STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43215

March 13, 1987

Gustavo Scioville, M.D.
2774 Deerhaven Drive
Cincinnati, Ohio 45244

Dear Doctor Scioville:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Wanita J. Sage, Hearing Examiner, Medical Board; a certified copy of the Motions by the State Medical Board, meeting in regular session on March 12, 1987, approving and confirming said Report and Recommendation as the Findings and Order of the State Medical Board.

You are hereby notified that you may appeal this Order to the Court of Common Pleas of the county in which your place of business is located, or the county in which you reside. If you are not a resident and have no place of business in this state, you may appeal to the Court of Common Pleas of Franklin County, Ohio.

To appeal as stated above, you must file a notice of appeal with the Board setting forth the Order appealed from, and the grounds of the appeal. You must also file a copy of such notice with the Court. Such notices of appeal shall be filed within fifteen (15) days after the date of mailing of this letter and in accordance with Section 119.12, Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Henry G. Cramblett, M.D.
Secretary

HGC:em

Enclosures

CERTIFIED MAIL NO. P 026 072 754
RETURN RECEIPT REQUESTED

cc: Sherri Blank Lazear, Esq.
69 E. State St., Capitol Square
Columbus, Ohio 43215

CERTIFIED MAIL NO. P 026 072 755
RETURN RECEIPT REQUESTED

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43215

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Wanita J. Sage, Hearing Examiner, State Medical Board of Ohio; and the attached copy of the Motions by the State Medical Board, meeting in regular session on March 12, 1987, approving and confirming said Report and Recommendation as the Findings and Order of the State Medical Board, constitutes a true and complete copy of the Findings and Order of the State Medical Board in the matter of Gustavo Scioville, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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

(SEAL)

Henry G. Cramblett, M.D.
Secretary

March 13, 1987
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

GUSTAVO SCIOVILLE, M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 12th day of March, 1987.

Upon the Report and Recommendation of Wanita J. Sage, Hearing Examiner, in this matter designated pursuant to R.C. 119.09, a true copy of which is attached hereto and incorporated herein, which Report and Recommendation was approved and confirmed by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board for the 12th day of March, 1987.

It is hereby ORDERED:

1. That Gustavo Scioville, M.D., be REPRIMANDED for misrepresentation of fact in his application for licensure by examination.

2. That upon completion of a reapplication form and payment of all accompanying fees, Gustavo Scioville, M.D., be permitted to sit for the June, 1987 FLEX examination in the State of Ohio.

(SEAL)

Henry G. Cramblett, M.D.
Secretary

March 13, 1987
Date

REPORT AND RECOMMENDATION
IN THE MATTER OF GUSTAVO SCIOVILLE, M.D.

The matter of Gustavo Scioville, M.D., came on for hearing before me, Wanita J. Sage, Attorney Hearing Examiner for the State Medical Board of Ohio, on February 27, 1987.

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INTRODUCTION AND SUMMARY OF EVIDENCE

I. Mode of Conduct

A. During the course of this hearing, rules of evidence were relaxed and both the State and the Applicant were given great latitude in demonstrating the relevancy and materiality of testimony and exhibits offered, as well as in attempting to discredit testimony and evidence presented by the opposing party.

II. Basis for Hearing

A. By letter of November 6, 1986, the State Medical Board of Ohio notified Dr. Scioville that it proposed to deny his application for Ohio licensure by examination on the basis of alleged violations of Section 4731.22(A) and 4731.08, Ohio Revised Code. These allegations were based upon the Applicant's having responded to the question on his October 8, 1980 FLEX application, "List all FLEX exams which you have taken . . . ," that he had taken the exam in Ohio in June 1975, and in Florida in December 1979 and June 1980. In fact, the Board was subsequently advised by the Federation of State Medical Boards that prior to October 1980, Dr. Scioville had taken the FLEX examination in Florida in June 1980, December 1979, and June 1979; in Georgia in June 1978; in Ohio in December 1975; and in Indiana in June 1973, December, 1972, and June 1972.

B. On November 24, 1986, the State Medical Board received a letter from Dr. Scioville requesting a hearing in this matter.

III. Appearance of Counsel

A. On behalf of the State of Ohio: Anthony J. Celebrezze, Attorney General, by Christopher J. Costantini, Assistant Attorney General.

B. On behalf of the Applicant: Sherri Blank Lazear, Esq.

IV. Testimony Heard

A. Presented by the State:

1. Gustavo Scioville, M.D., as on cross-examination

B. Presented by the Applicant:

1. Gustavo Scioville, M.D.

V. Exhibits Examined

A. Presented by the State:

1. State's Exhibit #1 - November 6, 1986 notice from the State Medical Board to Dr. Scioville proposing to deny his application for licensure by examination.

2. State's Exhibit #2 - November 19, 1986 letter from Dr. Scioville requesting a hearing.

3. State's Exhibit #3 - November 25, 1986 letter scheduling and postponing a hearing in this matter pursuant to Section 119.09, Ohio Revised Code.

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4. State's Exhibit #4 - February 4, 1987 letter from the State Medical Board scheduling Dr. Scioville's hearing for February 27, 1987.

5. State's Exhibit #5 - September 15, 1986 Federation FLEX Status Report on Dr. Scioville.

6. State's Exhibit #6 - Dr. Scioville's October 1980 application for licensure by examination.

7. State's Exhibit #7 - Dr. Scioville's September 1981 Federation FLex application.

8. State's Exhibit #8 - Dr. Scioville's February 1982 Federation FLEX application.

9. State's Exhibit #9 - Dr. Scioville's September 1982 Federation FLEX application.

10. State's Exhibit #10 - Dr. Scioville's March 1983 Federation FLEX application.

11. State's Exhibit #11 - Dr. Scioville's September 1983 Federation FLEX application.

12. State's Exhibit #12 - Dr. Scioville's March 1984 Federation FLEX application.

13. State's Exhibit #13 - Dr. Scioville's September 1984 Federation FLEX application.

14. State's Exhibit #14 - Dr. Scioville's March 1985 Federation FLEX application.

15. State's Exhibit #15 - Dr. Scioville's September 1985 Federation FLEX application.

16. State's Exhibit #16 - Dr. Scioville's March 1986 Federation FLEX application.

17. State's Exhibit #17 - Dr. Scioville's September 1986 Federation FLEX application.

B. Presented by the Applicant:

1. Applicant's Exhibit #1 - Confidential resume of Gustavo Scioville-Samper.

2. Applicant's Exhibit #2 - February 25, 1987 affidavit of George Dellaportas, M.D., recommending Dr. Scioville.

3. Applicant's Exhibit #3 - February 25, 1987 affidavit of Fred C. Robinson, M.D., recommending Dr. Scioville.

4. Applicant's Exhibit #4 - November 13, 1980 notice of eligibility from the State Medical Board to Dr. Scioville regarding the December 1980 FLEX examination.

5. Applicant's Exhibit #5 - September 7, 1984 letter to the State Medical Board from Senator Stanley J. Aronoff

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requesting a meeting between former Medical Board Administrator William J. Lee, Dr. M. S. Osher, and Dr. Scioville.

6. Applicant's Exhibit #6 - October 8, 1984 letter from M. S. Osher, M.D., thanking Mr. Lee for meeting with him and Dr. Scioville.

7. Applicant's Exhibit #7 - Unsigned handwritten notation concerning a meeting request of Drs. Osher and Scioville.

FINDINGS OF FACT

1. Prior to submitting his October 1980 application to take the FLEX examination in Ohio, Dr. Gustavo Scioville had taken the FLEX examination in Florida on the following dates: June 1980, December 1979 and June 1979. Dr. Scioville had also taken the examination in Georgia in June 1978, in Ohio in December 1975, and in Indiana in June,1973, December 1972 and June 1972.

2. In response to question 1(b) of Section 4 of his October 1980 application, "List all FLEX exams which you have taken . . . ," Dr. Scioville indicated that he had previously taken the examination in Ohio in June 1975 and in Florida in December 1979 and June 1980. Dr. Scioville did not indicate that he had also taken the examination in Florida on one other occasion, in Georgia on one other occasion, and in Indiana on three separate occasions.

3. Subsequent to submitting his application in October 1980, Dr. Scioville took the FLEX examination in Ohio in December 1980, December 1981, June 1982, December 1982, June 1983, December 1983, June 1984, December 1984, June 1985, December 1985, and June 1986, for a total of 19 sittings.

4. In responding to question 5 on the Federation FLEX applications labelled as State's Exhibits #7 through #17, Dr. Scioville indicated each time that he had taken the examination before. Although his responses never accurately reflected the specific number of times he had previously taken the exam, in several instances Dr. Scioville's responses were followed by a plus symbol or a question mark.

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CONCLUSIONS

Dr. Gustavo Scioville's failure to provide a complete and accurate answer to question 1(b) of Section 4 on his October 1980 examination application undeniably constitutes a misrepresentation in violation of Section 4731.22(A), Ohio Revised Code. However, it appears from the testimony and evidence presented that the Applicant's incorrect answer was an error resulting from misunderstanding and carelessness, rather than a concerted effort by the Applicant to deceive the Ohio Board.

This conclusion is based on Dr. Scioville's testimony that he had failed to maintain a record of the eight FLEX examinations he had previously taken and assumed that complete and accurate information would be provided to the Ohio Board by the Federation of State Medical Boards. His contention that he made this assumption in good faith and with no intent to deceive the Ohio Board is evidenced by his later indiciating in repeated instances on his Federation FLEX applications a question mark or a plus symbol in conjunction with the number listed for previous exams taken. No evidence was offered as to his response on the Federation application he completed at the time of the October 1980 exam application at issue; consequently this hearing examiner is unable to fully evaluate Dr. Scioville's intentions when he applied at that time.

There is no evidence in the record to suggest that Dr. Scioville had any reason to lie about the examinations he had taken previously. His testimony reflects his understanding that when he applied for the December 1980 exam in Ohio, there was no longer a limit to the number of times an applicant could sit for the test in this state. Consequently, he knew that his eight prior attempts at passing the exam had no bearing on his eligibility.

To some extent, the Board's ability to carry out its function is dependent upon the accuracy and reliability of the information provided by candidates for licensure. Carelessness and neglect, or the Applicant's interpretation of what is or is not important, must not be seen as acceptable standards. Accordingly, this hearing examiner recommends adoption of the Proposed Order set forth below.

Nevertheless, although there has been a misrepresentation made in violation of Section 4731.22(A), Ohio Revised Code, the evidence is insufficient to support a conclusion that such misrepresentation rises to the level of fraud, or that Dr. Scioville lacks the good

moral character required of licensure applicants by Section 4731.08, Ohio Revised Code.

In considering disposition of this case, it should be noted that due to Dr. Scioville's carelessness in completing the application, which necessitated this hearing, he has already forfeited the opportunity to sit for the December 1986 examination and the accompanying fee.

PROPOSED ORDER

It is hereby ORDERED:

1. That Gustavo Scioville, M.D., be reprimanded for misrepresentation of fact in his application for licensure by examination.

2. That upon completion of a reapplication form and payment of all accompanying fees, Gustavo Scioville, M.D., be permitted to sit for the June, 1987 FLEX examination in the State of Ohio.

Wanita J. Sage, Esq.
Hearing Examiner

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EXCERPT FROM THE MINUTES OF MARCH 12, 1987

REPORT AND RECOMMENDATION IN THE MATTER OF GUSTAVO SCIOVILLE, M.D.

Mr. Costantini returned to the meeting at this time.

Dr. Stephens asked if each member of the Board had received, read, and considered the hearing record, the proposed findings and order, and any objections filed to the proposed findings and order in the matter of Gustavo Scioville, M.D. A roll call was taken:

ROLL CALL:	Dr. Cramblett	- aye
	Dr. Lancione	- aye
	Dr. Barnes	- aye
	Dr. Buchan	- aye
	Dr. Lovshin	- aye
	Dr. Rothman	- aye
	Dr. Rauch	- aye
	Dr. O'Day	- aye
	Ms. Rolfes	- aye

.....

DR. BARNES MOVED TO APPROVE AND CONFIRM MS. SAGE'S FINDINGS OF FACT AND CONCLUSIONS IN THE MATTER OF GUSTAVO SCIOVILLE, M.D. DR. LANCIONE SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Lancione	- aye
	Dr. Barnes	- aye
	Dr. Buchan	- aye
	Dr. Lovshin	- aye
	Dr. Rothman	- aye
	Dr. Rauch	- aye
	Dr. O'Day	- aye
	Ms. Rolfes	- aye

The motion carried.

DR. BARNES MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED ORDER IN THE MATTER OF GUSTAVO SCIOVILLE, M.D. DR. LANCIONE SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Lancione	- aye
	Dr. Barnes	- aye
	Dr. Buchan	- aye
	Dr. Lovshin	- aye
	Dr. Rothman	- aye
	Dr. Rauch	- aye
	Dr. O'Day	- aye
	Ms. Rolfes	- aye

The motion carried.

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43215

November 6, 1986

Gustavo Scioville, M.D.
2774 Deerhaven Drive
Cincinnati, Ohio 45244

Dear Doctor Scioville:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board proposes to deny your application for licensure for the following reasons:

1. On or about October 8, 1980 you filed an application to sit for the December 1980 examination for Ohio licensure. In addition you filed re-examination applications on or about September 21, 1981, March 26, 1982, October 1, 1982, March 28, 1983, September 28, 1983, March 26, 1984, September 20, 1984, March 28, 1985, September 16, 1985, March 21, 1986 and September 15, 1986.

   In response to Question 1(b) of Section 4 of the October 1980 application you indicated that you had taken the FLEX examination in the following states on the following dates:

State	Date
Ohio	June 1975
Florida	December 1979
Florida	June 1980

   Question 1(b) of Section 4 states: "List all FLEX exams which you have taken. Indicate whether you took all three days or whether you took only part of the exam." Lines are provided for the State of examination, date, whether full or partial examination, and whether passed or failed.

   In fact, the Board has now been advised by the Federation of State Medical Boards that prior to October 1980 you sat for the FLEX examination in Indiana on the following dates: June 1972, December 1972, and June 1973. You sat for the FLEX exam in Ohio in December 1975. You sat for the FLEX exam in Georgia in June 1978. You sat for the FLEX exam in Florida in June 1979, December 1979 and June 1980.

Your acts, conduct and omissions as alleged in paragraph 1 constitute a violation of Section 4731.22(A), Ohio Revised Code, to wit: committing fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the Board.

Further, your acts, conduct and omissions as listed in paragraph 1 establish a failure to furnish satisfactory proof of good moral character as required by Section 4731.08, Ohio Revised Code.

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

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

A copy of the applicable sections are enclosed for your information.

Very truly yours,

Henry G. Cramblett, M.D.
Secretary

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Encls.

CERTIFIED MAIL # P 569 363 997
RETURN RECEIPT REQUESTED