

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

2005 AUG 18 AM 8:25  
CLERK OF COURTS

**JACK EDWARD SLINGLUFF, D.O.** :  
Appellant, : Case No. 04 CV 12-12991  
v. : JUDGE SHEERAN  
**STATE MEDICAL BOARD OF OHIO** :  
Appellee. :

**JUDGMENT ENTRY AFFIRMING THE STATE MEDICAL BOARD'S  
NOVEMBER 10, 2004, ORDER SUSPENDING DR. SLINGLUFF'S MEDICAL  
LICENSE FOR ONE YEAR**

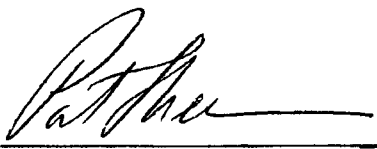
This case is before the Court upon the appeal, pursuant to R.C. 119.12, of the November 10, 2004 Order of the State Medical Board of Ohio which suspended the Medical License of Jack Edward Slingluff for one year with conditions for reinstatement.

For the reasons stated in the decision of this Court rendered and filed on August 8, 2005, which decision is incorporated by reference as if fully rewritten herein, it is hereby:

ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of Appellee, State Medical Board of Ohio, and the November 10, 2004 Order of the State Medical Board in the matter of Jack Edward Slingluff, D.O., is hereby AFFIRMED.

Costs to Appellant.

IT IS SO ORDERED  
8/16/05  
Date

  
\_\_\_\_\_  
JUDGE SHEERAN

APPROVED:

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Counsel for the State Medical Board

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# FINAL APPEALABLE ORDER

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

JACK EDWARD SLINGLUFF, D.O.,

Appellant,

vs.

STATE MEDICAL BOARD OF OHIO

Appellee

CASE NO. 04CVF-12-12991

JUDGE SHEERAN

TERMINATION NO. 10
BY: SS 8-4-05

2005 AUG - 9 AM 10:31  
CLERK OF COURTS  
FRANKLIN COUNTY, OHIO

## DECISION AND JUDGMENT ENTRY AFFIRMING THE ORDER OF THE OHIO STATE MEDICAL BOARD

Rendered this 4<sup>th</sup> day of August, 2005

**SHEERAN, JUDGE**

This is an appeal pursuant to R.C. 119.12 of a November 10, 2004 Order of the State Medical Board of Ohio ("the Board") suspending the medical license of Appellant Jack Edward Slingluff, D.O., for one year and imposing conditions on reinstatement.

### **I. HISTORY OF THIS MATTER**

On April 14, 2004, the Board notified Appellant that it proposed to take disciplinary action against his medical license. The Board alleged that Appellant had violated R.C. 4731.22(B)(3) and (B)(11) by reason of the following:

On or about March 16, 2004, in the United States District Court, Northern District of Ohio, Eastern Division, you pleaded guilty to one (1) misdemeanor count of introduction or delivery for introduction into interstate commerce of an unapproved drug to wit: thirty (30) vials of the unapproved new drug Amigdalina B-17 (AKA Laetrile) to be shipped from West Palm Beach, Florida to Salem, Ohio, in violation of Title 21, Sections 331(d), 355(a) and 333(a)(1), United States Code.

Your underlying conduct is provided in greater detail in the Information and Plea Agreement, copies of which are attached hereto and incorporated herein.

Appellant requested an administrative hearing, which was held on August 31, 2004.

On October 13, 2004, the Hearing Examiner issued a Report and Recommendation concluding that Appellant had committed the violations charged and recommending a 30-day stayed license suspension with conditions for reinstatement.

The Board considered this matter at its November 10, 2004 meeting. At the conclusion of the discussion, the Board voted to confirm the Hearing Examiner's findings and amend the proposed order by imposing a one-year suspension with conditions for reinstatement. On December 10, 2004, Appellant filed this appeal of the Board's Order.

## II. FACTS

At the administrative hearing, the State presented certified copies of the federal information and plea agreement (Ex. 5), transcripts of the federal court proceedings (Ex. 2, 3), and a transcript of a federal investigation tape of a visit to Appellant's office (Ex. 6). The State also called Appellant as a witness. This evidence came in without objection.

Appellant is a 73-year-old osteopathic physician who has practiced medicine in the Canton, Ohio, area for over forty years. (Tr. 21-23). As part of his general medical practice, Appellant treats cancer patients.

In his testimony, Appellant acknowledged that even though Laetrile has not been approved by the FDA, he has been treating cancer patients with Laetrile since the late 1970's. (Tr. 26-29, 57). He stated that because Laetrile is unapproved, it cannot legally be imported or transported across state lines. (Tr. 26). He acknowledged that the

purpose of FDA approvals for the safety of patients, and one of the reasons Laetrile has not been approved is that it may convert to cyanide after being ingested. (Tr. 26-27).

By 2002, the FDA had begun to investigate Appellant. In August, 2002, the FDA sent a wired undercover agent to Appellant's office posing as a cancer patient. During this office visit, Appellant made negative comments to the "patient" about conventional treatment and made positive comments about treatment with Laetrile. Appellant stated that he had treated 2,000 cancer patients "mostly with Laetrile" and that Laetrile was "13 times safer than Aspirin." (Ex. 6, p. 20, 34).

The facts giving rise to the misdemeanor conviction in this case are as follows. Appellant was treating a cancer patient identified as Patient 1. Patient 1 purchased Laetrile and brought it to Appellant's office. (Tr. 31-32). Appellant testified that during the treatment, Patient 1 left her supply of Laetrile at Appellant's office. (Tr. 30). In January, 2003, the FDA executed a search warrant at Appellant's office and recovered 30 vials of Laetrile. (Tr. 30-31; Ex. 5). It was determined that the Laetrile had been shipped from Florida to Patient 1, in violation of restrictions on transporting Laetrile across state lines. (Tr. 32-33, 63).

Appellant was charged with one misdemeanor count of introduction or delivery for introduction into interstate commerce of an unapproved drug. Appellant pleaded guilty to this misdemeanor count and stipulated to the facts satisfying the elements of the offense. (Ex. 5). Appellant was sentenced to one year of probation. (Tr. 38, Ex. 5).

Appellant testified that he believed he could lawfully treat patients with Laetrile as long as the patients obtained the Laetrile in Ohio. (Tr. 56). He testified that he believed Patient 1 had obtained the Laetrile in Ohio, and that she had inadvertently left

the Laetrile in his office. (Tr. 63). Appellant stated that his patients were benefited, and not harmed by, the Laetrile treatments. (Tr. 65-66). Appellant presented an affidavit from Patient 1 supporting Appellant. (Tr. 76). Appellant testified that after the conviction, he stopped treating patients with Laetrile. (Tr. 81).

Appellant testified on direct examination. Appellant also called Cindy Boylan, his office manager, as a witness. She testified that each patient who received Laetrile consented to the treatment. (Tr. 91). She stated that Appellant provided patients with information regarding sources from which Laetrile was available, and the patients obtained the Laetrile. (Tr. 93). She stated that Patient 1 left two vials of Laetrile at the office. (Tr. 93). The FDA recovered 30 vials of Laetrile from Appellant's office. (Tr. 30-31, Ex. 5). Appellant called two patients as witnesses who testified that they wanted Appellant to continue to be their physician. (Tr. 100, 105).

In the Report and Recommendation, the Hearing Examiner found that Appellant's guilty plea to the misdemeanor count of introduction or delivery for introduction into interstate commerce of an unapproved drug in violation of United States Code Title 21, Sections 331(d), 355(a), and 333(a)(1) constituted a "plea of guilty to ... a violation of any federal or state law regulating the possession, distribution, or use of any drug" pursuant to R.C. 4731.22(B)(3) and a "plea of guilty to ... a misdemeanor committed in the course of practice" pursuant to R.C. 4731.22(B)(11). (Report, p. 11). The Hearing Examiner found that Appellant had not knowingly engaged in illegal activity and that the conviction resulted from conduct motivated by a desire to help patients. The Hearing Examiner recommended a stayed 30-day license suspension with conditions for reinstatement. (Report, p. 12-13).

The Board considered this matter at its November 10, 2004 meeting. Appellant and his counsel addressed the Board, as did counsel for the State. At the conclusion of its deliberations, the Board voted to confirm the Hearing Examiner's findings of fact and conclusions. The Board voted to amend the proposed order by imposing a one-year license suspension with conditions for reinstatement.

### III. LAW

When considering an appeal from an order of the Medical Board, a common pleas court must uphold the order if it is supported by reliable, probative, and substantial evidence, and is in accordance with law. R.C. 119.12. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St. 3d 619, 621; *Landefeld v. State Med. Bd.* (2000), Tenth Appellate District No. 99AP-612, 2000 Ohio App. LEXIS 2556.

The Ohio Supreme Court has recognized that the General Assembly granted the Medical Board a broad measure of discretion. *Arlen v. State* (1980), 61 Ohio St. 2d 168, 174. In *Farrand v. State Med. Bd.* (1949), 151 Ohio St. 222, 224, the court stated:

... The purpose of the General Assembly in providing for administrative hearings in particular fields was to facilitate such matters by placing the decision on facts with boards or commissions composed of men equipped with the necessary knowledge and experience pertaining to a particular field. ...

"Accordingly, when courts review a medical board order, they are obligated to accord due deference to the board's interpretation of the technical and ethical requirements of the medical profession." *Landefeld, supra*, at pg. 9.

### IV. THE COURT'S FINDINGS AND CONCLUSIONS

Appellant's first argument is that the evidence does not support the Board's finding of a violation of R.C. 4731.22(B)(3).

R.C. 4731.22(B) provides as follows:

The board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

...

(3) Selling, giving away, personally furnishing, prescribing, or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction of, **a violation of any federal or state law regulating the possession, distribution, or use of any drug;** (emphasis added)

Appellant's brief argues that the evidence does not establish that he administered drugs for other than legal and legitimate purposes as set forth in the first part of R.C. 4731.22(B)(3). This argument disregards the remaining language of R.C. 4731.22(B)(3), which provides that discipline may also be based on "a plea of guilty to ... a violation of any federal or state law regulating the possession, distribution, or use of any drug." There is no dispute that Appellant entered such a plea, and therefore the Board had reliable, probative and substantial evidence to find that discipline was appropriate pursuant to R.C. 4731.22(E)(3).

Appellant's Reply brief argues that the Board improperly increased the penalty to a one-year suspension based on facts that were not in evidence at the hearing.

R.C. 119.09 provides, in pertinent part, as follows:

The recommendation of the referee or examiner may be approved, modified, or disapproved by the agency, and the order of the agency based on such report, recommendation, transcript of testimony and evidence, or objections of the parties, and additional testimony and evidence shall have the same effect as if such hearing had been conducted by the agency. No such recommendation shall be final until confirmed and approved by the agency as indicated by the order entered on its record of proceedings, and if the agency modifies or disapproves the recommendations of the referee

or examiner it shall include in the record of its proceedings the reasons for such modification or disapproval.

In *Feldman v. State Medical Board* (1999), Tenth App. Dist. Case No. 98AP-1627, 1999 Ohio App. LEXIS 4613, the court held that these provisions of R.C. 119.09 are satisfied if the minutes of the Board meeting reflect the basis for the decision to modify the Hearing Examiner's recommendation.

Appellant argues that the Board's modification of the Hearing Examiner's recommendation was improper in that the Board concluded, without supporting evidence, that Appellant had practiced below minimal standards. Appellant was not charged with practicing below minimal standards.

The minutes of the Board meeting of November 10, 2004, reflect that the Board members commented on the fact that Appellant admitted, at the hearing, prescribing Laetrile to many cancer patients over a long period of time. Evidence of this conduct was both presented by Appellant himself during his direct examination testimony and presented without objection. It can be expected that the Board members would consider and comment on the facts presented by Appellant surrounding the misdemeanor conviction.

The record shows that the Board did understand that the charges at issue related to the guilty plea and the conviction and not to allegations of practicing below minimal standards. The Report and Recommendation presented to the Board accurately identified the charges and the finding that Appellant's guilty plea was the basis for the disciplinary action. Minutes of the Board's meeting of November 10, 2004, also reflect that the Board accurately understood what the charges were. Dr. Steinbergh stated: "[T]he Board has charged him because of his conviction of a drug-related misdemeanor. That's

the charge today.” (Minutes, p. 9-10). Dr. Egner discussed the disciplinary guidelines for conviction of a misdemeanor. (*Id.*, p. 10). The following comment by Dr. Egner reflects the understanding that the case was not about practicing below minimal standards: “This should have been a minimal standards case, but it doesn’t really matter. There was a federal conviction of a crime for using a drug that has been banned.” (Minutes, p. 4).

Appellant further argues that Board based its decision on facts not in the record by concluding that Laetrile was a banned or illegal drug. Appellant argues that while Laetrile has not been approved by the FDA and cannot legally be imported or transported across state lines, it has not been “banned.”

The Hearing Examiner’s Report and Recommendation reflects the evidence that Laetrile has not been approved by the FDA and cannot be imported or transported across state lines. (Report, p. 8) The Report does not state that use of Laetrile has been entirely prohibited. The minutes of the Board’s meeting reflect that Dr. Bhati stated: “This is a drug not approved by the FDA ....” (Minutes, p. 6). Dr. Steinbergh described the drug as “experimental and not legally recognized” but did not suggest that its use was prohibited. (Minutes, p. 5).

At some points during the discussed Board members referred to Laetrile as “banned” or “illegal.” The Court finds that it is not a stretch for a person who is not an attorney to refer to a drug that is unapproved by the FDA and illegal to import or transport across state lines as “banned” or “illegal.” At one point, Appellant also referred to the drug as “banned from transporting or bringing it into the country.” (Tr. 26). Such references by themselves do not show that the Board reached, or based its decision on, an

erroneous finding, given that the record is clear as to the nature of the misdemeanor conviction and the charges against Appellant based on that conviction.

After reviewing the minutes of the Board's November 10, 2004 meeting, the Court finds that the minutes clearly reflect the basis for the Board's decision to modify the Hearing Examiner's recommendation. The Board members expressed the reasons for their view that a 30-day stayed suspension was insufficient, including their concerns about statements of Appellant that he knew Laetrile was unapproved because of safety concerns, his admissions that he had treated many patients with the drug over a long period of time, and his statements promoting Laetrile on the investigation tape. One of the Board members also emphasized that while Patient 1 had apparently left two vials of Laetrile in Appellant's office, 30 vials were located when the office was searched. (Minutes, p. 3).

The Court further notes that the penalty imposed by the Board is within the range of sanctions permitted under R.C. 4731.22(B).

For the foregoing reasons, the Court finds that the Board's Order is supported by reliable, probative and substantial evidence and in accordance with law. The Board's Order is **AFFIRMED**. This is a final, appealable Order. Costs to Appellant. Pursuant to Civil Rule 58, the Clerk of Court shall serve upon all parties notice of this judgment and its date of entry.

IT IS SO ORDERED.

  
PATRICK E. SHEERAN, JUDGE

**Copies to:**  
**Elizabeth Y. Collis, Counsel for Appellant**  
**Kyle C. Wilcox, Counsel for Appellee**