

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

FINAL APPEALABLE ORDER

JOSEPH E. RICH, M.D.,

Appellant,

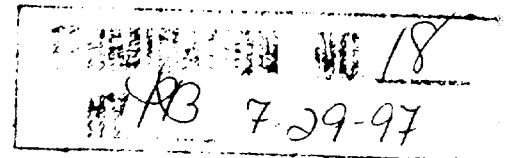
vs.

STATE MEDICAL BOARD OF OHIO,

Appellee.

CASE NO. 96CVF08-6591

JUDGE JOHNSON



NUNC PRO TUNC
FINAL JUDGMENT ENTRY
AFFIRMING THE AUGUST 14, 1996
ORDER OF THE STATE MEDICAL BOARD OF OHIO

This case is before the Court upon the appeal, pursuant to R.C. 119.12, of the August 14, 1996 order of the State Medical Board of Ohio. For the reasons stated in the decision of this Court filed on June 17, 1997, which decision is incorporated by reference as if fully rewritten herein, it is hereby

ORDERED, ADJUDGED AND DECREED that judgment is hereby entered in favor of Appellee, State Medical Board of Ohio, and the August 14, 1996 order of the State Medical Board of Ohio in the matter of Joseph E. Rich, M.D. **IT IS HEREBY AFFIRMED.**
Costs to Appellant.

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
97 JUL 30 PM 3:49
JESSE A. OODI
CLERK OF COURTS

COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
97 JUN 17 PM 3:03

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

JESSIE L. GADDI
CLERK OF COURTS

JOSEPH E. RICH, M.D.,]	CASE NO. 96CVF08-6591
]	
Appellant,]	JUDGE JOHNSON
]	
vs.]	
]	
STATE MEDICAL BOARD OF OHIO,]	
]	
Appellee.]	

DECISION ON MERITS OF REVISED CODE 119.12
ADMINISTRATIVE APPEAL, AFFIRMING ORDER OF
STATE MEDICAL BOARD OF OHIO, ENTERED AUGUST
14, 1996, AND MAILED TO APPELLANT AUGUST 16, 1996

Rendered this _____ day of June 1997.

JOHNSON, J.

This case is a Revised Code 119.12 administrative appeal, by Joseph E. Rich, M.D., from an Order which the State Medical Board of Ohio entered on August 14, 1996, and mailed to Appellant on August 16, 1996. The record which the Board has certified to the Court reflects the following.

In August 1995, Appellant, a physician then practicing medicine in Kentucky, applied to the State Medical Board of Ohio for a certificate to practice medicine and surgery in Ohio. In his application, Appellant did not answer certain questions truthfully and did not thoroughly answer other questions.

By letter dated March 13, 1996, the Board notified Appellant that it proposed to deny Appellant's application, based upon his failure to answer questions in his application.

Appellant requested a hearing, and on May 24, 1996, a Hearing Examiner conducted a hearing on the Board's proposed action.

On July 18, 1996, the Hearing Examiner issued a Report and Recommendation, in which she recommended that the Board deny Appellant's application. A copy of the Report and Recommendation was mailed to Appellant, and he was advised, in the accompanying letter, of his right to file written objections to the Report and Recommendation, and of his right to make an oral presentation at the Board's meeting on August 14 and 15, 1996.

Appellant did not file written objections or request the opportunity to make an oral presentation to the Board.

On August 14, 1996, the Board met and adopted the Hearing Examiner's Report and Recommendation, thereby denying Appellant's application for a certificate to practice medicine and surgery in Ohio. On August 16, 1996, a copy of the Board's Order was mailed to Appellant.

On August 30, 1996, Appellant appealed the Board's Order to this Court.

Pursuant to the Stipulated Briefing Schedule which was filed on November 6, 1996, Appellant was to file his brief in support of this appeal on or before November 22, 1996. Appellant, however, has never filed a brief or otherwise prosecuted this appeal.

Revised Code 119.12, which supplies the standard of review for this appeal, provides:

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

absence of such a finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law.

Revised Code 4731.29(A) provides:

When a person licensed to practice medicine and surgery *** by the licensing department of another state *** wishes to remove to this state to practice his profession, he shall file an application with the state medical board. The board may, in its discretion, *** issue to him a certificate to practice medicine and surgery *** without requiring the applicant to submit to examination, provided he submits evidence satisfactory to the board that he meets the same age, moral character, and educational requirements individuals must meet under sections 4731.08, 4731.09, 4731.091, and 4731.14 of the Revised Code ***.

Revised Code 4731.22(A) provides:

The state medical board, pursuant to an adjudication under Chapter 119, of the Revised Code *** may refuse to grant a certificate to a person found by the board *** to have committed fraud, misrepresentation, or deception in applying for *** any license or certificate issued by the board.

Revised Code 4731.22(B)(5) provides:

The board, pursuant to an adjudication under Chapter 119, of the Revised Code *** shall, to the extent permitted by law, *** refuse to register *** an applicant *** for one or more of the following reasons: *** publishing a false, fraudulent, deceptive, or misleading statement.

Revised Code 4731.08 provides:

*** The applicant shall furnish evidence satisfactory to the board that he is *** of good moral character.

In "Appellant's Notice of Appeal," filed with this Court on August 30, 1996, he asserted that the Board's Order "is not supported by the necessary quantum of reliable,

probative and substantial evidence nor is it in accordance with law." Appellant has not, however, demonstrated to this Court that his assertion is true.

Having reviewed the record which the Board has certified, the Court finds that there was reliable, probative, and substantial evidence before the Board that Appellant committed fraud, misrepresentation, and deception in his application, that he thereby published false, fraudulent, deceptive, and misleading statements, and that he therefore was not of good moral character. The Court further finds that the Board's Order is in accordance with law.

The Court will therefore **AFFIRM** the Board's Order. Counsel for Appellee shall submit an appropriate journal entry in accordance with Local Rule 25.



JUDGE DAVID L. JOHNSON



Copies mailed to:

JOSEPH E. RICH, M.D., Appellant pro se, P.O. Box 634, Harriman, TN 37748
PATRICK W. BEATTY, AAG, Counsel for Appellee

IN THE COURT OF COMMON PLEAS, FRANKLIN
CIVIL DIVISION

Copied to: RQB, WLS,
LL, HO, EC, TP, LE,
Original to JWR to file

Joseph E. Rich, MD, MPH,
P.O. Box 634
Harriman, Tennessee 37748
Appellant,

v.

State Medical Board of Ohio
77 South High St., 17th Floor
Columbus, Ohio 43266-0315
Appellee.

CASE NO. _____

JUDGE _____

Appeal from the State Medical Board of Ohio

APPELLANT'S NOTICE OF APPEAL

Pursuant to RC 119.12, notice is hereby given that Appellant, Joseph E. Rich, MD, MPH, appeals the decision and order of the State Medical Board dated August 14, 1996, mailed August 16, 1996, and received by Appellant's counsel on August 19, 1996, (copy attached as Exhibit A.) The Medical Board order is not supported by the necessary quantum of reliable, probative and substantial evidence nor is it in accordance with law.

Respectfully submitted,

KEVIN P. BYERS CO., L.P.A.

KPBYERS

Kevin P. Byers 0040253
One Columbus

10 West Broad Street, Suite 260
Columbus, Ohio 43215
614.228.6283 Fax 228.6425

Attorney for Joseph E. Rich MD, MPH

SMB original

KEVIN P. BYERS
CO., LPA
♦ ♦ ♦
One Columbus
614.228.6283

STATE MEDICAL BOARD
OF OHIO
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STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

August 16, 1996

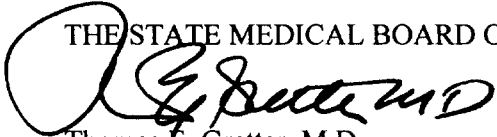
Joseph E. Rich, M.D.
P. O. Box 634
Harriman, TN 37748-0634

Dear Doctor Rich:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on August 14, 1996, including Motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio, and a copy of that Notice of Appeal 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

Thomas E. Gretter, M.D.
Secretary

TEG:em
Enclosures

Certified Mail Receipt No. P 152 983 605
Return Receipt Requested

cc: Kevin P. Byers, Esq.

Certified Mail No. P 152 983 606
Return Receipt Requested

Mailed 8-16-96



STATE MEDICAL BOARD OF OHIO

South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on August 14, 1996, including Motions approving and confirming the Report and Recommendation 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 Joseph E. Rich, 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.

(SEAL)

A handwritten signature in black ink, appearing to read "T. E. Gretter, M.D.", is written over a horizontal line.

Thomas E. Gretter, M.D.
Secretary

8/14/96

Date



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

JOSEPH E. RICH, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 14th day of August, 1996.

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

It is hereby ORDERED that:

The application of Joseph E. Rich, M.D., for a certificate to practice medicine and surgery in the state of Ohio is hereby DENIED.

This Order shall **become** effective immediately upon mailing of notification of approval by the State Medical Board of Ohio.

Thomas E. Gretter, M.D.
Secretary

(SEAL)

8/14/96

Date

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REPORT AND RECOMMENDATION IN THE MATTER OF JOSEPH E. RICH, M.D.

The Matter of Joseph E. Rich, M.D., was heard by Sharon W. Murphy, Esq., Attorney Hearing Examiner for the State Medical Board of Ohio, on May 24, 1996.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated March 13, 1996, the State Medical Board of Ohio [Board] notified Joseph E. Rich, M.D., [Respondent] that it proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio based on one or more of the following allegations:

On or about August 14, 1995, Respondent submitted an application for a certificate to practice medicine and surgery in Ohio by endorsement. In the "Additional Information" section of the application, Respondent was instructed: "If you answer 'Yes' to any of the following questions, you are required to furnish complete details, including date, place, reason and disposition of the matter. All affirmative answers must be thoroughly explained on a separate sheet of paper."

- (1) In the application, Respondent affirmatively answered five questions regarding previous actions by any board, bureau, department, agency, or other body with respect to his professional license. Nevertheless, Respondent failed to fully explain actions taken against his certificate to practice medicine in the state of Kansas by the Kansas State Board of Healing Arts.
- (2) In addition, Respondent affirmatively answered a question regarding actions taken by a hospital or other institution against his privileges. However, Respondent did not explain the details of the suspension of his privileges at a Louisville, Kentucky, hospital.
- (3) Moreover, Respondent affirmatively answered a question which asked if he had ever been notified of any investigation concerning him or any charges filed against him, by any board or other body

with respect to his certificate to practice medicine. In addition, Respondent negatively answered a question regarding actions taken by a military organization against his privileges. He failed to report, however, any details regarding the termination of his privileges from an Air Force Base Hospital. Respondent also failed to report the termination of his privileges from the Air Force Base Hospital in his applications to two other state medical boards.

- (4) Respondent answered "No" when asked if he had ever been treated for mental or emotional illness or drug or alcohol problems. In addition, Respondent failed to report relevant treatment history.
- (5) Finally, Respondent also answered "No" to a question regarding the denial of staff membership at hospitals or other similar institutions. Respondent failed to report that his privileges had been denied at a hospital in Louisville, Kentucky.

The Board asserted that Respondent's conduct 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, [and] 'publishing a false, fraudulent, deceptive, or misleading statement,' as that clause is used in Section 4731.22(B)(5), Ohio Revised Code." In addition, the Board alleged that Respondent's conduct constitutes "a failure to furnish satisfactory proof of good moral character as required by Section 4731.08, Ohio Revised Code."

In addition, the Board advised Respondent of his right to request a hearing in this matter. The Board further advised Mr. DeMoisey that, pursuant to Rule 4731-13-01(B), Ohio Administrative Code, Dr. Rich could "represent himself or may be represented by an attorney admitted to the practice of law in Ohio." (State's Exhibit 1).

- B. On March 19, 1996, J. Fox DeMoisey, Esq., filed a written hearing request on behalf of Respondent. (State's Exhibit 2).

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Patrick W. Beatty, Assistant Attorney General.
- B. On behalf of Respondent: Kevin P. Byers, Esq., appeared on behalf of Respondent.

EVIDENCE EXAMINED

I. Testimony Heard

Presented by the State: Penny McKenzie

II. Exhibits Presented

In addition to State's Exhibits 1 and 2, noted above, the following exhibits were identified and admitted into evidence:

1. State's Exhibit 3: Copy of a March 26, 1996, letter to Mr. DeMoisey from the Board, notifying him that a hearing had been scheduled in this matter for April 5, 1996, but further advising that the hearing had been postponed pursuant to Section 119.09, Ohio Revised Code.
2. State's Exhibit 4: Copy of an April 4, 1996, letter to Respondent from the Board, scheduling the hearing for May 10, 1996. (2 pp.)
3. State's Exhibit 5A: Copy of an April 4, 1996, letter to the Board from Mr. DeMoisey requesting consultation prior to setting the date of the hearing.
4. State's Exhibit 5B: Copy of a May 9, 1996, Entry granting Respondent's oral motion for continuance and, by agreement of the parties, rescheduling the hearing to May 24, 1996.
5. State's Exhibit 5C: Copy of Respondent's Motion for Continuance filed on or about May 20, 1996. (3 pp.)
6. State's Exhibit 5D: Copy of the State's Memoranda Contra Motion for Continuance filed May 22, 1996. (4 pp.)
7. State's Exhibit 5E: Copy of a May 21, 1996, Entry denying Respondent's Motion for Continuance.
8. State's Exhibit 6: Copy of the documents submitted to the Board by Respondent during the application process. (33 pp.) (Note: Pages numbered by Attorney Hearing Examiner).
9. State's Exhibit 7: Copy of a February 13, 1996, letter to Respondent from the Board advising that his application had been "deemed

complete," but further advising that the application would require additional investigation by the Board.

10. State's Exhibit 8: Certified copies of documents concerning Respondent from the Kansas Board of Healing Arts. (45 pp.) (Note: Pages numbered by Attorney Hearing Examiner).
11. State's Exhibit 9, Volumes I and II: Certified copies of additional documents concerning Respondent from the Kansas Board of Healing Arts. (901 pp.)
12. State's Exhibit 10: Certified copies of documents concerning Respondent from the Commonwealth of Kentucky Court of Justice, Civil Docket. (78 pp.) (Note: Pages numbered by Attorney Hearing Examiner).
13. State's Exhibit 11: Certified copies of the Commonwealth of Kentucky Court of Appeals Opinion and the Supreme Court of Kentucky Order denying discretionary review in *Joseph E. Rich, M.D. v. Southwest Jefferson Community Hospital, Inc.*, Case No. 93-CA-01247-MR. (11 pp.)
14. State's Exhibit 12: Copies of credentials files regarding Respondent maintained by the Department of the Air Force. (30 pp.)
15. State's Exhibit 13A: Copies of documents pertaining to *Joseph E. Rich, M.D., v. Med-National, Inc., The Department of the Air Force, et al.*, in the United States District Court for the Western District of Oklahoma. Case No. Civ-95-6-6(A).
16. State's Exhibit 13B: Copies of additional documents pertaining to *Joseph E. Rich, M.D., v. Med-National, Inc., The Department of the Air Force, et al.*, in the United States District Court for the Western District of Oklahoma. Case No. Civ-95-6-6(A).
17. State's Exhibit 14: Certified copies of documents concerning Respondent from the Medical Licensing Board of Indiana. (161 pp.)
18. State's Exhibit 15: Certified copies of documents concerning Respondent from the State of Tennessee Board of Medical Examiners. (269 pp.)

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19. State's Exhibit 16: Certified copies of documents concerning Respondent from the Saint Anthony Medical Center, Louisville, Kentucky. (4 pp.)
20. State's Exhibit 17: Copy of the notice sent by the Board to applicants when their applications are incomplete. (2 pp.)
21. State's Exhibit 18: Copy of a December 4, 1995, letter to the Board from Richard I. Edelson, Ph.D., regarding his evaluation of Respondent, and attached affidavit. (3 pp.)
22. State's Exhibit 19: Copy of a January 9, 1996, letter to the Board from J. Fox DeMoisey, Esq., Louisville, Kentucky, detailing his perception of the chronology of Respondent's situation. (5 pp.)

B. Presented by Respondent

1. Respondent's Exhibit A: Copy of Respondent's Notice of Appearance, filed by Kevin P. Byers, Esq., on behalf of Respondent, on May 24, 1996.
2. Respondent's Exhibit B: Copy of Respondent's Motion for Continuance, filed May 24, 1996.

III. Post-Hearing Admission to the Record

Upon the Attorney Hearing Examiner's own motion, the following exhibits are hereby admitted into evidence:

1. Board Exhibit A: A June 27, 1996, Entry advising that Respondent had failed to submit a brief or any exhibits by June 21, 1996, as agreed at hearing. Therefore, the briefing schedule established at hearing was moot. Accordingly, the Attorney Hearing Examiner directed that parties could submit written closing arguments on or before July 15, 1996.
2. State's Exhibit 20: Closing Argument of the State Medical Board. (19 pp.)
3. Respondent's Exhibit C: Respondent's Written Closing. (8 pp.) (Note: Attached to this exhibit were documents which introduced new evidence. Accordingly, these documents will not be admitted to the

record, but will be labeled Respondent's Exhibit D and held as proffered materials. See PROCEDURAL MATTERS, below.)

4. Respondent's Exhibit D: Proffered.

PROCEDURAL MATTERS

The Board notified Respondent on March 13, 1996, that the Board had proposed to deny his application for licensure and advised that he could request a hearing in the matter. Respondent requested a hearing, and the Board advised him on April 4, 1996, that a hearing would take place on May 10, 1996. On May 7, 1996, J. Fox DeMoisey, Esq., a Kentucky attorney not licensed to practice law in Ohio who was then representing Respondent in this matter, made an untimely oral motion for continuance of the hearing. Mr. DeMoisey represented that Respondent would be participating in an educational program in another state and, therefore, would be unable to attend the hearing on the scheduled date. The Attorney Hearing Examiner granted the motion and, with the agreement of the parties, rescheduled the hearing for May 24, 1996. (See State's Exhibits [St. Exs.]1-5B).

On May 20, 1996, Mr. DeMoisey filed a second untimely Motion for Continuance on behalf of Respondent. At that time, Mr. DeMoisey represented that: (a) he was scheduled to begin a trial in Oklahoma on May 28, 1996, which outcome would be relevant to this matter; (b) an up-coming deposition in that matter would also provide relevant information; (c) Respondent no longer intended to practice in Ohio; (d) Mr. DeMoisey had believed that this matter would be resolved by settlement agreement; and (e) the State had recently advised Mr. DeMoisey that the State oppose another motion for continuance or a motion for Mr. DeMoisey to either appear as a witness or represent Respondent at the hearing. (See St. Ex. 5C).

Counsel for the State filed a Memoranda Contra Motion for Continuance. Counsel for the State noted that Rule 4731-13-16(C), Ohio Administrative Code, requires that proper diligence and reasonable cause be shown before a continuance is granted. The State argued that the requirements have not been met. Neither the outcome of the federal trial nor the information likely to be discovered in the deposition are relevant to the present issues. Moreover, the State argued that Mr. DeMoisey had long been on notice that Rule 4731-13-01(B) requires that an attorney representing a Respondent at a hearing must be licensed to practice in Ohio. Therefore, Respondent had had ample time to retain Ohio counsel to represent him at hearing. (See St. Ex. 5D).

The Attorney Hearing Examiner denied Respondent's May 20, 1996, Motion for Continuance for reasons similar to those set forth by the State. Moreover, pursuant

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to Rule 4731-13-06(C), Ohio Administrative Code, when filing an untimely motion for continuance, a party must demonstrate that an extraordinary situation exists which could not have been anticipated and which would justify the granting of a continuance. Respondent failed to comply with that requirement. (See St. Ex. 5E).

Thereafter, on the day of hearing, Respondent filed yet another untimely Motion for Continuance. This time, Respondent argued, among other things, that he had finally hired local counsel, only thirteen hours before the scheduled commencement of the hearing. Accordingly, the new counsel asserted that he was unable to prepare for hearing with such limited time. The Attorney Hearing Examiner denied the motion in a telephone conference with parties' representatives. (See Respondent's Exhibit B).

At hearing, Respondent renewed his motion for continuance. At that time, Respondent himself admitted that he had been aware that Mr. DeMoisey would not be allowed to represent him at hearing. Nevertheless, Respondent had postponed retaining Ohio counsel because he had hoped to settle the matter through negotiation. (Transcript [Tr.] at 8-9).

Respondent's new counsel argued at hearing that it was "patently prejudicial to require Respondent to proceed through the hearing. . . ." He requested an opportunity to prepare a defense and review the documents submitted by the State. (Tr. at 9-10, 43-45). In light of that argument, the Attorney Hearing Examiner agreed to hold open the hearing record for four weeks in order to allow Respondent's new counsel time to review the State's documents and the transcript of the hearing, and to prepare and submit his contentions in a brief, along with any relevant exhibits. A detailed briefing schedule was established wherein the parties would have had an opportunity to respond to each other's briefs and exhibits and to submit written closing arguments. Respondent was allowed until June 21, 1996, to submit his original brief and exhibits. (Tr. at 47-53). Nevertheless, as of June 27, 1996, Respondent had not submitted any additional information, which rendered the briefing schedule moot. Accordingly, the Attorney Hearing Examiner issued an Entry whereby the parties were allowed until July 15, 1996, to submit written closing arguments. (See Board Exhibit A).

The parties filed written closing arguments on July 15, 1996. In addition to a closing argument, however, Respondent submitted numerous documents which set forth evidence that had not been introduced prior to the closing argument. Moreover, this evidence was not "newly discovered." (See *Eric Burstein, M.D. v. Ohio State Medical Board* (Dec. 11, 1992). Franklin C.P. No. 92CVF-06-4558, unreported.) Accordingly, these documents were not admitted to the record, but were labeled Respondent's Exhibit D and held as proffered materials.

SUMMARY OF THE EVIDENCE

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

1. Joseph E. Rich, M.D., received a Doctor of Medicine Degree from the University of Saarland, Saarbrueken, Germany, on June 23, 1976, after completing a required internship program in Germany. Respondent finished one year of a surgical residency at St. Vincent Medical Center in Portland, Oregon. Thereafter, he fulfilled two years of a residency program in Obstetrics and Gynecology at St. Joseph Mercy Hospital in Pontiac, Michigan. From 1980 through 1981, Respondent functioned as a Chief Resident at Stanford University Medical Center in Stanford, California. Subsequently, Respondent joined a hospital-based practice in Topeka, Kansas. Two years later, he opened a private practice in Topeka. [Subsequent history will be discussed below.] Respondent has been a Diplomate of the American Board of Obstetrics and Gynecology since December 7, 1984. (State's Exhibit [St. Ex.] 6 at 14; St. Ex. 14 at 89, 90; 111; St. Ex. 15 at 39-40, 143, 225, 245-249).
2. On December 4, 1987, the Kansas State Board of Healing Arts [Kansas Board] issued an Order regarding Respondent's certificate to practice medicine in that state. The Order found that Respondent had failed to renew his certificate on August 1, 1987, and that his certificate had been canceled. The Order further found that on September 30, 1987, Respondent had filed an application for reinstatement and, on October 30, 1987, the Kansas Board granted him a temporary permit to practice. Nevertheless, after considering the matter, the Kansas Board terminated Respondent's temporary permit to practice. Furthermore, The Kansas Board found that probable cause existed to believe that: (1) Respondent had made false statements in his application for reinstatement; (2) Respondent had practiced medicine and surgery without a certificate from August 1 through October 30, 1987; and (3) the Kansas Board had sufficient grounds to institute disciplinary action against Respondent. (St. Ex. 8 at 2-3).

A hearing was held December 15, 16, 17, and 22, 1987. The Presiding Officer found that Respondent had practiced medicine without a certificate from August 1 through October 23, 1987. The Presiding Officer also found that Respondent had committed three acts of shoplifting. In the first, Respondent took two magazines, a packet of sunflower seeds and two cooked hams from a grocery store. Respondent was not arrested at that time, but was detained by the store's agents. In the second incident, Respondent again stole property from a store: on that occasion he was arrested and charged with theft. The court

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ordered Respondent to enter a diversion program for one year. In the third incident, Respondent stole property valued at nineteen dollars. Again, Respondent was arrested and sent to a diversion program. (St. Ex. 8 at 7-8).

The Presiding Officer further noted that Respondent had asserted in his application for reinstatement that he had never been "arrested, fined, charged with or convicted of a crime. . . ." (St. Ex. 8 at 7). The Presiding Officer concluded that Respondent had responded negatively to this question despite knowing that he had been legally arrested and charged in the second two incidents. The Presiding Officer found Respondent to be not credible when he argued that because he entered the diversion program he had never been arrested or charged. (St. Ex. 8 at 10-11).

The Presiding Officer also found that a psychiatrist had evaluated Respondent at the request of the Board. The psychiatrist noted that:

While a number of diagnostic possibilities can be entertained, I, in summary, see Dr. R as in the throes of self-destructive acting out which actions are out of character with an otherwise compulsive and hard-working physician. . . . [T]hese actions if addressed in intensive psychotherapy might well be arrested and understood. In the absence of such an intervention, one could only speculate that they will not only continue but generalize. I do not see him as suffering from a definable psychiatric disorder. His psychological state at this point could be described as an adjustment reaction. . . .

(St. Ex. 8 at 8-9).

The Presiding Officer concluded, however, that, in misrepresenting his criminal history to the Board, Respondent did not intend to perjure himself or to defraud the Board. Rather, the Presiding Officer found that Respondent's conduct "indicated[d] a deep-seated problem confirmed by [the Board-ordered psychiatrist] and may very well be symptomatic of the erratic behavior and self-destructiveness alluded to by [the psychiatrist]. (St. Ex. 8 at 11).

Nevertheless, the Presiding Officer did find that Respondent violated the Kansas statute prohibiting misrepresentation in an application. The Presiding Officer further found that: "Even though there is direct evidence of non-impairment of any medical judgment, the evidence does reflect that under continuing stress, [Respondent's] erratic behavior could pose an imminent danger to the public health and safety." (St. Ex. 8 at 11-12). The Presiding Officer recommended the reinstatement of Respondent license, on the condition

that Respondent "immediately seek counseling and undergo any reasonable treatment program" recommended by the Board-ordered psychiatrist. (St. Ex. 8 at 12).

The Kansas Board confirmed the Presiding Officer's Initial Order, with minor modifications, in a Final Order issued February 6, 1988. (St. Ex. 8 at 14-15). Respondent appealed the Kansas Board's decision in a court of law, but filed to dismiss the appeal prior to its final determination. (St. Ex. 8 at 31).

On August 15, 1988, the Kansas Board issued a Petition for Revocation, Suspension, or Other Disciplinary Action Against Licensee [Petition]. The Kansas Board initiated this action because it had received complaints which suggested that conduct of Respondent might constitute "unprofessional conduct, dishonorable conduct, professional incompetency, or other matters which may result in the revocation, suspension, or limitation of [his] license." The Petition cited twenty counts of performing "unnecessary or inappropriate surgery"; two counts of failure to diagnose; one count of improper delivery, one count of abandonment; three counts of shoplifting, and one count of submitting false claims for payment of state and federal funds. (St. Ex. 8 at 17-30).

Thereafter, the Kansas Board and Respondent entered into a Settlement Agreement and Stipulation whereby Respondent agreed to leave the State of Kansas and to discontinue the practice of medicine in that state. The Kansas Board agreed to dismiss the Petition and Respondent agreed to file for dismissal of his appeal in the former action. Respondent also agreed to surrender his certificate to practice medicine in Kansas and promised never to request reinstatement of that certificate. (St. Ex. 8 at 31-34). In addition, the Kansas Board agreed to amend its February 6, 1988, Final Order to state that Respondent had held a valid certificate to practice medicine from August 1, 1987. The Kansas Board agreed to the amendment in order to assure that the patients treated by Respondent during the period in which he had allegedly practiced medicine without a certificate would be protected by Respondent's medical malpractice insurance plan. (St. Ex. 8 at 34, 41). Finally, Respondent expressly denied the allegations set forth in the Petition. (St. Ex. 8 at 31, 39).

The Kansas Board affirmed the Settlement Agreement and Stipulation by Enforcement Order issued October 25, 1988. (St. Ex. 8 at 43-45) (See also State's Exhibit 9 which is the complete record of Public Disciplinary Documents, including hearing transcripts, held by the Kansas Board).

3. After leaving Kansas, Respondent relocated to Louisville, Kentucky, where he practiced at Humana Hospital-Southwest [Humana]. On or about June 18, 1991, Respondent admitted three patients to that hospital for delivery.

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Problems developed, and the hospital imposed a summary suspension of Respondent's privileges. (St. Ex. 10 at 10-11). In a civil action filed by Respondent against Humana and others, the Jefferson Circuit Court upheld the summary suspension and, on January 29, 1993, dismissed all of Respondent's claims. (St. Ex. 10 at 55-56, 66).

Respondent appealed the decision of the Jefferson County Court. On May 26, 1995, the Commonwealth of Kentucky Court of Appeals affirmed the Jefferson Circuit Court's decision. (St. Ex. 10 at 70-78). In its opinion, the Court of Appeals set forth the hospital's complaints against Respondent upon which the summary suspension had been based. The complaints included Respondent's decision to transfer patients:

"from the [Humana] to Humana Hospital-University for imminent delivery under circumstances which caused the Executive committee to question the timeliness of the transfer to the University, the stability of the patient for transfer and the accuracy of the information reported to University Hospital by [Respondent].. The babies of these two patients died shortly after delivery."

(St. Ex. 10 at 72). The Court also noted the Hospital's complaint that:

On January 17, 1992, at 4:35 a.m., [Respondent] was advised that the fetal heart monitor strip of a patient who had recently been admitted to the Hospital showed periods of minimal to poor variability. [Respondent] did not arrive at the Hospital until 7:10 a.m. when he performed a C-Section.

Finally, the court noted that the hospital had alleged that:

On March 9, 1992, three of [Respondent]'s patients were admitted to the Hospital for labor and delivery. One patient had a history of precipitous delivery and her fetal monitor strip showed signs of fetal distress at 8:45 p.m. The other two patients had been administered Pitocin to induce labor and amniocentesis had commenced by the evening of March 9. Nevertheless, at approximately 9:00 p.m., [Respondent] left the hospital to attend a going-away party [Respondent] did not advise the nurses in charge of these three patients that at he was leaving the hospital, and they were unable to reach him even after repeatedly paging him. [Respondent] spent the next hour and a half drinking a margarita at [the restaurant] without making any inquiry as to the condition of the three patients. At 10:25 p.m., a nurse had to deliver the baby of the patient with the history of

precipitous delivery. [Respondent] showed up at the Hospital 10 minutes later, and delivered the babies of the two patients who had been administered Pitocin without complications. In response to the statements of nurses that they repeatedly attempted to page him, [Respondent] claimed that his pager malfunctioned, although he acknowledged that he had not checked his pager to determine if it was working properly.

(St. Ex. 10 at 73).

On February 14, 1996, the Supreme Court of Kentucky issued an Order Denying Discretionary Review. (St. Ex. 11 at 2).

4. The Kentucky Board of Medical Licensure [Kentucky Board] initiated disciplinary action against Respondent based, in part, on Humana-Hospital-Southwest's suspension of his privileges. The Kentucky Board did not include as a basis for its action the facts underlying the suspension of privileges. (St. Ex. 14 at 121). After a hearing, the Hearing Officer submitted a Recommended Findings of Fact and Conclusions of Law to the Kentucky Board. The Hearing Officer found that the Kentucky Board could not discipline Respondent based solely on the fact that the hospital had suspended his privileges. (St. Ex. 14 at 130). The Hearing Officer recommended that the charges against Respondent be dismissed and that Respondent's license to practice medicine in Kentucky be restored. (St. Ex. 14 at 144).

Nevertheless, after review of the matter, the Kentucky Board determined that Respondent's conduct regarding the three patients warranted discipline. Accordingly, the Kentucky Board issued an Order and a Letter of Reprimand. (St. Ex. 14 at 145-150). On appeal, however, the Order and the Letter of Reprimand were vacated by the Jefferson Circuit Court because (1) the Kentucky Board could not discipline Respondent based solely on the actions of the hospital, and (2) Respondent had not had an adequate opportunity to present a defense. (St. Ex. 14 at 151-156).

5. In November and December 1993, Respondent entered into a contractual arrangement with Med-National, a professional management firm, whereby Respondent would serve as an obstetrician/gynecologist at the Tinker Air Force Base hospital [Tinker AFB]. (St. Ex. 13B at 50). Tinker AFB required Respondent to apply for privileges. In doing so, Respondent provided information to Med-National regarding his licensure issues in Kansas and Kentucky; Med-National forwarded that information to Tinker AFB. Tinker AFB granted Respondent's privileges on January 3, 1994. (St. Ex. 13B at 2).

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On May 26, 1994, Tinker AFB notified Respondent that his privileges were being "held in abeyance" because he had allegedly provided incomplete and misleading information in his application for privileges. Thereafter, Med-National terminated its contract with Respondent. (St. Ex. 13B at 51). On April 25, 1995, Respondent filed a civil suit against Med-National and the Department of the Air Force in the United States District Court for the Western District of Oklahoma. (St. Ex. 13A at 1). Respondent claimed, among other things, that he had provided accurate and honest information to Med-National regarding his licensure in Kansas and Kentucky. He further alleged that Med-National, in desperate need to fulfill its contractual obligation to provide an obstetrician/gynecologist to Tinker AFB, altered the information before providing it to Tinker AFB. (St. Ex. 13B at 75-76).

No evidence was presented as to final determination of this matter.

6. In September 1995, Respondent submitted an application for medical licensure in the State of Indiana. In his application, Respondent did not advise the Indiana Board of the actions of Tinker AFB or Med-National. (St. Ex. 14).

In March 1995, Respondent submitted an application for licensure by the State of Tennessee Board of Medical Examiners [Tennessee Board]. On August 15, 1995, Respondent was interviewed by a member of the Tennessee Board. That member agreed to support Respondent's licensure before the full Tennessee Board on the condition that Respondent enter the Impaired Physician's Program and demonstrate the continued support of the Medical Director of that program. (St. Ex. 15 at 3). There is no indication in the record as to the final decision of the Tennessee Board.

In his application, Respondent did not advise the Tennessee Board of the actions of Tinker AFB or Med-National. (St. Ex. 15).

7. Respondent was seen by Richard I. Edelson, Ph.D., a licensed psychologist practicing in Kentucky, from September 1991 through May 1992. At the request of Respondent, Dr. Edelson wrote the Board in December 1995. Dr. Edelson advised that he had evaluated Respondent in 1991, and found that Respondent had "high average intelligence, with no suggestions of cortical dysfunction, but the presence of a mild depression." Dr. Edelson felt that these symptoms were caused by the problems Respondent faced while at Humana. Dr. Edelson also reported that Respondent had been seen by a psychiatrist prior to seeing Dr. Edelson and by psychologist in 1987 and 1988. (St. Ex. 18)
8. In February 1990, Respondent applied for Obstetrics, Gynecology and endoscopy privileges at St. Anthony Medical Center in Louisville, Kentucky.

After a hearing and review of the matter by numerous committees, the Board of Directors voted to deny Respondent's application for medical staff membership. The hospital notified the National Practitioners Data Bank that it had denied the application because Respondent had not disclosed "the extent of the problems with the [Kansas Board] relating to professional competence and personal stability." (St. Ex. 16).

9. On February 9, 1995, Respondent submitted a Request for Application Forms to the Board. (St. Ex. 6 at 1). On August 23, 1995, he submitted an Application for Certificate - Medicine or Osteopathic Medicine, requesting a certificate to practice medicine and surgery in Ohio by endorsement. (St. Ex. 6 at 3). In the "Additional Information" section, the application instructed:

If you answer 'Yes' to any of the following questions, you are required to furnish complete details, including date, place, reason and disposition of the matter. All affirmative answers must be thoroughly explained on a separate sheet of paper.

In the application, Respondent affirmatively answered the following questions:

2. Have you ever been warned, censured, disciplined, had admissions monitored, had privileges limited, had privileges suspended or terminated, been put on probation, or been requested to withdraw from or resign privileges at any hospital, nursing home, clinic, health maintenance organization, or other similar institution in which you have trained, been a staff member, or held privileges, for reasons other than failure to maintain records on a timely basis, or failure to attend staff or section meetings?

* * *

7. Has any board, bureau, department, agency or other body, including those in Ohio, in any way limited, restricted, suspended, or revoked any professional license, certificate, or registration granted to you; placed you on probation; or imposed a fine, censure or reprimand against you?

* * *

8. Have you ever voluntarily surrendered, resigned, or otherwise forfeited any professional license, certificate or registration issued to you by any board . . . ?

* * *

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

* * *

11. Have you ever entered into an agreement of any kind, whether oral or written, with respect to a professional license, in lieu of or in order to avoid formal disciplinary action, with any board, bureau, department, agency, or other body, including those in Ohio?

* * *

12. Have you ever been notified of any investigation concerning you by, or have you ever been notified of, any charges, allegations, or complaints filed against you with, any board, bureau, department, agency, or other body, including those in Ohio, with respect to a professional license?

* * *

17. Have you ever been convicted of or found guilty of a violation of federal law, state law, or municipal ordinance other than a minor traffic violation?

(St. Ex. 6 at 18-20).

In addition, Respondent negatively answered the following questions:

1. Have you ever been denied staff membership at any hospital . . . ?, and

* * *

15. Have you ever been treated but not hospitalized for emotional or mental illness . . . ?

(St. Ex. 6 at 18-19).

In his Response to Questions involving State Licensure/Disciplinary Action and Medical Staff Privileges, Questions 2, 7, 8, 10, 11, and 12, Respondent advised that, in 1987, while practicing in Kansas, he inadvertently allowed his Kansas certificate to practice medicine to expire. Therefore, his license was suspended for one week. Respondent further advised that, after a hearing,

the hearing examiner issued a fine and ordered that [his] license be reinstated 'forthwith.' When this was finally done . . . it was not

reinstated retroactively, as had been done in other similar cases. Following several unsuccessful appeals to the Medical Licensure Board, [Respondent] was forced to take the issue to District Court. In response to this, the [Kansas] Board filed an action against [him] alleging medical practice concerns. This action was based on cases that had been hand carried to them by one of [Respondent's] former associates and main competitors without the hospital's approval or knowledge. [The former associate] failed to tell the Board that the cases presented had been evaluated by the hospital executive committee who found no problems with [Respondent's] medical practice. Without any independent evaluation by an unbiased Ob/Gyn practitioner, the Board then filed their action, which gave them the leverage for a negotiated settlement. The Board subsequently agreed to drop their action, retroactively reinstate [Respondent's] license (as had been originally requested) and assist [Respondent] in obtaining licensure in other states.

(St. Ex. 6 at 23).

Respondent stated that he then relocated to Kentucky and was in a satellite office owned by Humana. Respondent further stated that the satellite office failed, and Humana blamed him for the failure. He stated that Humana cited the events in Kansas to make him the "fall guy." Respondent further reported that Humana later cited him for the care he provided to three patients. Respondent explained that on March 9, 1992, he admitted three patients in labor to the Humana Hospital. He stated that he told the nurses where he would be, and left the hospital to attend a dinner party. When the first patient delivered, the hospital was unable to reach Respondent due to the failure of his beeper. As a result, the Humana Hospital suspended his privileges. (St. Ex. 6 at 25-26).

Respondent further reported that, as a result Humana's actions, the Kentucky Medical Licensure Board suspended his certificate to practice. A hearing was held and his license was reinstated. Respondent also advised that after reinstatement of his certificate, Humana assisted the Kentucky Board in selecting Respondent's cases for review. Seventy cases were sent to experts for review, but the expert found no significant problems. Respondent further reported that a hearing officer found that no basis existed to discipline his license and recommended that his "license be cleared." Despite the recommendation of the hearing officer, however, the Kentucky Board issued a letter of reprimand. Respondent appealed to the district court and prevailed. (St. Ex. 6 at 25-26).

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Respondent also advised that he had been accused of shoplifting twenty dollars worth of merchandise from a grocery store in December 1990. Respondent explained that he had been under pressure from Humana because the administration was "watching for any opportunity to cause [him] problems." Therefore, when his pager activated, he went to the service counter to use the phone. Although he had not yet left the store, he was cited for shoplifting. He further stated that he was convicted even though the store clerk changed his story and committed perjury. (St. Ex. 6 at 27).

10. Respondent also provided information regarding eleven legal actions involving claims of medical malpractice against him. (St. Ex. 6 at 28-33).

LEGAL ISSUES

Section 4731.29, Ohio Revised Code, sets forth the procedure for admitting to the practice of medicine in this state physicians already licensed to practice in other states. Subsection 4731.29(A) states that when a physician licensed in another state submits an application for licensure in Ohio, the Board may issue a certificate without requiring that the applicant take a qualifying examination. However, that applicant must meet "the same age, moral character, and educational requirements" as required for an applicant applying for admission by examination. Moreover, Subsection 4731.29(B) provides:

The state medical board shall issue or deny its certificate within sixty days after the receipt of a complete application to practice medicine and surgery, or osteopathic medicine and surgery, under division (A) of this section. Within thirty days after receipt of an application, the state medical board shall provide the applicant with written notice, by certified mail, of any information required before an application can be considered complete for purpose of this section.

In addition, Subsection 4731.29(C) provides:

If an applicant is under investigation pursuant to Section 4731.22 of the Revised Code, the state medical board shall conclude the investigation within ninety days of receipt of a complete application unless extended by written consent of the applicant or unless the board determines that a substantial question of such a violation exists and the board has notified the applicant in writing of the reasons for the continuation of the investigation. If the board determines that the application has not violated Section 4731.22 of the Revised Code, it shall issue a certificate within forty-five days of that determination.

Respondent argued that the Board delayed determining the "completion date" of Respondent's application for six months. Therefore, he argued, the Board failed to comply with Section 4731.29, Ohio Revised Code, and the Board is deprived of jurisdiction to act in this matter. He further argued that Respondent has been unduly prejudiced by the delay because a position that had been offered to him is no longer available. (St. Ex. 19; Resp. Ex. C).

Respondent's argument is without merit. In the present matter, Respondent submitted an application for licensure on August 13, 1995. (St. Ex. 6 at 2). On August 30, 1995, the Board informed Respondent that additional information would be required. Therefore, the Board notified Respondent within thirty days that additional information was required, in accordance with Subsection 4731.29(A). Similarly, on October 2, 1995, the Board notified Respondent that he had failed to provide additional information. (St. Ex. 19).

Respondent represented that Ms. McKenzie informed Mr. DeMoisey by telephone on October 31, 1995, that the application was complete at that time. (St. Ex. 19). Ms. McKenzie, however, provided credible testimony at hearing, denying that she had told Mr. DeMoisey that the application was then complete. (Tr. at 18-23, 26-28). However, even if such an oral communication had been made, Respondent should have realized that the application was incomplete when the Board made further requests for information on November 28 and December 14, 1995, and January 4, 1996. (St. Ex. 19).

By letter dated February 13, 1996, the Board informed Respondent that his application had been "deemed complete." The notice further advised, however, that the application would require further investigation because the Board had determined that there was a "substantial question" of a violation of Section 4731.22, Ohio Revised Code, in accordance with Subsection 4731.22(C). (St. Ex. 7). On March 13, 1996, the Board notified Respondent that Board had proposed denying his application for licensure, in compliance with Subsection 4731.29(C), Ohio Revised Code. (St. Ex. 1).

However, even if the Board had failed to process Respondent's application within the time frame contemplated by the statute, the Board would not lose jurisdiction over this matter. Courts have held that such time frames are directory rather than mandatory. *In re Heath* (1992), 80 Ohio App.3d 605, 609 N.E.2d 1346; *Sicking v. State Medical Board* (1991), 62 Ohio App.3d 387, 575 N.E.2d 881; *In re Raymundo* [1990], 67 Ohio App.3d 262, 586 N.E.2d 1149; *State ex rel. Singh* (May 4, 1993), Franklin App. Nos. 92AP-188 and 92AP-193, unreported. In fact, in discussing a similar time requirement set forth in R.C. 4731.23(A), the Franklin County Court of Appeals held that it is not error when an attorney hearing examiner fails to issue a

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report within the statutorily designated time. As the statute is directory, failure to comply with the statute is not grounds for reversal, absent a definite statutory mandate to the contrary. The court held that this ruling applies even if a respondent can demonstrate that he was prejudiced by the delay. *Sicking* (citing *Raymundo*). Accordingly, even if Respondent is correct in his argument that the Board failed to act on Respondent's application in a timely manner, his further argument that such failure deprives the Board of jurisdiction is without merit.

Finally, any claim that Respondent was prejudiced by the Board's failure to deem the application complete in a more timely manner is eclipsed by the fact that the application was not complete only because Respondent failed to provide the required information with the initial application.

FINDINGS OF FACT

1. On August 23, 1995, Respondent submitted an application for a certificate to practice medicine and surgery in Ohio by endorsement. In the "Additional Information" section of the application, Respondent was instructed: "If you answer 'Yes' to any of the following questions, you are required to furnish complete details, including date, place, reason and disposition of the matter. All affirmative answers must be thoroughly explained on a separate sheet of paper."
2. In the application, Respondent failed to fully explain actions taken against his certificate to practice medicine in the state of Kansas by the Kansas State Board of Healing Arts. Respondent misrepresented the fact that the Kansas Board had canceled his certificate after he failed to renew it. Respondent also failed to inform the Board that the Kansas Board had reinstated his certificate only on the condition that he participate in a counseling and treatment program.

In addition, Respondent failed to advise that the Kansas Board had found that Respondent made false statements in his application for reinstatement because he had asserted that he had never been "arrested, fined, charged with or convicted of a crime. . . ." In fact, the Kansas Board found that Respondent denied having been arrested or charged when he knew that he had been arrested and charged in two incidents of shoplifting. Moreover, Respondent did not disclose that the Kansas Board had imposed a \$2,500 fine on him for practicing medicine after the cancellation of his certificate on August 1, 1987. Finally Respondent failed to inform the Board that the Kansas Board had amended its finding that he had practiced medicine without a license only to assure that Respondent's patients were entitled to malpractice insurance coverage.

3. In addition, Respondent did not fully explain the details of the suspension of his privileges at Humana Hospital-Southwest in Louisville, Kentucky. Respondent provided only minimal details regarding the incident in which he admitted three patients to the hospital, left to attend a party, and failed to answer his beeper. In addition, Respondent failed to provide any information regarding the other incidents which formed the basis of his suspension. Respondent did not advise of Humana's complaint that he had inappropriately transferred two unstable patients to another hospital and failed to provide the new hospital with accurate information regarding the patients. Respondent also failed to explain that Humana had complained that Respondent failed to see a patient admitted to the hospital for over two and one half hours when that patient's fetal heart monitor strip showed periods of minimal to poor variability. Finally, Respondent failed to mention that he had appealed the Humana's suspension of his privileges to the Supreme Court of Kentucky, and that Humana prevailed.
4. In addition, Respondent inappropriately responded to a question regarding the revocation, suspension or reduction of his privileges by a military organization. Respondent also failed to inform the Board that his privileges at Tinker Air Force Base Hospital were "held in abeyance." Although Respondent's privileges were terminated only after Med-National canceled his contract and, thus, not directly by Tinker AFB, a reasonable interpretation of the question would suggest that having privileges held in abeyance constitutes a "reduction" of privileges.
5. There is insufficient evidence, however, to support a finding that Respondent failed to report the reduction of his privileges at Tinker Air Force Base to two other state licensing agencies. The questions asked by those states differ somewhat from the questions asked by this Board. Accordingly, without final determination by the Indiana and Tennessee Boards, such a finding by this Board would be only speculative.
6. In the application, Respondent denied ever having been treated for mental or emotional illness. Nevertheless, the evidence demonstrates that Respondent received treatment from several psychiatrists and psychologists. Respondent argues, however, that he was not treated for emotional or mental illness, but rather for "extreme stress." It is significant, nonetheless, that the Kansas Board-ordered psychiatrist had determined that Respondent suffered from an adjustment reaction which required "intensive psychotherapy." In addition, the Kansas Board required that Respondent obtain treatment as a condition for reinstatement of his certificate to practice medicine. In fact, the Kansas Board found that "under continuing stress, [Respondent's] erratic behavior could pose

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an imminent danger to the public health and safety." Respondent failed to advise the Board of this relevant information.

7. Finally, Respondent falsely answered "No" to a question regarding the denial of staff membership at hospitals or other similar institutions. In addition, Respondent failed to report that his privileges had been denied at St. Anthony Medical Center in Louisville, Kentucky, on the basis that Respondent had not disclosed "the extent of the problems with the [Kansas Board] relating to professional competence and personal stability."

CONCLUSIONS

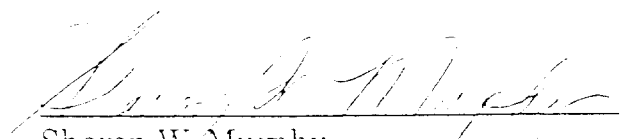
1. Respondent's failure to furnish complete and accurate information in his application for licensure to practice medicine in this State, as set forth in Findings of Fact 1, 2, 3, 4, 6 and 7, constitutes "fraud, misrepresentation, [and] deception in applying for or securing any license or certificate issued by the board," as that clause is used in Subsection 4731.22(A), Ohio Revised Code.
2. Respondent's conduct, as described in Findings of Fact 1, 2, 3, 4, 6 and 7, constitutes "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Subsection 4731.22(B)(5), Ohio Revised Code.
3. Respondent's conduct, as depicted in Findings of Fact 1, 2, 3, 4, 6 and 7, constitutes "a failure to furnish satisfactory proof of good moral character as required by Section 4731.08, Ohio Revised Code."

PROPOSED ORDER

It is hereby ORDERED that:

The application of Joseph E. Rich, M.D., for a certificate to practice medicine and surgery in the state of Ohio is hereby DENIED.

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


Sharon W. Murphy
Attorney Hearing Examiner

OHIO STATE MEDICAL BOARD

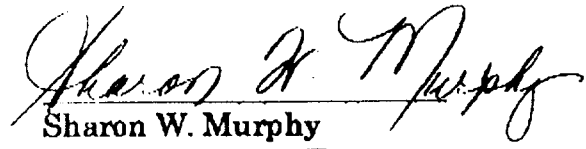
JUL 23 1996

**REPORT AND RECOMMENDATION
IN THE MATTER OF JOSEPH E. RICH, M.D.**

ERRATA

The first sentence of Findings of Fact #3, page 20, should read:

In addition, Respondent did not fully explain the details of the suspension of his privileges at Humana Hospital-Southwest in Louisville, Kentucky.


Sharon W. Murphy
Attorney Hearing Examiner

EXCERPT FROM THE DRAFT MINUTES OF AUGUST 14, 1996

REPORTS AND RECOMMENDATIONS

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

Dr. Stienecker asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Robert L. Abdalla, M.T.; Matthew A. Polito, D.P.M.; Barbara A. Reed, M.D.; Esther Elizabeth Reed, M.D.; Joseph E. Rich, M.D.; and Anthony D. Zucco, D.O.

A roll call was taken:

ROLL CALL:	Mr. Albert	- nay
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Gretter	- aye
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Dr. Stienecker	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Gretter	- aye
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Dr. Stienecker	- aye

In accordance with the provision in Section 4731.22(C)(1), 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 this matter.

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

.....
REPORT AND RECOMMENDATION IN THE MATTER OF JOSEPH E. RICH, M.D.

.....
DR. GARG MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JOSEPH E. RICH, M.D.
DR. STEINBERGH SECONDED THE MOTION.

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

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Mr. Sinnott	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye

The motion carried.



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43260-0315 • (614) 464-3934

March 13, 1996

Joseph E. Rich, M.D.
9936 Rail Road
Midwest City, OK 73130

Dear Doctor Rich:

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

- (1) On or about August 14, 1995, you submitted an application for a certificate to practice medicine and surgery in the State of Ohio by endorsement which is currently pending.
- (2) In the "Additional Information" section of the application, the instructions are as follows:

"If you answer 'Yes' to any of the following questions, you are required to furnish complete details, including date, place, reason and disposition of the matter. All affirmative answers must be thoroughly explained on a separate sheet of paper."

- (3) In the above-mentioned application, you answered "Yes" to questions seven (7), eight (8), ten (10), eleven (11), and twelve (12), which involve previous actions by any board, bureau, department, agency, or other body with respect to your professional license.

In your explanation to these affirmative responses with respect to the disciplinary actions of the Kansas State Board of Healing Arts (hereafter Kansas Board), you failed to fully and accurately furnish complete details of the suspension, reinstatement, and surrender of your license to practice medicine and surgery in the State of Kansas.

You failed to report that when you did not renew your license by August 1, 1987, the Kansas Board canceled your license, and required you to submit an application for reinstatement.

In your explanation, you also failed to report that the February 1988 Kansas Board Order reinstating your license was conditioned upon your immediate

Mailed 3/14/96

March 13, 1996

participation in counseling and a treatment program as recommended by Joseph Hyland, M.D., a psychiatrist who evaluated you at the request of the Kansas Board in 1987.

Further, you failed to report that in the February 1988 Kansas Board Order, you were publicly censured for failing to disclose three shoplifting incidents in your reinstatement application, and that the \$2,500 fine was for violating the order of cancellation of your license to practice, knowing you were not authorized to practice medicine after August 1, 1987.

Further, the September 8, 1988, Settlement Agreement and Stipulation with the Kansas Board in which you agreed to surrender your certificate to practice medicine, stated that the Board was aware that you practiced medicine and surgery in Kansas from the time your license was canceled on August 1, 1987, until you were provided temporary authority to engage in such practice on October 30, 1987. In order to ensure the protection of patients who were treated during that period of time, the Board agreed to modify its Order, dated February 6, 1988, to reflect that you had a valid license to practice in Kansas from August 1, 1987.

- (4) You also answered "Yes" to question two which asks, "Have you ever been warned, censured, disciplined, had admissions monitored, had privileges limited, had privileges suspended or terminated, been put on probation, or been requested to withdrawn from or resign privileges at any hospital, nursing home, clinic, health maintenance organization, or other similar institution in which you have trained, been a staff member, or held privileges, for reasons other than failure to maintain records on a timely basis, or failure to attend staff or section meetings?"

In the explanation, you failed to fully and accurately furnish complete details, including the reason and disposition of the April 14, 1992, Summary Suspension of your privileges at Humana Hospital Southwest in Louisville, Kentucky.

- (5) As indicated in paragraph 3 above, you responded affirmatively to question twelve (12) of the application. The question asks, "Have you ever been notified of any investigation concerning you by, or have you ever been notified of, any charges, allegations, or complaints filed against you with any board, bureau, department, agency, or other body, including those in Ohio, with respect to a professional license?"

Additionally, you answered "No" to question twenty-two (22) which asks, "Have you ever been denied privileges, or had privileges revoked, suspended, restricted, reduced, or terminated by the Department of Defense, the Veteran's Administration, or any of their respective components?"

March 13, 1996

- a) You failed to report any details regarding the abeyance and termination of your clinical privileges by the Department of the Air Force during your employment as a contract physician at Tinker Air Force Base Hospital in Oklahoma from January to June 1994.
 - b) Further, in response to a similar question in the licensure applications that you submitted to the Medical Licensing Board of Indiana in September 1994, and the Tennessee Board of Medical Examiners in March 1995, you failed to report any information regarding the abeyance and termination of your privileges as stated above.
- (6) You also answered "No" to question fifteen which asks, "Have you ever been treated but not hospitalized for emotional or mental illness, drug addiction or abuse, or an alcohol problem?"

You failed to report that you received treatment from Leonard Horwitz, Ph.D., in Topeka, Kansas, from November 1987 through July 1988. Further, you failed to report that you were treated by Theodore Feldman, M.D., and Richard Edelson, Ph.D., in Louisville, Kentucky.

- (7) You also answered "No" to question one (1) which asks "Have you ever been denied staff membership at any hospital, nursing home, clinic, health maintenance organization, or similar institution?"

You failed to report that, in 1991, your application for membership on the medical staff and for privileges in obstetrics and gynecology at St. Anthony Medical Center in Louisville, Kentucky, was denied, in part, because you did not disclose the extent of your problems with the Kansas Medical Licensure Board relating to professional competence and personal stability.

Your acts, conduct, and/or omissions as alleged in paragraphs (3), (4), (5)(a), (6) and (7) 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.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (3), (4), (5)(a) and (b), (6) and (7) 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.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (3), (4), (5)(a) and (b), (6) and (7) above, individually and/or collectively, constitute a failure to furnish

March 13, 1996

Rich, M.D.

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satisfactory proof of good moral character as required by Section 4731.08, Ohio Revised Code.

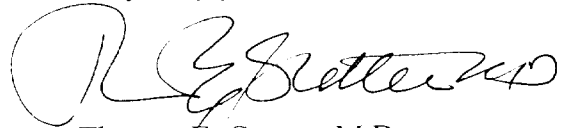
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing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

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

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in dark ink, appearing to read "T. E. Gretter", with a stylized flourish at the end.

Thomas E. Gretter, M.D.
Secretary

TEG/bjm

Enclosures

CERTIFIED MAIL # P 348 887 265

RETURN RECEIPT REQUESTED

cc: J. Fox DeMoisey, Esq.

CERTIFIED MAIL # P 152 983 378

RETURN RECEIPT REQUESTED

rev.2/15/95