



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-7034 • Website: www.med.ohio.gov

October 13, 2004

Barry Alan Fultz, M.T.
804 Kilbourne Street
Bellevue, OH 44811

Dear Mr. Fultz:

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 October 13, 2004, 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 a Notice of Appeal with the State Medical Board of Ohio and 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

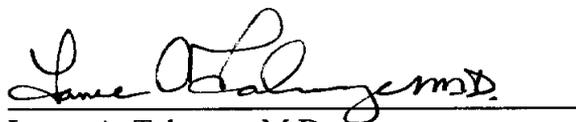
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RETURN RECEIPT REQUESTED

Mailed 10-19-04

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 October 13, 2004, 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 Barry Alan Fultz, M.T., 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)

October 13, 2004

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

BARRY ALAN FULTZ, M.T.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on October 13, 2004.

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:** The certificate of Barry Alan Fultz, M.T., to practice as a massage therapist in the State of Ohio shall be SUSPENDED for an indefinite period of time.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Mr. Fultz's certificate to practice as a massage therapist until all of the following conditions have been met:
 - 1. **Application for Reinstatement or Restoration:** Mr. Fultz shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
 - 2. **Completion of Inpatient Treatment:** Mr. Fultz shall complete a minimum of twenty-eight days of inpatient or residential treatment, or a combination thereof, for his chemical dependency. Such inpatient or residential treatment shall be completed without interruption. Further, such inpatient or residential treatment shall be provided in accordance with Rule 4731-16-08(A)(13), Ohio

Administrative Code, by a treatment provider approved under Section 4731.25, Ohio Revised Code.

In addition, upon discharge from treatment, Mr. Fultz shall enter into, and thereafter maintain compliance with, a post-discharge aftercare contract which complies with Rule 4731-16-10, Ohio Administrative Code, with a treatment provider approved under Section 4731.25, Ohio Revised Code, who has access to Mr. Fultz's treatment records.

3. **Demonstration of Ability to Resume Practice:** Mr. Fultz shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Mr. Fultz has successfully completed any required inpatient treatment.
 - b. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with Rule 4731-16-10 of the Administrative Code.
 - c. Two written reports indicating that Mr. Fultz's ability to practice has been evaluated for chemical dependency and/or impairment and that he has been found capable of practicing according to acceptable and prevailing standards of care. The evaluations shall have been performed by individuals or providers approved by the Board for making such evaluations. Moreover, the evaluations shall have been performed within sixty days prior to Mr. Fultz's application for reinstatement or restoration. The reports of evaluation shall describe with particularity the bases for the determination that Mr. Fultz has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his practice.
4. **Additional Evidence of Fitness To Resume Practice:** In the event that Mr. Fultz's certificate remains suspended for more than two years prior to application for reinstatement or restoration, the Board may exercise its discretion pursuant to Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.

- C. **PROBATION:** Upon reinstatement or restoration, Mr. Fultz's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
1. **Obey the Law:** Mr. Fultz shall obey all federal, state, and local laws, and all rules governing the practice of massage therapy in Ohio.
 2. **Personal Appearances:** Mr. Fultz 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.
 3. **Quarterly Declarations:** Mr. Fultz 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. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
 4. **Abstention from Drugs:** Mr. Fultz shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Mr. Fultz's history of chemical dependency.
 5. **Abstention from Alcohol:** Mr. Fultz shall abstain completely from the use of alcohol.
 6. **Drug & Alcohol Screens; Supervising Physician:** Mr. Fultz shall submit to random urine screenings for drugs and/or alcohol twice monthly or as otherwise directed by the Board. Mr. Fultz shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Within thirty days of the submission of his application for restoration or reinstatement, or as otherwise determined by the Board, Mr. Fultz shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Mr. Fultz shall submit the required specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Mr. Fultz. Mr. Fultz and the supervising physician shall ensure that the urine specimens

are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Mr. Fultz shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Order, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, Mr. Fultz must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Mr. Fultz shall further ensure that the previously designated supervising physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

All screening reports and supervising physician reports required under this paragraph must be received in the Board's offices no later than the due date for Mr. Fultz's quarterly declaration. It is Mr. Fultz's responsibility to ensure that reports are timely submitted.

7. **Submission of Blood or Urine Specimens upon Request:** Mr. Fultz shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Mr. Fultz's expense.
8. **Rehabilitation Program:** Mr. Fultz shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Mr. Fultz shall submit acceptable documentary evidence of continuing compliance with this program, which must be received in the Board's offices no later than the due date for Mr. Fultz's quarterly declarations.
9. **Tolling of Probationary Period While Out of State:** In the event that Mr. Fultz should leave Ohio for three consecutive months, or reside or practice outside the State, Mr. Fultz must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.

10. **Violation of Terms of Probation:** If Mr. Fultz 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.
- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Mr. Fultz's certificate will be fully restored.
- E. **RELEASES:** Mr. Fultz shall provide continuing authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Mr. Fultz's chemical dependency and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluations occurred before or after the effective date of this Order. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.

Mr. Fultz shall also provide the Board written consent permitting any treatment provider from whom Mr. Fultz obtains treatment to notify the Board in the event he fails to agree to or comply with any recommended treatment or with any treatment or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.

- F. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Mr. Fultz 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, Mr. Fultz 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.
- G. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, Mr. Fultz 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. Mr. Fultz 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, Mr. Fultz shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

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

(SEAL)



Lance A. Talmage, M.D.
Secretary

October 13, 2004
Date

STATE MEDICAL BOARD
OF OHIO

2004 SEP -8 P 1: 09

**REPORT AND RECOMMENDATION
IN THE MATTER OF BARRY ALAN FULTZ, M.T.**

The Matter of Barry Alan Fultz, M.T., was heard by Sharon W. Murphy, Esq., Hearing Examiner for the State Medical Board of Ohio, on July 20, 2004.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated May 12, 2004, the State Medical Board of Ohio [Board] notified Barry Alan Fultz, M.T., that it had proposed to take disciplinary action against his certificate to practice massage therapy in Ohio. The Board based its proposed action on allegations that Mr. Fultz had been diagnosed as having alcohol dependency; that a Board-approved treatment provider had found him to be impaired in his ability to practice massage therapy according to acceptable and prevailing standards of care due to his abuse of alcohol; and that the Board-approved treatment provider had advised that Mr. Fultz requires treatment. The Board further alleged that Mr. Fultz's conduct constitutes "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code." Accordingly, the Board advised Mr. Fultz of his right to request a hearing in this matter. (State's Exhibit 1A).
- B. On June 3, 2004, the Board received a written hearing request from Mr. Fultz. (State's Exhibit 1B).

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.
- B. On behalf of the Respondent: Mr. Fultz, having been apprised of his right to be represented by counsel, appeared at the hearing on his own behalf.

EVIDENCE EXAMINED

I. Testimony Heard

- A. Presented by the State
 - 1. Barry Alan Fultz, M.T., as upon cross-examination
 - 2. Sallie Debolt, Esq.

B. Presented by the Respondent

Barry Alan Fultz, M.T.

II. Exhibits Examined

Presented by the State

1. State's Exhibits 1A-1F: Procedural exhibits.
2. State's Exhibit 2: Certified copy of Mr. Fultz's application for a certificate to practice as a massage therapist in Ohio.
3. State's Exhibit 3: Certified copy of Mr. Fultz's application for renewal of his certificate to practice as a massage therapist in Ohio.
4. State's Exhibit 4: Certified copies of documents pertaining to Mr. Fultz maintained by the Bowling Green, Ohio, Municipal Court.
5. State's Exhibit 5: Certified copies of documents pertaining to Mr. Fultz maintained by the Municipal Court of Sandusky, Erie County, Ohio.
6. State's Exhibits 6 through 9: A "Chemical Abuse Evaluation" of Mr. Fultz by COMPASS, Comprehensive Addiction Service Systems, Toledo, Ohio, and related documents. (Note: These exhibits are sealed to protect patient confidentiality).

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.

General Background

1. Barry Alan Fultz, M.T., testified that he had graduated from high school in 1996. After graduating from high school, Mr. Fultz completed one year of higher education at the University of Toledo. In March 2000, he graduated from the Northwest Academy of Massotherapy in Maumee, Ohio. Therefore, in February 2000, Mr. Fultz submitted an application to the Board for licensure as a massage therapist. In his application for licensure, Mr. Fultz advised that, in March 1999, he had been convicted of Driving Under the Influence [DUI] with a blood alcohol level of 0.14. (Hearing Transcript [Tr.] at 9-11; State's Exhibit [St. Ex.] 2 at 20, 27).

Mr. Fultz testified that he had performed massage therapy, part time, in the office of a chiropractor in Bellevue, Ohio, until a few months prior to the hearing. Mr. Fultz stated that he had ceased his practice as a massage therapist while awaiting resolution of the Board's allegations against him. Instead, Mr. Fultz has been working as a bartender at TGI Friday, a restaurant near Cedar Point Amusement Park. Mr. Fultz testified that he has worked at TGI Friday seasonally since September 1997. He explained that, during the operations of Cedar Point, he works as much as sixty to eighty hours per week. Currently, he is employed as a supervisor, server, and bartender at TGI Friday. (Tr. at 8-10; St. Ex. 2 at 17).

2. Mr. Fultz testified that he had started drinking alcohol, usually beer, when he was seventeen years old. He has continued to drink intermittently over the years. (Tr. at 12-13).
3. Early in the morning on March 18, 1999, Mr. Fultz was arrested for DUI after drinking in a bar to celebrate St. Patrick's Day. Mr. Fultz testified that a breathalyzer test had revealed a blood alcohol level of 0.14. (Tr. at 19-22; St. Ex. 4).

On April 7, 1999, Mr. Fultz pleaded guilty to the offense of DUI in the Bowling Green, Ohio, Municipal Court. The court sentenced him to thirty days incarceration with twenty-seven days suspended, so long as Mr. Fultz attended the seventy-two hour Driver Intervention Program at Nazarene Hall. Mr. Fultz did so. In addition, the court imposed a six months drivers license suspension, two years probation, and fines/costs of \$550.00. Mr. Fultz was twenty-one years old at that time. (Tr. at 22-24; St. Ex. 4).

4. Mr. Fultz testified that, in March 2002, the Board had requested that he appear at an office conference with Mr. Albert, the Board's Supervising Member, and other Board staff. Mr. Fultz testified that he had been asked to appear to discuss his use of alcohol and his DUI conviction. Mr. Fultz testified that he had assured Mr. Albert that he would not have another DUI arrest. He recalled, however, that Mr. Albert had been concerned that Mr. Fultz worked as a bartender. (Tr. at 30-32).

The Board issued Mr. Fultz a massage therapy license in March 2002. (Tr. at 9).

5. On May 24, 2002, Mr. Fultz was arrested for DUI, again after drinking in a bar. Mr. Fultz's blood alcohol level was 0.145. (Tr. at 24-27; St. Ex. 5).

On September 26, 2002, Mr. Fultz pleaded no contest to a reduced charge of Reckless Operation in the Municipal Court of Sandusky, Erie County, Ohio. The court sentenced him to thirty days incarceration with twenty-seven days suspended, so long as Mr. Fultz obtained a chemical dependency assessment. Mr. Fultz served three days in jail. In addition, the court imposed a six months drivers license suspension, impounded his vehicle for ninety days, ordered three years probation, and assessed fines/costs of \$235.00. (Tr. at 27-29; St. Ex. 5).

6. Mr. Fultz testified that, after his second arrest for DUI, he had participated in a twelve week outpatient treatment program through Firelands Counseling Service in Sandusky, Ohio.

Mr. Fultz testified that the program had required that he meet with a counselor once per week for two to three hours. Moreover, the program required that he maintain abstinence and submit urine for drug screening. (Tr. at 13-15).

7. In November 2003, the Board ordered Mr. Fultz to submit to a three-day evaluation for chemical dependency at Comprehensive Addiction Service Systems [COMPASS], a Board-approved treatment provider in Toledo, Ohio. (Tr. at 15, 41).
8. Mr. Fultz reported to COMPASS, on or about December 8, 2003, for purposes of the examination ordered by the Board. Mr. Fultz testified that he had remained at COMPASS for fifty-five hours. (Tr. at 15-16; St. Ex. 6).

In a December 18, 2003, letter to the Board, Christine Ellis, M.D., of COMPASS, advised that Mr. Fultz had been diagnosed as having alcohol dependence. Dr. Ellis noted that, although Mr. Fultz had suffered negative consequences from his drinking and had expressed a desire to control his drinking, he continued to drink three or four times a month. Nevertheless, Dr. Ellis stated that Mr. Fultz had a good prognosis for “continued sobriety.” Dr. Ellis advised:

It is my recommendation that he enter into a supervised treatment program to address relapse prevention issues. He should be monitored by a professional certified to treat substance dependence until the Medical Board feels he is no longer in need of supervision. He should attend AA three times per week with written corroboration of attendance. He should remain free of all mood-altering substances and should not be employed at a facility where mood-altering substances are served. He should also have random urine and breathalyzer screenings at a Medical Board-approved facility for the next six months.

To Mr. Fultz’s credit he was very forthright with his responses and maintained a positive attitude towards getting help. I would feel this gives him a good prognosis for his continued sobriety.

(St. Ex. 6 at 6-7).

In January 2004, Sallie J. Debolt, Enforcement Attorney for the Board, wrote to Marilyn Smith, Ph.D., Clinical Director of COMPASS. In the letter, Ms. Debolt explained that, when an evaluation has been ordered by the Board, Ohio law requires additional information to be included in the report of the evaluation. (St. Ex. 7). (See also Tr. at 42-45).

Thereafter, by letter dated February 5, 2004, Dr. Smith advised that Mr. Fultz has an impairment of ability to practice according to acceptable and prevailing standards of care because of habitual and excessive abuse of alcohol. (St. Ex. 8). And, by letter dated March 3, 2004, Dr. Ellis advised that, “Mr. Fultz is responsible to follow the State Medical

Board of Ohio regulations. That being he is to attend a 28 day in-patient treatment program in accordance with the Board's rules." (St. Ex. 9).

9. Mr. Fultz testified that, currently, he attends between one and three AA meetings per week. He stated that it is difficult to go to meetings since he is working long hours. Mr. Fultz further stated that other members of AA have questioned his decision to continue working as a bartender since, "It's like a kid in a candy store scenario." (Tr. at 17).

Mr. Fultz further testified that he does not believe he has "a drinking problem." He stated, "I see it as I've made a mistake, and I don't really drink that often. And if I do, it's not too many." Mr. Fultz testified that he had last consumed alcohol two weeks prior to the hearing and had last been intoxicated three months prior to the hearing. (Tr. at 32-33).

10. Sallie Debolt, Esq., testified on behalf of the State. Ms. Debolt testified that she is an Enforcement Attorney for the Board. Ms. Debolt testified that, as an Enforcement Attorney, she had been involved in Mr. Fultz's matter before the Board. (Tr. at 39-40).

Ms. Debolt testified that she had chosen COMPASS for Mr. Fultz's evaluation because it is the least expensive of the Board-approved evaluators. Ms. Debolt further testified that she had tried to help Mr. Fultz locate more affordable treatment providers but acknowledged that most of the Board-approved treatment providers charge approximately \$500.00 per day, for a total of \$14,000.00 for the required twenty-eight days of inpatient treatment. She added that, even the few less expensive "sliding-scale" treatment providers charge approximately \$300.00 per day, or \$8,400.00 for twenty-eight days of inpatient treatment. (Tr. at 46-49).

11. Mr. Fultz testified that he is unable to afford twenty-eight days of inpatient treatment. He stated that he works long hours at his job, but still barely covers his bills. He further stated that, having been out of school for only three years, he has not yet recovered the cost of his massage therapy education and related supplies. Moreover, he is trying to develop a profession outside the restaurant industry. In fact, Mr. Fultz has submitted an application to attend nursing school. If he is accepted, however, it will further reduce his income. Finally, Mr. Fultz admitted that he has made mistakes in his life, but stated that he is trying to correct them. He added that it has been a very difficult thing to do. (Tr. at 54-56).

FINDINGS OF FACT

1. In November 2003, the Board ordered Barry Alan Fultz, M.T., to submit to a three-day evaluation for chemical dependency at Comprehensive Addiction Service Systems [COMPASS], a Board-approved treatment provider in Toledo, Ohio.
2. Mr. Fultz reported to COMPASS, on or about December 8, 2003, for purposes of the examination ordered by the Board. Based upon the COMPASS treatment team's examination of Mr. Fultz, Mr. Fultz was diagnosed as having alcohol dependence. In

addition, the COMPASS treatment team concluded that Mr. Fultz has an impairment of ability to practice according to acceptable and prevailing standards of care because of habitual and excessive abuse of alcohol. Finally, the COMPASS treatment team recommended that Mr. Fultz undergo treatment.

CONCLUSIONS OF LAW

The conduct of Barry Alan Fultz, M.T., as set forth in the Findings of Fact, constitutes “[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,” as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

* * * * *

Because Mr. Fultz has been diagnosed with alcohol dependence, Ohio law requires that the Board suspend his certificate and order him to obtain twenty-eight days of inpatient or residential substance abuse treatment by a Board-approved treatment provider.¹ This is true despite the fact that Mr. Fultz cannot afford the required treatment.

PROPOSED ORDER

It is hereby ORDERED that:

- A. **SUSPENSION:** The certificate of Barry Alan Fultz, M.T., to practice as a massage therapist in the State of Ohio shall be SUSPENDED for an indefinite period of time.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Mr. Fultz’s certificate to practice as a massage therapist until all of the following conditions have been met:
 1. **Application for Reinstatement or Restoration:** Mr. Fultz shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
 2. **Completion of Inpatient Treatment:** Mr. Fultz shall complete a minimum of twenty-eight days of inpatient or residential treatment, or a combination thereof, for his chemical dependency. Such inpatient or residential treatment shall be completed without interruption. Further, such inpatient or residential treatment shall be provided in accordance with Rule 4731-16-08(A)(13), Ohio Administrative Code, by a treatment provider approved under Section 4731.25, Ohio Revised Code.

¹ See Section 4731.22(B)(26), Ohio Revised Code; and Rules 4731-16-02(B)(3), 4731-16-02(B)(4), and 4731-16-08(A)(13), Ohio Administrative Code.

In addition, upon discharge from treatment, Mr. Fultz shall enter into, and thereafter maintain compliance with, a post-discharge aftercare contract which complies with Rule 4731-16-10, Ohio Administrative Code, with a treatment provider approved under Section 4731.25, Ohio Revised Code, who has access to Mr. Fultz's treatment records.

3. **Demonstration of Ability to Resume Practice:** Mr. Fultz shall demonstrate to the satisfaction of the Board that he can resume practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include but shall not be limited to the following:
 - a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Mr. Fultz has successfully completed any required inpatient treatment.
 - b. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with Rule 4731-16-10 of the Administrative Code.
 - c. Two written reports indicating that Mr. Fultz's ability to practice has been evaluated for chemical dependency and/or impairment and that he has been found capable of practicing according to acceptable and prevailing standards of care. The evaluations shall have been performed by individuals or providers approved by the Board for making such evaluations. Moreover, the evaluations shall have been performed within sixty days prior to Mr. Fultz's application for reinstatement or restoration. The reports of evaluation shall describe with particularity the bases for the determination that Mr. Fultz has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his practice.
 4. **Additional Evidence of Fitness To Resume Practice:** In the event that Mr. Fultz's certificate remains suspended for more than two years prior to application for reinstatement or restoration, the Board may exercise its discretion pursuant to Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.
- C. **PROBATION:** Upon reinstatement or restoration, Mr. Fultz's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
1. **Obey the Law:** Mr. Fultz shall obey all federal, state, and local laws, and all rules governing the practice of massage therapy in Ohio.

2. **Personal Appearances**: Mr. Fultz 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.
3. **Quarterly Declarations**: Mr. Fultz 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. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
4. **Abstention from Drugs**: Mr. Fultz shall abstain completely from the personal use or possession of drugs, except those prescribed, administered, or dispensed to him by another so authorized by law who has full knowledge of Mr. Fultz's history of chemical dependency.
5. **Abstention from Alcohol**: Mr. Fultz shall abstain completely from the use of alcohol.
6. **Drug & Alcohol Screens; Supervising Physician**: Mr. Fultz shall submit to random urine screenings for drugs and/or alcohol twice monthly or as otherwise directed by the Board. Mr. Fultz shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Within thirty days of the submission of his application for restoration or reinstatement, or as otherwise determined by the Board, Mr. Fultz shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Mr. Fultz shall submit the required specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Mr. Fultz. Mr. Fultz and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results.

Mr. Fultz shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Order, whether all urine screens have been

negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, Mr. Fultz must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Mr. Fultz shall further ensure that the previously designated supervising physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

All screening reports and supervising physician reports required under this paragraph must be received in the Board's offices no later than the due date for Mr. Fultz's quarterly declaration. It is Mr. Fultz's responsibility to ensure that reports are timely submitted.

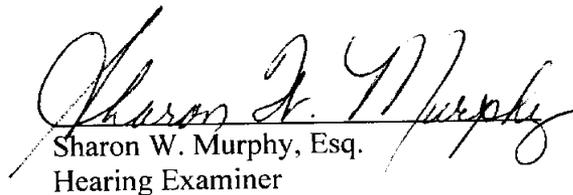
7. **Submission of Blood or Urine Specimens upon Request**: Mr. Fultz shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Mr. Fultz's expense.
 8. **Rehabilitation Program**: Mr. Fultz shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Mr. Fultz shall submit acceptable documentary evidence of continuing compliance with this program, which must be received in the Board's offices no later than the due date for Mr. Fultz's quarterly declarations.
 9. **Tolling of Probationary Period While Out of State**: In the event that Mr. Fultz should leave Ohio for three consecutive months, or reside or practice outside the State, Mr. Fultz must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this probationary period, unless otherwise determined by motion of the Board in instances where the Board can be assured that the purposes of the probationary monitoring are being fulfilled.
 10. **Violation of Terms of Probation**: If Mr. Fultz 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.
- D. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Mr. Fultz's certificate will be fully restored.
- E. **RELEASES**: Mr. Fultz shall provide continuing authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever

nature, by any and all parties that provide treatment or evaluation for Mr. Fultz's chemical dependency and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluations occurred before or after the effective date of this Order. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.

Mr. Fultz shall also provide the Board written consent permitting any treatment provider from whom Mr. Fultz obtains treatment to notify the Board in the event he fails to agree to or comply with any recommended treatment or with any treatment or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.

- F. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Mr. Fultz 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, Mr. Fultz 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.
- G. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, Mr. Fultz 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. Mr. Fultz 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, Mr. Fultz shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

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

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EXCERPT FROM THE DRAFT MINUTES OF OCTOBER 13, 2004

REPORTS AND RECOMMENDATIONS

Ms. Sloan announced that the Board would now consider the findings and orders appearing on the Board's agenda. She 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: Ghassan Haj-Hamed, M.D.; Sam Hill, D.O.; Barry Alan Fultz, M.T.; Sandra Kay Harewood, M.D.; Jeanne M. Kirkland, M.D.; Michael Paul Parker, M.D.; Jinka R. Sathya, M.D.; Animesh Chandulal Shah, M.D.; Hisham H. Soliman, M.D.; and Mary Mei-Ling Yun, M.D. A roll call was taken:

ROLL CALL:	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Ms. Sloan	- aye

The motion carried.

Ms. Sloan 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:	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Ms. Sloan	- aye

Ms. Sloan 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.

Ms. Sloan 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.

Dr. Davidson returned to the meeting at this time and advised that she received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the Reports and Recommendations appearing on today's agenda. She further advised that she does understand 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

.....

BARRY ALAN FULTZ, M.T.

.....

DR. KUMAR MOVED TO APPROVE AND CONFIRM MS. CLOVIS' PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF BARRY ALAN FULTZ, M.T. DR. BUCHAN SECONDED THE MOTION.

.....

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

Vote:	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain

The motion carried.



State Medical Board of Ohio

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May 12, 2004

Barry Alan Fultz, M.T.
804 Kilbourne Street
Bellevue, OH 44811

Dear Mr. Fultz:

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 massage therapy, or to reprimand you or place you on probation for one or more of the following reasons:

- (1) By letter dated November 20, 2003, the Board notified you of its determination that it had reason to believe that you are in violation of Section 4731.22(B)(26), Ohio Revised Code, and ordered you to submit to a three-day evaluation, beginning on December 8, 2003, at Comprehensive Addiction Service Systems [COMPASS], a Board-approved treatment provider in Toledo, Ohio, in order to determine whether you are in violation of Section 4731.22(B)(26), Ohio Revised Code. The Board's determination was based upon one or more of the reasons outlined in such letter.

You reported to COMPASS, on or about December 8, 2003, for purposes of the examination ordered by the Board. Based upon the COMPASS treatment team's examination of you, you were diagnosed as having alcohol dependency. In addition, the COMPASS treatment team concluded that you have an impairment of ability to practice according to acceptable and prevailing standards of care because of habitual and excessive abuse of alcohol and recommended that you undergo treatment.

Your acts, conduct, and/or omissions as alleged in paragraph (1), individually and/or collectively, constitute "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), 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 this notice.

Mailed 5/13/04

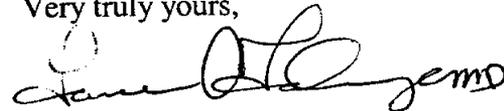
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at 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, suspend, refuse to register or reinstate your certificate to practice massage therapy 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,

A handwritten signature in black ink, appearing to read "Lance A. Talmage", written in a cursive style.

Lance A. Talmage, M.D.
Secretary

LAT/blt
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5140 1910
RETURN RECEIPT REQUESTED