BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :

:

JON A. MOLISKY, D.O. :

ENTRY OF ORDER

On June 10, 2002, Jon A. Molisky, D.O. executed a Voluntary Surrender of his Certificate to practice osteopathic medicine and surgery in the State of Ohio with a consent to revocation, which document is attached hereto and fully incorporated herein.

In consideration of the foregoing and of Dr. Molisky's express waiver of the provision of Section 4731.22(B), Ohio Revised Code, requiring that six (6) Board members vote to revoke said certificate, it is hereby ORDERED that Certificate No. 34-003447 authorizing Jon A. Molisky, D.O. to practice osteopathic medicine be permanently REVOKED, effective July 8, 2002.

This Order is hereby entered upon the Journal of the State Medical Board of Ohio for the 8th day of July, 2002, and the original thereof shall be kept with said Journal.

Anand G. Garg, M.D.
Secretary

(SEAL)

July 9, 2002
Date

STATE OF OHIO
THE STATE MEDICAL BOARD
SURRENDER OF CERTIFICATE TO PRACTICE
OSTEOPATHIC MEDICINE AND SURGERY

I, Jon A. Molisky, D.O., am aware of my rights to representation by counsel, the right of being formally charged and having a formal adjudicative hearing, and do hereby freely execute this document and choose to take the actions described herein.

I, Jon A. Molisky, D.O., do hereby voluntarily, knowingly, and intelligently surrender my certificate to practice osteopathic medicine and surgery, No. 34-003447, to the State Medical Board of Ohio, thereby relinquishing all rights to practice osteopathic medicine and surgery in Ohio.

I understand that as a result of the surrender herein that I am no longer permitted to practice osteopathic medicine and surgery in any form or manner in the State of Ohio.

I agree that I shall be ineligible for, and shall not apply for, reinstatement of certificate to practice osteopathic medicine and surgery No. 34-003447, or issuance of any other certificate pursuant to Chapters 4730., 4731., 4760. or 4762., Ohio Revised Code, on or after the date of signing this Surrender of Certificate to Practice Osteopathic Medicine and Surgery. Any such attempted reapplication shall be considered null and void and shall not be processed by the Board.

I hereby authorize the State Medical Board of Ohio to enter upon its Journal an Order permanently revoking my certificate to practice osteopathic medicine and surgery, No. 34-003447, in conjunction with which I expressly waive the provision of Section 4731.22(B), Ohio Revised Code, requiring that six (6) Board Members vote to revoke said certificate, and further expressly and forever waive all rights as set forth in Chapter 119., Ohio Revised Code, including but not limited to my right to counsel, right to a hearing, right to present evidence, right to cross-examine witnesses, and right to appeal the Order of the Board revoking my certificate to practice osteopathic medicine and surgery.

I, Jon A. Molisky, D.O., hereby release the Board, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This document shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code, and may be reported to appropriate organizations, data banks, and governmental bodies. I, Jon A. Molisky, D.O., agree to provide my social security number to the Board and hereby authorize the Board to utilize that number in conjunction with that reporting.

I stipulate and agree that I am taking the action described herein in lieu of formal disciplinary proceedings pursuant to Sections 4731.22(B)(26) and 4731.22(B)(15), Ohio Revised Code.

Signed this 10 day of June, 2002.

x
Jon A. Molisky, D.O.

Witness

Witness Boardman Police Department

Sworn to and subscribed before me this 10 day of June, 2002. @ 11:36 AM

ANGELO S. KISSOS
Notary Public
In and for the State of Ohio
My Commission Expires
November 30, 2004

Notary Public

SEAL

~~This form must be either witnessed~~ **(OR notarized)**

Accepted by the State Medical Board of Ohio:

ANAND G. GARG, M.D.
SECRETARY

07/08/02
DATE

RAYMOND A. ALBERT
SUPERVISING MEMBER

7/8/02
DATE

State Medical Board of Ohio

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

September 12, 2001

Jon A. Molisky, D.O.
888 Boardman-Canfield Road
Boardman, OH 44512

Dear Doctor Molisky:

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 September 12, 2001, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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

Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5147 2866
RETURN RECEIPT REQUESTED

Cc: Kevin P. Byers, Esq.
CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5147 2859
RETURN RECEIPT REQUESTED

Mailed 10.2.01

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 September 12, 2001 including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Jon A. Molisky, D.O., 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.

Anand G. Garg, M.D.
Secretary

(SEAL)

September 12, 2001
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

JON A. MOLISKY, D.O. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on date.

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 modification, approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

A. **SUSPENSION OF CERTIFICATE**: The certificate of Jon A. Molisky, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than thirty (30) days.

B. **INTERIM MONITORING**: During the period that Dr. Molisky's certificate to practice osteopathic medicine and surgery in Ohio is suspended, Dr. Molisky shall comply with the following terms, conditions, and limitations:

1. **Obey Laws in Ohio**: Dr. Molisky shall obey all federal, state, and local laws; and all rules governing the practice of medicine in Ohio.

2. **Quarterly Declarations**: Dr. Molisky shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. **Appearances**: Dr. Molisky shall appear in person for quarterly interviews before the Board or its designated representative, or as otherwise directed by the Board Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

4. **Abstention from Drugs**: Dr. Molisky shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. Molisky's history of chemical dependency.

5. **Abstention from Alcohol**: Dr. Molisky shall abstain completely from the use of alcohol.

6. **Rehabilitation Program**: Dr. Molisky 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. Substitution of any other specific program must receive prior Board approval. Dr. Molisky 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 Dr. Molisky's quarterly declarations.

7. **Drug & Alcohol Screens; Supervising Physician**: Dr. Molisky shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Molisky 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 effective date of this Order, Dr. Molisky shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Molisky shall submit the required urine 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 Dr. Molisky. Dr. Molisky 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.

   Dr. Molisky 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 Consent Agreement, 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, Dr. Molisky must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Molisky 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 Dr. Molisky's quarterly declarations. It is Dr. Molisky's responsibility to ensure that reports are timely submitted.

8. **Provision of Blood or Urine for Screening without Prior Notice**: Dr. Molisky shall submit blood and/or urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Molisky's expense.

9. **Contact An Appropriate Impaired Physicians Committee**: Dr. Molisky shall contact an appropriate impaired physicians committee, approved by the Board, to arrange for assistance in recovery and/or aftercare.

10. **Psychological Treatment**: Prior to reinstatement or restoration of his certificate, Dr. Molisky shall submit to the Board for its prior approval the name and curriculum vitae of a psychologist of Dr. Molisky's choice. The Board may consider Dr. Joe Edward for this purpose.

    Upon approval by the Board, Dr. Molisky shall obtain from the approved psychologist an assessment of Dr. Molisky's current status. The assessment shall take place no more than sixty days prior to the submission of Dr. Molisky's application for reinstatement. Prior to the assessment, Dr. Molisky shall furnish the approved psychologist any documentation which the Board may deem appropriate or helpful to that psychologist.

    Upon completion of the initial assessment, Dr. Molisky shall cause a written report to be submitted to the Board from the approved psychologist. The written report shall include:

    i. A detailed report of the evaluation of Dr. Molisky's current psychological status and condition;

    ii. A detailed plan of recommended psychological treatment, if any, based upon the psychologist's informed assessment of Dr. Molisky's current needs; and

iii. Any reports upon which the treatment recommendation is based, including reports of physical examination and psychological or other testing.

Should the Board approved psychologist recommend psychological treatment, and upon approval by the Board, Dr. Molisky shall undergo and continue psychological treatment weekly or as otherwise directed by the Board. Dr. Molisky shall comply with his psychological treatment plan.

Dr. Molisky shall continue in psychological treatment until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require reports from the approved treating psychologist. The psychological reports shall contain information describing Dr. Molisky's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Molisky's compliance with his treatment plan; Dr. Molisky's mental status; Dr. Molisky's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. Molisky shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Molisky's quarterly declaration.

In addition, Dr. Molisky shall ensure that his treating psychologist immediately notifies the Board of his failure to comply with his psychological treatment plan and/or any determination that Dr. Molisky is unable to practice due to his psychological disorder.

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

11. **Releases**: Dr. Molisky shall provide 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 Dr. Molisky's chemical dependency or related conditions, or for purposes of complying with this Order, whether such treatment or evaluation 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.

Dr. Molisky shall provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract.

Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.

C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION**: The Board shall not consider reinstatement or restoration of Dr. Molisky's certificate to practice osteopathic medicine and surgery unless all of the following conditions are met:

1. **Application and Fees**: Dr. Molisky shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.

2. **Continued Compliance with Interim Monitoring Conditions**: Dr. Molisky shall have maintained continuing compliance with all terms of Paragraph B of this Order, unless otherwise determined by the Board.

3. **Continued Aftercare Treatment**: Dr. Molisky 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 Dr. Molisky's treatment records.

4. **Demonstration of Ability to Resume Practice**: Dr. Molisky shall demonstrate to the satisfaction of the Board that he can practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include, but not be limited to, the following:

   a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Molisky has successfully completed the 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 post-discharge aftercare contract must comply with rule 4731-16-10 of the Administrative Code.

   c. Evidence of continuing full compliance with this Order.

   d. Two written reports indicating that Dr. Molisky's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the Board for making such assessments and shall describe the basis for this determination.

5. **Absence from Practice**: In the event that Dr. Molisky has not been engaged in the active practice of osteopathic medicine and surgery for a period in excess of two years prior to the submission of his application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Molisky's fitness to resume practice.

D. **PROBATIONARY CONDITIONS**: Upon reinstatement or restoration, Dr. Molisky's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five (5) years:

1. **Terms, Conditions, and Limitations Continued from Suspension Period**: Dr. Molisky shall continue to be subject to the terms, conditions, and limitations specified in paragraph B of this Order.

2. **Absence from Ohio**: In the event that Dr. Molisky should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Molisky 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 period under the Order, unless otherwise determined by the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.

3. **Violation of Probation; Discretionary Sanction Imposed**: If Dr. Molisky 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.

4. **Tolling of Probationary Period while Out of Compliance**: In the event Dr. Molisky is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.

E. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Molisky's certificate will be fully restored.

F. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS**: Within thirty days of the effective date of this Order, Dr. Molisky shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Molisky 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 BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES**: Within thirty days of the effective date of this Order, Dr. Molisky shall provide a copy of this Order by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. Molisky shall also provide a copy of this Order by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Molisky shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

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

Anand G. Garg, M.D.
Secretary

(SEAL)

September 12, 2001
Date

VER/SWM

STATE MEDICAL BOARD
OF OHIO
2001 AUG 14 P 5:46

REPORT AND RECOMMENDATION
IN THE MATTER OF JON A. MOLISKY, D.O.

The Matter of Jon A. Molisky, D.O., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio, on July 25, 2001.

INTRODUCTION

I. Basis for Hearing

A. By letter dated April 11, 2001, the State Medical Board of Ohio [Board] notified Jon A. Molisky, D.O., that it had proposed to take disciplinary action against his certificate to practice osteopathic medicine and surgery in this state. The Board based its proposed action on allegations pertaining to Dr. Molisky's history of impairment and his submission of false and/or fraudulent statements to the Board. The Board further alleged that Dr. Molisky's conduct constitutes the following statutory violations:

1. "'fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board,' as that clause is used in Section 4731.22(A), Ohio Revised Code."

2. "'[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board,' as that clause is used in Section 4731.22(B)(5), Ohio Revised Code."

3. "'[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 Dr. Molisky of his right to request a hearing in this matter. (State's Exhibit 1A).

B. On May 11, 2001, Kevin P. Byers, Esq., submitted a written hearing request on behalf of Dr. Molisky. (State's Exhibit 1B).

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II. Appearances

A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Hanz R. Wasserburger, Assistant Attorney General.

B. On behalf of the Respondent: Kevin P. Byers, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

Jon A. Molisky, D.O.

II. Exhibits Examined

A. Presented by the State

1. State's Exhibits 1A-1L: Procedural exhibits.

2. State's Exhibit 2: Certified copy of Dr. Molisky's 2000 application for renewal of his certificate to practice osteopathic medicine and surgery in Ohio.

3. State's Exhibit 3: Certified copies of Dr. Molisky's medical records maintained by Glenbeigh Hospital, Rock Creek, Ohio. (Note: Exhibit sealed to protect patient confidentiality.)

4. State's Exhibits 4 and 5: Copies of letters to the Board from Randy Vipperman, MSSA, LISW, CCDC-IIIE, Clinical Supervisor, Chemical Dependency Services, Edwin Shaw Hospital for Rehabilitation, Akron, Ohio.

5. State's Exhibit 6: Certified copies of documents pertaining to Dr. Molisky maintained by the City of Canfield [Ohio] Mayor's Court.

6. State's Exhibit 7: Copy of a letter to the Board from Bertram Polis, an attorney who represented Dr. Molisky in Tucson, Arizona.

7. State's Exhibit 8: Copy of the August 1, 2001, "State Medical Board of Ohio's Response to Respondent's Supplemental Statement."

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B. Presented by the Respondent

1. Respondent's Exhibit A: Copy of the July 31, 2001, "Respondent's Motion for *Instanter* Filing of the Respondent's Supplemental Statement."

2. Respondent's Exhibit B: Copy of the July 31, 2001, "Respondent's Supplemental Statement."

C. Admitted by the Attorney Hearing Examiner *sua sponte*

Board Exhibit A: August 2, 2001, Entry.

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. Jon A. Molisky, D.O., graduated from high school in 1971, after which he completed four years of undergraduate education. After working for two years, he attended and graduated from the West Virginia School of Osteopathic Medicine in Lewisburg, West Virginia. Dr. Molisky completed a one-year internship at Doctor's Hospital in Massillon, Ohio. Thereafter, he completed a radiology residency program at St. Louis Office Medical Center in Youngstown, Ohio. After completing his residency program, Dr. Molisky joined a private radiology practice in the Youngstown area. (Hearing Transcript [Tr.] at 20).

   Dr. Molisky is currently practicing mammography and diagnostic ultrasound in Boardman, Ohio. Dr. Molisky is not licensed in any other state. (Tr. at 11-12).

2. Dr. Molisky testified that, prior to September 1999, he had been drinking one pint of vodka and four beers a day for a number of years. Moreover, in late 1998 or early 1999, Dr. Molisky had undergone a surgical repair of carpal tunnel, and started taking Vicodin for pain. Dr. Molisky testified that, in January 1999, he had been under the influence of alcohol and Vicodin when he decided to go to his girlfriend's house to cook breakfast. He got into his car and found himself lost, parked in a stranger's driveway. The police were contacted and charged Dr. Molisky with disorderly conduct/intoxication. (Tr. at 26-27).

3. On January 19, 1999, in the City of Canfield [Ohio] Municipal Court, Dr. Molisky pled guilty to one count of Disorderly Conduct/Intoxication, a minor misdemeanor, in violation of Cod. Ord. 509.03(B)(2). The violation stated that Dr. Molisky "while voluntarily intoxicated, engaged in conduct that created a condition that represents a risk of physical

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harm to himself or to the property of another." The court imposed fines and costs of $105.00. (State's Exhibit [St. Ex.] 6).

4. Dr. Molisky testified that, in April 1999, he had been visited by an enforcement investigator from the Board. Dr. Molisky testified that the investigator questioned Dr. Molisky about his January 1999 conviction for disorderly conduct. (Tr. at 15, 25-27).

5. Dr. Molisky testified that he had not sought treatment for chemical dependency after the arrest for disorderly conduct. He decided to "slow down" his drinking. Nevertheless, he had started drinking excessively again shortly thereafter. Eventually, his employer noticed that he was "shaking" at work. Dr. Molisky testified that his employer had stated that he did not want patients to see Dr. Molisky in that condition and asked Dr. Molisky to get help. Dr. Molisky further testified that he had also started realizing that alcohol was having a negative impact on his life and his relationships. He testified that he last took a drink of alcohol on September 1, 1999, and initiated inpatient substance abuse treatment the following day. (Tr. at 28-29).

6. Dr. Molisky entered Glenbeigh Hospital, a Board approved treatment provider in Rock Creek, Ohio, on September 2, 1999. Dr. Molisky's admitting diagnoses included alcohol dependence/withdrawal and hepatic dysfunction. Upon admission, Dr. Molisky admitted that he had been drinking one pint of vodka and four to six beers daily for the past ten years. He further admitted that he had started using alcohol at the age of sixteen. (Tr. at 29; St. Ex. 3).

   Dr. Molisky was discharged from inpatient treatment with staff approval on September 18, 1999. Upon discharge, Dr. C.J. Prusinski, D.O., recommended that Dr. Molisky "attend intensive outpatient treatment at Glenbeigh Niles; obtain a home group and sponsor while in intensive outpatient treatment; attend three AA/NA/CA meetings in seven days; participate in the social/recreational activities offered by the recovering community; [and participate in] individual counseling at Associates Mental Health with Dr. Joe Edward." (St. Ex. 3).

7. Dr. Molisky testified that one of the recommendations had been to complete intensive outpatient care, which was a twelve-week aftercare program. Dr. Molisky stated that, despite the recommendation, he had completed only five weeks of the recommended twelve weeks of aftercare. (Tr. at 16).

   Dr. Molisky explained that, at his fifth aftercare meeting, he heard one of the other participants state that the participant had been getting more benefit from attending AA meetings then from attending aftercare meetings. Dr. Molisky further reported that the counselor had advised that the participant was not required to attend aftercare meetings, and should only attend if he wanted to attend. Dr. Molisky stated that he had also felt that AA meetings were more beneficial than aftercare meetings, so he decided not to attend

STATE MEDICAL BOARD

any additional aftercare meetings. Dr. Molisky stated that the fact that there was no cost for attending AA meetings also influenced his decision. Dr. Molisky admitted that he had not given aftercare meetings "a chance" because he had not believed that he would gain anything by attending the meetings. (Tr. at 16-19, 41-42, 47-49). Dr. Molisky further testified that he benefits from AA meetings due to the fellowship of AA. (Tr. at 30-32).

Dr. Molisky testified that, when he left Glenbeigh, he had attended ninety AA meetings during the first ninety days after discharge. He further stated that, since that time, he has attended AA meetings at least three times per week. Nevertheless, Dr. Molisky stated that he could not provide any verification of his attendance. (Tr. at 19).

Dr. Molisky further testified that he had not seen Dr. Joe Edward. Dr. Molisky testified that he had scheduled an appointment with Dr. Edward, but later cancelled it. Dr. Molisky stated that he had not gone because he did not think it would be helpful to him. (Tr. at 19, 42-43).

8. On April 25, 2000, Dr. Molisky signed an application for renewal of his certificate to practice osteopathic medicine and surgery in Ohio for the 2000-2002 registration period. By signing the renewal application card, Dr. Molisky certified that "the information provided on this application for renewal is true and correct in every respect." (St. Ex. 2).

When completing the renewal application card, Dr. Molisky answered "Yes" to the following question: At any time since signing your last application for renewal of your certificate have you been found guilty of, or pled guilty or no contest to, or received treatment in lieu of conviction of, a felony or misdemeanor? Moreover, above the question, Dr. Molisky hand wrote "TRESPASSING 10-98." (St. Ex. 2).

Nevertheless, when completing the renewal application card, Dr. Molisky failed to advise the Board of the 1999 conviction in Canfield, Ohio. (St. Ex. 2).

9. In correspondence dated June 20, 2000, Bertram Polis, an attorney who represented Dr. Molisky in Arizona, advised the Board that Dr. Molisky had "pled guilty to trespass, received a fine and [was] ordered to perform community service" with respect to charges against Dr. Molisky in Tucson, Arizona. Mr. Polis further stated:

> The circumstances of the offense arose from a dispute with his girlfriend, concerning a family problem back in Ohio. He was distraught and upset and was playing piano at the hotel lobby where he was staying, as a means of therapy. Due to some confusion, he was asked to stop, which he did. Unfortunately, police were called and he was charged with minor criminal offenses which were resolved expeditiously to the satisfaction of all concerned. No one was harmed, nor injured, nor was any property damaged.

> Clearly, this offense has no relationship to his competence or professionalism as a doctor.

(St. Ex. 7). Dr. Molisky testified that the letter accurately reflects the events that had transpired in Tucson. Dr. Molisky further testified that he had not been sober at the time of his arrest. (Tr. at 24).

10. Dr. Molisky testified that he had not mentioned the 1999 conviction in Canfield in his 2000 renewal application because he had known that he Board was aware of the conviction. Dr. Molisky referred to the fact that, in April 1999, he had been contacted by a Board investigator regarding that conviction. Dr. Molisky stated that he had assumed that he did not have to report it on the renewal application since the Board was already aware of it. (Tr. at 16, 26).

    Dr. Molisky acknowledged that he had not asked the investigator if he would be required to report the 1999 conviction; nor did the investigator advise Dr. Molisky that he did not have to report it. (Tr. at 24-25). Moreover, Dr. Molisky acknowledged that nothing in the renewal application states that a criminal conviction need not be reported if the licensee believes the Board is already aware of it. (Tr. at 51-52).

11. On July 28, 2000, the Board ordered Dr. Molisky to Edwin Shaw Hospital for Rehabilitation in Akron, Ohio, for a chemical dependency evaluation. Dr. Molisky went to Edwin Shaw Hospital on September 5, 2000. (Tr. at 17, 37; St. Exs. 4 and 5).

    By letters dated September 6 and September 20, 2000, Randy Vipperman, MSSA, LISW, CCDC-IIIE, Clinical Supervisor, Chemical Dependency Services, at Edwin Shaw Hospital, advised the Board that he had assessed Dr. Molisky for chemical dependency on September 5, 2000. Mr. Vipperman further advised that the assessment had been performed at the request of the Board. While at Edwin Shaw Hospital, Dr. Molisky was diagnosed as "alcohol dependent in full remission." (St. Exs. 4 and 5).

    Mr. Vipperman acknowledged that Dr. Molisky had completed the inpatient and outpatient chemical dependency treatment program at Glenbeigh Hospital in September 1999. Nevertheless, Mr. Vipperman noted that Dr. Molisky had not completed all the recommendations for aftercare. In fact, Dr. Molisky had attended only five aftercare sessions and had failed to participate in individual counseling with Dr. Joe Edward. Mr. Vipperman recommended that Dr. Molisky "complete aftercare at Glenbeigh Hospital, continue AA attendance, and follow through with Dr. Joe Edward." (St. Exs. 4 and 5).

12. Dr. Molisky testified that he has not seen any one for counseling since his discharge from Glenbeigh. Moreover, Dr. Molisky has not had any contact with an impaired physicians committee. Finally, Dr. Molisky testified that he was not aware of any aftercare contract between himself and Glenbeigh Health Sources. (Tr. at 51-52, 61).

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FINDINGS OF FACT

1. On April 25, 2000, Jon A. Molisky, D.O., signed an application for renewal of his certificate to practice osteopathic medicine and surgery for the 2000-2002 registration period. In signing the renewal application card, Dr. Molisky indicated that, "the information provided on this application for renewal is true and correct in every respect."

   a. Dr. Molisky answered "Yes" to the question, "At any time since signing your last application for renewal of your certificate have you been found guilty of, or pled guilty or no contest to, or received treatment in lieu of conviction of, a felony or misdemeanor?" In addition, Dr. Molisky hand wrote "TRESPASSING 10-98" above the question. Furthermore, in subsequent correspondence dated June 20, 2000, an Arizona attorney representing Dr. Molisky advised that Dr. Molisky had "pled guilty to trespass, received a fine and [was] ordered to perform community service" with respect to charges against him in Tucson, Arizona.

   b. Dr. Molisky failed to inform the Board that on January 19, 1999, he had pled guilty to one count of "Disorderly Conduct/Intoxication" in the City of Canfield Mayor's Court.

2. Dr. Molisky entered Glenbeigh Health Sources, a Board approved treatment provider, on September 2, 1999. He was discharged from inpatient treatment with staff approval on September 18, 1999, after being diagnosed with alcohol dependence. Upon discharge, it was recommended that, among other things, Dr. Molisky initiate individual counseling at Associates Mental Health with Dr. Joe Edward.

3. Pursuant to an Order by the Board, on September 5, 2000, Dr. Molisky appeared at Edwin Shaw Hospital for Rehabilitation, a Board approved treatment provider, for a chemical dependency examination. While at Edwin Shaw Hospital, Dr. Molisky was diagnosed as alcohol dependent in full remission. It was recommended that, among other things, Dr. Molisky follow through with individual counseling with Dr. Joe Edward.

4. Dr. Molisky failed to comply with the recommendation of Glenbeigh Hospital and Edwin Shaw Hospital to initiate individual counseling at Associates Mental Health with Dr. Joe Edward.

CONCLUSIONS OF LAW

1. The conduct of Jon A. Molisky, D.O., as described in Findings of Fact 1, constitutes "fraud, misrepresentation, or deception in applying for or securing any certificate to practice or

certificate of registration issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code.

2. Dr. Molisky's conduct, as described in Findings of Fact 1, constitutes "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

3. Finally, the Board alleged that Dr. Molisky's conduct, as described in Findings of Fact 2 through 4, 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. Section 4731.22(B)(26), Ohio Revised Code, provides, in part, 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:
>
> (26) Impairment 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.

R.C. 4731.22(B)(26).

In a post hearing brief, the Respondent argued that Section 4731.22(B)(26), Ohio Revised Code, does not apply to the facts of this matter. First, the Respondent argues that the statutory language is couched in the present tense, and is meant to address practitioners who are currently abusing drugs and/or alcohol. The Respondent states that:

> [T]he statutory language is undeniably premised upon the Board's discovery of a licensee's <u>current</u>, <u>ongoing</u>, <u>untreated</u> impairment which could subject the public to risk if the Medical Board did not promptly address the impairment by levying a license suspension so that the practitioner could be coerced into entering treatment.

(Resp. Ex. B at 1-2) (emphasis in original). The Respondent further argues that the statutory language is not meant to address a practitioner such as Dr. Molisky, because Dr. Molisky entered treatment nearly two years ago and has remained abstinent since that time.

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The Respondent's argument is without merit. First, a review of the statues and rules regarding impaired practitioners suggests that the term "impairment" does not apply only to those who are currently abusing alcohol and/or drugs. In fact, such an interpretation would be unreasonable. The risk of relapse and the resultant potential harm to the public cannot be ignored. Moreover, Rule 4731-16-06, Ohio Administrative Code, provides terms which must be included in Consent Agreements and Board Orders for impaired practitioners. Among the terms, the rule provides as follows:

> Minimum probationary term of at least five years, except that a practitioner who first applies for licensure or license restoration after receiving treatment for impairment may be given probation of less than five years if the practitioner demonstrates continuous current sobriety of more than one year but less than five years, and a practitioner who first applies for licensure or license restoration after receiving treatment for impairment may be licensed without probation if the practitioner demonstrates continuous current sobriety of at least five years.

O.A.C. 4731-6-16(A)(19) (emphasis added). Accordingly, it is clear that the statutes and rules pertaining to impairment are designed to treat impairment as an ongoing entity, which warrants Board involvement over a period of many years.

Second, the Respondent bases his argument that Section 4731.22(B)(26), Ohio Revised Code, does not apply to the facts of this matter on the assumption that Dr. Molisky was "effectively treated." Nevertheless, the evidence does not support such a conclusion. Although Dr. Molisky did complete sixteen days of inpatient treatment through a Board approved treatment provider, Dr. Molisky's treatment was not complete at that time. The treatment provider recommended that Dr. Molisky complete aftercare, attend 12 Step meetings, and obtain counseling. Dr. Molisky did not obtain counseling and did not complete the recommended in aftercare. Accordingly, it is not safe to assume that Dr. Molisky was "effectively treated." Therefore, the Respondent's argument that Section 4731.22(B)(26), Ohio Revised Code, does not apply to the facts of this matter is not compelling.

In an unrelated argument, the Respondent suggests that, should the Board take disciplinary action against Dr. Molisky based on a violation of Section 4731.22(B)(26), Ohio Revised Code, the Board may be in violation of the Americans with Disabilities Act [ADA], 28 CFR §35.131(a)(2), which states:

> A public entity shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who- -
>
> (i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully[.]

28 CFR §35.131(a)(2). Again, the Respondent's argument is without merit. First, the Code defines "illegal use of drugs" as "the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812)." 28 CFR §35.104(a)(2). Alcohol, Dr. Molisky's drug of choice, does not fit into this category.

Moreover, in another case involving a Board licensee where the Respondent argued that the Board's disciplinary action violated the ADA, the Franklin County Court of Appeals reasoned as follows:

> There is simply no evidence that the board discriminated against appellant because of appellant's prior illegal use of drugs as such term is utilized in the ADA. Rather, the board proceeded with appellant's case as it would with any other disciplinary action against a physician who violated the rules governing the practice of medicine in Ohio. As discussed previously, the sanctions imposed by the board were fully authorized by law. Indeed, the board was not punishing appellant because he is an addict, rather, the board disciplined appellant because he violated specific provisions of R.C. 4731.22(B).

Sam Hill, D.O. v. State Medical Board of Ohio (Dec. 5, 1996), Franklin App. No. 96APE05-656, unreported. The court held that there was no need to determine whether the Board had violated the ADA under those circumstances. Accordingly, Dr. Molisky's conduct, as described in Findings of Fact 2 through 4, 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.

* * * * *

In the present matter, pursuant to Section 4731.22(B)(26) of the Revised Code, the Board ordered Dr. Molisky to obtain an evaluation for impairment. In accordance with the Board Order, Dr. Molisky went to Edwin Shaw Hospital on September 5, 2000, and was diagnosed as "alcohol dependent in full remission." The evaluator at Edwin Shaw Hospital noted that, although Dr. Molisky had completed the inpatient and outpatient chemical dependency treatment program at Glenbeigh Hospital, a Board approved treatment provider, he had not completed all the recommendations for aftercare. The Edwin Shaw Hospital evaluator recommended that Dr. Molisky "complete aftercare at Glenbeigh Hospital, continue AA attendance, and follow through with Dr. Joe Edward."

Nevertheless, a review of the Board's statutes and rules provide that the Board must suspend Dr. Molisky's certificate and order him to obtain twenty-eight days inpatient or residential substance abuse treatment. Section 4731.22(B)(26) of the Revised Code provides that, once

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impairment is found, the Board "shall suspend the individual's certificate * * * and shall require the individual, as a condition for initial, continued, reinstated, or renewed certification to practice, to submit to treatment." Rule 4731-16-02(B)(3) of the Administrative Code provides if the Board finds a licensee to be impaired, "the board shall initiate proceedings to suspend the license."

Furthermore, Rule 4731-16-02(B)(4) of the Administrative Code provides that:

> Before being eligible to apply for reinstatement of a license suspended under this paragraph the impaired practitioner must demonstrate to the board that the practitioner can resume practice in compliance with acceptable and prevailing standards of care under the provisions of the practitioner's certificate. Such demonstrations 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 the practitioner has successfully completed any required inpatient treatment. For purposes of this certification, inpatient treatment shall include inpatient or residential treatment provided in conformance with paragraph (A)(13) of rule 4731-16-08 of the Administrative Code[.]

O.A.C. 4731-16-02(B)(4). See also R.C. 4731.22(B)(26).

Finally, Rule 4731-16-08(A)(13) of the Administrative Code provides that a Board approved treatment provider must ensure that:

> [E]ach patient who is subject to the jurisdiction of the board complete a minimum of twenty-eight days of inpatient or residential treatment, or a combination thereof, during which the patient shall be prohibited by the terms of the treatment contract from conducting any practice or practice related activities, and after which the provider shall evaluate the patient and determine the necessity for further treatment based solely on clinical grounds. * * *

O.A.C. 4731-16-08(A)(13). Accordingly, the Board's statues and rules, when reviewed in conjunction with each other, provide that, once the Board finds a practitioner to be impaired, the Board must suspend the practitioner's certificate. Moreover, the Board may not reinstate that certificate until the practitioner demonstrates that he or she has completed "a minimum of twenty-eight days of inpatient or residential treatment, or a combination thereof," furnished by a Board approved treatment provider. Consequently, despite the fact that the recommendations of the Board approved treatment providers suggest that twenty-eight days of inpatient or residential treatment is not necessary in Dr. Molisky's case, the Board has no option but to comply with the statues and rules and require Dr. Molisky to complete twenty-eight days of inpatient or residential treatment prior to reinstatement.

Aside from the issue of inpatient or residential treatment, it is clear that Dr. Molisky has not complied with the recommendations of the substance abuse professionals at Glenbeigh Hospital and Edwin Shaw Hospital. Moreover, Dr. Molisky is unable to provide any verification of his continued sobriety and participation in self-help groups. Accordingly, in order to ensure protection of the public, the Board must assure that Dr. Molisky provides adequate evidence of compliance with an aftercare contract, participation in counseling, and continued participation in a 12 Step support group after his reinstatement to practice.

PROPOSED ORDER

It is hereby ORDERED that:

A. **SUSPENSION OF CERTIFICATE**: The certificate of Jon A. Molisky, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than thirty days.

B. **INTERIM MONITORING**: During the period that Dr. Molisky's certificate to practice osteopathic medicine and surgery in Ohio is suspended, Dr. Molisky shall comply with the following terms, conditions, and limitations:

1. **Obey Laws in Ohio**: Dr. Molisky shall obey all federal, state, and local laws; and all rules governing the practice of medicine in Ohio.

2. **Quarterly Declarations**: Dr. Molisky shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. **Appearances**: Dr. Molisky shall appear in person for quarterly interviews before the Board or its designated representative, or as otherwise directed by the Board Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

4. **Abstention from Drugs**: Dr. Molisky shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. Molisky's history of chemical dependency.

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5. **Abstention from Alcohol**: Dr. Molisky shall abstain completely from the use of alcohol.

6. **Rehabilitation Program**: Dr. Molisky 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. Substitution of any other specific program must receive prior Board approval. Dr. Molisky 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 Dr. Molisky's quarterly declarations.

7. **Drug & Alcohol Screens; Supervising Physician**: Dr. Molisky shall submit to random urine screenings for drugs and alcohol on a twice-monthly basis or as otherwise directed by the Board. Dr. Molisky 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 effective date of this Order, Dr. Molisky shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Molisky shall submit the required urine 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 Dr. Molisky. Dr. Molisky 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.

   Dr. Molisky 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 Consent Agreement, 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, Dr. Molisky must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Molisky 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 Dr. Molisky's

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quarterly declarations. It is Dr. Molisky's responsibility to ensure that reports are timely submitted.

8. **Provision of Blood or Urine for Screening without Prior Notice**: Dr. Molisky shall submit blood and/or urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Molisky's expense.

9. **Contact An Appropriate Impaired Physicians Committee**: Dr. Molisky shall contact an appropriate impaired physicians committee, approved by the Board, to arrange for assistance in recovery and/or aftercare.

10. **Psychological Treatment**: Prior to reinstatement or restoration of his certificate, Dr. Molisky shall submit to the Board for its prior approval the name and curriculum vitae of a psychologist of Dr. Molisky's choice. The Board may consider Dr. Joe Edward for this purpose.

    Upon approval by the Board, Dr. Molisky shall obtain from the approved psychologist an assessment of Dr. Molisky's current status. The assessment shall take place no more than sixty days prior to the submission of Dr. Molisky's application for reinstatement. Prior to the assessment, Dr. Molisky shall furnish the approved psychologist any documentation which the Board may deem appropriate or helpful to that psychologist.

    Upon completion of the initial assessment, Dr. Molisky shall cause a written report to be submitted to the Board from the approved psychologist. The written report shall include:

    i. A detailed report of the evaluation of Dr. Molisky's current psychological status and condition;

    ii. A detailed plan of recommended psychological treatment, if any, based upon the psychologist's informed assessment of Dr. Molisky's current needs; and

    iii. Any reports upon which the treatment recommendation is based, including reports of physical examination and psychological or other testing.

    Should the Board approved psychologist recommend psychological treatment, and upon approval by the Board, Dr. Molisky shall undergo and continue psychological treatment weekly or as otherwise directed by the Board. Dr. Molisky shall comply with his psychological treatment plan.

    Dr. Molisky shall continue in psychological treatment until such time as the Board determines that no further treatment is necessary. To make this determination, the

Board shall require reports from the approved treating psychologist. The psychological reports shall contain information describing Dr. Molisky's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Molisky's compliance with his treatment plan; Dr. Molisky's mental status; Dr. Molisky's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. Molisky shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. Molisky's quarterly declaration.

In addition, Dr. Molisky shall ensure that his treating psychologist immediately notifies the Board of his failure to comply with his psychological treatment plan and/or any determination that Dr. Molisky is unable to practice due to his psychological disorder.

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

11. **Releases**: Dr. Molisky shall provide 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 Dr. Molisky's chemical dependency or related conditions, or for purposes of complying with this Order, whether such treatment or evaluation 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.

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

C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION**: The Board shall not consider reinstatement or restoration of Dr. Molisky's certificate to practice osteopathic medicine and surgery unless all of the following conditions are met:

1. **Application and Fees**: Dr. Molisky shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.

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2. **Continued Compliance with Interim Monitoring Conditions**: Dr. Molisky shall have maintained continuing compliance with all terms of Paragraph B of this Order, unless otherwise determined by the Board.

3. **Completion of Inpatient Treatment**: Dr. Molisky 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, Dr. Molisky 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 Dr. Molisky's treatment records.

4. **Demonstration of Ability to Resume Practice**: Dr. Molisky shall demonstrate to the satisfaction of the Board that he can practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include, but not be limited to, the following:

   a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Molisky has successfully completed the 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 post-discharge aftercare contract must comply with rule 4731-16-10 of the Administrative Code.

   c. Evidence of continuing full compliance with this Order.

   d. Two written reports indicating that Dr. Molisky's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the Board for making such assessments and shall describe the basis for this determination.

5. **Absence from Practice**: In the event that Dr. Molisky has not been engaged in the active practice of osteopathic medicine and surgery for a period in excess of two years prior to the submission of his application for reinstatement or restoration, the

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Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Molisky's fitness to resume practice.

D. **PROBATIONARY CONDITIONS**: Upon reinstatement or restoration, Dr. Molisky's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years:

1. **Terms, Conditions, and Limitations Continued from Suspension Period**: Dr. Molisky shall continue to be subject to the terms, conditions, and limitations specified in paragraph B of this Order.

2. **Absence from Ohio**: In the event that Dr. Molisky should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Molisky 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 period under the Order, unless otherwise determined by the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.

3. **Violation of Probation; Discretionary Sanction Imposed**: If Dr. Molisky 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.

4. **Tolling of Probationary Period while Out of Compliance**: In the event Dr. Molisky is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.

E. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Molisky's certificate will be fully restored.

F. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS**: Within thirty days of the effective date of this Order, Dr. Molisky shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Molisky 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 BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES**: Within thirty days of the effective date of this Order, Dr. Molisky shall

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

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

Sharon W. Murphy
Attorney Hearing Examiner

State Medical Board of Ohio

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

EXCERPT FROM THE DRAFT MINUTES OF SEPTEMBER 12, 2001

REPORTS AND RECOMMENDATIONS

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

Dr. Bhati 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 matter of Marguerite D. Bruce, M.D.; Jon A. Molisky, D.O.; Regine Neptune, D.O.; William A. Romer, M.D.; and Michael Alan Twaddle, M.D. A roll call was taken:

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

Mr. Dilling advised that, due to restrictions in air travel, Dr. Israelstam was unable to travel from Wisconsin for this meeting. The Report and Recommendation in his matter will be considered by the Board in October.

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Dr. Buchan	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye

Dr. Steinbergh - aye
Dr. Bhati - aye

Dr. Bhati 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.

Dr. Bhati 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.

.....

JON A. MOLISKY, D.O.

Dr. Bhati directed the Board's attention to the matter of Jon A. Molisky, D.O. He advised that objections were filed to Hearing Examiner Murphy's Report and Recommendation and were previously distributed to Board members.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JON A. MOLISKY, D.O. DR. AGRESTA SECONDED THE MOTION.

Dr. Bhati stated that he would now entertain discussion in the above matter.

Dr. Steinbergh spoke in support of the Report and Recommendation, stating that there is some question about Dr. Molisky's sobriety over time. He has not submitted any appropriate documentation. The question and the issue for Dr. Molisky is whether or not he should be required to fulfill 28 days of inpatient therapy. She does not think he was honest in his responses to the Board on his application, and she supports the Report and Recommendation.

Dr. Talmage questioned requiring another 28 days of inpatient treatment when he is in aftercare. That seems neither necessary nor practical. The rest of the Order is certainly appropriate, but it is his concern that the 28-day treatment is redundant and unnecessary. Dr. Talmage stated that he would like to hear further discussion on this issue before he proposes an amendment to eliminate that provision.

Dr. Steinbergh referred to page 9 of Ms. Murphy's Report and Recommendation, stating that Ms. Murphy's opinion was that it was not safe to assume that Dr. Molisky has been effectively treated. There is not appropriate documentation to show that he was effectively treated. Dr. Molisky was released without completing treatment at the time. Dr. Steinbergh stated that her concerns were that, perhaps, this was true

and that 28 days would be appropriate at this time.

Dr. Somani stated that when he reviewed this case he had several concerns. One that the Board knows that 28 days inpatient treatment really helps the physician to understand that there was a problem. Dr. Molisky left that earlier program in half the time, and he did not go through the appropriate counseling. The Board has seen time and time again that that leads to continued problem. Dr. Molisky has had a number of relapses. Dr. Somani stated that he is somewhat concerned about the Report and Recommendation. The Board must make sure that he's gone through the proper counseling, and that he understands his addiction problem. The Board knows through experience that it often takes more than 28 days to come to grips with that problem. Dr. Somani stated that Dr. Molisky needs to go back into treatment.

Dr. Somani continued that the Board has been told that Dr. Molisky has been taking part in aftercare and has not had any positive drug screens. He stated that if the Board should move to eliminate the requirement for 28 days of inpatient treatment, Dr. Molisky will at least need closer monitoring.

Dr. Stienecker stated that the therapeutic process of inpatient care that the Board has seen through people who have appeared before the Board is not a tolling process. You don't do so many days over a period of time and it works. It's a dynamic process; one has to go from start to finish without interruption to get the benefit. If he did 16 days with no benefit from having been there, as evidenced by his actions afterwards, he needs the full 28 days.

Dr. Talmage referred to page 7 of the Report and Recommendation that states that upon Dr. Molisky's admission to Edwin Shaw Hospital he was evaluated and found to be "alcohol dependent in full remission." Would a further 28 days be necessary? He would defer to other Board members on this.

Dr. Steinbergh stated that Dr. Molisky did complete the program and was, in fact, discharged, but he did not complete the recommended aftercare. He did not complete what the Board considers to be a full course of therapy. The Board has learned over the years from those impaired physicians who have gone into these programs that inpatient care for that period of time has been enormously important. She believes that, if there is an error, the Board needs to err on the side of making certain that he gets complete treatment. It's not evident to her that he got complete treatment at the time.

Dr. Somani stated that he would, personally, at this stage, not have a problem to put him back to 28-day treatment. Dr. Molisky did go through a program from which he was discharged early. He did not go through the appropriate aftercare. At the same time, as far as the Board knows, he has not relapsed.

DR. SOMANI MOVED TO AMEND MS. MURPHY'S PROPOSED ORDER IN THE MATTER OF JON A. MOLISKY, D.O., TO AMEND PARAGRAPH B (7) TO REQUIRE DRUG SCREENS AT LEAST ONCE PER WEEK, AND TO EXTEND THE TERMS OF PROBATION TO FIVE YEARS, AND TO ELIMINATE THE FIRST PARAGRAPH OF C (3). DR. TALMAGE SECONDED THE MOTION. A vote was taken:

ROLL CALL: Mr. Albert - abstain

Dr. Egner	- nay
Dr. Talmage	- aye
Dr. Somani	- aye
Dr. Buchan	- aye
Dr. Stienecker	- aye
Dr. Agresta	- aye
Dr. Garg	- abstain
Dr. Steinbergh	- nay
Dr. Bhati	- aye

The motion carried.

DR. TALMAGE MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF JON A. MOLISKY, D.O. DR. BUCHAN SECONDED THE MOTION. A vote was taken:

ROLL CALL:

Mr. Albert	- abstain
Dr. Egner	- nay
Dr. Talmage	- aye
Dr. Somani	- aye
Dr. Buchan	- aye
Dr. Stienecker	- aye
Dr. Agresta	- aye
Dr. Garg	- abstain
Dr. Steinbergh	- nay
Dr. Bhati	- aye

The motion carried.

State Medical Board of Ohio

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

April 11, 2001

Jon Alan Molisky, D.O.
888 Harrington
Boardman-Canfield Road
Boardman, Ohio 44512

Dear Doctor Molisky:

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, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

(1) On or about April 25, 2000, you signed your 2000-2002 renewal card, indicating that "the information provided on this application for renewal is true and correct in every respect."

You answered "YES" to the following question:

At any time since signing your last application for renewal of your certificate have you been found guilty of, or pled guilty or not contest to, or received treatment in lieu of conviction of, a felony or misdemeanor?

In addition, you hand wrote "TRESPASSING 10-98."

In subsequent correspondence dated June 20, 2000, your attorney indicated that you "pled guilty to trespass, received a fine and [were] ordered to perform community service" with respect to charges against you in Tucson, Arizona.

Although you informed the State Medical Board (hereinafter "Board") of the above mentioned trespass charge, you failed to inform the Board that on or about January 19, 1999, you pled guilty to one count of "Disorderly Conduct/Intoxication" in the City of Canfield Municipal Court.

Mailed 4.12.01

(2) You entered Glenbeigh Health Sources, a Board approved treatment provider, on September 2, 1999, and were released from inpatient treatment with staff approval on September 18, 1999, after being diagnosed with alcohol dependence. After completing inpatient treatment it was recommended to you by Glenbeigh staff that, among other things, you initiate individual counseling at Associates Mental Health with Dr. Joe Edward.

Pursuant to an Order by the Board dated July 28, 2000, you appeared on September 5, 2000, at Edwin Shaw Hospital for Rehabilitation, a Board approved treatment provider, for a chemical dependency examination. While at Edwin Shaw Hospital, you were diagnosed as alcohol dependent in full remission, and it was recommended that, among other things, you follow through with individual counseling with Dr. Joe Edward, as recommended by Glenbeigh.

As of March 24, 2001, you have failed to comply with the recommendation of Glenbeigh and Edwin Shaw Hospital to initiate individual counseling at Associates Mental Health with Dr. Joe Edward.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration 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 paragraph (1) above, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, 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 (30) days of the time of mailing of this notice.

You are further advised that, if you timely request a hearing, you are entitled to appear

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

In the event that there is no request for such hearing received within thirty (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, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, effective March 9, 1999, 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,

Anand G. Garg, M.D.
Secretary

AGG/krt

Enclosures

CERTIFIED MAIL # 7000 0600 0024 5140 5444
RETURN RECEIPT REQUESTED