

State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov



May 14, 2008

Gerald B. Applegate, M.D.
P.O. Box 402098
Miami Beach, FL 33140-0098

Dear Dr. Applegate:

Please find enclosed a certified copy of the Order and Entry in the above matter approved and confirmed by the State Medical Board of Ohio meeting in regular session on May 14, 2008. This Order and Entry documents the Medical Board's reconsideration of the penalty in Dr. Applegate's case in accordance with the instruction of the Tenth District Court of Appeals.

Section 119.12, Ohio Revised Code, may, but does not necessarily, authorize an appeal from this Order. Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of an original Notice of Appeal with the State Medical Board of Ohio and a copy with the Franklin County Court of Common Pleas within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage MD
Lance A. Talmage, M.D. *rw*
Secretary

LAT:bar
Enclosures

CERTIFIED MAIL RECEIPT NO. 91 7108 2133 3933 2407 0761
RETURN RECEIPT REQUESTED

cc: James M. McGovern, Esq.

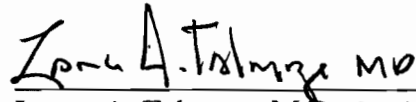
CERTIFIED MAIL RECEIPT NO. 91 7108 2133 3933 2407 0754
RETURN RECEIPT REQUESTED

Mailed 6-3-08

CERTIFICATION

I hereby certify that the attached copy of the Order and Entry of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board; May 14, 2008, Entry of Order in the matter of Gerald Brian Applegate, M.D.; and attached excerpt of draft Minutes of the State Medical Board, meeting in regular session on May 14, 2008, including a Motion approving and amending the Findings of Fact, amending the Conclusions of Law, and adopting an amended Order, constitute a true and complete copy of the Order and Entry of the State Medical Board in the Matter of Gerald Brian Applegate, 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 of Ohio and in its behalf.



Lance A. Talmage, M.D. *rw*
Secretary

(SEAL)

May 14, 2008

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of :

:

Gerald Brian Applegate, M.D. :

ORDER AND ENTRY

On June 14, 2006, the State Medical Board of Ohio issued its Findings and Order in the Matter of Gerald Brian Applegate, M.D., whereby Dr. Applegate's license to practice medicine and surgery in the State of Ohio was suspended for one year and the license was placed on probation for one year thereafter. A copy of those Findings and Order are attached hereto and incorporated herein.

Pursuant to 119.12, Ohio Revised Code, Dr. Applegate appealed the Medical Board's Order to the Franklin Court of Common Pleas, which affirmed the Medical Board's decision in January 2007. Thereafter, Dr. Applegate appealed to the Tenth District Court of Appeals. By Opinion on November 30, 2007, the Court of Appeals issued a decision that affirmed the Board's decision in part and reversed the Board's finding that Dr. Applegate had violated Sections 4731.22(A) and 4731.22(B)(5) of the Revised Code, in regard to his responses on a 1996 renewal application submitted to the Ohio State Medical Board. By Entry on February 15, 2008, the Franklin County Court of Common Pleas remanded the case to the State Medical Board for consideration.

WHEREFORE, pursuant to the instructions of the Tenth District Court of Appeals and upon approval and confirmation by vote of the Board on May 14, 2008, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for that date.

It is hereby ORDERED that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Gerald Brian Applegate, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for one year from the effective date of the June 14, 2006, Order, which suspension has already been served.
- B. **PROBATIONARY CONDITIONS:** Upon reinstatement, which took effect on June 17, 2007 pursuant to the terms of the June 14, 2006, Order, Dr. Applegate's certificate shall be subject to the following **PROBATIONARY** terms, conditions and limitations for a period of at least one year:

1. **Obey the Law:** Dr. Applegate shall obey all federal, state, and local laws. Moreover, he shall obey all rules governing the practice of medicine and surgery in the state in which he is practicing.
 2. **Quarterly Declarations:** Dr. Applegate shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
 3. **Personal Appearances:** Dr. Applegate shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Order. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
 4. **Personal/Professional Ethics Course:** Before the end of probation, or as otherwise approved by the Board, Dr. Applegate shall provide acceptable documentation of successful completion of a course or courses dealing with personal/professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.
 5. **Violation of Probation; Discretionary Sanction Imposed:** If Dr. Applegate violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- C. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Applegate's certificate will be fully restored.

D. REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND

HOSPITALS: Within thirty days of the effective date of this Order,

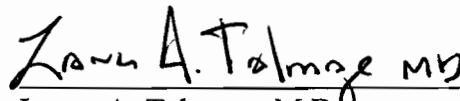
Dr. Applegate shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training, and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Applegate shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

E. REQUIRED REPORTING BY LICENSEE TO OTHER STATE

LICENSING AUTHORITIES: Within thirty days of the effective date of this Order, Dr. Applegate shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Applegate shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Applegate shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of notification of approval by the Board.

(SEAL)

 MB

Lance A. Talmage, M.D.

Secretary

May 14, 2008

Date



State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
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EXCERPT FROM THE DRAFT MINUTES OF MAY 14, 2008

REPORTS AND RECOMMENDATIONS IN THE MATTERS OF LEO D'SOUZA, M.D., KALIOPE E. VARAKIS, M.D., AND NICO CAPURRO, M.D.; THE REMAND IN THE MATTER OF GERALD BRIAN APPLGATE, M.D., AND THE PROPOSED FINDINGS AND PROPOSED ORDER IN THE MATTER OF PATRICIA ANNETTE FOWLER, M.T.

Dr. Varyani announced that the Board would now consider the Reports and Recommendations appearing on its agenda. He asked whether each member of the Board had received, read and considered the hearing record; the Findings of Fact, Conclusions of Law and Proposed Orders; and any objections filed in the matters of Leo D'Souza, M.D., Kaliope E. Varakis, M.D., and Nico Capurro, M.D.; the remand in the matter of Gerald Brian Applegate, M.D., and the proposed findings and proposed order in the matter of Patricia Annette Fowler, M.T. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Browning	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

Dr. Varyani 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. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Browning	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye

Dr. Steinbergh - aye
Dr. Varyani - aye

Dr. Varyani 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. He advised that they may, however, participate in the matters of Dr. Varakis, Dr. Boyd-Lawhorn, Ms. Kronenberger, Dr. Robison, and Dr. Eslami-Varzaneh, as those cases are not disciplinary in nature and concern only qualifications for licensure. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

The original Reports and Recommendations, Remand Findings, Conclusions and Order, and Proposed Findings, Orders and Journal Entries shall be maintained in the exhibits section of this Journal.

.....

GERALD BRIAN APPELEGATE, M.D. – REMAND

Dr. Varyani directed the Board's attention to the matter of Gerald Brian Applegate, M.D. He advised that Sharon W. Murphy was the Hearing Examiner in this case. This matter was initially considered by the Board at its meeting of June 14, 2006. Dr. Applegate appealed the Board's order. The 10th District Court of Appeals affirmed in part and reversed in part the judgment of the Franklin County Court of Common Pleas, which had upheld the Board's June 14, 2006 Order, and ordered that the matter be remanded to the Board to determine the appropriate sanction.

Dr. Varyani asked whether there is a motion for reconsideration in this matter.

DR. STEINBERGH MOVED TO RECONSIDER THE MATTER OF GERALD BRIAN APPELEGATE, M.D. MR. HAIRSTON SECONDED THE MOTION. A vote was taken:

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Suppan	- abstain
	Dr. Madia	- aye
	Mr. Browning	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

Dr. Steinbergh stated that the Court has directed the Board to not consider Finding of Fact # 2, which found

that Dr. Applegate falsified his 1996 renewal application. The Board can still consider the other Findings of Fact that in August 1993 Dr. Applegate did submit to the Board an application for licensure, and that, in completing the application, he falsely denied having ever been a defendant in a legal action involving professional liability or having had a professional liability claim paid on his behalf. Dr. Steinbergh stated that, in fact, on January 31, 1991, he'd been named as the sole defendant in the malpractice action in the Court of Common Pleas in Butler County, Pennsylvania. Subsequently that action was settled on Dr. Applegate's behalf with a total payout of \$598,735. That is part of this Board's consideration.

Dr. Steinbergh continued that on February 24, 2004, the State of Pennsylvania issued a 90-day stayed suspension of Dr. Applegate's Pennsylvania medical license and levied a penalty of \$5,000, based upon admissions to the following: "he had prescribed controlled substances for his wife on eighty-six different occasions from July 7, 1999, to July 20, 2001; those prescriptions had been filled at eight different pharmacies; and Dr. Applegate had failed to maintain medical records pertaining to the prescriptions he issued for his wife."

Dr. Steinbergh referred to Finding of Fact # 4, which states:

On October 25, 2004, the New York State Board for Professional Medical Conduct [New York Board] entered a Consent Agreement and Order based on the action of the Pennsylvania Board. In its Consent Agreement and Order, the New York Board issued a stayed ninety-day suspension of Dr. Applegate's New York medical license and permanently restricted him from prescribing controlled substances for himself and family members.

Dr. Steinbergh stated that she's considered all of these things in crafting her Proposed Order.

DR. STEINBERGH MOVED TO ENTER THE FOLLOWING ORDER IN THE MATTER OF GERALD BRIAN APPLGATE, M.D.:

It is hereby ORDERED that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Gerald Brian Applegate, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for one year from the effective date of the June 14, 2006, Order, which suspension has already been served.
- B. **PROBATIONARY CONDITIONS:** Upon reinstatement, which took effect on June 17, 2007 pursuant to the terms of the June 14, 2006, Order, Dr. Applegate's certificate shall be subject to the following PROBATIONARY terms, conditions and limitations for a period of at least one year:
 - 1. **Obey the Law:** Dr. Applegate shall obey all federal, state, and local laws. Moreover, he shall obey all rules governing the practice of medicine and surgery in the state in which he is practicing.

2. **Quarterly Declarations:** Dr. Applegate shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which this Order becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
 3. **Personal Appearances:** Dr. Applegate shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Order. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
 4. **Personal/Professional Ethics Course:** Before the end of probation, or as otherwise approved by the Board, Dr. Applegate shall provide acceptable documentation of successful completion of a course or courses dealing with personal/professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.
 5. **Violation of Probation; Discretionary Sanction Imposed:** If Dr. Applegate violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- C. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Applegate's certificate will be fully restored.
- D. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Dr. Applegate shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training, and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Applegate shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives

training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

E. REQUIRED REPORTING BY LICENSEE TO OTHER STATE

LICENSING AUTHORITIES: Within thirty days of the effective date of this Order, Dr. Applegate shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Applegate shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Applegate shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of notification of approval by the Board.

DR. STEINBERGH FURTHER MOVED TO APPROVE THE COURSE, *LEGAL AND ETHICAL IMPLICATIONS IN MEDICINE; A PHYSICIAN'S SURVIVAL GUIDE – LAWS AND RULES*, SPONSORED BY THE FLORIDA MEDICAL ASSOCIATION AND ATTENDED BY DR. APPELATE ON JUNE 24, 2006, AS FULFILLMENT OF PARAGRAPH (B)(4) OF THE PROPOSED ORDER. DR. AMATO SECONDED THE MOTION. A vote was taken:

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Browning	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

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

Gerald Brian Applegate, M.D. :
Appellant, : Case No. 06-CV-8344
vs. : Judge Pat Sheeran
State Medical Board of Ohio, :
Appellee. :


STATE MEDICAL BOARD
2008 MAR 24 A 11:54

ENTRY AND ORDER

This case is before the Court on remand from the Tenth District Court of Appeals, in Case No. 07AP-78. Appellant's first assignment of error was sustained by that Court, and the remaining four assignments of error were overruled, and the remand is for this Court to remand the case back to the State Medical Board for a determination by that Board of "the appropriate sanction in light of this court's [the Court of Appeals] decision." A copy of that decision is attached to this Entry.

Based on the foregoing, this Court hereby ORDERS that this case be remanded to the State Medical Board, so that the Board can make that determination. The record is also ORDERED to be transferred from the Clerk of Courts back to the State Medical Board.

It is so ordered.


Patrick E. Sheeran, Judge

Copies to:

James M. McGovern, Esq.
Counsel for Appellant

(2)

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2008 FEB 15 AM 10:09
CLERK OF COURTS

D7665 - W61

Marc Dann, Esq.
Attorney General, State of Ohio
Steven McGann, Esq.
Assistant Attorney General
Counsel for Appellee

STATE MEDICAL BOARD
2009 MAR 24 A 11:54

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FILED
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FRANKLIN COUNTY, OHIO
2007 NOV 30 PM 3:07
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Gerald Brian Applegate, M.D.,

Appellant-Appellant,

v.

State Medical Board of Ohio,

Appellee-Appellee.

No. 07AP-78

(C.P.C. No. 06CVF06-8344)

(REGULAR CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the opinion of this court rendered herein on November 29, 2007, we sustain appellant's first assignment of error and overrule his second, third, fourth, fifth, and sixth assignments of error. Further, we affirm in part and reverse in part the judgment of the Franklin County Court of Common Pleas, and we remand this matter to that court with instructions to remand the matter to the appellee to reconsider the appropriate sanction in light of this court's decision. Costs assessed against appellee.

KLATT, J., BRYANT & DESHLER, JJ.

By


Judge William A. Klatt

ATTORNEY GENERALS OFFICE

DEC - 3 2007

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Deshler, J., retired, of the Tenth Appellate District, assigned to active duty under authority of Section 6(C), Article IV, Ohio Constitution.

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Gerald Brian Applegate, M.D.,	:	
Appellant-Appellant,	:	
v.	:	No. 07AP-78 (C.P.C. No. 06CVF06-8344)
State Medical Board of Ohio,	:	(REGULAR CALENDAR)
Appellee-Appellee.	:	

O P I N I O N

Rendered on November 29, 2007

Hammond, Sowards & Williams, and James M. McGovern, for appellant.

Marc Dann, Attorney General, and Steven McGann, for appellee.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Appellant, Gerald Brian Applegate, M.D., appeals from a judgment of the Franklin County Court of Common Pleas affirming an order of appellee, State Medical Board of Ohio ("Board"), suspending his medical license. For the following reasons, we affirm in part and reverse in part.

{¶2} In an August 10, 2005 letter, the Board notified Applegate that it intended to take disciplinary action against him for four reasons. First, the Board alleged that Applegate fraudulently answered a question contained in his 1993 licensure application. Applegate checked "no" next to the question, "[h]ave you been a defendant to a legal action involving professional liability (malpractice), or had a professional liability claim paid on your behalf, or paid the claim yourself?" At the time Applegate answered that question, he had, in fact, been a defendant in a malpractice action that his insurer had settled on his behalf.

{¶3} Second, the Board alleged that Applegate fraudulently answered a question on his 1996 renewal application. Applegate responded "no" to the question, "[a]t any time since signing your last application for renewal of your certificate have you: * * * [h]ad any clinical privileges suspended, restricted or revoked for reasons other than failure to maintain records or attend staff meetings?" At the time Applegate answered that question, the North Hills Passavant Hospital ("Hospital") had placed Applegate's privileges on probation for unprofessional conduct. The Hospital disciplined Applegate due to his lack of veracity regarding whether he had maintained full-time coverage for patients he was responsible for as an "on call" physician.

{¶4} Third, the Board alleged that Applegate had entered into a consent agreement and order with the Pennsylvania State Board of Medicine ("Pennsylvania Board") wherein the Pennsylvania Board issued a 90-day stayed suspension of Applegate's Pennsylvania medical license and levied a civil penalty. This discipline resulted from Applegate's admission that he had prescribed controlled substances for his wife without maintaining the appropriate medical records.

{¶5} Fourth, the Board alleged that Applegate had entered into a consent agreement and order with the New York State Board for Professional Medical Conduct ("New York Board") wherein the New York Board issued a 90-day stayed suspension of Applegate's New York medical license and restricted Applegate from prescribing controlled substances to himself and his family members. The New York Board subjected Applegate to discipline because the Pennsylvania Board had sanctioned him for acts that would have constituted professional misconduct under New York law if Applegate had committed those acts in New York.

{¶6} Applegate requested and received an adjudicatory hearing. After the hearing, the hearing examiner issued a report and recommendation in which she concluded that evidence submitted at the hearing proved each factual allegation made in the August 10, 2005 letter. The hearing examiner also concluded that Applegate's conduct warranted discipline under R.C. 4731.22(A), (B)(5), and (B)(22), and she recommended that the Board suspend Applegate's license for one year.

{¶7} The Board approved and confirmed the hearing examiner's findings of fact and conclusions of law. Additionally, it issued an order suspending Applegate's license for one year and subjecting Applegate to various probationary terms, conditions, and limitations. Applegate appealed the Board's order to the trial court pursuant to R.C. 119.12. On January 16, 2007, the trial court issued a decision and entry finding that the Board's order was supported by reliable, probative, and substantial evidence. Consequently, the trial court affirmed the Board's order.

{¶8} Applegate now appeals from the trial court's judgment and assigns the following errors:

1. The lower court Decision and Entry affirming the State Medical Board of Ohio Order was an abuse of discretion, because there was no evidence that Appellant intended to mislead the Board when after his clinical privileges were only placed on "probation" he responded "no" to a question on his 1996 licensure renewal application inquiring whether his clinical privileges had been "suspended, restricted or revoked."
2. The lower court Decision and Entry affirming the State Medical Board of Ohio Order was an abuse of discretion, because there was no evidence that Appellant intended to mislead the Board where he incorrectly responded "no" to a question on his 1993 licensure application regarding previous professional liability claims.
3. The lower court Decision and Entry affirming the State Medical Board of Ohio Order was an abuse of discretion, because the Board relied upon events relating to Appellant's 1996 licensure renewal application in making inferences regarding his intent in responding to questions on his 1993 licensure Application.
4. The lower court Decision and Entry affirming the State Medical Board of Ohio Order was an abuse of discretion, because the Board, in concluding that Appellant intended to mislead the Board with his response on the 1993 licensure Application, relied upon uncharged conduct from 1996 in evaluating his credibility, while at the same time disregarding appropriate evidence regarding his credibility.
5. The lower court Decision and Entry affirming the State Medical Board of Ohio Order was not in accordance with law, because the Board violated Appellant's due process rights by failing to provide him with notice that the Board would consider the conduct underlying the privileges action at issue in his 1996 licensure renewal application question when deciding what discipline to impose upon his Ohio license.
6. The lower court Decision and Entry affirming the State Medical Board of Ohio Order is not in accordance with law, because the sanction imposed (one year suspension of Appellant's Ohio license followed by one year of probation) has no reasonable basis and is too harsh based upon what the Ohio Board was able to prove regarding the actions taken

by the New York and Pennsylvania Boards against Appellant's medical licenses in those states.

{¶9} By Applegate's first assignment of error, he argues that the trial court abused its discretion in determining that reliable, probative, and substantial evidence supported the Board's finding that he intentionally provided false information on his 1996 renewal application. We agree.

{¶10} Pursuant to R.C. 119.12, when a trial court reviews an order of an administrative agency, it must consider the entire record to determine if the agency's order is supported by reliable, probative, and substantial evidence and is in accordance with law. To be "reliable," evidence must be dependable and true within a reasonable probability. *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571. To be "probative," evidence must be relevant, or, in other words, tend to prove the issue in question. *Id.* To be "substantial," evidence must have importance and value. *Id.*

{¶11} An appellate court's review of the evidence is more limited than a trial court's. Instead of appraising the weight of the evidence, an appellate court determines whether the trial court abused its discretion, i.e., whether the trial court demonstrated a perversity of will, passion, prejudice, partiality, or moral delinquency. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621. Absent such an abuse of discretion, an appellate court must affirm the trial court's judgment, even if the appellate court would have arrived at a different conclusion than the trial court. *Lorain City School Dist. Bd. of Edn. v. State Emp. Relations Bd.* (1988), 40 Ohio St.3d 257, 261.

{¶12} The Board disciplined Applegate under R.C. 4731.22(B)(5) for falsely responding to a question on his 1996 renewal application. Pursuant to R.C. 4731.22(B)(5), the Board may discipline a physician if he makes "a false, fraudulent,

deceptive, or misleading statement * * * in securing or attempting to secure any certificate to practice * * * ." In order to discipline a physician under R.C. 4731.22(B)(5), the Board must prove that the physician intended to mislead the Board. *Coleman v. State Med. Bd. of Ohio*, Franklin App. No. 06AP-1299, 2007-Ohio-5007, at ¶12; *Istanbooly v. Ohio State Med. Bd.*, Franklin App. No. 04AP-76, 2004-Ohio-3696, at ¶15; *Gipe v. State Med. Bd. of Ohio*, Franklin App. No. 02AP-1315, 2003-Ohio-4061, at ¶64. Intent may be inferred from the surrounding facts and circumstances, such as when a physician knows information that he fails to disclose in response to a direct question. *Coleman*, at ¶12; *Istanbooly*, at ¶16; *Gipe*, at ¶64.

{¶13} Applegate acknowledges that he answered "no" when the 1996 renewal application asked if he "[h]ad any clinical privileges suspended, restricted or revoked * * * ." Applegate also admits that the Hospital placed his privileges on probation in 1994. However, Applegate contends that the Board could not infer intent to mislead from this evidence because probation is neither a suspension, a restriction, nor a revocation. In response, the Board first argues that pursuant to the commonly understood definitions of the relevant terms, probation is a restriction. Consequently, the Board maintains that Applegate should have known that his probation restricted his privileges and, thus, his "no" answer demonstrates his intent to mislead the Board.

{¶14} According to Webster's Third New International Dictionary (1961) 1806, "probation" means "the action of subjecting an individual to a period of testing and trial so as to be able to ascertain the individual's fitness or lack of fitness for something." To "restrict" is "to set bounds or limits to" so as "to check free activity * * * ." *Id.* at 1937. After comparing these two definitions, we cannot conclude that probation is a restriction.

"Probation" denotes a testing or trial period, but it does not inherently include limitations to a person's actions during that testing or trial period. In other words, a physician whose privileges are on probation may be on trial (and may ultimately lose his privileges if he fails that trial), but he is not restricted in the scope of his activities by virtue of being on probation. As the disputed question asked about restrictions only (and not probation), a fact finder could not infer that from Applegate's "no" answer that he intended to mislead the Board.¹

{¶15} Next, the Board argues that Applegate's privileges were restricted because the report from the National Practitioner Data Bank ("NPDB") said so. The NPDB collects information regarding malpractice payments, medical licensure actions, and other adverse actions against physicians. The report generated from the NPDB about Applegate lists his probation as an adverse action and categorizes the type of action taken as "other priv restrict: unprofessional conduct (64510)." The Board contends that this classification means that the Hospital, who reported the probation to the NPDB, viewed Applegate's probation as a restriction on his privileges.

{¶16} Even if we were to accept the Board's interpretation of the NPDB's classification code, we find that this evidence does not establish that Applegate intentionally misled the Board. In order to prove Applegate's intent through circumstantial evidence, the Board would also have to demonstrate that Applegate knew that the Hospital viewed the probation as a restriction. The Board failed to present any such evidence. Recognizing this problem, the trial court held that Applegate had constructive

¹ Tangentially, we note that the Board did not offer any documentary or testimonial evidence from the Hospital as to the terms or conditions of Applegate's probation. While it is conceivable that the Hospital imposed restrictions upon the exercise of Applegate's privileges as a part of his probation, a fact finder cannot merely assume that those restrictions existed.

knowledge that his probation constituted a restriction because Applegate's NPDB report was publicly available. Contrary to the trial court's assertion, information collected in the NPDB is not disclosed to the general public. Section 60.11, Title 45, C.F.R. (limiting who may request information contained in the NPDB and specifying release in only six instances). Therefore, we find no support for the Board's position in the trial court's reasoning.

{¶17} Because the Board failed to present any evidence (either direct or circumstantial) to prove that Applegate intended to mislead the Board, we find that the trial court abused its discretion in holding otherwise. Accordingly, we sustain Applegate's first assignment of error.

{¶18} By Applegate's second assignment of error, he argues that the trial court abused its discretion in concluding that reliable, probative, and substantial evidence supported the Board's finding that he intentionally provided false information in his 1993 licensure application. We disagree.

{¶19} In the case at bar, Applegate responded "no" to the question, "[h]ave you been a defendant in a legal action involving professional liability (malpractice) * * * ?" The Board, however, offered into evidence both the complaint and answer from a malpractice action a former patient filed against Applegate in February 1991. Attached to the answer is an affidavit signed by Applegate in which he swore that all the averments contained in the answer were true and correct. Thus, the evidence shows that when Applegate completed the 1993 licensure application, he knew that he had been a defendant in a malpractice action. Nevertheless, he answered "no" to a clear, unambiguous question that sought to ascertain that very information. Given this reliable, probative, and

substantial evidence, we conclude that the trial court did not abuse its discretion in finding that Applegate intended to mislead the Board when completing his 1993 licensure application. Accordingly, we overrule Applegate's second assignment of error.

{¶20} We next turn to Applegate's third and fourth assignments of error, by which he argues that the Board misjudged his credibility. Essentially, Applegate contends the Board should have believed his explanation that his erroneous answer to the malpractice question resulted from inattention, and not from an intention to mislead the Board.

{¶21} An appellate court cannot second guess the Board's credibility determinations. *Hoxie v. Ohio State Med. Bd.*, Franklin App. No. 05AP-681, 2006-Ohio-646, at ¶32. Further, even if this court were inclined to judge Applegate's credibility, we cannot find any fault with the Board's rejection of Applegate's explanation. As the Board found, it is unlikely that Applegate would forget the February 1991 malpractice action—it was the first malpractice action filed against him, it was settled for a significant amount, and it occurred only two years prior. Accordingly, we overrule Applegate's third and fourth assignments of error.

{¶22} By Applegate's fifth assignment of error, he asserts that the Board violated his right to due process when it disciplined him for certain misconduct without first notifying him that it was charging him based upon that misconduct. We disagree.

{¶23} Due process entitles an individual to fair notice of the precise nature of the charges to be brought forth at a disciplinary proceeding. *Althof v. Ohio State Bd. of Psychology*, Franklin App. No. 05AP-1169, 2007-Ohio-1010, at ¶19; *Sohi v. Ohio State Dental Bd.* (1998), 130 Ohio App.3d 414, 422. In this case, the Board's August 10, 2005 letter did not inform Applegate that the Board intended to discipline him for the

misconduct that motivated the Hospital to place Applegate on probation. This deficiency, however, did not violate Applegate's due process rights because Applegate was not disciplined for the disputed misconduct. Although two Board members mentioned that misconduct in reviewing the totality of the circumstances, the Board did not rely upon it as a reason to discipline Applegate. At most, the Board only viewed the disputed misconduct as further indication of Applegate's willingness to lie to protect his own self-interest. Accordingly, we overrule Applegate's fifth assignment of error.

{¶24} By Applegate's sixth assignment of error, he argues that the trial court erred in not reversing the one-year suspension of his medical license as too harsh a sanction. Applegate maintains that the Board should have imposed a sanction similar to those that the Pennsylvania and New York Boards imposed. We disagree.

{¶25} In an R.C. 119.12 appeal, "the Court of Common Pleas has no authority to modify a penalty that the agency was authorized to and did impose * * *." *Henry's Café, Inc. v. Bd. of Liquor Control* (1959), 170 Ohio St. 233, paragraph three of the syllabus. R.C. 4731.22(B)(22) gives the Board the discretion to suspend a physician's Ohio license if another state's medical board limits or suspends the physician's license to practice in that state. In the case at bar, the Board determined that both Pennsylvania and New York suspended Applegate's license. Applegate does not challenge that determination. Therefore, the Board had the authority to suspend Applegate's license, and the trial court could not modify that sanction. Accordingly, we overrule Applegate's sixth assignment of error.

{¶26} Of the four bases on which the Board disciplined Applegate, we have found one to be unsupported by reliable, probative, and substantial evidence. "An appellate

court may remand to the administrative agency for reconsideration of a sanction where the court finds one or more of multiple violations to be unsupported by reliable, probative, and substantial evidence." *Coleman*, at ¶19. Given the circumstances of this case, we remand this matter to the Board so that it may, in its discretion, reconsider the appropriate sanction.

{¶27} For the foregoing reasons, we sustain Applegate's first assignment of error and overrule his second, third, fourth, fifth, and sixth assignments of error. Further, we affirm in part and reverse in part the judgment of the Franklin County Court of Common Pleas, and we remand this matter to that court with instructions to remand the matter to the Board to reconsider the appropriate sanction in light of this court's decision.

*Judgment affirmed in part and reversed in part;
and cause remanded with instructions.*

BRYANT and DESHLER, JJ., concur.

DESHLER, J., retired, of the Tenth Appellate District,
assigned to active duty under authority of Section 6(C), Article
IV, Ohio Constitution.

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

GERALD BRIAN APPLGATE, MD

Appellant,

Vs.

STATE MEDICAL BOARD OF OHIO

Appellee.

CASE NO. 06CVF06 8344

JUDGE SHEERAN

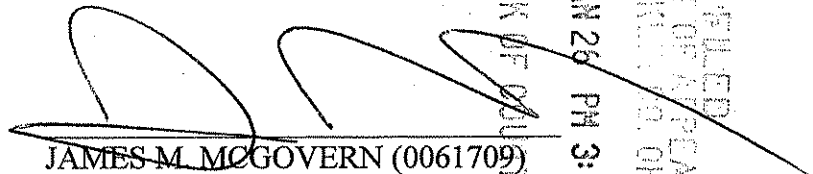
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FRANKLIN CO. OHIO
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CLERK OF COURTS

NOTICE OF APPEAL

Notice is hereby given that Gerald Brian Applegate, M.D., hereby appeals to the Court of Appeals of the Franklin County, Ohio, Tenth Appellate District from the attached Judgment Entry (filed January 16, 2007) Affirming the State Medical Board's Order suspending Dr. Applegate's Ohio Medical license for one year. The Medical Board's Order is neither supported by the requisite evidence nor in accordance with law. Thus, the lower court erred in affirming the Board's Order.

RESPECTFULLY SUBMITTED,



JAMES M. MCGOVERN (0061709)

HAMMOND SEWARDS & WILLIAMS

556 E. Town Street

Columbus, OH 43215

(614) 228-6061/(614) 228-5883 fax

Counsel for Gerald B. Applegate, MD

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CLERK OF COURTS

HEALTH & HUMAN

JAN 31 2007

SERVICES SECTION

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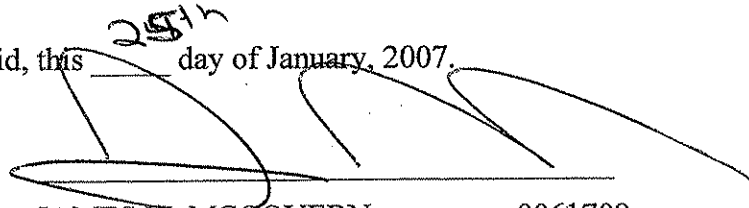
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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and accurate copy of the foregoing was served upon the following:

Steven McGann
Assistant Attorney General
Health and Human Services Section
30 East Broad Street, 26th Floor
Columbus, OH 43215

by regular US Mail, postage prepaid, this 25th day of January, 2007.


JAMES M. MCGOVERN 0061709

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
GENERAL DIVISION**

Gerald Brian Applegate, M.D.,

:

Appellant,

:

CASE NO. 06-CVF-06-8344

-vs-

:

JUDGE PATRICK E. SHEERAN

The State Medical Board of Ohio,

:

Appellee.

:

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FRANKLIN CO. OHIO
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CLERK OF COURTS

**DECISION AND ENTRY AFFIRMING THE JUNE 14, 2006 ORDER OF THE
STATE MEDICAL BOARD OF OHIO**

Rendered this 12th day of January, 2007

SHEERAN, JUDGE.

This matter comes before this Court upon an appeal pursuant to R.C. § 119.12 from a June 14, 2006 Order of the State Medical Board of Ohio (hereinafter “the Board”). The Board approved the Proposed Order of the Hearing Officer, suspended the Appellant’s medical license for a period of one year, and set forth probationary terms upon reinstatement wherein Appellant would serve a minimum one year probation. See June 14, 2006 Entry of Order.

The issues surrounding this appeal involve Appellant’s responses to questions on his 1993 application to practice medicine in Ohio and his subsequent 1996 renewal application. In August 1993, Appellant submitted an application to practice medicine in the state of Ohio and signed and notarized an affidavit swearing that “all statements I have or shall make with respect thereto are true.” See State’s Exhibit 2. In response to Question 19 on the application, which asked the applicant if he had ever been involved as a defendant in a legal action involving a professional liability claim, the Appellant responded “no.” See State’s Exhibit 2. However, the record indicates that two years prior to that response, the Appellant

was the sole defendant in a Pennsylvania malpractice lawsuit wherein Appellant's malpractice insurance carrier paid \$598,735 to one of Appellant's former patients. See State's Exhibit 3, 4.

In his 1996 application to renew his Ohio medical license, Appellant certified that the information he provided was "true and correct in every respect." See State's Exhibit 2. However, on the renewal application Appellant responded "no" to Question 7 which asked him if he "had any clinical privileges suspended, restricted, or revoked for reasons other than failure to maintain records or attend staff meetings." State's Exhibit 2. The record demonstrates that in November 1994 Appellant was placed on two-years probation at North Hills Passavant Hospital for "lack of veracity in reference to representations made concerning maintaining full-time coverage for obstetrical and gynecological patients." See State's Exhibit 4.

The Board considered the following four counts against the Appellant:

1. Appellant responded "no" to Question 19 on his 1993 application to practice medicine in Ohio when in fact he had been the sole defendant in a Pennsylvania malpractice lawsuit wherein his malpractice insurance carrier paid \$598,735 to a former patient. This conduct violated R.C. 4731.22(A) and (B)(5) as in effect prior to March 9, 1999.
2. On Appellant's 1996 application for renewal, he responded "no" to Question 7 when in fact he had been placed on probation by the North Hills Passavant Hospital in Pittsburgh Pennsylvania for his lack of truthfulness as to representations he made regarding patient coverage. This conduct violated R.C. 4731.22(A) and (B)(5) as in effect prior to March 9, 1999.
3. A February 24, 2004 Order of the Pennsylvania Medical Board issued a 90 day stayed suspension of his license and levied a \$5000 civil penalty for prescribing controlled substances for his wife on 86 different occasions at eight different pharmacies from July 1999-July 2001. This conduct violated R.C. 4731.22(B)(22).
4. In October 2004 the New York Medical Board issued a 90-day stayed suspension and permanently restricted Appellant from prescribing controlled substances for himself and his family members. This conduct violated R.C. 4731.22(B)(22).

Standard of Review

R.C. § 119.12 sets forth the standard of review a common pleas court must follow when reviewing an administrative appeal. R.C. 119.12 provides in pertinent part:

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative and substantial evidence and is in accordance with law.

In *Our Place* the Ohio Supreme Court provided the following definition of reliable, probative and substantial evidence as:

(1) ‘Reliable’ evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) ‘Probative’ evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) ‘Substantial’ evidence is evidence with some weight; it must have importance and value.

Our Place, Inc. v. Ohio Liquor Comm. (1992), 63 Ohio St. 3d 570, 571.

Once the common pleas court has determined that the administrative agency’s order is supported by reliable, probative and substantial evidence, the court must then determine whether the order is in accordance with law. See R.C. § 119.12. The reviewing court cannot substitute its judgment for the agency’s decision where there is some evidence supporting the decision. See *Harris v. Lewis* (1982), 69 Ohio St. 2d 577, 579; see also *University of Cincinnati v. Conrad* (1980), 63 Ohio St. 2d 108.

Appellant’s Argument

Appellant does not dispute that the Pennsylvania and New York Board Orders (Counts 3 and 4) technically constitute a violation of R.C. § 4731.22(B)(22). He disagrees with the Board’s conclusion that he violated R.C. 4731.22(A) and (B)(5) with his responses on the 1993 Ohio application and the 1996 renewal. As to the 1993 Ohio application, Appellant asserts that the issues surrounding his personal life at the time demonstrate that he

did not have the level of intent necessary to conclude that he violated R.C. 4731.22(A) or (B)(5). In regard to the 1996 renewal application, Appellant argues he did not interpret having his privileges placed on probation at North Hills Passavant Hospital as a “restriction” and submits that “probation” is not identified as a synonym for the word “restrict” and its derivatives. Moreover, it is Appellant’s position that the Board compounded its mistake by relying on this conduct to bolster its conclusion that he cannot be trusted to tell the truth. Appellant relies on the reasoning in *Istanbooly* to assert that there is no evidence that he intended to deceive the Board with his answer to Question 7 on his 1996 renewal application. See *Istanbooly v. Ohio State Medical Board* (July 13, 2004), Franklin Cty. App. No. 01AP-76, unreported. Thus, Appellant asserts that the one-year suspension imposed by the Board was too harsh.

Appellee’s Argument

Appellee argues that Appellant admitted that his answer to Question 19 on his initial 1993 application to practice medicine in Ohio was false and a misrepresentation. Tr. pp. 23, 29-30, 118-119. Appellee points out that it was the first time that Appellant had been a defendant in a malpractice action and that the amount paid, nearly \$600,000, was significant. Thus, it is Appellee’s argument that more likely than not this omission was intentional, and not unintentional regardless of any personal issues Appellant was experiencing in his life at the time. Tr. 116-117.

Appellee also asserts that Appellant admitted that at the time he submitted his 1996 renewal application he was aware that his privileges to practice medicine at North Hills Passavant Hospital had been placed on probation for two years. Tr. p.33. Appellee submits that the National Practitioner Data Bank indicates that Appellant’s privileges at North Hills Passavant Hospital were restricted under the “Action Classification.” See State’s Ex. 4, p. 4.

Appellee also relies on the holding in *Istanbooly* asserting that Appellant had complete knowledge of the probation at North Hills Passavant Hospital and chose not to disclose it on his 1996 renewal application.

Appellee asserts that Appellant's failure to truthfully answer Question 19 on his 1993 application and Question 7 on his 1996 renewal application constitutes violations of R.C. §§ 4731.22(A) and (B)(5). See Counts 1 and 2. Further, Appellee asserts that Counts 3 and 4 constitute violations of R.C. § 4731.22(B)(22).

Law and Argument

Upon a review of the record there is reliable, probative and substantial evidence to support the June 14, 2006 Order of the Board. The trustworthiness of a physician is a central and fundamental component of a doctor-patient relationship and has been recognized as a guiding principle in matters of licensure. *Gipe v. State Med. Bd. of Ohio* Jul. 31, (2003), Franklin App. No. 02AP-1315, citing *Bouquett v. Ohio Med. Bd.* (1997), 123 Ohio App. 3d 466, 473. The Tenth District Court of Appeals has determined that in order to find a violation of R.C. § 4731.22, the Board must find that the underlying statements were made with intent to mislead the Board. *In re Wolfe* (1992), 82 Ohio App.3d 675, 687; *Webb v. State Med. Bd. of Ohio* (2001), 146 Ohio App.3d 621. The Board may infer intent from the surrounding circumstances, such as when a licensee clearly knows something which he or she fails to disclose in response to a direct question. *Hayes v. State Med. Bd. of Ohio* (2000), 138 Ohio App.3d 762, 770. See also *Gipe, supra.*

The facts in this case indicate that at the time that Appellant submitted his 1993 application to practice medicine in Ohio, he had complete knowledge of the fact that he had been sued, as the sole defendant, in a Pennsylvania malpractice lawsuit wherein Appellant's malpractice insurance carrier paid \$598,735 to one of Appellant's former patients. See

State's Exhibit 3, 4, Tr. pp. 29-30. The Board was clearly acting within its authority by inferring an intent to mislead under these circumstances, which include the facts that Appellant was the sole defendant in the civil suit and the amount of the settlement itself. Appellant's testimony is that the personal issues in his life affected his ability and judgment in completing his 1993 Ohio application to practice medicine.

Appellant contends that personal issues affected his ability and judgment. These issues include events that occurred in 1992, including a divorce, the breakup of his practice, and the need to establish his own medical practice. While these are indeed events that might be traumatic, the Medical Board was within its authority and discretion in concluding as it did. This Court will note that all of the other information Appellant provided in the application was correct and it was only the matter of Appellant's probation that did not appear anywhere on his renewal application. Appellant asked the Board and, to a certain extent, asks this Court, to believe that the only information which, if discovered, would be grounds to deny the application as a matter of law, was the information that he incorrectly and innocently placed on the application. The Board declined to do, and this Court, on review, finds it inappropriate to disturb this finding, which is based on reliable, probative, and substantial evidence.

Appellant's purpose was to obtain and/or renew his application to practice medicine in Ohio. Thus, this same type of analysis applies to his 1996 renewal application. Appellant's testimony indicates that he had complete knowledge (and chose not to disclose) at the time he submitted his 1996 renewal application that his privileges to practice medicine at North Hills Passavant Hospital had been placed on probation for two years. Tr. p. 33. Moreover, there is evidence in the record that pursuant to the National Practitioner Data Bank, the clearinghouse for the collection and release of certain information regarding

physician misconduct, the public was on notice that Appellant's clinical privileges at North Hills Passavant Hospital were restricted. See State's Exhibit 4, p. 4. Therefore, the Board was in its discretion in discounting Appellant's semantics argument regarding the definitions of "probation" and "restriction" since there was reliable, probative and substantial evidence before it that not only Appellant, but the public, was on notice that Appellant's clinical privileges at North Hills Passavant Hospital were classified as restricted according to the National Practitioner Data Bank. Thus, there is ample evidence to support the conclusion that Appellant had complete knowledge of these restricting circumstances affecting his privileges to practice medicine at the North Hills Passavant Hospital. The Board, therefore, was within its discretion to infer that Appellant intentionally chose not to disclose them to the Ohio Medical Board.

This Court finds Appellant's arguments to be unpersuasive. This Court finds from the surrounding circumstances that Appellant's conduct in deceiving the Ohio Medical Board was intentional and thus, there is reliable, probative and substantial evidence supporting the Board's June 14, 2006 Order. See *Hayes, supra*.

Based on the foregoing, this Court finds that the June 14, 2006 Order of the Ohio Medical Board is supported by reliable, probative and substantial evidence. The June 14, 2006 Order of the Ohio Medical Board is hereby AFFIRMED.

It is so ordered.


JUDGE PATRICK E. SHEERAN

Copies to:

Jim Petro, Esq., and Steven McGann, Esq., Counsel for Appellee

James M. McGovern, Esq., Counsel for Appellant

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

Gerald Brian Applegate, :
Appellant, : Case No. 06-CV-8344
vs. : Judge Sheeran
State Medical Board of Ohio, :
Appellee. :

DECISION AND ENTRY DENYING STAY ORDER

Rendered this 7th day of July, 2006

Sheeran, J.

This case is before the Court on Appellant's Motion to Suspend the Order of the State Medical Board, pending a decision of this Court on the merits of the appeal.

Counsel met with the Court on July 7, 2006, and discussed this case. After a full discussion, this Court is satisfied that such an Order would be premature at this time. Certainly, Appellant faces the potential for serious financial hardship, but Appellant also has no Ohio practice, and, to date, has incurred no financial loss at all. Future economic harm will only occur if Florida (and/or New York and Pennsylvania), or a third-party provider, takes future action against Appellant.


This has not happened as of yet. Therefore, there is no hardship at all yet, much less "unusual hardship" as that phrase is used in R.C. 119.12.

Based on the foregoing, this Court must DENY Appellant's Motion. However, should the situation change, counsel have been asked to bring this Motion to the Court's attention.

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JUL 14 2006
SERVICES SECTION

It is so ordered.

 7/7/16

Patrick E. Sheeran, Judge

Copies to:

James McGovern, Esq.
Counsel for Appellant

Steven McCann, Esq.
Counsel for Appellee

**IN THE COURT OF COMMON PLEAS STATE MEDICAL BOARD
FRANKLIN COUNTY, OHIO**

2006 JUN 28 A 11:44

GERALD BRIAN APPLGATE, MD
PO Box 402098
Miami Beach, FL 33140-0098

CASE NO.

06 CV F 06

8344

JUDGE

Appellant,

CATEGORY F

Vs.

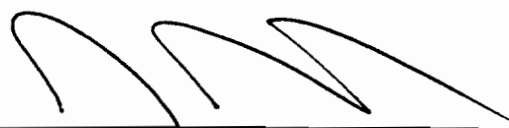
STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th Flr.
Columbus, OH 43266-0306

Appellee.

NOTICE OF APPEAL

Gerald Brian Applegate, MD, through his undersigned counsel, hereby gives Notice of his appeal of the attached adjudication Order of the State Medical Board of Ohio, which was mailed June 16, 2006. The Board's Order is not supported by reliable, probative and substantial evidence and is not in accordance with law. In accordance with R.C. 119.12, the original of this Notice of Appeal of Appeal is being filed with the State Medical Board of Ohio and a copy is being filed with the Franklin County Court of Common Pleas.

RESPECTFULLY SUBMITTED,


JAMES M. MCGOVERN 0061709
HAMMOND, SEWARDS & WILLIAMS
556 E. Town St.
Columbus, OH 43215
(614) 228-6061 tele.
(614) 228-5883 fax
Counsel for Gerald Brian Applegate, MD

STATE MEDICAL BOARD
OF OHIO

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OHIO STATE MEDICAL BOARD

JUL 06 2006

CERTIFICATE OF SERVICE

STATE MEDICAL BOARD
OF OHIO

The undersigned counsel hereby certifies that a true and accurate copy of the

2006 JUN 28 A 11:44

foregoing was served upon the following:

Steven McGann
Assistant Attorney General
Health and Human Services Section
30 East Broad Street, 26th Floor
Columbus, OH 43215

by regular US Mail, postage prepaid, this 28th day of June, 2006.


JAMES M. MCGOVERN

0061709

STATE MEDICAL BOARD
OF OHIO

2006 JUL -6 P 1:20

OHIO STATE MEDICAL BOARD

JUL 06 2006



State Medical Board of Ohio

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

June 14, 2006

Gerald Brian Applegate, M.D.
P. O. Box 402098
Miami Beach, FL 33140-00098

Dear Doctor Applegate:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on June 14, 2006, 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 an original Notice of Appeal with the State Medical Board of Ohio and a copy of the Notice of Appeal with 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

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 7003 0500 0002 4329 9774
RETURN RECEIPT REQUESTED

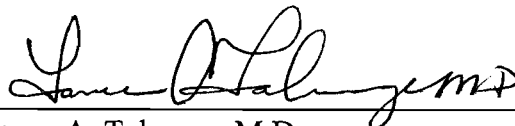
CC: James M. McGovern, Esq.
CERTIFIED MAIL NO. 7003 0500 0002 4329 9798
RETURN RECEIPT REQUESTED

Mailed 6-16-06

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 14, 2006, 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 Gerald Brian Applegate, 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 of Ohio and in its behalf.



Lance A. Talmage, M.D.
Secretary

(SEAL)

June 14, 2006

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

GERALD BRIAN APPLGATE, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on June 14, 2006.

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:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Gerald Brian Applegate, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for one year.
- B. **PROBATIONARY CONDITIONS:** Upon reinstatement, Dr. Applegate's certificate shall be subject to the following **PROBATIONARY** terms, conditions, and limitations for a period of at least one year:
 - 1. **Obey the Law:** Dr. Applegate shall obey all federal, state, and local laws. Moreover, he shall obey all rules governing the practice of medicine and surgery in the state in which he is practicing.
 - 2. **Quarterly Declarations:** Dr. Applegate shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Order becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices

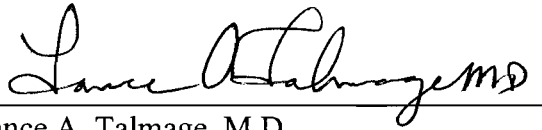
on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. **Appearances:** Dr. Applegate shall appear in person for quarterly interviews before the Board or its designated representative during the third month following the effective date of this Order. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
 4. **Course on Personal/Professional Ethics:** Before the end of probation, or as otherwise approved by the Board, Dr. Applegate shall provide acceptable documentation of successful completion of a course or courses dealing with personal/professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.
 5. **Violation of Probation; Discretionary Sanction Imposed:** If Dr. Applegate violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- C. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Applegate's certificate will be fully restored.
- D. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Dr. Applegate shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training, and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Applegate shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
- E. **REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, Dr. Applegate shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Applegate shall also

provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Applegate shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of notification of approval by the Board.

(SEAL)



Lance A. Talmage, M.D.
Secretary

June 14, 2006

Date

2006 MAY -5 P 12:43

**REPORT AND RECOMMENDATION
IN THE MATTER OF GERALD BRIAN APPLGATE, M.D.**

The Matter of Gerald Brian Applegate, M.D., was heard by Sharon W. Murphy, Esq., Hearing Examiner for the State Medical Board of Ohio, on January 5, 2006.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated August 10, 2005, the State Medical Board of Ohio [Board] notified Gerald Brian Applegate, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action on allegations that Dr. Applegate had provided false information in his applications for licensure in Ohio. In addition, the Board's action was based on actions taken against Dr. Applegate's certificates to practice in Pennsylvania and New York. The Board further alleged that Dr. Applegate's conduct and the other states' actions constitute violations of Sections 4731.22(A), 4731.22(B)(5), and/or 4731.22(B)(22), Ohio Revised Code. Accordingly, the Board advised Dr. Applegate of his right to request a hearing in this matter. (State's Exhibit 1A)
- B. On August 29, 2005, the Board received a written hearing request submitted by Dr. Applegate. (State's Exhibit 1B)

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Tara L. Berrien, Assistant Attorney General.
- B. On behalf of the Respondent: James M. McGovern, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

- A. Presented by the State

Gerald Brian Applegate, M.D., as upon cross-examination

B. Presented by the Respondent

1. Gerald Brian Applegate, M.D.
2. Kay Rieve
3. David Katko, Esq.
4. Michael Krew, M.D.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A through 1V: Procedural exhibits.
2. State's Exhibit 2: Certified copies of documents regarding Dr. Applegate maintained by the Board.
3. State's Exhibit 3: Copies of documents regarding Dr. Applegate maintained by the Court of Common Pleas of Butler County, Pennsylvania.
4. State's Exhibit 4: Copies of documents regarding Dr. Applegate maintained by the National Practitioner Data Bank.
5. State's Exhibit 7: Certified copies of documents regarding Dr. Applegate maintained by the Commonwealth of Pennsylvania, Department of State, State Board of Medicine.
6. State's Exhibit 8: Certified copies of documents regarding Dr. Applegate maintained by the State Department of New York, Department of Health, Office of Professional Medical Conduct.
7. State's Exhibit 9: State's Written Closing Argument.

B. Presented by the Respondent

1. Respondent's Exhibit A: Curriculum vitae of Dr. Applegate.
2. Respondent's Exhibit B: Copy of a letter written by Dr. Applegate to the Commonwealth of Pennsylvania Department of State before the State Board of Medicine, with attachments.
3. Respondent's Exhibit C: Copy of a letter to Dr. Applegate from the State Department of New York Department of Health, Office of Professional Medical Conduct.

4. Respondent's Exhibit E: Copy of a Notice of Bankruptcy Filing in the United States Bankruptcy Court for the Western District of Pennsylvania on behalf of Dr. Applegate.
 5. Respondent's Exhibit F: Copy of an Agreement of Sale whereby Dr. Applegate agreed to sell his practice, Women's Choice of Pittsburgh.
 6. Respondent's Exhibit G: Dr. Applegate's Closing Argument.
- C. Admitted by the Hearing Examiner, sua sponte
- Board Exhibit A: Copy of an April 6, 2006, Notice of Substitution of Counsel filed by Steven McGann, Assistant Attorney General, on behalf of the State.

PROCEDURAL MATTERS

1. During the hearing, Counsel for the State examined witnesses regarding information she had obtained from the Pennsylvania Board. The Respondent challenged the information presented by the State, and the State agreed to attempt to obtain and submit additional evidence to support its position. Post-hearing, Counsel for the Respondent provided evidence to the State which refuted the information that had been provided to the State by the Pennsylvania Board. Therefore, as requested by the Respondent in his closing argument, all reference to the substance of that matter has been redacted from the transcript by the Hearing Examiner. Nevertheless, it should be noted that there is no evidence to suggest that, when Counsel for the State examined witnesses regarding the information provided by the Pennsylvania Board, she had not acted in good faith reliance on that information. (See Hearing Transcript at 95, 127-133, 159; State's Exhibit 9 at 2-3; Respondent's Exhibit G at 12)
2. At the close of the hearing, the parties agreed to submit written closing arguments. Pursuant to a schedule set forth by the Hearing Examiner, the parties' written arguments were filed on February 13, 2006. The hearing record closed at that time. (See Hearing Transcript at 159-160)

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. Gerald Brian Applegate, M.D., graduated in 1982 from the New Jersey Medical School in Newark, New Jersey. In 1985, Dr. Applegate completed a residency in obstetrics and

gynecology at the Magee Women's Hospital in Pittsburgh, Pennsylvania. Since that time Dr. Applegate maintained a medical practice, working as a staff physician or medical director at various women's health centers and hospitals in Western Pennsylvania. Moreover, from 1993 through 2004, Dr. Applegate also served as the medical director of the Mahoning Women's Center in Youngstown, Ohio. In 2004, Dr. Applegate sold his medical practice in Pennsylvania and, since that time, has served as the medical director of Eve Medical Centers in Miami, Florida. Dr. Applegate is certified by the American Board of Obstetrics and Gynecology. (Hearing Transcript [Tr.] at 17-20, 100-105, 113-114; State's Exhibit [St. Ex.] 2 at 12, 14; Respondent's Exhibits [Resp. Exs.] A, E, F)

Dr. Applegate testified that he has experienced numerous personal and financial difficulties over the past decade. He stated that he had divorced his first wife in 1992, remarried in 1994, and separated again in 2004. He also has child support responsibilities. Moreover, when he sold his medical practice in 2004, the buyer did not comply with all of his contractual obligations and failed to pay Dr. Applegate the salary that had been agreed. In that process, Dr. Applegate lost all of his medical records and other documents. Finally, Dr. Applegate was forced to file for bankruptcy. (Tr. at 99-105; Resp. Exs. E, F)

Dr. Applegate has not practiced in Ohio in the past eighteen months, although his certificate to practice in this state is currently active. He testified that he does not know at this time if he plans to return to practice in Ohio. (Tr. at 17-18)

2. On January 31, 1991, Dr. Applegate was named as the sole defendant in a malpractice action in the Court of Common Pleas for Butler County, Pennsylvania. The basis of the action was a laparoscopy performed by Dr. Applegate in which it was alleged, among other things, that he had torn the small bowel mesentery, torn the colon wall, transected the hypogastric artery, transected the iliac artery, transected the ilium vein, and caused a large retro-peritoneal hematoma. Moreover, it was alleged that Dr. Applegate had failed to recognize or correct the injuries within a reasonable time. On August 22, 1991, the malpractice action was settled on Dr. Applegate's behalf for \$598,735.00. (St. Ex. 3; St. Ex. 4 at 7)
3. In August 1993, Dr. Applegate submitted to the Board an "Application for Certificate – Medicine or Osteopathic Medicine" [License Application]. By signing the License Application, Dr. Applegate certified that the information provided therein was true. (St. Ex. 2 at 17-27; Tr. at 21-22)

Nevertheless, Dr. Applegate answered "No" in response to question number 19 in the "Additional Information" section of his License Application. Question number 19 asked the following:

Have you been a defendant in a legal action involving professional liability (malpractice), or had a professional liability claim paid on your

behalf, or paid such a claim yourself? If yes, include the case name, case number, court and address, date filed, and a summary of the underlying events. Indicate current status, including amount of settlement or judgment, if any.

(St. Ex. 2 at 26) Based on the information provided in the License Application, the Board granted Dr. Applegate a license to practice in Ohio. (Tr. at 18-19)

4. In approximately 1994, Dr. Applegate maintained a full-time obstetrics and gynecology practice at the North Hills Passavant Hospital, located in Pittsburgh, Pennsylvania. Dr. Applegate had full-time on-call responsibilities at the hospital. When on-call, Dr. Applegate was responsible to provide care and treatment for obstetrical and gynecological patients who presented to the hospital. (St. Ex. 4 at 3-4; Tr. at 35-37, 122-123, 148-149)

At the same time, however, Dr. Applegate also worked one half day per week at the Mahoning Women's Center in Youngstown, Ohio. Therefore, once each week, Dr. Applegate left Pittsburgh and traveled to Youngstown to work at the women's center while he was on call in Pittsburgh. For reasons undisclosed in the hearing record, the hospital discovered that Dr. Applegate was leaving Pittsburgh without first making arrangements with another physician to assume his on-call responsibilities, and without advising the hospital of his unavailability. Accordingly, the hospital took action against Dr. Applegate's privileges to practice at the hospital. (St. Ex. 4 at 3-4; Tr. at 35-37, 122-123, 148-149)

In November 1994, subsequent to an administrative hearing, Dr. Applegate's privileges to practice at North Hills Passavant Hospital were placed on probation for a period of twenty-four months. As basis for that action, the hospital cited Dr. Applegate's unprofessional conduct and "lack of veracity in reference to representations made concerning maintaining required full-time coverage for obstetrical and gynecological patients." (St. Ex. 4 at 3-4)

5. On March 15, 1996, Dr. Applegate signed and then submitted to the Board an application for renewal of his Ohio certificate to practice medicine and surgery [1996 Renewal Application]. By signing the 1996 Renewal Application, Dr. Applegate certified the information provided therein was true. (St. Ex. 2 at 6)

Nevertheless, in this application for renewal, Dr. Applegate responded "No" to question seven, which asks:

At any time since signing your last application for renewal of your certificate have you * * * [h]ad any clinical privileges suspended,

restricted or revoked for reasons other than failure to maintain records or attend staff meetings?

(St. Ex. 2 at 6) Dr. Applegate's last application for renewal of his certificate had been filed in April 1994. His last application had been submitted in April 1994; nonetheless, he did not mention the November 1994 action by North Hills Passavant Hospital. (St. Ex. 2 at 7)

6. On February 24, 2004, the Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs, State Board of Medicine [Pennsylvania Board], entered a Consent Agreement and Order pertaining to Dr. Applegate. The bases of the Pennsylvania Board action were admissions made by Dr. Applegate, which included the following:

- Dr. Applegate had prescribed controlled substances¹ for his wife on eighty-six occasions between July 7, 1999, and July 20, 2001;
- The prescriptions written by Dr. Applegate had been filled at eight different pharmacies; and
- Dr. Applegate had failed to maintain medical records for the circumstances under which he had written the prescriptions for his wife.

(St. Ex. 7 at 1-2, 9-11)

The Pennsylvania Consent Agreement and Order suspended Dr. Applegate's Pennsylvania medical license for ninety days, but stayed the suspension and placed him on probation for ninety days. In addition, the Consent Agreement and Order levied a civil penalty of \$5000.00 and ordered that Dr. Applegate successfully complete courses in controlled substance prescribing and medical record keeping. (St. Ex. 7 at 3-6)

7. Effective on October 25, 2004, the New York State Board for Professional Medical Conduct entered a Consent Agreement and Order based on the Pennsylvania Consent Agreement and Order. The New York Consent Agreement and Order issued a stayed ninety-day suspension of Dr. Applegate's New York medical license and permanently restricted him from prescribing controlled substances to himself and family members. (St. Ex. 8)
8. Dr. Applegate completed the courses mandated by the Pennsylvania Consent Agreement and Order. On November 17, 2004, the Pennsylvania Board reinstated Dr. Applegate's certificate to practice in that State. (Tr. at 107-108; Resp. Ex. B) Moreover, on April 7, 2005, the New York Board advised Dr. Applegate that he had "satisfied the terms and conditions imposed upon [his] New York medical license." (Tr. at 109-110; Resp. Ex. C)

¹ The controlled substances he prescribed included Demerol, oral and injectable; OxyContin; Vicodin; Percocet; Diazepam; and Lorazepam.

9. At hearing, Dr. Applegate acknowledged that he had provided false answers to questions on his applications for licensure in Ohio. (Tr. at 23, 29-30)
 - a. Regarding his falsely denying that he had been the defendant in a malpractice action, Dr. Applegate explained that, at the time he completed his initial application for licensure in Ohio, there had been “a lot going on in [his] life,” including a divorce, a child support order, and the dissolution of a practice partnership. He concluded that his failure to acknowledge the malpractice action had been an omission, which he attributed to a “lack of attention to detail.” Dr. Applegate testified that he had not intended to deceive the Board, and “deeply regret[s] having made that omission.” (Tr. at 23-30, 113-119, 134-137)
 - b. Regarding the action against his privileges at North Hills Passavant Hospital in Pittsburgh, Dr. Applegate stated that he does not recall why he had not advised the hospital that he would be unavailable when he was supposed to be on call. Moreover, he could not recall how the hospital had discovered his unavailability, despite the fact that he had been subject to an administrative hearing and subsequent probation. (Tr. at 38-43, 119-123, 148-149; St. Ex. 4)

Dr. Applegate further explained that he had answered “No” to question number 7 in his renewal application because the question asked if his privileges had ever been “suspended, restricted, or revoked.” He stated that he had been placed on probation for a period of two years, but that he did not believe that probation constitutes a suspension, restriction, or revocation. Dr. Applegate testified that he cannot recall if there were conditions or terms of probation. Dr. Applegate acknowledged that North Hills Passavant Hospital had reported the action to the National Practitioner Data Bank as a “restriction” of his privileges, but he stated that he had not known that at the time he completed his renewal application. Dr. Applegate testified that, had the question specifically asked about probation, he would have answered it affirmatively. (Tr. at 30-120-122, 148-152)

10. Regarding the action by the Pennsylvania Board, Dr. Applegate testified that the basis of the Board’s action had been his failure to keep medical records pertaining to the prescriptions he had written for his wife, rather than the prescribing itself. Nevertheless, he later testified that, after completing the controlled substance prescribing course mandated by the Pennsylvania Board, he now understands the difficulties presented in prescribing to a close family member. He stated that he will not make a similar mistake in the future. (Tr. at 47, 111-1132)
11. Michael A. Krew, M.D., testified at hearing by telephone on behalf of Dr. Applegate. Dr. Krew testified that he had attended medical school at Northeastern University. Thereafter, he completed a residency in obstetrics and gynecology at Magee Women’s Hospital, and a fellowship in maternofetal medicine at Metro Health Medical Center in Cleveland, Ohio. (Tr. at 88-89)

Dr. Krew testified that he had been a resident with Dr. Applegate from 1982 through 1986. Dr. Krew further testified that, during their residency, Dr. Applegate had had a good reputation. Moreover, he stated that Dr. Applegate had had a good knowledge base and had cared about his patients. Nevertheless, Dr. Krew testified that he can not provide testimony regarding Dr. Applegate's current reputation. In addition, Dr. Krew testified that, prior to testifying at the hearing, he had been unfamiliar with many of the actions that had been taken against Dr. Applegate. (Tr. at 90-96)

FINDINGS OF FACT

1. In August 1993, Gerald Brian Applegate, M.D., submitted to the Board an Application for Certificate – Medicine or Osteopathic Medicine [License Application]. By signing the License Application, Dr. Applegate certified that the information provided therein was true. Nevertheless, in completing the application, Dr. Applegate falsely denied ever having been “a defendant in a legal action involving professional liability (malpractice), or [having] had a professional liability claim paid on [his] behalf * * *.” In fact, on January 31, 1991, Dr. Applegate had been named as the sole defendant in a malpractice action in the Court of Common Pleas for Butler County, Pennsylvania. Further, on August 30, 1991, the malpractice action had been settled on Dr. Applegate's behalf for a total payout of \$598,735.00.
2. On March 15, 1996, Dr. Applegate signed and submitted to the Board an application for renewal of his Ohio certificate to practice medicine and surgery [1996 Renewal Application]. By signing the 1996 Renewal Application, Dr. Applegate certified the information provided therein was true. Nevertheless, Dr. Applegate falsely denied having had his “clinical privileges suspended, restricted or revoked for reasons other than failure to maintain records or attend staff meetings[.]” In fact, in or about November 1994, Dr. Applegate's privileges had been placed on probation by the North Hills Passavant Hospital in Pittsburgh, Pennsylvania. The hospital's action was based on Dr. Applegate's “lack of veracity regarding representations made concerning maintaining the required full-time coverage for obstetrical and gynecological patients.”
3. On February 24, 2004, the Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs, State Board of Medicine [Pennsylvania Board], entered a Consent Agreement and Order [Pennsylvania Order] which issued a ninety-day stayed suspension of Dr. Applegate's Pennsylvania medical license and levied a civil penalty of \$5000.00. The Pennsylvania Order was based on Dr. Applegate's admissions to the following: he had prescribed controlled substances for his wife on eighty-six different occasions from July 7, 1999, to July 20, 2001; those prescriptions had been filled at eight different pharmacies; and Dr. Applegate had failed to maintain medical records pertaining to the prescriptions he issued for his wife.

4. On October 25, 2004, the New York State Board for Professional Medical Conduct [New York Board] entered a Consent Agreement and Order based on the action of the Pennsylvania Board. In its Consent Agreement and Order, the New York Board issued a stayed ninety-day suspension of Dr. Applegate's New York medical license and permanently restricted him from prescribing controlled substances for himself and family members.

CONCLUSIONS OF LAW

1. The evidence presented at hearing supports a conclusion that Gerald Brian Applegate, M.D., knowingly and intentionally misrepresented both the malpractice action and the restriction of his hospital privileges. Therefore, the conduct of Dr. Applegate, as set forth in Findings of Fact 1 and 2, constitutes "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code, as in effect prior to March 9, 1999.

Dr. Applegate's contention that he had had too much distraction in his personal and professional life to adequately complete his application for licensure is not convincing. It had been his first malpractice action, and the settlement value had been nearly \$600,000.00. Moreover, the settlement had occurred only two year prior to his completing the application.

Similarly, Dr. Applegate's argument that the hospital's action in placing his privileges on probation for a period of two years was not a restriction of those privileges is not credible. Prior to the hospital's action, Dr. Applegate held full and unrestricted privileges; afterwards, he did not. Moreover, when weighing Dr. Applegate's credibility in this matter, it is significant that the hospital had taken the action in the first place due to Dr. Applegate's "lack of veracity * * *."

2. The conduct of Dr. Applegate, as set forth in Findings of Fact 1 and 2, constitutes "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, as in effect prior to March 9, 1999.
3. The Consent Agreement and Order issued by the Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs, State Board of Medicine, as set forth in Findings of Fact 3, 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.

4. The Consent Agreement and Order issued by the New York State Board for Professional Medical Conduct, as set forth in Findings of Fact 4, 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.

* * * * *

Dr. Applegate repeatedly misrepresented significant difficulties he had experienced during his professional career. Moreover, the evidence supports the conclusion that Dr. Applegate intentionally tried to hide these difficulties from the Board when applying for licensure in this state. Not only are his arguments unpersuasive on their face, but it is also highly incredible that a physician would fail to recognize that a state contemplating granting him licensure would design questions directly addressing the type of problems Dr. Applegate had experienced in his career. These facts, especially when viewed in combination with his lack of veracity to the North Hills Passavant Hospital and his conduct which led to the actions of the Pennsylvania and New York Boards, suggest that Dr. Applegate cannot be trusted to tell the truth when his self-interest is at stake, which presents a great potential for harm to the citizens of Ohio. Therefore, such conduct warrants a significant sanction, if not permanent revocation of his certificate to practice in this state.

PROPOSED ORDER

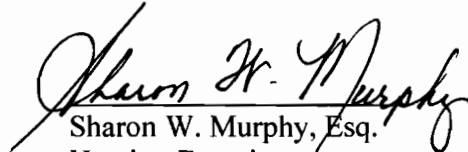
It is hereby ORDERED that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Gerald Brian Applegate, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for one year.
- B. **PROBATIONARY CONDITIONS:** Upon reinstatement, Dr. Applegate’s certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least one year:
 1. **Obey the Law:** Dr. Applegate shall obey all federal, state, and local laws. Moreover, he shall obey all rules governing the practice of medicine and surgery in the state in which he is practicing.
 2. **Quarterly Declarations:** Dr. Applegate shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether

- there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Order becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
3. **Appearances**: Dr. Applegate shall appear in person for quarterly interviews before the Board or its designated representative during the third month following the effective date of this Order. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
 4. **Course on Personal/Professional Ethics**: Before the end of probation, or as otherwise approved by the Board, Dr. Applegate shall provide acceptable documentation of successful completion of a course or courses dealing with personal/professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education acquisition period(s) in which they are completed.
 5. **Violation of Probation; Discretionary Sanction Imposed**: If Dr. Applegate violates probation in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.
- C. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Applegate's certificate will be fully restored.
- D. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS**: Within thirty days of the effective date of this Order, Dr. Applegate shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training, and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Applegate shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
- E. **REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES**: Within thirty days of the effective date of this Order, Dr. Applegate

shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Applegate shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Applegate shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of notification of approval by the Board.


Sharon W. Murphy, Esq.
Hearing Examiner



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3954 • Website: www.med.ohio.gov

EXCERPT FROM THE DRAFT MINUTES OF JUNE 14, 2006

REPORTS AND RECOMMENDATIONS

Dr. Robbins announced that the Board would now consider the findings and orders appearing on the Board's agenda. He noted that the cases of Mitchell Edward Simons, M.D., and Frank Murray Strasek, D.P.M., which were scheduled for this meeting, would be considered at a later time due to the unavailability of their attorneys to accompany them to the meeting.

Dr. Robbins asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Gerald Brian Applegate, M.D.; Janice E. Green Douglas, M.D.; Khalid Mahmoud Shirif, M.D.; and Cynthia Dianne Wester-Broner, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Madia	- aye
	Dr. Steinbergh	- aye
	Dr. Robbins	- aye

Dr. Robbins 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. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye

Dr. Madia	- aye
Dr. Steinbergh	- aye
Dr. Robbins	- aye

Dr. Robbins 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. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

Dr. Robbins 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.

GERALD BRIAN APPELGATE, M.D.

.....

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER IN THE MATTER OF GERALD BRIAN APPELGATE, M.D. DR. KUMAR SECONDED THE MOTION.

.....

Dr. Talmage left the meeting during the previous discussion.

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

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Varyani	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Dr. Davidson	- aye
	Dr. Madia	- abstain
	Dr. Steinbergh	- aye

The motion carried.



State Medical Board of Ohio

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

August 10, 2005

Gerald Brian Applegate, M.D.
P. O. Box 402098
Miami Beach, FL 33140-0098

Dear Doctor Applegate:

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

- (1) In or about August 1993, you submitted to the Board an Application for Certificate – Medicine or Osteopathic Medicine [License Application]. By signing the License Application, you certified that the information provided therein was true.

You answered “No” in response to question number 19 in the “Additional Information” section of your License Application, which asks:

Have you been a defendant in a legal action involving professional liability (malpractice), or had a professional liability claim paid on your behalf, or paid such a claim yourself? If yes, include the case name, case number, court and address, date filed, and a summary of the underlying events. Indicate current status, including amount of settlement or judgment, if any.

In fact, on or about January 31, 1991, you were named as the sole defendant in a malpractice action in the Court of Common Pleas for Butler County, Pennsylvania, located in Butler, Pennsylvania. Further, on or about August 30, 1991, the above referenced malpractice action was settled on your behalf for a total payout of \$598,735.

- (2) On or about March 15, 1996, you signed and submitted to the Board your application for renewal of your Ohio certificate to practice medicine and surgery

MAILED 8-11-05

[1996 Renewal Application]. By signing the 1996 Renewal Application, you certified the information provided therein was true.

In this application for renewal, you responded "NO" to question seven, which asks:

* * *

At any time since signing your last application for renewal of your certificate have you:

* * *

Had any clinical privileges suspended, restricted or revoked for reasons other than failure to maintain records or attend staff meetings?

* * *

In fact, in or about November 1994, your privileges were placed on probation by the North Hills Passavant Hospital, located in Pittsburgh, Pennsylvania, due to your lack of veracity regarding representations made concerning maintaining the required full-time coverage for obstetrical and gynecological patients.

- (3) On or about February 24, 2004, the Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs, State Board of Osteopathic Medicine [Pennsylvania Board], entered a Consent Agreement and Order [Pennsylvania Order] which issued a 90 day stayed suspension of your Pennsylvania medical license and levied a civil penalty of \$5000. The Pennsylvania Order was based on your admissions that you prescribed controlled substances for your wife on 86 different occasions from July 7, 1999, to July 20, 2001, that were filled at eight different pharmacies, and that you failed to maintain medical records for the circumstances under which said prescriptions were issued. A copy of the Pennsylvania Order is attached hereto and fully incorporated herein.
- (4) On or about October 25, 2004, based upon the aforementioned Pennsylvania Order, the New York State Board for Professional Medical Conduct, entered a Consent Agreement and Order [New York Order] which, *inter alia*, issued a stayed 90 day suspension of your New York medical license and permanently restricted you from prescribing controlled substances to yourself and family members. A copy of the New York Order is attached hereto and fully incorporated herein.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code, as in effect prior to March 9, 1999.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code, as in effect prior to March 9, 1999.

Further, the Pennsylvania Order and the New York Order, as alleged in paragraphs (3) and (4) above, individually and/or collectively, constitute "[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.

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 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 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, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand you or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, 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,



Lance A. Talmage, M.D.
Secretary

LAT/blt
Enclosures

CERTIFIED MAIL # 7003 0500 0002 4333 2891
RETURN RECEIPT REQUESTED

duplicate mailing to:

Eve Clinic
3900 NW 79th Street Suite 575
Miami, FL 33156

CERTIFIED MAIL # 7003 0500 0002 4333 2907
RETURN RECEIPT REQUESTED

cc: Lawrence D. Kerr, Esq.
115 North Main Street
Greensburg, PA 15601

CERTIFIED MAIL # 7003 0500 0002 4333 3263
RETURN RECEIPT REQUESTED

TRUE AND CORRECT COPY
CERTIFIED FROM THE RECORD
THIS 15th DAY OF June A.D. 2004

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE
PROTHONOTARY

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs

vs.

Gerald B. Applegate, M.D.
Respondent

Docket No. 0241-49-03
File No. 01-49-04549

CONSENT AGREEMENT AND ORDER

The Commonwealth and Respondent stipulate as follows in settlement of the above-captioned case.

1. This matter is before the State Board of Medicine pursuant to the Medical Practice Act, Act of December 20, 1985, P.L. 457, No. 112, as amended ("Act"), 63 P.S. §422.1 et seq.
2. At all relevant and material times, **Gerald B. Applegate, M.D.** ("Respondent") held a license to practice medicine in the Commonwealth of Pennsylvania, license number MD-029271-E.
3. Respondent admits that the following facts are true:
 - a. Respondent's license is current through December 31, 2004, and may be renewed thereafter upon the filing of the appropriate documentation and payment of the necessary fees.
 - b. Respondent's last known address on file with the Board is Town Centre, Suite 208, 10475 Terry Highway, Wexford, PA 15090.
 - c. Respondent last practiced at Wexford, PA.
 - d. Respondent is married to Karen Applegate.
 - e. During the period from July 7, 1999 to July 20, 2001, Respondent prescribed controlled substances for Karen Applegate on eight-six (86) occasions.

PROTHONOTARY
2004 JUN 21 9:27
Department of State

STATE MEDICAL BOARD
OF OHIO

2004 JUN 21 A 10:56

f. A summary list of the prescriptions for Karen Applegate from July 7, 1999 to July 20, 2001 is attached as **Exhibit 1** and incorporated herein.

g. The prescriptions noted in paragraph 3.e. and 3.f. above were filled at eight (8) different pharmacies. (See **Exhibit 1**).

h. Respondent did not maintain medical records for the circumstances under which any of the prescriptions noted in paragraph 3.e. and 3.f. above were written.

i. 49 Pa. Code §16.92(a) states that,

a. "A person licensed to practice medicine and surgery in this Commonwealth...when prescribing, administering or dispensing controlled substances, shall carry out, or cause to be carried out, the following minimum standards:"

(4) Medical Records "... certain information shall be recorded in the patient's medical record on each occasion when a controlled substance is prescribed, administered or dispensed. This information shall include the name of the controlled substance, its strength, the quantity and the date it was prescribed, administered or dispensed. On the initial occasion when a controlled substance is prescribed, administered or dispensed to a patient, the medical record shall also include a specification of the symptoms observed and reported, the diagnosis of the condition for which the controlled substance is being given and the directions given to the patient for the use of the controlled substance. If the same controlled substance continues to be prescribed, administered or dispensed, the medical record shall reflect changes in the symptoms observed and reported, in the diagnosis of the condition for which the controlled substance is being given and in the directions given to the patient."

4. The actions of Respondent, described above, violated the Act at 63 P.S. §422.41(6) in that Respondent violated 49 Pa. Code §16.92(a)(4) by failing to maintain medical records when prescribing controlled substances for Karen Applegate on 86 occasions.

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

a. Respondent violated the Act at 63 P.S. §422.41(6) in that Respondent violated the Board Regulation at 49 Pa. Code §16.92(a)(4) by failing to maintain medical records when prescribing controlled substances for Karen Applegate on 86 occasions.

b. Respondent shall pay a **CIVIL PENALTY** of five thousand dollars (\$5,000) 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.

c. Respondent's license, number MD-029271-E, is **SUSPENDED** for a period of 90 days, which is immediately **STAYED** in favor of **PROBATION** for a period of 90 days from the date of the Order adopting this Consent Agreement, subject to the following terms and conditions:

GENERAL

(1) Respondent shall abide by and obey all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions and all rules and regulations and laws pertaining to the practice of the profession in this Commonwealth or any other state or jurisdiction in which Respondent holds a license to practice. Provided, however, summary traffic violations shall not constitute a violation of this Order.

(2) Respondent shall at all times cooperate with the Bureau of Professional and Occupational Affairs ("Bureau"), any of its agents or employees and the Bureau of Enforcement and Investigation ("BEI") and its agents and employees, in the monitoring, supervision and investigation of Respondent's compliance with the terms and conditions of this Order, including Respondent causing to be submitted at his own expense written reports, records and verifications of actions that may be required by the Bureau, BEI or any of its agents or employees.

(3) Respondent's failure to fully cooperate with and successfully comply with the terms and conditions of this probation shall be deemed a violation of this Consent Agreement and Order.

(4) Respondent shall not falsify, misrepresent or make material omission of any information submitted pursuant to this Order.

(5) Respondent may not be absent from the Commonwealth of Pennsylvania for any period exceeding twenty (20) days unless Respondent seeks and receives prior written permission from the Prosecuting Attorney, subject to any additional terms and conditions required by the Prosecuting Attorney.

(6) Respondent shall notify BEI, in writing, within twenty (20) days of the filing of any criminal charges, the initiation of any other

legal action pertaining to the practice of Respondent's profession, the initiation, action, restriction or limitation relating to Respondent by the professional licensing authority of any state or jurisdiction, or the Drug Enforcement Agency of the U.S. Department of Justice, or any investigation, action, restriction or limitation relating to Respondent's privilege to practice the profession.

(7) Respondent shall notify BEI by telephone within 72 hours and in writing within ten (10) days of the change of his home address, phone number, place(s) of employment and/or practice.

d. Respondent shall enroll in and successfully complete a course in the proper prescribing of controlled dangerous substances given by the University of Medicine and Dentistry of New Jersey (UMDNJ), or a course equivalent thereto within one (1) year of the effective date of this order. The information concerning UMDNJ's course is attached as **Exhibit 2**.

e. Respondent shall complete a continuing medical education course for the maintenance of medical records within one (1) year of the date of this order.

f. Proof of the successful completion of paragraph 5.d. and e. above shall be sent to:

Prosecuting Attorney
State Board of Osteopathic Medicine
P. O. Box 2649
Harrisburg, PA 17105-2649

g. Failure of Respondent to complete the required courses described in paragraph 5.d. and e. above within one (1) year from the effective date of this order

shall result in the indefinite suspension of Respondent's license, number MD-029271-E, until Respondent has completed the required courses.

h. A **VIOLATION** of the terms or conditions of this Consent Agreement and Order shall result in the **IMMEDIATE VACATION** of the STAY Order, **TERMINATION** of the period of PROBATION, and **ACTIVATION** of the entire period of SUSPENSION of Respondent's license to practice the profession in the Commonwealth of Pennsylvania under the procedure delineated in **Exhibit 3**.

i. Upon successful completion of probation, Respondent may petition the Board to reinstate Respondent's license to unrestricted, non-probationary status upon an affirmative showing that Respondent has complied with all terms and conditions and that Respondent's resumption of unmonitored practice does not present a threat to the public health and safety.

j. This case shall be deemed settled and discontinued upon the Board's adoption of the Consent Agreement.

k. This Order shall take effect immediately upon the Board's adoption of the 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.

B. A. Cero

Benjamin A. Cero
Prosecuting Attorney
Department of State

Gerald B. Applegate M.D.
Respondent

DATED: 2/18/04

DATED:

FEBRUARY 18, 2004

Date	Drug	Schedule	Amount	Refills	Telephone or Pad	Pharmacy
7/7/1999	Demerol 100mg	II	10	0	P	PH
7/12/1999	Phenergan 25mg		1	0	T	GE-45
	Promethazin 25mg		1	0	T	GE-45
7/12/1999	Phenergan 50mg Sup		30	0	T	GE-45
	Phenergan 50mg Tab		30	0	T	GE-45
8/7/1999	Vicodin ES Tabs	III	60	1	T	ED-12
11/16/1999	Ocutricin OPH SOL		10	0	T	GE-45
11/29/1999	Diazepam 10mg	IV	90	1	T	GE-67
12/1/1999	Demerol 50mg	II	29	0	P	PH
12/25/99	Demerol 100mg, 1ml vials	II	10	0	P	PH
	Vistaril 50mg, 1ml vials		10	0	P	PH
1/22/2000	Demerol 100mg, 1ml vials	II	5	0	P	PH
2/3/2000	Diazepam 10mg	IV	90	0	T	GE-45
2/3/2000	Meperidine 50mg/ml vial	II	30	0	T	FP
2/3/2000	Meperidine 50mg/ml vial	II	30	0	P	FP
2/15/2000	Meperidine 50mg/ml vial	II	30	0	P	FP
2/16/2000	Percocet 10-650mg	II	30	0	P	GE-45
2/16/2000	Percocet 10-650mg	II	30	0	P	GE-45
2/16/2000	Hydroxyzine 50mg/ml vial		10	0	P	FP
2/16/2000	Hydroxyzine 50mg/ml vial		10	0	T	FP
2/17/2000	Valium 5mg/ml vial	IV	10	0	T	FP
2/17/2000	Zofran 2mg/ml vial		20	0	T	FP
2/17/2000	Valium 5mg/ml vial	IV	10	0	T	FP
	D.H.E.45 1mg/ml Ampul		10	0	T	FP
	Zofran 2mg/ml vial		20	0	T	FP
2/18/2000	Meperidine 50mg/ml vial	II	30	0	P	FP
2/23/2000	Hydroxyzine 50mg/ml vial		20	0	T	FP
2/23/2000	Demerol 50mg/ml vial	II	30	0	P	FP
2/29/2000	Diphen/A Trop		60	2	T	GE-45
2/29/2000	Trazodone 50mg		60	2	T	GE-45
2/29/2000	Lorazepam 0.5mg	IV	60	0	T	GE-45
3/11/2000	Vicodin ES 7.5-750	III	90	2	T	GE-45
3/27/2000	Hydroxyzine 50mg/ml vial		10	0	T	FP
3/27/2000	Demerol 50mg/ml vial	II	30	0	P	FP
4/7/2000	Percocet 10-650mg	II	60	0	P	GE-45
4/17/2000	Librium 25mg	IV	60	0	P	PH
4/18/2000	Demerol 50mg/ml vial	II	10	0	P	PH
4/18/2000	Demerol 50mg/ml vial	II	5	0	P	PH
4/19/2000	Oxycontin 20mg	II	60	0	P	ED-12
4/20/2000	Demerol 50mg/ml vial	II	3	0	P	PH
4/28/2000	Demerol 50mg/ml vial	II	10	0	P	PH
	Vistaril 100mg/2ml vial		10	0	P	PH
5/2/2000	Vicodin ES 7.5-750	III	90	0	T	GE-67
5/14/2000	Demerol 50mg/ml vial	II	6	0	P	PH
5/25/2000	Demerol 50mg/ml vial	II	8	0	P	PH
	Vistaril 100mg/2ml vial		8	0	P	PH
6/5/2000	Demerol 50mg/ml vial	II	4	0	P	PH
	Vistaril 100mg/2ml vial		4	0	P	PH

EXHIBIT

1

tabbies

mmw
11/21/2002

6/7/2000	Diazepam 10mg	IV	90	0	T	GE-45
6/7/2000	Claritin-D 12Hr		20	0	T	GE-45
	Zithromax ZPK 250 mg		6	0	T	GE-45
6/9/2000	Demerol 50mg/ml vial	II	4	0	P	PH
	Vistaril 100mg/2ml vial		4	0	P	PH
6/12/2000	Demerol 50mg/ml vial	II	4	0	P	PH
	Vistaril 100mg/2ml vial		4	0	P	PH
6/16/2000	Demerol 50mg/ml vial	II	1	0	P	PH
6/16/2000	Demerol 50mg/ml vial	II	3	0	P	PH
	Vistaril 100mg/2ml vial		1	0	P	PH
6/18/2000	Demerol 50mg/ml vial	II	4	0	P	PH
	Vistaril 100mg/2ml vial		2	0	P	PH
6/21/2000	Demerol 50mg/ml vial	II	2	0	P	PH
	Vistaril 100mg/2ml vial		1	0	P	PH
6/21/2000	Demerol 50mg/ml vial	II	4	0	P	PH
	Vistaril 100mg/2ml vial		4	0	P	PH
7/19/2000	Vicodin ES 7.5-750	III	90	2	T	ED-47
7/25/2000	Demerol 50mg/ml vial	II	1	0	P	FP
7/25/2000	Demerol 50mg/ml vial	II	30ml	0	P	FP
7/25/2000	Hydroxyzine 50mg/ml vial		10ml	0	T	FP
8/12/2000	But/Asa/Caf/Cod 30mg	III	15	0	P	GE-45
8/14/2000	Fiortal w/Code 30mg	III	90	2	T	GE-45
8/25/2000	Oxycontin 20mg	II	60	0	P	GE-45
8/30/2000	Demerol 50mg/ml vial	II	6	0	P	Magee Womens Hospital
9/5/2000	Percocet 10-650mg	II	20	0	P	GE-45
9/25/2000	Ambien 10mg	IV	15	0	T	GE-45
10/19/2000	Diphenoxylate/Atr	V	30	0	T	ED-47
	Triazolam 0.25mg	IV	40	0	T	ED-47
10/30/2000	Demerol 50mg/ml vial	II	8	0	P	Magee Womens Hospital
11/2/2000	Librium 25mg	IV	30	1	T	ED-47
	Catapres 0.1mg		40	0	T	ED-47
	Chlordiazepoxide 25mg	IV	6	0	T	ED-47
11/2/2000	Librium 25mg	IV	40	0	T	GE-45
11/2/2000	Catapres 0.1mg		40	0	T	GE-45
11/29/2000	Hydroquinone 4%		29	6	T	GE-45
	Renova 0.05%		40	6	T	GE-45
12/4/2000	Vicodin ES	III	60	0	T	ED-12
12/12/2000	Percocet 10-650mg	II	20	0	P	ED-12
12/18/2000	Vicodin ES	III	20	0	P	ED-47
	Parafon Forte Dsc		20	1	P	ED-47
12/19/2000	Vicodin ES 7.5-750	III	25	0	P	GE-45
12/26/2000	Demerol 100mg/2ml vial	II	6	0	P	PH
12/26/2000	Cephalexin 500mg		14	0	T	GE-45
12/27/2000	Halcion 0.25mg	IV	50	3	P	ED-47
1/3/2001	Valium 10mg	IV	30	1	T	ED-47
1/5/2001	Percocet 10-650mg	II	15	0	P	GE-45
1/14/2001	SSD 1%		50	0	T	GE-45
1/16/2001	Vicodin ES	III	90	3	T	ED-47
1/24/2001	Hydrocod/Hom5-1.5/5 Syp		240	3	P	GE-67
1/30/2001	Hydrocod/Hom5-1.5/5 Syp		240	2	T	GE-45
2/19/2001	Diazepam 10mg	IV	40	2	P	GE-67

Walter
11/21/2002

3/6/2001	Triazolam 0.25mg	IV	30	0	P	GE-67
3/6/2001	Lonox 2.5mg	V	30	1	P	GE-67
3/6/2001	Oxycontin 20mg	II	30	0	P	GE-67
3/27/2001	Percocet 10-650mg	II	10	0	P	GE-45
4/11/2001	Hydromet		240ml	1	P	PP-02
4/12/2001	Percocet 10-650mg	II	15	0	P	ED-12
4/16/2001	Librium 25mg	IV	25	0	T	ED-47
4/17/2001	Diazepam 10mg	IV	40	3	P	ED-47
7/20/2001	Vicodin ES 7.5-750	III	90	2	P	PP-02

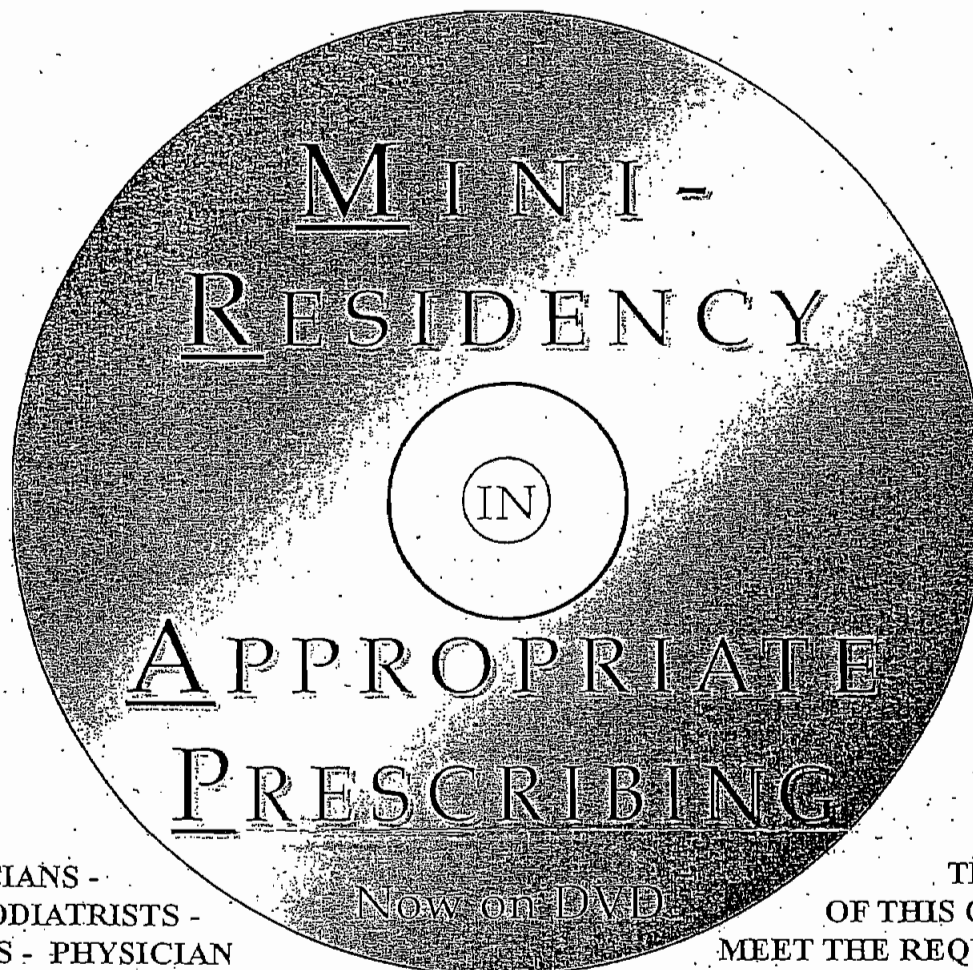
Pharmacies

Passavant Hospital	PH
Giant Eagle Pharmacy #0045	GE-45
Giant Eagle Pharmacy #0067	GE-67
Eckerd Drugs #6212	ED-12
Eckerd Drugs #6147	ED-47
Fisher's Pharmacy	FP
Pharmor Pharmacy #0002	PP-02
Magee Womens Hospital	

mw
11/21/2002



UMDNJ
UNIVERSITY OF MEDICINE &
DENTISTRY OF NEW JERSEY



FOR: PHYSICIANS -
DENTISTS - PODIATRISTS -
PHARMACISTS - PHYSICIAN
ASSISTANTS - NURSE PRACTITIONERS

THE OBJECTIVES
OF THIS COURSE ARE TO
MEET THE REQUIREMENTS OF
STATE LICENSING BOARDS AND TO:

This 21 year old pioneer remedial education course is for healthcare providers who:

- want to upgrade their knowledge;
- have been sanctioned for injudicious prescribing, dispensing or record-keeping involving opioids and benzodiazepines;
- lack the ability to recognize abuse, addiction and patterns of manipulative behavior.

Nurse practitioners and physician's assistants may utilize this course as a basis for applying for CDS prescribing privileges

Now offered by the University of Medicine and Dentistry of New Jersey-School of Osteopathic Medicine (UMDNJ-SOM) through the Department of Family Medicine, Carman A. Ciervo, DO, FACOFP, chair, the course continues under the direction of William Vilensky, DO, RPh, FASAM, FAOAAM, FAAFS.

- 1) Review existent and new federal and state mandates pertaining to the prescribing of controlled substances;
- 2) Promote the understanding of parameters of prescribing to which a provider must adhere;
- 3) Discuss appropriate methods of documenting medical records to maintain compliance with the regulations;
- 4) Increase awareness of violations and penalties in instances of insurance fraud by prescribers;
- 5) Assist the practitioner in identifying scams of the drug abuser;
- 6) Clarify issues of prescribing controlled drugs for sexual favors;
- 7) Address different biomedical ethics issues;
- 8) Help the practitioner formulate informed consent and treatment agreements.

The MRAP Disc Sets will be available October 15, 2003

THE NEW CONCEPT IN REMEDIAL EDUCATION:

THE FORMAT: For 21 years healthcare providers from 43 states and Canada have traveled to New Jersey to take this "Proper Prescribing" course. Now, due to the threat of terrorism, restricted and inconvenient travel and the state of the economy, it is more difficult to afford air travel, hotel, meals, and the fee for a 5 1/2 day course while also losing practice income.

To remedy this situation, the original course has been compressed to a minimum of 25 hours and is now available on a multi-disc set of DVDs. When played on a DVD player at home in comfort, safety and privacy, the licensee will actually hear and see the lecturer as if he/she were sitting in a classroom. The personality and inflections of the expert faculty still engage the viewer.

With each MRAP Disc Set the registrant will receive a manual and teaching tools containing all the highlights of the Microsoft PowerPoint® slides for each lecture. This can be used to review for the examination and then saved as a reference source for future questions, problems arising in practice and for patient education.

• Advantages to the Board

- There is no conflict of interest, personnel or cost involvement to the board office.
- Statistics tabulated and published periodically.
- Sanctioned health care providers can take the course immediately.

Copyright Note: The University of Medicine and Dentistry of New Jersey - School of Osteopathic Medicine is the sole owner of the content of the DVDs and manual and holds the copyright thereto. Any attempt to duplicate, use or sell that content in whole or in part, except as prescribed in the course agreement is prohibited.

Violators will be prosecuted.

THE PROCESS: After an agreement with the board:

- The interested healthcare provider can contact the MRAP office.
- An Informed Consent and Program Agreement / registration form is sent to the licensee (copy enclosed).
- The licensee is asked to complete the form and to designate a date that he/she would like to receive the DVD set, and a day in the week after the DVDs are returned when he/she will go to a testing site professionally proctored by the Test Proctoring and Consultancy Services of the Room Rental Affiliate Network, an affiliate of the National College Testing Association, to take the exam.
- The exam date and location requested will be confirmed and the registrant will receive the dated DVD set, manual and documents.
- The DVDs can be viewed for 14 days. This allows the "licensee" to view and review some or all of the lectures - not possible in a live classroom setting.
- By the end of the 14 days the encoded and encrypted disc set must be returned to the Course Administrator at the University in the self-addressed and stamped padded envelope included with the DVD set.
- Failure to return the DVD set within 14 days of receipt will result in a letter to the licensing agency informing them of failure of the licensee to comply with the course agreement.
- The licensee will go to the selected test site to take the exam on the date specified.
- At that site the respondent will be identified by a voucher and photo identification and given the sealed written examination (previously sent to the site by MRAP).
- At the end of the two-hour exam, the examinee will seal the exam in our pre-addressed and stamped envelope and the testing site will mail it to MRAP.
- Upon receipt of the examination, the Course Director, or designee, will grade the exam electronically and report the results to the examinee, his/her attorney and the State Board.

The Passing Grade will be 70 in a 100 question examination consisting of multiple choice, matching and case presentations.

COURSE DESCRIPTION:

When the course was initiated in 1981 as the Mini-Residency in the Proper Prescribing of Controlled Substances, a concept proposed by Dr. Vilensky to the NJ State Board of Medical Examiners, several controlled substances, i.e., amphetamines, barbiturates, anabolic steroids and stimulants were significant drugs of use and abuse. These drugs are no longer appropriate for diet control, reduction of anxiety and hypnosis or muscle enhancement.

The urgent focus is now on:

- 1) Recognition of pain and anxiety,
- 2) Appropriate history and physical examination,
- 3) Diagnosis,
- 4) Choices of treatment,
- 5) The use of non-opioid, opioid and anxiolytic substances,
- 6) The basic knowledge of pharmacology in a clinical setting,
- 7) Drug abuse with or without the combination of alcohol or other depressants, and
- 8) Medical record keeping.
- 9) Medical errors.

COURSE TOPICS:

- | | |
|---|--|
| 1) Course History & Purpose
and How Best to Utilize MRAP
William Vilensky, DO, RPh,
FASAM, FAOAAM, FAFPS | 8) Pharmacological Treatment of
Chronic Pain
Ann Berger, RN, MSN, MD |
| 2) Pain Management - Definitions,
Classification & Categories
William Vilensky, DO, RPh | 9) Backache
William Vilensky, DO, RPh |
| 3) Controlled Substances
William Vilensky, DO, RPh | 10) Headache
Loretta Mueller, DO, FACOPF |
| 4) Drug Dependence, Tolerance, Abuse, and
Addiction
William Vilensky, DO, RPh | 11) Anxiolytics - The Benzodiazepines
William Vilensky, DO, RPh |
| 5) Good & Safe Practices - Viewpoint of a
State Licensing Agency
Joan Gelber, JD | 12) BioMedical Ethics
Edmund Erde, PhD |
| 6) Opiate/Opioid Pharmacology - Mechanism,
Forms, Different Types
William Vilensky, DO, RPh | 13) The Impaired Physician
David Canavan, M.D. |
| 7) Pharmacological Treatment of Acute Pain
William Vilensky, DO, RPh | 14) Medical Record Keeping
William Vilensky, DO, RPh |
| | 15) Recognizing the Drug Abuser and Addict
William Vilensky, DO, RPh |
| | 16) Conclusions
William Vilensky, DO, RPh |

While the multi-disc set of lectures on DVD makes up the majority of the course, additional content is found in the binder which contains printouts of each lecturers' slides, scientific and legal guidelines, titration and conversion scales, pain assesment kits, educational tools for both the physician and the patient, amongst other documents.

FACULTY

Ann Berger, RN, MSN, MD

Chair, Pain and Palliative Care
National Institute of Health
Bethesda, MD

Author:

Principles and Practice of
Supportive Oncology
(Berger, Portenoy, Weissman)

David Canavan, MD

Director Emeritus
Physicians' Health Program
Medical Society of New Jersey
Lawrenceville, NJ

Edmund Erde, PhD (BioEthics)

Professor of Family Medicine
UMDNJ- School of Osteopathic Medicine
Stratford, NJ

Founding Member:

The Ethics Group, LLC
providing the ProBE Course

Joan Gelber, JD

Deputy Attorney General
State of New Jersey
(Assigned to the NJ State Board of Medical Examiners)
Courtesy:
Office of the Attorney General, State of NJ

Loretta Mueller, DO, FACP

Associate Professor of Clinical Family Medicine
UMDNJ - School of Osteopathic Medicine
Stratford, NJ
Associate Director:
University Headache Center

William Vilensky, DO, RPh,

FASAM, FAOAAM, FAAFS
Clinical Associate Professor of Psychiatry
UMDNJ - New Jersey Medical School
Newark, NJ
MRAP Course Director
UMDNJ - School of Osteopathic Medicine
Stratford, NJ

REGISTRATION

FEE: The fee for the course in its new format is \$ 985.00. This includes viewing of the DVDs for a 14 day period, the manual of lecture content and teaching tools/documents for the enrollee to keep, testing services and processing of the examination.

A separate DVD set for licensees who are mandated to have an educational tutorial solely for Medical Record Keeping (not necessarily related to controlled substances prescribing) will be available separately for \$200.

For more information, please contact:

Lora Donia,

MRAP Program Administrator
UMDNJ-SOM,

Department of Family Medicine
40 E. Laurel Road - Suite 207
Stratford, New Jersey 08084-1501

Office phone: 856-566-6330

Monday - Friday, 9:30 AM - 2:30 PM (EST)

Office FAX: 856-566-6360 (avail. 24 hrs.)

E-mail: doniala@umdnj.edu

Dr. William Vilensky,

MRAP Course Director

609-332-3344

Monday - Friday, 9:00 AM - 4:00 PM (EST)

E-mail: wvilensky@hotmail.com

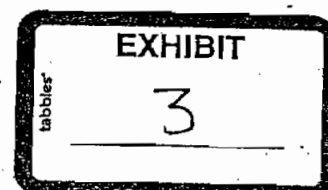
Sincere appreciation is extended to Purdue Pharma L.P. and Endo Pharmaceuticals Inc. for an educational grant to fund the purchase of electronic equipment to enable the technical production of this course.

** Purdue Pharma L.P. and Endo Pharmaceuticals are not responsible for any of the lecture content.**

VIOLATION OF TERMS OF PROBATION

A violation of the terms or conditions of this Consent Agreement and Order shall result in the **IMMEDIATE VACATING** of the stay order, **TERMINATION** of the period of probation, and **ACTIVATION** of the entire period of suspension of Respondent's license to practice the profession in the Commonwealth of Pennsylvania under the following procedure:

1. The prosecuting attorney for the Commonwealth shall file with the Board a petition which indicates that Respondent has violated one (or more) of the terms or conditions of this Consent Agreement and Order.
2. Upon a probable cause determination that Respondent has violated any of the terms or conditions of this Consent Agreement and Order, the Board shall, without holding a formal hearing, issue a preliminary order vacating the stay of the suspension, terminating the period of probation, and activating the entire period of suspension of Respondent's license.
3. Respondent shall be notified of the Board's Preliminary Order within three (3) days of its issuance by certified mail and first class mail postage prepaid, sent to the last registered address on file with the Board.
4. Within twenty (20) days of mailing of the notification of the Board's action, Respondent may answer the Commonwealth's Petition and request a formal hearing, at which time Respondent may seek relief from the Preliminary Order activating the suspension. Respondent shall serve the prosecuting attorney for the Commonwealth with a copy of the answer and all subsequent filings in this matter.



5. If a request for a formal hearing is received from Respondent, the Board shall convene a formal hearing within forty-five (45) days from the date of the Board's receipt of Respondent's request for a formal hearing.
6. If Respondent files an answer and request for a hearing within the twenty (20) day period, the Preliminary Order activating the suspension shall remain in effect unless and until the Board issues a determination favorable to Respondent after holding the formal hearing.
7. The facts and averments in this Consent Agreement and Order shall be deemed admitted and uncontested at the formal hearing.
8. If the Board after the formal hearing makes a determination adverse to Respondent, the Board will issue a Final Order activating the suspension of Respondent's license and imposing any additional disciplinary measures it deems appropriate.
9. If a request for a formal hearing is not received from Respondent within the prescribed twenty (20) day period, the Board's Preliminary Order shall become a Final Order twenty (20) days after the date of its mailing.
10. If the stay is terminated, Respondent shall still comply with all terms and conditions of probation during the active suspension, other than those terms and conditions pertaining to practicing the profession. Continued failure by Respondent to comply with the unaffected terms and conditions of probation shall result in further disciplinary action against Respondent.

ORDER

AND NOW, this 24th day of February, 2004 the State Board of Medicine 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.

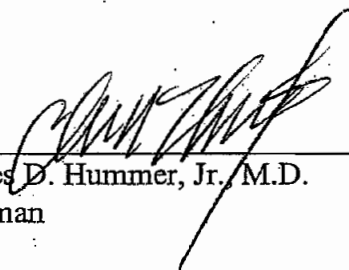
BY ORDER:

**BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS**



Basil L. Merenda
Acting Commissioner

STATE BOARD OF MEDICINE



Charles D. Hummer, Jr., M.D.
Chairman

File No.:

01-49-04549

Date of mailing:

3/3/04

For the Commonwealth:

Benjamin A. Cero, Esquire
P. O. Box 2649
Harrisburg, PA 17105-2649

For Respondent:

Larry Kerr, Esquire
BERKS, WHITEHEAD, KERR
115 North Main Street
Greensburg, PA 15601

BAC/bld

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
GERALD APPEGATE, M.D.
CO-04-04-1761-A

CONSENT AGREEMENT
AND ORDER

BPMC No. 04-221

GERALD APPEGATE, M.D., states:

That on or about October 13, 1994, I was licensed to practice as a physician in the State of New York, having been issued License No. 197471 by the New York State Education Department.

My current address is 1601 Fieldstone Lane, Sewickley, PA 15143, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that the New York State Board for Professional Medical Conduct has charged me with two (2) specifications of professional misconduct.

A copy of the Statement of Charges, is annexed hereto, made a part hereof, and marked as Exhibit A.

I do not contest Factual Allegations A and B(3) and the two (2) Specifications, in full satisfaction of the charges against me. I agree, hereby, to the following penalty:

Ninety (90) days suspension of my New York state license, stayed,

Respondent shall comply fully with the requirements of the Department of State, State Board of Medicine for the Commonwealth of Pennsylvania, February 18, 2004, Consent Agreement and Order and any extension or modification thereof.

Respondent shall provide a written authorization for the Pennsylvania Board to provide the Director of OPMC with any/all information or documentation as requested by OPMC to enable OPMC to determine whether Respondent is in compliance with the Pennsylvania Order.

Respondent shall submit semi-annually a signed Compliance Declaration to the Director of OPMC, which truthfully attests whether Respondent has been in compliance with the Pennsylvania Order during the declaration period specified.

Should I practice medicine in New York state or in any other jurisdiction where that practice is predicated on my New York state medical license to practice prior to my license being fully restored without conditions by the State of Pennsylvania, I shall provide ninety (90) days notice, in writing, to the Director, OPMC. The Director in his sole discretion, may impose whatever probation, limitation(s), term(s) or further conditions, he in his sole discretion deems reasonable.

Permanently restricted from prescribing controlled substances to himself and family members.

I further agree that the Consent Order for which I hereby apply shall impose the following conditions:

That, except during periods of actual suspension, I shall maintain current registration of my license with the New York State Education Department Division of Professional Licensing Services, and pay all registration fees. This condition shall be in effect beginning thirty days after the effective date of the Consent Order and will continue while Respondent possesses his license; and

That I shall fully cooperate in every respect with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigation of all matters regarding Respondent. I shall respond in a timely manner to each and every request by OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. I shall meet with a person designated by the Director of OPMC as directed. I shall respond promptly and provide any and all documents and information within my control upon the direction of OPMC. This condition shall be in effect beginning upon the effective date of the Consent Order and will continue while I possess my license.

OHIO STATE MEDICAL BOARD

JUN - 7 2005

I, hereby, stipulate that any failure by me to comply with such conditions shall constitute misconduct as defined by New York State Education Law §6530(29).

I agree that in the event I am charged with professional misconduct in the future, this agreement and order shall be admitted into evidence in that proceeding.

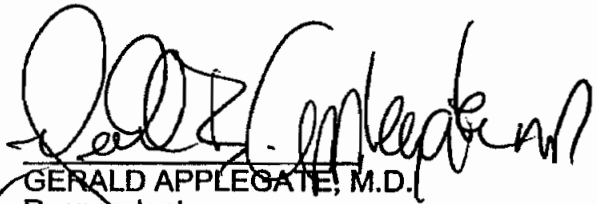
I, hereby, make this application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that, in the event that this application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

I agree that, in the event the Board grants my application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same. I agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to me at the address set forth in this agreement, or to my attorney, or upon transmission via facsimile to me or my attorney, whichever is earliest.

I am making this application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this application, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive any right I may have to contest the Consent Order for which I hereby apply, whether administratively or judicially, and ask that the application be granted.

AFFIRMED


GERALD APPLGATE, M.D.
Respondent

DATED

Sept 15, 2004

OHIO STATE MEDICAL BOARD

JUN - 7 2005

The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: 16 September 2004


ROBERT BOGAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 21 September 2004


DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

OHIO STATE MEDICAL BOARD

JUN - 7 2005

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
GERALD APPEGATE, M.D

CONSENT ORDER

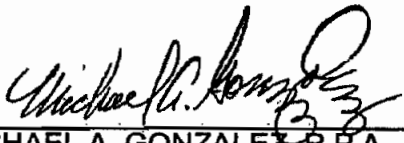
Upon the proposed agreement **GERALD APPEGATE, M.D.** (Respondent) for Consent Order, which application is made a part hereof, it is agreed to and

ORDERED, that the application and the provisions thereof are hereby adopted; and it is further

ORDERED, that this order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to Respondent at the address set forth in this agreement or to Respondent's attorney by certified mail, or upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 9/26/04


MICHAEL A. GONZALEZ, R.P.A.
Vice Chair
State Board for Professional
Medical Conduct

OHIO STATE MEDICAL BOARD

JUN - 7 2005

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
GERALD B. APPEGATE, M.D.
CO-04-04-1761-A

STATEMENT
OF
CHARGES

GERALD B. APPEGATE, M.D., the Respondent, was authorized to practice medicine in New York state on October 13, 1994, by the issuance of license number 197471 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about February 18, 2004, the Commonwealth of Pennsylvania, Department of State, State Board of Medicine, (hereinafter "Pennsylvania Board"), by a Consent Agreement and Order (hereinafter "Pennsylvania Order"), SUSPENDED Respondent's license to practice medicine for ninety (90) days, STAYED the SUSPENSION in favor of PROBATION for ninety (90) days with conditions, and imposed a \$5,000.00 CIVIL PENALTY, based on writing prescriptions for controlled substances for his wife on 86 occasions that were filled at eight (8) different pharmacies wherein he failed to maintain medical records for the circumstances under which the prescriptions were written.

B. The conduct resulting in the Pennsylvania Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state law:

1. New York Education Law §6530(2) (practicing the profession fraudulently);
2. New York Education Law §6530(3) (practicing the profession with negligence on more than one occasion); and/or
3. New York Education Law §6530(32) (failure to maintain a record of each patient which accurately reflects the evaluation and treatment).

OHIO STATE MEDICAL BOARD

JUN - 7 2005

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constituted professional misconduct under the laws of New York state, in that Petitioner charges:

2. The facts in Paragraphs A and/or B.

DATED: 8/23, 2004
Albany, New York


BRIAN M. MURPHY
Chief Counsel
Bureau of Professional Medical Conduct

OHIO STATE MEDICAL BOARD

JUN - 7 2005