



State Medical Board of Ohio

77 S. High Street, 17th Floor • Columbus, Ohio 43266-0315 • 614/ 466-3934 • Website: www.state.oh.us/med/

April 5, 2000

John C. Stare, P.A.
29400 Vita Lane
North Olmstead, OH 44070-5021

Dear Mr. Stare:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 5, 2000, 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 may be taken to the Franklin County Court of Common Pleas only.

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

THE STATE MEDICAL BOARD OF OHIO

Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

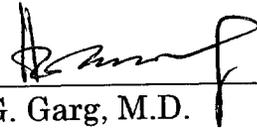
CERTIFIED MAIL RECEIPT NO. Z 281 981 282
RETURN RECEIPT REQUESTED

Mailed 4/7/00

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on April 5, 2000, 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 John C. Stare, P.A., 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.



Anand G. Garg, M.D.
Secretary

(SEAL)

APRIL 5, 2000
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

JOHN C. STARE, P.A.

*

ENTRY OF ORDER

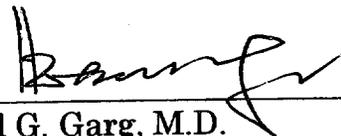
This matter came on for consideration before the State Medical Board of Ohio on April 5, 2000.

Upon the Report and Recommendation of R. Gregory Porter, 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 registration of John C. Stare, P.A., to practice as a physician assistant in the State of Ohio shall be PERMANENTLY REVOKED.

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

(SEAL)



Anand G. Garg, M.D.
Secretary

APRIL 5, 2000
Date

MAR - 7 2000

**REPORT AND RECOMMENDATION
IN THE MATTER OF JOHN C. STARE, P.A.**

The Matter of John C. Stare, P.A., was heard by R. Gregory Porter, Attorney Hearing Examiner for the State Medical Board of Ohio, on January 27, 2000.

INTRODUCTION

I. Basis for Hearing

- A. In a Notice of Immediate Suspension and Opportunity for Hearing dated November 17, 1999, the State Medical Board of Ohio [Board] advised John C. Stare, P.A., that, pursuant to Sections 2929.24 and/or 3719.12, Ohio Revised Code, the Cuyahoga County Prosecuting Attorney had reported that, on or about September 27, 1999, in the Cuyahoga County Common Pleas Court, Mr. Stare had pleaded guilty to four felony counts of violating Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents. The Board notified Mr. Stare that, pursuant to Section 3719.121(C), Ohio Revised Code, his certificate of registration to practice as a physician assistant in Ohio had been immediately suspended. The Board further advised Mr. Stare that continued practice would be considered practicing as a physician assistant without a certificate of registration, in violation of Section 4730.02, Ohio Revised Code.

Moreover, the Board notified Mr. Stare that the Board had proposed to take disciplinary action against his certificate based on the following allegations:

On or about September 27, 1999, in the Cuyahoga County Court of Common Pleas, [Mr. Stare] pleaded guilty to four (4) felony counts of Illegal Processing of Drug Documents, in violation of Section 2925.23, Ohio Revised Code.

The Board alleged that Mr. Stare's plea of guilty had constituted "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony,' as that clause is used in Section 4730.25(B)(11), Ohio Revised Code; [and] '[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for violating any state or federal law regulating the possession, distribution, or use of any drug,' as that clause is used in Section 4730.25(B)(17), Ohio Revised Code."

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

MAR - 7 2000

- B. By document received by the Board on December 1, 1999, Mr. Stare requested a hearing. (Respondent's Exhibit A)

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Rebecca J. Albers, Assistant Attorney General.
- B. On behalf of the Respondent: Mr. Stare, having been notified of his right to appear in person or by representative, did not appear at the hearing. Instead, Mr. Stare presented his defense in writing.

EVIDENCE EXAMINED

I. Testimony Heard

Presented by the State

James Reye

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A through 1F: Procedural exhibits.
2. State's Exhibit 2: Copy of a Journal Entry from the Cuyahoga County Court of Common Pleas, filed in *State of Ohio v. John C. Stare*, Case No. CR 359485.

B. Presented by the Respondent

1. Respondent's Exhibit A: Mr. Stare's December 1, 1999, hearing request and written defense, with attachments. The attachments include a spreadsheet that Mr. Stare described as a list of support witnesses; a November 20, 1999, letter to the Board from Mr. Stare in which Mr. Stare listed published references which had been used by Mr. Stare's supervising physician as support for the supervising physician's utilization of controlled substances; Section 3719.06, Ohio Revised Code; and several letters written to the Cuyahoga County Court of Common Pleas in support of

MAR - 7 2000

Mr. Stare. [Note: This exhibit has been sealed to protect patient confidentiality.]

2. Respondent's Exhibit B: Copy of an unsigned Sentencing Memorandum prepared by Mr. Stare's counsel for *State v. Stare*, with attachments.
3. Respondent's Exhibit C: Undated letter from Mr. Stare to the Board.

PROCEDURAL MATTERS

In the ordinary course of transcribing hearings for the Board, the court reporter retains the original exhibits that had been admitted to the hearing record. These original exhibits are then returned along with the hearing transcript. In this matter, the hearing transcript was received with no exhibits attached. The Hearing Examiner contacted the court reporting firm concerning the return of the original exhibits, but the court reporting firm was unable to locate them. Accordingly, because the underlying facts in this matter are not in dispute, the Hearing Examiner substituted the copies of the original exhibits that had been provided to him during the hearing.

SUMMARY OF THE EVIDENCE

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

1. James Reye testified that he is a Compliance Agent for the State Board of Pharmacy [Pharmacy Board], and that he has been so employed for 10 years. Agent Reye stated that he had become acquainted with John C. Stare, P.A., during the course of Agent Reye's investigation of George Smirnoff, M.D., a physician who had been practicing in Cleveland, Ohio. Agent Reye further testified that he had learned that Mr. Stare was Dr. Smirnoff's full-time physician assistant, that Mr. Stare worked in the office 60 to 70 hours per week, and that Mr. Stare "was a very important part in running Dr. Smirnoff's office. He was described as Dr. Smirnoff's right-hand man." (Transcript [Tr.] at 10-12)

Agent Reye testified that his investigation of Dr. Smirnoff had begun as a result of Agent Reye having received "literally hundreds of verbal complaints from pharmacists about Dr. George Smirnoff's office being basically a prescription mill." Agent Reye testified that he had gathered all of the prescriptions that had been written for controlled substances by Dr. Smirnoff in the Cuyahoga County area. Agent Reye further testified that these prescriptions were then reviewed by an expert, Dr. Ted Parran, who determined that many of the prescriptions had no legitimate medical purpose. Finally, Agent Reye testified that Dr. Jennifer Kreigler, whom Agent Reye described as an expert in pain management, had concurred that many of the prescriptions were not legitimate. (Tr. at 15-17)

MAR - 7 2000

Agent Reye testified that criminal charges were filed against Dr. Smirnoff, Mr. Stare, and a nurse who had worked in Dr. Smirnoff's office. Agent Reye stated that Dr. Smirnoff and Mr. Stare subsequently went to trial. (Tr. at 12-14)

2. On September 27, 1999, in the Cuyahoga County Common Pleas Court, Mr. Stare pleaded guilty to four counts of violating Section 2925.23, Illegal Processing of Drug Documents, a felony of the fifth degree. Sentencing was delayed until October 27, 1999, for a pre-sentence investigation. (State's Exhibit [St. Ex.] 2)
3. Agent Reye testified that, following a trial that lasted three weeks, Dr. Smirnoff pleaded guilty to 31 counts of Drug Trafficking. In addition, Agent Reye testified that, on the same date, Mr. Stare pleaded guilty to four counts of Illegal Processing of Drug Documents. Moreover, Agent Reye testified that Mr. Stare's guilty plea had been based on Mr. Stare's having written four prescriptions to which he had signed Dr. Smirnoff's name. (Tr. at 12-14)

Agent Reye testified that he had interviewed Mr. Stare prior to the criminal trial, and that Mr. Stare had admitted, with regard to several prescriptions, that Mr. Stare had written the complete prescription and signed Dr. Smirnoff's name. (Tr. at 12-13)

4. By letter dated November 18, 1999, Mr. Stare wrote to the Board that he had been a physician assistant in Dr. Smirnoff's office and that Dr. Smirnoff had "treated many chronic pain patients in his practice of over 5000 patients seen annually." Mr. Stare further stated that Dr. Smirnoff, in order to justify Dr. Smirnoff's treatment of chronic pain patients, had provided Mr. Stare with "a plethora" of articles concerning pain management, "including the OSMB publication 'Pain, the Fifth Vital Sign,['] (1998)." (Respondent's Exhibit [Resp. Ex.] A)

Mr. Stare wrote that Dr. Smirnoff had been indicted on drug trafficking charges. Mr. Stare further stated that "[t]he county prosecutor indicted me along with Dr. Smirnoff and would not bifurcate me because I refused to speak against the doctor." Mr. Stare also wrote that, "[a]s a result of a plea bargain, Dr. Smirnoff was sentenced to 5 years for 31 counts of drug trafficking." Moreover, Mr. Stare wrote that Mr. Stare had been "forced to plea bargain to four counts of 'illegal processing of drug documents' which is a fifth degree felony. [Mr. Stare] was given two years probation. The court took no legal action against [Mr. Stare's] medical licensure." (Resp. Ex. A)

Mr. Stare stated that the four counts to which he had pleaded guilty were based on "two prescriptions for diazepam, one for Restoril and one for phentermine." Further, Mr. Stare stated:

I was directed to write over a period of five years, four prescriptions, each one written at the instruction of Dr. Smirnoff, in his presence and in the

MAR - 7 2000

presence of the patient. I was instructed to sign his name and initial the prescription. This was standard office practice with the nurses and other assistants whose regular duties included writing these prescriptions.

(Resp. Ex. A) (Emphasis in original) Finally, Mr. Stare stated:

On my behalf, I would like to state that at the time of the indictment, other staff members bargained with the prosecutor to speak against Dr. Smirnoff so as not to be prosecuted. I had the same opportunity but in good conscience, I could not because I had not observed any illegal drug activity. As a result of these court actions, I have been unemployed since the onset of the trial. I am attempting to gain employment with Medical Care Center under [a new supervising physician.] Therefore, I am requesting that my certification be reinstated and that every consideration be given in this situation that has been imposed upon me.

(Resp. Ex. A)

5. In a November 20, 1999, letter to the Board, Mr. Stare listed 14 publications concerning pain management and pharmacology. Mr. Stare further wrote:

All these articles I have in my possession and have reviewed throughout the practice duration with my supervising physician and have been referenced to these materials on many occasions. Again, as seriously unfortunate that my supervising physician currently is serving his sentence, he has in no way accomplished any criminal actions of which I was aware.

(Resp. Ex. A)

6. In a Sentencing Memorandum prepared for the Cuyahoga County Court of Common Pleas, Mr. Stare's counsel had argued that the following mitigating factors were relevant to the court's sentencing of Mr. Stare:

"1. The Defendant is a 49 year old physician's assistant who practiced for 25 years without any incidents of improper conduct being investigated by the [Board].

"2. The Defendant has been a law-abiding citizen for his entire life.

"3. The Defendant has no history of criminal convictions or delinquency adjudications, and therefore, has never had the opportunity to respond to any court-imposed sanctions.

MAR - 7 2000

- “4. The Defendant has continuously expressed sincere and genuine concern for the suffering by these patients as well as remorse for any conduct which, unfortunately, might have contributed to these difficulties.
- “5. The Defendant has the counsel of a strong and concerned family which have rallied to his support and are convinced of the sincerity of his remorse.
- “6. The offense to which the Defendant plead guilty was not committed while on bail, awaiting sentencing, or under any type of community control sanctions.
- “7. This offense was committed under circumstances unlikely to recur. Additionally, the facts of the case suggest that the Defendant was mistakenly operating under the impression that the doctor was prescribing medications for a legitimate medical purpose. Defendant, however, realizes that in spite of this impression the Defendant is still responsible for his own conduct, if it is in fact illegal.”

(Resp. Ex. B)

6. Mr. Stare presented the Board with several letters that had been written to the Cuyahoga County Court of Common Pleas on Mr. Stare’s behalf with regard to Mr. Stare’s criminal matter. All of these letters describe Mr. Stare as a dedicated and caring physician assistant, and as an honest person of good character. (Resp. Ex. A) [Note that the State’s representative did not have the opportunity to cross-examine the authors of these letters.]

FINDINGS OF FACT

On or about September 27, 1999, in the Cuyahoga County Court of Common Pleas, John C. Stare, P.A. pleaded guilty to four counts of violating Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents, a felony of the fifth degree.

CONCLUSIONS OF LAW

1. The plea of guilty of John C. Stare, P.A., as set forth in the Findings of Fact, above, constitutes “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony,” as that clause is used in Section 4730.25(B)(11), Ohio Revised Code.

MAR - 7 2000

2. Mr. Stare's plea of guilty as set forth in the Findings of Fact, above, constitutes "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for violating any state or federal law regulating the possession, distribution, or use of any drug," as that clause is used in Section 4730.25(B)(17), Ohio Revised Code.

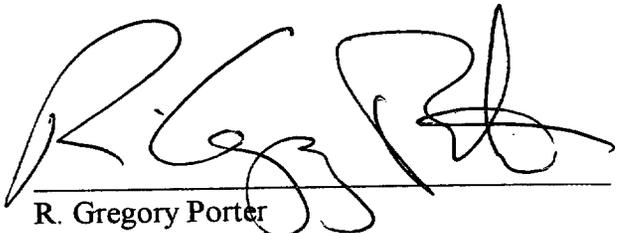
* * * * *

The evidence in this matter indicates that Mr. Stare wrote four prescriptions, signed his supervising physician's name to those prescriptions and, as a consequence, pleaded guilty to four felony counts of Illegal Processing of Drug Documents. Moreover, Mr. Stare's written defense leads to a conclusion that he does not understand the gravity of this offense, or of his supervising physician's practices. Accordingly, this Board should impose the severest sanction.

PROPOSED ORDER

It is hereby ORDERED that the certificate of registration of John C. Stare, P.A., to practice as a physician assistant in the State of Ohio shall be PERMANENTLY REVOKED.

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



R. Gregory Porter
Attorney Hearing Examiner



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF APRIL 5, 2000

REPORTS AND RECOMMENDATIONS

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

- Dr. Egner 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 Steven P. Andrei, L.M.T.; Chowdhury F. Azam, M.D.; John C. Stare, P.A.; and Deleno H. Webb, III, M.D. A roll call was taken:

ROLL CALL:

Mr. Albert	- aye
Dr. Bhati	- aye
Dr. Talmage	- aye
Dr. Somani	- aye
Dr. Buchan	- aye
Mr. Browning	- aye
Dr. Stienecker	- aye
Dr. Agresta	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye
Dr. Egner	- aye

Dr. Egner 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. Bhati	- aye
Dr. Talmage	- aye
Dr. Somani	- aye
Dr. Buchan	- aye
Mr. Browning	- aye
Dr. Stienecker	- aye
Dr. Agresta	- aye
Dr. Garg	- aye
Dr. Steinbergh	- aye
Dr. Egner	- aye

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. Egner 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.

.....

JOHN C. STARE, P.A.

.....

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JOHN C. STARE, P.A. DR. SOMANI 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. Somani	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.



State Medical Board of Ohio

77 S. High Street, 17th Floor • Columbus, Ohio 43266-0315 • 614/466-3934 • Website: www.state.oh.us/med/

NOTICE OF IMMEDIATE SUSPENSION AND OPPORTUNITY FOR HEARING

November 17, 1999

John C. Stare, P.A.
29400 Vita Lane
North Olmsted, Ohio 44070

Dear Mr. Stare:

In accordance with Sections 2929.24 and/or 3719.12, Ohio Revised Code, the Office of the Prosecuting Attorney of Cuyahoga County, Ohio reported that on or about September 27, 1999, in the Cuyahoga County Court of Common Pleas, you pleaded guilty to four (4) felony counts of Illegal Processing of Drug Documents, in violation of Section 2925.23, Ohio Revised Code.

Therefore, pursuant to Section 3719.121(C), Ohio Revised Code, you are hereby notified that your certificate of registration to practice as a physician assistant in the State of Ohio is immediately suspended. Continued practice after this suspension shall be considered practicing as a physician assistant without a certificate of registration in violation of Section 4730.02, Ohio Revised Code.

Furthermore, 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, or suspend your certificate of registration as a physician assistant, refuse to issue or reinstate your certificate, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) On or about September 27, 1999, in the Cuyahoga County Court of Common Pleas, you pleaded guilty to four (4) felony counts of Illegal Processing of Drug Documents, in violation of Section 2925.23, Ohio Revised Code.

You guilty pleas, as alleged in paragraph (1) above, individually and/or collectively, constitute "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for, a felony," as that clause is used in Section 4730.25(B)(11), Ohio Revised Code.

Further, your guilty pleas, as alleged in paragraph (1) above, individually and/or collectively, constitute "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for treatment in lieu of conviction for violating any state or federal law regulating the possession,

Mailed 11/18/99

Suspension
John C. Stare, P.A.
Page 2

distribution, or use of any drug," as that clause is used in Section 4730.25(B)(17), Ohio Revised Code.

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

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

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

Please note that, whether or not you request a hearing, Section 4730.25(L), Ohio Revised Code, effective March 9, 1999, provides that "[w]hen the board refuses to grant a certificate of registration as a physician assistant to an applicant, revokes an individual's certificate of registration, refuses to issue a certificate of registration, or refuses to reinstate an individual's certificate of registration, 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 of registration as a physician assistant 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/bjs
Enclosures
CERTIFIED MAIL #Z 395 591 039
RETURN RECEIPT REQUESTED

cc: James W. Burke, Jr., Esq.
CERTIFIED MAIL #Z 395 591 232
RETURN RECEIPT REQUESTED