of seven (7) years from the date of this Order.

3. Brenn I. Garriel may not practice the profession of podiatric medicine through any medium whatsoever, I.E.: in person, by phone, by fax, by computer, by mail, verbal or in writing, in the State of Indiana, as it is a criminal offense to engage in this profession without a valid license.

4. Brenn I. Garriel shall notify any and all states where he holds any type of medical or other professional license of this Order and shall provide each such state with a copy of this Order within ten days of receipt thereof.

5. Brenn I. Garriel shall answer affirmatively on any application, in Indiana or to any other state, for malpractice insurance or for the issuance or renewal of any type of medical or professional license, permit, or other form of certification, to a question asking

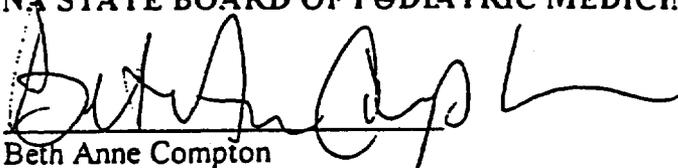
if he has ever been disciplined for actions related to providing medical , professional, or related services.

6. A letter of reprimand shall be issued to Brenn I. Garriel and a copy thereof placed in the permanent file maintained in his name by the Indiana State Board of Podiatric Medicine.

SO ORDERED this 20th day of February 2001.

INDIANA STATE BOARD OF PODIATRIC MEDICINE

By:


Beth Anne Compton
Executive Director
Health Professions Bureau

copies to:

Brenn I. Garriel
8410 East 21st Street
Indianapolis, IN 46219
BY CERTIFIED MAIL NO.: 7099 3400 0006 4112 4023

Brenn I. Garriel
4705 Burkey Rd.
Youngstown, OH 44515
BY CERTIFIED MAIL NO.: 7099 3400 0006 4112 4141

Laura Crowley
151 N. Delaware, Suite 2025
Indianapolis, IN 46204
fax 624-4561
phone 631-5151

William T. Niemier
Deputy Attorney General
IGCS, 5th Floor
402 W. Washington Street
Indianapolis, IN 46204



STATE OF INDIANA

FRANK O'BANNON, Governor

HEALTH PROFESSIONS BUREAU

402 West Washington Street Room 041
Indianapolis, Indiana 46204
Telephone: (317) 232-2960
Fax: (317) 233-4236
<http://www.ai.org/hpb>
Equal Opportunity Employer

February 19, 2001

Brenn I Garriel D.P.M.
8410 East 21st Street
Indianapolis, IN 46219

RE: Cause Number 2000 PMC 0002
Letter of Reprimand

Dear Dr. Garriel,

This letter of reprimand is the result of a settlement agreement accepted by the Indiana Board of Podiatric Medicine resulting from charges filed by the Office of the Attorney General on June 9, 2000.

That settlement agreement resulted in the surrender of your license and this letter of reprimand being issued.

The purpose of this reprimand is to stress that licensed podiatrists have an important responsibility to practice within the bounds of conduct that are prescribed by law.

The Findings of Fact and Order filed on February 19, 2001, are attached hereto and incorporated herein as part of this official reprimand.

Sincerely,

INDIANA STATE BOARD OF PODIATRIC MEDICINE

By: 
Beth Anne Compton
Executive Director
Health Professions Bureau

CERTIFIED MAIL RECEIPT #: _____
RETURN RECEIPT REQUESTED

Mailed
3/28/01



DEPARTMENT OF PENNSYLVANIA
DEPARTMENT OF STATE
P. O. BOX 2649
HARRISBURG, PA 17105-2649

LEGAL OFFICE
PROSECUTION DIVISION
(717) 783-7200
FAX: (717) 787-0201

116 PINE STREET
P.O. BOX 2649
HARRISBURG, PA
17105-2649

Indiana State Board of Podiatric Medicine
Attn: Barbara Buck, Director
Health Professions Bureau
402 West Washington Street
Room 041
Indianapolis, IN 46204

Date: 3/28/01

RE: Brenn I Garriel, D.P.M.
Indiana Temporary License No. 0043
Case No. 2000 PMC 0002
PA License No. SC-004322-R
File No. 2001-44-01136

REQUEST FOR CERTIFIED DOCUMENTS

Dear Ms. Buck:

This office has received information that your agency may have disciplined the license of the above-listed licensed professional. Because this individual is also licensed in the Commonwealth of Pennsylvania and in order that the Pennsylvania Board may consider reciprocal action, it is requested that you forward certified copies of your *Administrative Complaint* and/or *Charging Document* and your *Final Order* relative to disciplinary action you have taken.

Certification must include (1) an original signature of your agency's keeper of the records, (2) a statement that this person is the keeper of the records and (3) your agency's raised seal.

In addition, would you please provide Dr. Garriel's current address, date of birth, social security number, school attended and year of graduation.

Please forward the requested information to:

Department of State
Bureau of Professional and Occupational Affairs
Legal Prosecution/Complaints Office
Attention: George S. Barkos, Legal Assistant
P. O. Box 2649
Harrisburg, PA 17105-2649

Thank you for your cooperation in this matter.

Sincerely,

George S. Barkos
Legal Assistant

Dr. Brenn Garriel
342 Ophelia St.
Pittsburgh, PA 15213
412-687-7883

RECEIVED

MAR 01 2001

To Whom It May Concern:

I am contacting you concerning the status of my Indiana license. On February 9, 2000, I voluntarily agreed to surrender my temporary license to practice in order to settle a grievance with the Indiana State Board of Podiatric Medicine. It is my desire to make you aware of the details involving this incident. COMPLAINTS OFFICE

I first applied for a Podiatric license within the state of Indiana in the fall of 1998 and was granted a temporary license. At that time, I already had active permanent licenses in the states of Kansas, Pennsylvania, and West Virginia.

One year after granting my temporary license, in November of 1999, I still had not received my permanent license for reasons unknown to me. At that time, I was practicing with Dr. James Hilaire in Indianapolis. I treated a patient by the name of B. D. on November 30, 1999 for Dr. Hilaire who was out of the office for the morning. Mr. D. was complaining of severe heel pain and requested a refill on his Hydrocodone which was initially prescribed by his primary care physician. He stated that this was the only medication that relieved his pain. Against my better judgment, I agreed to refill the prescription because he was quite distressed and Dr. Hilaire was unavailable. I made Dr. Hilaire aware of the situation and treatment upon his return.

Mr. D. then called in with continued complaints and requested another refill sometime prior to January 6, 2000, which Dr. Hilaire granted. On January 6, 2000, the patient returned to the office again and I refilled his prescription. After he left the office, I discussed Mr. D.'s case with Dr. Hilaire and realized that he was abusing the hydrocodone. I immediately contacted the pharmacist to make him aware of the situation.

On January 13, 2000, I relayed all of this information to Detective Andy Moloy of the Marion County Sheriff's Department. He did not file any charges against me.

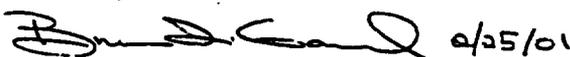
On February 9, 2001, I met with the Indiana State Board of Podiatric Medicine for a settlement conference regarding this issue. As I was no longer working in Indiana, I voluntarily surrendered my temporary license.

This was an isolated case in which I was attempting to do what appeared to be the best form of treatment for the patient. I admitted all of my actions to Dr. Hilaire and Detective Moloy and realize that I was mistaken in writing the refill on November 30, 1999. Fortunately, I was able to identify the patient's abuse and followed proper procedure by notifying the pharmacy.

Since January 2000 (and prior to this incident) my record has been clear and I have been practicing successfully and without complaint.

If you have any questions concerning this matter, please contact me. The "Findings of Fact & Order" from the State of Indiana are enclosed.

Sincerely,

 2/25/01

Dr. Brenn Garriel



ORDER

AND NOW, this 26 day of Sept, 2001, the State Board of Podiatry adopts and approves the foregoing Consent Agreement and incorporates the terms of paragraph 5, which shall constitute the Board's Order and is now issued in resolution of this matter.

This Order shall take effect immediately.

BY ORDER:

BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS

STATE BOARD OF PODIATRY


Albert H. Masland
Commissioner


Jeffrey S. Gerland, D.P.M.
Chairman

Date of mailing: 10/3/01
For the Commonwealth:

Bernadette Paul, Esquire
P. O. Box 2649
Harrisburg, PA 17105-2649

For Respondent:

John Stember, Esquire
1705 Allegheny Building
429 Forbes Avenue
Pittsburgh, Pa 15219

BP/sdl

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE MEDICAL BOARD
OF OHIO

2002 JUN 24 A 11: 18

BRENN I. GARRIEL, D.P.M.
4705 Burkey Road
Youngstown, Ohio 44515
Appellant,

Case No. 02CVF06 6968

vs.

JUDGE ONEILL

STATE MEDICAL BOARD OF OHIO
77 S. High Street, 17th Floor
Columbus, Ohio 43215-6127

Appellee.

FILED
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
JUN 24 AM 11:48
CLERK OF COURTS-CV

NOTICE OF APPEAL

Appellant, Brenn I. Garriel, D.P.M., pursuant to Ohio Revised Code Section 119.12 hereby appeals the final decision of the State Medical Board of Ohio, ("Appellee") which permanently revoked Appellant's license to practice podiatric medicine and surgery in its Adjudication Order (attached hereto) issued on June 12, 2002 and mailed to Appellant on June 14, 2002.

Appellant asserts that the decision of the State Medical Board of Ohio is not

STATE MEDICAL BOARD
OF OHIO
2002 JUL -2 P 12:48

2002 JUL -2 P 12:48

supported by reliable, probative and substantial evidence and is not in accordance with
law.

Respectfully submitted,



Elizabeth Y. Collis (#0061961)
Law Office of Elizabeth Y. Collis
1560 Fishinger Road
Columbus, Ohio 43221
(614) 488-8692
Fax (614) 488-0270
COUNSEL FOR APPELLANT
Brenn I. Garriel, D.P.M.

Certificate of Service

I certify that the *Notice of Appeal* was served upon Rebecca Albers and Kyle C. Wilcox, Assistants Attorney General, Office of the Ohio Attorney General, Health and Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215 by regular U.S. mail, postage prepaid on June 24, 2002.



Elizabeth Y. Collis