

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

I, James Charles Helphenstine, 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, James Charles Helphenstine, do hereby voluntarily, knowingly, and intelligently surrender my certificate to practice medicine and surgery, LICENSE #34-004200, to the State Medical Board of Ohio, thereby relinquishing all rights to practice medicine and surgery in Ohio. I stipulate and agree that I am taking the action described herein in lieu of further formal disciplinary proceedings in accordance with R.C. Chapter 119 and R.C. 4731.22 for the matters described in the Notice of Opportunity for Hearing dated February 11, 2004. I further stipulate and admit the allegations in said Notice, which is attached hereto in Exhibit A and incorporated herein by this reference.

I understand that as a result of the surrender herein that I am no longer permitted to practice 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 medicine and surgery No. LICENSE #34-004200 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 Medicine and Surgery. Any such attempted reapplication shall be considered null and void and shall not be processed by the Board.

I, James Charles Helphenstine, 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. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. I, James Charles Helphenstine, D.O., acknowledge that my social security number will be used if this information is so reported and agree to provide my social security number to the Board for such purposes.

Signed this 17 day of May, 2004

J. Delphunt
Signature of Physician

Margaret Jones
Witness

Telly Kilroy
Witness

Sworn to and subscribed before me this 17 day of May, 2004

Margaret Jones
Notary Public

Margaret A. Jones
Notary Public
In and for The State of Ohio
My Commission Expires May 26, 2005

SEAL (This form must be either witnessed OR notarized)

Accepted by the State Medical Board of Ohio:

Lance A. Talmage Raymond J. Albert
LANCE A. TALMAGE, M.D. RAYMOND J. ALBERT
SECRETARY SUPERVISING MEMBER

6-9-04
DATE DATE

6/9/04



State Medical Board of Ohio

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

CERTIFICATION

I hereby certify that the attached documents are true and complete copies as they appear in the records of the State Medical Board of Ohio in the Matter of **James Charles Helphenstine, D.O.**

This certification is made by authority of the State Medical Board and on its behalf.


William J. Schmidt
Assistant Executive Director

(SEAL)

April 29, 2004
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/

February 11, 2004

James Charles Helphenstine, D.O.
845 N. Heincke Road
Miamisburg, OH 45342

Dear Doctor Helphenstine:

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 osteopathic medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about March 10, 1999, you entered into a Step I Consent Agreement with the Board [March 1999 Step I Consent Agreement] in lieu of formal proceedings based upon your violations of Sections 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents; Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 3719.07, Ohio Revised Code, Improper Records of Controlled Substances; Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(D), Ohio Administrative Code; and Section 4731.22(B)(26), Ohio Revised Code. A copy of the aforementioned March 1999 Step I Consent Agreement is attached hereto and incorporated herein.

In the March 1999 Step I Consent Agreement, you admitted that you suffered from polysubstance dependence, including opiate dependence, barbiturate dependence, benzodiazepine dependence and marijuana dependence. You also admitted that you had self-prescribed controlled substances, had prescribed controlled substances for self-use in the names of family members, had obtained controlled substances samples for self-use from office stock, and had failed to maintain records reflecting such prescribing and dispensing. You further admitted that on or about February 24, 1999, you had been charged with driving under the influence of alcohol or drugs, and had subsequently entered treatment for chemical dependence at a Board approved treatment facility. In the March 1999 Step I Consent Agreement, you also agreed to certain terms, conditions, and limitations, including that your certificate to practice osteopathic medicine and surgery in the State of Ohio would be suspended for an indefinite period of time, but not less than six months, with specified conditions for reinstatement.

Mailed 2-12-04

- (2) On or about September 8, 1999, you entered into a Step II Consent Agreement with the Board [September 1999 Step II Consent Agreement] based upon your violations as set forth in the aforementioned March 1999 Step I Consent Agreement. The September 1999 Step II Consent Agreement provided for reinstatement of your license to practice osteopathic medicine and surgery in the State of Ohio subject to certain terms, conditions, and limitations, including but not limited to, requirements that you abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to you by another so authorized by law who has full knowledge of your history of chemical dependency; that you obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio; and that you submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of the Consent Agreement. A copy of the September 1999 Step II Consent Agreement is attached hereto and incorporated herein.
- (3) On or about September 11, 2002, the Board summarily suspended your certificate to practice osteopathic medicine and surgery in Ohio and issued to you a Notice of Summary Suspension and Opportunity for Hearing alleging that you were impaired, that you had committed acts that constituted felonies in this state, that you had violated the conditions of limitation placed upon your certificate to practice, that you had made false statements in securing a certificate to practice, and that you had violated certain rules promulgated by the Board related to the utilization of controlled substances and associated medical record keeping. A copy of the September 11, 2002, Notice of Summary Suspension and Opportunity for Hearing is attached hereto and incorporated herein.
- (4) On or about January 8, 2003, the Board issued an Entry of Order [January 2003 Order] that permanently revoked your certificate to practice osteopathic medicine and surgery, stayed such permanent revocation, suspended your certificate for an indefinite period of time, but not less than two years, and imposed terms for interim monitoring, reinstatement or restoration, and probation. A copy of the January 2003 Order is attached hereto and fully incorporated herein

The Conclusions of Law that were approved and confirmed by the Board pursuant to the January 2003 Order included the following determinations:

The evidence is undisputed that Dr. Helphenstine relapsed on hydrocodone while subject to a Step II Consent Agreement with the Board. Further, Dr. Helphenstine involved third parties in his efforts to obtain that medication. Moreover, Dr. Helphenstine provided false information to the Board in declarations of compliance and controlled substance logs. Finally, Dr. Helphenstine acknowledged that he had not always

properly and accurately documented prescriptions for controlled substances in his medical records. Such conduct would justify the Board in permanently revoking Dr. Helphenstine's certificate.

Nevertheless, there is mitigating evidence in Dr. Helphenstine's favor. Dr. Helphenstine self-reported his relapse to the Board, and appears to have been honest with the Board in its investigation of this matter and forthright in his testimony at hearing. Further, Dr. Helphenstine had previously maintained sobriety for two years prior to relapsing. Moreover, Dr. Helphenstine seems to have good insight into the reasons behind his relapse and had developed strategies to avoid future relapses. Under these circumstances, the Board may wish to allow Dr. Helphenstine the opportunity to return to practice under stringent monitoring conditions following time out of practice to obtain the required treatment and establish a solid recovery.

- (5) On or about January 8, 2003, the Board issued a Notice of Opportunity for Hearing based on allegations that you were impaired in the ability to practice due to a relapse on benzodiazepines. A copy of the January 8, 2003, Notice of Opportunity for Hearing is attached hereto and incorporated herein.
- (6) Thereafter, on or about December 10, 2003, the Board issued an Entry of Order [December 2003 Order] that superseded the January 2003 Order and permanently revoked your certificate to practice osteopathic medicine and surgery, stayed such permanent revocation, suspended your certificate to practice osteopathic medicine and surgery for an indefinite period of time, but not less than twenty-four months, and imposed terms for interim monitoring, reinstatement or restoration, and probation. Your certificate to practice osteopathic medicine and surgery in the State of Ohio remains suspended to date. A copy of the December 2003 Order is attached hereto and incorporated herein.
 - (a) The Findings of Fact that were approved and confirmed by the Board pursuant to the December 2003 Order included the following determinations:
 - (i) On November 4, 2003, Dr. Helphenstine appeared for a hearing before a Hearing Examiner for the Board concerning the Notice of Summary Suspension and Opportunity for Hearing. During that hearing, Dr. Helphenstine testified, in part, "... first and foremost the

most important thing to me in my life is maintaining my sobriety.”

- (ii) On November 5, 2002, Dr. Helphenstine submitted a urine specimen that reflected the presence of benzodiazepines. Subsequent GC/MS testing of the specimen confirmed the initial positive finding for benzodiazepines based upon the presence of the drug oxazepam. The formal laboratory report for the positive drug screen, which the Board received on or about November 25, 2002, included a handwritten note dated November 15, 2002, stating “Dr. states he will reenter treatment.”
- (b) The Conclusions of Law that were approved and confirmed by the Board pursuant to the December 2003 Order included the following determinations:

Dr. Helphenstine has a history of serious impairment that includes criminal convictions related to substance abuse, and multiple relapses. Moreover, there are a number of aggravating circumstances. First, Dr. Helphenstine lied to the Board under oath at the November 4, 2002, hearing regarding a relapse that had occurred three days earlier. At that hearing, Dr. Helphenstine testified that that he was fully committed to his recovery program and that he was “very aware” of the things he needed to do to maintain his recovery. Nevertheless, three days prior to making these statements under oath, Dr. Helphenstine had resorted to self-treating his anxiety by taking a drug from a friend. Dr. Helphenstine admitted that taking the drug had been a demonstration of addictive behavior. In light of Dr. Helphenstine’s history of dishonest dealings with the Board, the Board is fully justified in permanently revoking Dr. Helphenstine’s certificate to practice in this state.

- (c) The terms, conditions, and limitations related to your certificate to practice osteopathic medicine and surgery contained in the aforementioned December 2003 Order include the following interim monitoring requirements:

Pursuant to Paragraph (B)(4) of the December 2003 Order, “Abstention from Drugs: Dr. Helphenstine 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 Dr. Helphenstine's history of chemical dependency."

- (7) Despite the requirements of Paragraph (B)(4) of the December 2003 Order, the urine specimen you provided on December 22, 2003, resulted in a positive finding for the presence of THC, the main active ingredient in marijuana. Subsequent GC/MS testing of the specimen confirmed the initial positive finding for THC.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) through (7), 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.

Further, your acts, conduct, and/or omissions as alleged in paragraph (7), above, individually and/or collectively, constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

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

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

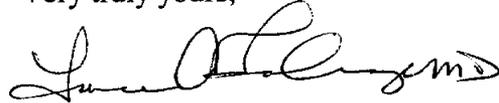
In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice 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, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An

individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate.”

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.
Secretary

LAT/blt
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5150 7384
RETURN RECEIPT REQUESTED

cc: Eric J. Plinke, Esq.
Porter, Wright, Morris & Arthur
41 South High Street
Columbus, Ohio 43215

CERTIFIED MAIL # 7000 0600 0024 5141 6709
RETURN RECEIPT REQUESTED



State Medical Board of Ohio

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

December 10, 2003

James Charles Helphenstine, D.O.
845 N. Heincke Road
Miamisburg, OH 45342

Dear Doctor Helphenstine:

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 December 10, 2003, 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.
Lance A. Talmage, M.D.
Secretary *ITAD*

LAT:jam
Enclosures

CERTIFIED MAIL NO. 7000 0600 0024 5150 9685
RETURN RECEIPT REQUESTED

Cc: Eric J. Plinke, Esq.
CERTIFIED MAIL NO. 7000 0600 0024 5150 9678
RETURN RECEIPT REQUESTED

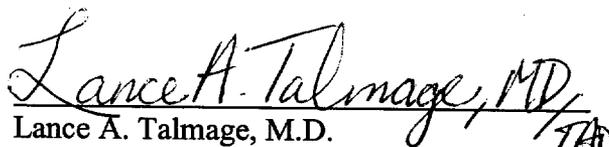
Mailed 12-12-03

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 December 10, 2003, 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 James Charles Helphenstine, 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.

(SEAL)


Lance A. Talmage, M.D.
Secretary

December 10, 2003

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

JAMES CHARLES HELPHENSTINE, D.O.*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on December 10, 2003.

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. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of James Charles Helphenstine, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Helphenstine's certificate shall be SUSPENDED for an indefinite period of time, but not less than twenty-four months.
- B. **INTERIM MONITORING:** During the period that Dr. Helphenstine's certificate to practice osteopathic medicine and surgery in Ohio is suspended, Dr. Helphenstine shall comply with the following terms, conditions, and limitations:
1. **Obey the Law:** Dr. Helphenstine shall obey all federal, state, and local laws, and all rules governing the practice of osteopathic medicine and surgery in Ohio.
 2. **Personal Appearances:** Dr. Helphenstine shall appear in person for quarterly interviews before the Board or its designated representative. The first such appearance shall take place on the date his appearance would have been scheduled pursuant to the January 8, 2003, Board 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**: Dr. Helphenstine shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the date his quarterly declaration would have been due pursuant to the January 8, 2003 Board Order. 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**: Dr. Helphenstine 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 Dr. Helphenstine's history of chemical dependency.
5. **Abstention from Alcohol**: Dr. Helphenstine shall abstain completely from the use of alcohol.
6. **Drug & Alcohol Screens; Supervising Physician**: Dr. Helphenstine shall submit to random urine screenings for drugs and/or alcohol on a weekly basis or as otherwise directed by the Board. Dr. Helphenstine 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, or as otherwise determined by the Board, Dr. Helphenstine shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Helphenstine 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 Dr. Helphenstine. Dr. Helphenstine 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. Helphenstine 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, Dr. Helphenstine must immediately notify the Board in writing, and make arrangements acceptable to the Board for another

supervising physician as soon as practicable. Dr. Helphenstine 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. Helphenstine's quarterly declaration. It is Dr. Helphenstine's responsibility to ensure that reports are timely submitted.

7. **Submission of Blood or Urine Specimens upon Request:** Dr. Helphenstine shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Helphenstine's expense.
 8. **Rehabilitation Program:** Dr. Helphenstine shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than four times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Dr. Helphenstine 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. Helphenstine's quarterly declarations.
 9. **Comply with the Terms of Treatment and Aftercare Contract:** Dr. Helphenstine shall maintain continued compliance with the terms of the treatment and aftercare contracts entered into with his treatment provider, provided that, where terms of the treatment and aftercare contract conflict with terms of this Order, the terms of this Order shall control.
 10. **Continued Compliance with a Contract with an Impaired Physicians Committee:** Dr. Helphenstine shall maintain continued compliance with the terms of the contract entered into with OPEP, or with another impaired physicians committee, approved by the Board, to assure continuous assistance in recovery and/or aftercare.
- C. **CONDITIONS FOR RESTORATION:** The Board shall not consider restoration of Dr. Helphenstine's certificate to practice osteopathic medicine and surgery until all of the following conditions have been met:
1. **Application for Reinstatement or Restoration:** Dr. Helphenstine shall submit an application for restoration, accompanied by appropriate fees, if any.
 2. **Compliance with Interim Conditions:** Dr. Helphenstine shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order, unless otherwise determined by the Board.
 3. **Completion of Inpatient Treatment:** Dr. Helphenstine 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. Helphenstine 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. Helphenstine's treatment records.

4. **Demonstration of Ability to Resume Practice:** Dr. Helphenstine 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 Dr. Helphenstine 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. Evidence of continuing full compliance with this Order.
 - d. Two written reports indicating that Dr. Helphenstine'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 Dr. Helphenstine's application for reinstatement or restoration. The reports of evaluation shall describe with particularity the bases for the determination that Dr. Helphenstine has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his practice.
5. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Helphenstine has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.

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

1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Helphenstine shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order.
2. **Practice Plan:** Prior to Dr. Helphenstine's commencement of practice in Ohio, or as otherwise determined by the Board, Dr. Helphenstine shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Helphenstine's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Helphenstine shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Dr. Helphenstine submits his practice plan, he shall also submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary or Supervising Member will give preference to a physician who practices in the same locale as Dr. Helphenstine and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Helphenstine and his practice, and shall review Dr. Helphenstine's patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Helphenstine and his practice, and on the review of Dr. Helphenstine's patient charts. Dr. Helphenstine 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. Helphenstine's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Helphenstine must immediately so notify the Board in writing. In addition, Dr. Helphenstine shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Helphenstine shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

3. **Ban on Prescribing, Ordering, Administering, Furnishing, or Possessing Controlled Substances; Log:** Dr. Helphenstine shall not prescribe, write orders for, give verbal orders for, administer, personally furnish, or possess (except as allowed under Paragraph B.4) any controlled substances without prior Board approval.

In the event that the Board agrees at a future date to modify this Order to allow Dr. Helphenstine to prescribe, order, administer or personally furnish controlled substances, Dr. Helphenstine shall keep a log of all controlled substances prescribed, ordered, administered, or personally furnished. Such log shall be submitted in a format approved by the Board thirty days prior to Dr. Helphenstine's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Helphenstine shall make his patient records with regard to such prescribing, administering, or personally furnishing available for review by an agent of the Board upon request.

4. **Tolling of Probationary Period While Out of State:** In the event that Dr. Helphenstine should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Helphenstine 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.
5. **Violation of Terms of Probation:** If Dr. Helphenstine 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.

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

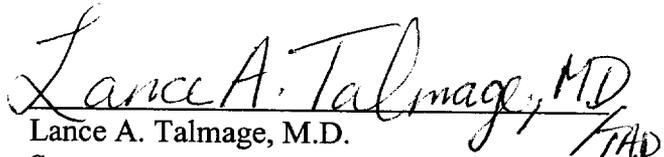
Dr. Helphenstine shall also provide the Board written consent permitting any treatment provider from whom Dr. Helphenstine obtains treatment to notify the Board in the event he fails to agree to or comply with any recommended treatment

or with any treatment or aftercare contract. Failure to provide such consent, or revocation of such consent, shall constitute a violation of this Order.

- G. REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Dr. Helphenstine 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. Helphenstine 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.
- H. REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, Dr. Helphenstine 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. Helphenstine 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. Helphenstine shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
- I. SUPERSEDE PREVIOUS CONSENT AGREEMENT:** This Order shall supersede the terms and conditions set forth in the January 8, 2003, Board Order.

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

(SEAL)


Lance A. Talmage, M.D.
Secretary

December 10, 2003

Date

2003 SEP 22 P 1: 22

**REPORT AND RECOMMENDATION
IN THE MATTER OF JAMES CHARLES HELPHENSTINE, D.O.**

The Matter of James Charles Helphenstine, D.O., was heard by Sharon W. Murphy, Hearing Examiner for the State Medical Board of Ohio, on August 18, 2003.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated January 8, 2003, the State Medical Board of Ohio [Board] notified James Charles Helphenstine, D.O., that it had proposed to take disciplinary action against his certificate to practice osteopathic medicine and surgery in Ohio. The Board's action was based on allegations pertaining to Dr. Helphenstine's history of impairment and relapse, including a positive screen on a urine sample submitted by Dr. Helphenstine on November 5, 2002. The Board alleged that Dr. Helphenstine'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 Dr. Helphenstine of his right to request a hearing in this matter. (State's Exhibit 1A).
- B. On January 16, 2003, Eric J. Plinke, Esq., submitted a written hearing request on behalf of Dr. Helphenstine. (State's Exhibit 1C).

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Mark A. Michael, Assistant Attorney General.
- B. On behalf of the Respondent: Eric J. Plinke, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

Presented by the Respondent

- A. Barron Farrier
- B. James Charles Helphenstine, D.O.

II. Exhibits Examined

- A. State's Exhibits 1A-1S: Procedural exhibits.
- B. State's Exhibit 2: Certified copy of test results for a positive screen of a urine sample submitted by Dr. Helphenstine on November 5, 2002.
- C. State's Exhibit 3: Certified copies of documents pertaining to Dr. Helphenstine maintained by Board.

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. James Charles Helphenstine, D.O., testified that he had obtained his osteopathic medical degree in 1985 from the Ohio University College of Osteopathic Medicine. Subsequently, Dr. Helphenstine completed a one year internship. In 1987, he completed a one year family practice residency at Grandview Medical Center in Dayton, Ohio. Dr. Helphenstine further testified that, after his residency, he had accepted a position at Doctors Urgent Care and had remained there through 1991. From 1991 through 1999, Dr. Helphenstine maintained a private family practice in Vandalia, Ohio. In March 2000, he returned to Doctors Urgent Care. (Hearing Transcript [Tr.] at 37-39)

Dr. Helphenstine's 1999 Treatment for Substance Abuse

2. On March 2, 1999, Dr. Helphenstine was admitted to Shepherd Hill Hospital in Newark, Ohio [Shepherd Hill], a Board-approved treatment facility, for inpatient treatment for poly-substance dependence. On March 26, 1999, at his request, Dr. Helphenstine was granted a five day therapeutic leave from Shepherd Hill. Dr. Helphenstine contacted Shepherd Hill on March 31, 1999, and advised that he would not be returning to Shepherd Hill. He was discharged from Shepherd Hill, treatment incomplete. (State's Exhibit [St. Ex.] 3 at 55)
3. On March 31, 1999, Dr. Helphenstine started intensive outpatient treatment at Green Hall in Xenia, Ohio, a Board-approved treatment facility. Dr. Helphenstine was discharged from that facility on July 25, 1999, upon completion of treatment. The following day, Dr. Helphenstine began participation in the Green Hall aftercare program, and entered into an aftercare contract with that facility. Finally, in May 1999, Dr. Helphenstine entered into

an advocacy contract with the Ohio Physicians Effectiveness Program [OPEP]. (St. Ex. 3 at 55)

Dr. Helphenstine's March 10, 1999, Step I Consent Agreement

4. On March 10, 1999, Dr. Helphenstine entered into a Step I Consent Agreement with the Board [March 1999 Step I Consent Agreement] in lieu of formal proceedings based upon Dr. Helphenstine's violations of the following statutes and rules:

- Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents;
- Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 3719.07, Ohio Revised Code, Improper Records of Controlled Substances;
- Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(D), Ohio Administrative Code; and
- Section 4731.22(B)(26), Ohio Revised Code.

(St. Ex. 3 at 65-66).

5. In the March 1999 Step I Consent Agreement, Dr. Helphenstine made the following admissions:

- He suffered from polysubstance dependence, including opiate, barbiturate, benzodiazepine, and marijuana dependence;
- He had self-prescribed controlled substances;
- He had prescribed controlled substances for self-use in the names of family members;
- He had obtained controlled substances samples for self-use from office stock;
- He had failed to maintain records reflecting such prescribing and dispensing;
- On or about February 24, 1999, he had been charged with driving under the influence of alcohol or drugs; and
- Subsequently, he had entered treatment for chemical dependence at a Board-approved treatment facility.

(St. Ex. 3 at 66-67).

6. In the March 1999 Step I Consent Agreement, Dr. Helphenstine agreed to certain terms, conditions, and limitations. Among the terms and conditions, Dr. Helphenstine agreed that his certificate to practice osteopathic medicine and surgery in Ohio would be suspended for an indefinite period of time, but not less than six months, with specified conditions for reinstatement. (St. Ex. 3 at 67-71).
7. During a November 2001 hearing, Dr. Helphenstine testified that he had entered into the March 1999 Step I Consent Agreement as a result of his substance abuse problem. He stated that his drug of choice had been hydrocodone, but that he had also developed secondary addictions due to the tolerance he had developed toward hydrocodone. Dr. Helphenstine further testified that he had abused benzodiazepines and butalbital because he had suffered from insomnia resulting from the high tolerance level he had developed. Finally, Dr. Helphenstine testified that he had also occasionally used marijuana. (St. Ex. 3 at 17).

Dr. Helphenstine's September 8, 1999, Step II Consent Agreement

8. On September 8, 1999, Dr. Helphenstine entered into a Step II Consent Agreement with the Board [September 1999 Step II Consent Agreement] based upon the violations set forth in the March 1999 Step I Consent Agreement. The September 1999 Step II Consent Agreement provided for reinstatement of Dr. Helphenstine's license to practice osteopathic medicine and surgery in Ohio subject to certain terms, conditions, and limitations. These terms, conditions, and limitations included the following requirements:
 - Dr. Helphenstine 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. Helphenstine's history of chemical dependency;
 - Dr. Helphenstine shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio; and
 - Dr. Helphenstine shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of the Consent Agreement.

(St. Ex. 3 at 54-64).

Dr. Helphenstine's November 2001 Relapse

9. In November 2001, Dr. Helphenstine took "a handful of Vicodin tablets" from a patient. The patient was also a co-worker at Doctors Urgent Care. Subsequently, Dr. Helphenstine started writing prescriptions for Vicodin, a controlled substance, to three patients. The

three patients were also co-workers. Dr. Helphenstine entered into an arrangement with the patients whereby, when the patients filled the Vicodin prescriptions, the patients returned portions of the medications to Dr. Helphenstine. (St. Ex. 3 at 19-21).

Dr. Helphenstine stated that he had not used any of the Vicodin until early 2002. Nevertheless, Dr. Helphenstine continued writing prescriptions for these patients and taking portions of the controlled substances for himself through early August 2002. (St. Ex. 3 at 19-21).

10. On or about August 27, 2002, Dr. Helphenstine's attorney notified the Board that Dr. Helphenstine had relapsed by using hydrocodone in or about November 2001 after engaging in a pattern of pill-sharing with at least three of his patients. (St. Ex. 3 at 44-53).

Dr. Helphenstine's September 11, 2002, Summary Suspension

11. On September 11, 2002, the Board summarily suspended Dr. Helphenstine's certificate to practice osteopathic medicine and surgery in Ohio. The Board issued to Dr. Helphenstine a Notice of Summary Suspension and Opportunity for Hearing which alleged the following:

- Dr. Helphenstine was impaired;
- Dr. Helphenstine had committed acts that constituted felonies in this state;
- Dr. Helphenstine had violated the conditions of limitation placed upon his certificate to practice;
- Dr. Helphenstine had made false statements in securing a certificate to practice; and
- Dr. Helphenstine had violated certain rules promulgated by the Board related to the utilization of controlled substances and associated medical recordkeeping.

The Notice of Summary Suspension and Opportunity for Hearing was based upon information reported to the Board by Dr. Helphenstine's attorney. (St. Ex. 3 at 44-53).

12. At hearing on that matter, Dr. Helphenstine testified that he had shielded his relapse from discovery by timing his use to the schedule of his urine drug screens. Dr. Helphenstine stated that he had taken hydrocodone immediately after submitting a urine sample, reasoning that the next one would not be requested for a while. (Tr. at 63-64)

Dr. Helphenstine acknowledged that he had been under the Step II Consent Agreement when these incidents transpired and that his conduct had violated the terms of that agreement. In addition, Dr. Helphenstine acknowledged that he had been dishonest with the Board when he signed declarations stating that he had maintained compliance with the terms of that agreement. (St. Ex. 3 at 21).

Finally, Dr. Helphenstine testified that he had lost sight of his recovery because he had become over confident after two years of continuous sobriety. Nevertheless, Dr. Helphenstine testified that, at the time of the hearing, he was “very aware” of the things he needed to do to maintain his recovery. Dr. Helphenstine concluded that, “first and foremost the most important thing to me in my life is maintaining my sobriety.” (St. Ex. 3 at 26-27).

13. Following the hearing, the Hearing Examiner wrote the following,

The evidence is undisputed that Dr. Helphenstine relapsed on hydrocodone while subject to a Step II Consent Agreement with the Board. Further, Dr. Helphenstine involved third parties in his efforts to obtain that medication. Moreover, Dr. Helphenstine provided false information to the Board in declarations of compliance and controlled substance logs. Finally, Dr. Helphenstine acknowledged that he had not always properly and accurately documented prescriptions for controlled substances in his medical records. Such conduct would justify the Board in permanently revoking Dr. Helphenstine’s certificate.

Nevertheless, there is mitigating evidence in Dr. Helphenstine’s favor. Dr. Helphenstine self-reported his relapse to the Board, and appears to have been honest with the Board in its investigation of this matter and forthright in his testimony at hearing. Further, Dr. Helphenstine had previously maintained sobriety for two years prior to relapsing. Moreover, Dr. Helphenstine seems to have good insight into the reasons behind his relapse and has developed strategies to avoid future relapses. Under these circumstances, the Board may wish to allow Dr. Helphenstine the opportunity to return to practice under stringent monitoring conditions following time out of practice to obtain the required treatment and establish a solid recovery.

(St. Ex. 3 at 30-31).

Dr. Helphenstine’s November 5, 2002, Positive Urine Screen

14. On November 5, 2002, the day after he provided testimony at hearing, Dr. Helphenstine submitted a urine specimen that reflected the presence of benzodiazepines. Subsequent GC/MS testing of the specimen confirmed the initial positive finding for benzodiazepines based upon the presence of the drug oxazepam. The formal laboratory report for the positive drug screen, which the Board received on or about November 25, 2002, included a handwritten note dated November 15, 2002, stating “Dr. states he will reenter treatment.” (St. Ex. 2).

Dr. Helphenstine's January 8, 2003, Board Order

15. On January 8, 2003, the Board issued an Order based the allegations set forth in the September 11, 2002, Notice of Summary Suspension and Opportunity for Hearing. The Order included a stayed permanent revocation of Dr. Helphenstine's certificate. In addition, the Order suspended Dr. Helphenstine's certificate for a period of not less than two years, and imposed terms for interim monitoring, reinstatement or restoration, and probation. (St. Ex. 3 at 7-11).

Dr. Helphenstine's January 8, 2003, Notice of Opportunity for Hearing

16. On January 8, 2003, the Board issued the current notice of opportunity for hearing based on allegations pertaining to Dr. Helphenstine's history of impairment and on the November 5, 2002, positive urine screen. (St. Ex. 1A).
17. At hearing on the matter, Dr. Helphenstine did not deny having ingested oxazepam [Serax]. Dr. Helphenstine testified that, on November 1, 2002, Dr. Helphenstine's wife had told him that she was considering leaving him. He stated that he and his wife had had a long, difficult, and emotional conversation. Dr. Helphenstine testified that he had gone to a friend's house to talk, and the friend had offered Dr. Helphenstine a drug to help relieve his anxiety. (Tr. at 21-22).

Dr. Helphenstine testified that had taken the drug believing it to be Serzone, a prescription medication used to treat depression and anxiety. Dr. Helphenstine stated that Serzone is not a controlled substance. Dr. Helphenstine later discovered that the drug was not Serzone, but Serax, a controlled substance benzodiazepine. Dr. Helphenstine testified that he had accepted the drug not believing it to be a controlled substance. Nevertheless, Dr. Helphenstine testified that, even if he had believed that the drug would not be found in a toxicology screen, taking the drug had been a demonstration of addictive behavior. (Tr. at 2-23).

When asked if he had believed that taking one dose of an antidepressant medication would be effective, Dr. Helphenstine replied, in part, "you have to understand at that point in time what my emotional state was * * * I have no idea what I thought at that time as to whether one dose would help me or not." (Tr. at 23-24).

Dr. Helphenstine testified that taking the drug was "one of those very, very big mistakes one makes in life." He added that he had had no intent to take a controlled substance. (Tr. at 24).

18. Barron Farrier testified on behalf of the State at the hearing in this matter. Mr. Farrier testified that he is field services representative for OPEP. He explained that his job duties include assisting physicians in obtaining treatment and monitoring their recovery. (Tr. at 14-15).

Mr. Farrier testified that Dr. Helphenstine had signed an advocacy contract with OPEP in May 1999. (Tr. at 14-15).

Mr. Farrier further testified that OPEP had received the report of the positive drug screen on November 13, 2002. Shortly thereafter, Mr. Farrier contacted Dr. Helphenstine. Mr. Farrier testified that he had advised Dr. Helphenstine to get back into treatment. Dr. Helphenstine informed Mr. Farrier that he would reenter treatment as soon as he was financially able. Mr. Farrier testified that he had written the note on the positive drug screen report to document Dr. Helphenstine's statement regarding entering treatment. (Tr. at 15-19; St. Ex. 2).

Mr. Farrier added that Dr. Helphenstine had not denied his relapse. Moreover, Mr. Farrier stated that Dr. Helphenstine had continued to comply with his OPEP contract subsequent to the positive urine screen. (Tr. at 18).

Dr. Helphenstine's Current Status

19. Dr. Helphenstine testified that the Serax was the only controlled substance he had taken since self-reporting his relapse in August 2002. Moreover, Dr. Helphenstine testified that he had been compliant with his OPEP contract at all times since August 2002, other than the Serax he took on November 1, 2002. (Tr. at 24-25).

Dr. Helphenstine attends three to four 12-step meetings per week. Furthermore, Dr. Helphenstine has continued to have his urine screened and stated that all tests have been negative. (Tr. at 34).

Dr. Helphenstine has not received any additional substance abuse treatment. He testified that that he can not afford even outpatient treatment at Green Hall. He stated that the outpatient protocol is three nights per week at \$150.00 per night. He stated that he is in treatment, however, because attending Alcoholics Anonymous [AA] meetings is treatment. (Tr. at 34).

20. Currently, Dr. Helphenstine is not working as a physician. He is working for Metropolitan Casualty Insurance Company. Dr. Helphenstine testified that he has obtained a license to sell insurance in 23 states. (Tr. at 30-33).

FINDINGS OF FACT

1. On March 10, 1999, James Charles Helphenstine, D.O., entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based upon Dr. Helphenstine's violations of Sections 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents; Section 4731.22(B)(12),

Ohio Revised Code, to wit: Section 3719.07, Ohio Revised Code, Improper Records of Controlled Substances; Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(D), Ohio Administrative Code; and Section 4731.22(B)(26), Ohio Revised Code.

In the March 1999 Step I Consent Agreement, Dr. Helphenstine admitted that he suffered from polysubstance dependence, including opiate, barbiturate, benzodiazepine, and marijuana dependence. Dr. Helphenstine also admitted that he had self-prescribed controlled substances, prescribed controlled substances for self-use in the names of family members, obtained controlled substances samples for self-use from office stock, and failed to maintain records reflecting such prescribing and dispensing. Dr. Helphenstine further admitted that, on or about February 24, 1999, he had been charged with driving under the influence of alcohol or drugs, and had subsequently entered treatment for chemical dependence at a Board approved treatment facility.

In the March 1999 Step I Consent Agreement, Dr. Helphenstine agreed to certain terms, conditions, and limitations, including that his certificate to practice osteopathic medicine and surgery in Ohio would be suspended for an indefinite period of time, but not less than six months, with specified conditions for reinstatement.

2. On or about September 8, 1999, Dr. Helphenstine entered into a Step II Consent Agreement with the Board based upon the violations set forth in the March 1999 Step I Consent Agreement. The September 1999 Step II Consent Agreement provided for reinstatement of Dr. Helphenstine's license to practice osteopathic medicine and surgery in Ohio. Reinstatement was subject to certain terms, conditions, and limitations, including but not limited to, requirements that Dr. Helphenstine 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. Helphenstine's history of chemical dependency; that Dr. Helphenstine obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio; and that he submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of the Consent Agreement.
3. On September 11, 2002, the Board summarily suspended Dr. Helphenstine's certificate to practice osteopathic medicine and surgery in Ohio. The Board issued to Dr. Helphenstine a Notice of Summary Suspension and Opportunity for Hearing. The allegations included the following: Dr. Helphenstine was impaired; Dr. Helphenstine had committed acts that constituted felonies in this state; Dr. Helphenstine had violated the conditions of limitation placed upon his certificate to practice; Dr. Helphenstine had made false statements in securing a certificate to practice; and Dr. Helphenstine had violated certain rules promulgated by the Board related to the utilization of controlled substances and associated medical recordkeeping.

The Notice of Summary Suspension and Opportunity for Hearing was based upon information reported to the Board by Dr. Helphenstine's attorney on or about August 27, 2002. Dr. Helphenstine's attorney had reported that Dr. Helphenstine had relapsed, having resumed hydrocodone use during or about November 2001 after engaging in a pattern of pill-sharing with at least three of his patients.

On November 4, 2002, Dr. Helphenstine appeared for a hearing before a Hearing Examiner for the Board concerning the Notice of Summary Suspension and Opportunity for Hearing. During that hearing, Dr. Helphenstine testified, in part, "... first and foremost the most important thing to me in my life is maintaining my sobriety."

4. On November 5, 2002, Dr. Helphenstine submitted a urine specimen that reflected the presence of benzodiazepines. Subsequent GC/MS testing of the specimen confirmed the initial positive finding for benzodiazepines based upon the presence of the drug oxazepam. The formal laboratory report for the positive drug screen, which the Board received on or about November 25, 2002, included a handwritten note dated November 15, 2002, stating "Dr. states he will reenter treatment."

CONCLUSIONS OF LAW

The conduct of James Charles Helphenstine, D.O., as set forth in Findings of Fact 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.

* * * * *

Dr. Helphenstine has a history of serious impairment that includes criminal convictions related to substance abuse, and multiple relapses. Moreover, there are a number of aggravating circumstances. First, Dr. Helphenstine lied to the Board under oath at the November 4, 2002, hearing regarding a relapse that had occurred three days earlier. At that hearing, Dr. Helphenstine testified that he was fully committed to his recovery program and that he was "very aware" of the things he needed to do to maintain his recovery. Nevertheless, three days prior to making these statements under oath, Dr. Helphenstine had resorted to self-treating his anxiety by taking a drug from a friend. Dr. Helphenstine admitted that taking the drug had been a demonstration of addictive behavior. In light of Dr. Helphenstine's history of dishonest dealings with the Board, the Board is fully justified in permanently revoking Dr. Helphenstine's certificate to practice in this state.

Nevertheless, there are some mitigating circumstances in this matter. The relapse occurred during a time of personal stress and was a single occasion. Although Dr. Helphenstine's testimony that he did not realize that the drug he took was a controlled substance is not wholly credible, there is no proof of Dr. Helphenstine's intent to violate his recovery. Moreover,

although Dr. Helphenstine testified at his November 2002 hearing that he was very aware of the things he needed to do to maintain his recovery, it is clear by his actions that he did not understand and was not committed to the recovery process. In fact, Dr. Helphenstine has not yet completed twenty-eight days of inpatient treatment for substance abuse. Under these circumstances, the Board may wish to allow Dr. Helphenstine one final opportunity to return to practice under strict monitoring conditions following additional treatment and time out of practice to establish a solid recovery.

PROPOSED ORDER

It is hereby ORDERED that:

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of James Charles Helphenstine, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Helphenstine's certificate shall be SUSPENDED for an indefinite period of time, but not less than twenty-four months.
- B. **INTERIM MONITORING:** During the period that Dr. Helphenstine's certificate to practice osteopathic medicine and surgery in Ohio is suspended, Dr. Helphenstine shall comply with the following terms, conditions, and limitations:
 1. **Obey the Law:** Dr. Helphenstine shall obey all federal, state, and local laws, and all rules governing the practice of osteopathic medicine and surgery in Ohio.
 2. **Personal Appearances:** Dr. Helphenstine shall appear in person for quarterly interviews before the Board or its designated representative. The first such appearance shall take place on the date his appearance would have been scheduled pursuant to the January 8, 2003, Board 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:** Dr. Helphenstine shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the date his quarterly declaration would have been due pursuant to the January 8, 2003 Board Order. 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:** Dr. Helphenstine 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 Dr. Helphenstine's history of chemical dependency.

5. **Abstention from Alcohol**: Dr. Helphenstine shall abstain completely from the use of alcohol.
6. **Drug & Alcohol Screens; Supervising Physician**: Dr. Helphenstine shall submit to random urine screenings for drugs and/or alcohol on a weekly basis or as otherwise directed by the Board. Dr. Helphenstine 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, or as otherwise determined by the Board, Dr. Helphenstine shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Helphenstine 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 Dr. Helphenstine. Dr. Helphenstine 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. Helphenstine 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, Dr. Helphenstine must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Helphenstine 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. Helphenstine's quarterly declaration. It is Dr. Helphenstine's responsibility to ensure that reports are timely submitted.

7. **Submission of Blood or Urine Specimens upon Request**: Dr. Helphenstine shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Helphenstine's expense.
 8. **Rehabilitation Program**: Dr. Helphenstine shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than four times per week, unless otherwise determined by the Board. Substitution of any other specific program must receive prior Board approval. Dr. Helphenstine 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. Helphenstine's quarterly declarations.
 9. **Comply with the Terms of Treatment and Aftercare Contract**: Dr. Helphenstine shall maintain continued compliance with the terms of the treatment and aftercare contracts entered into with his treatment provider, provided that, where terms of the treatment and aftercare contract conflict with terms of this Order, the terms of this Order shall control.
 10. **Continued Compliance with a Contract with an Impaired Physicians Committee**: Dr. Helphenstine shall maintain continued compliance with the terms of the contract entered into with OPEP, or with another impaired physicians committee, approved by the Board, to assure continuous assistance in recovery and/or aftercare.
- C. **CONDITIONS FOR RESTORATION**: The Board shall not consider restoration of Dr. Helphenstine's certificate to practice osteopathic medicine and surgery until all of the following conditions have been met:
1. **Application for Reinstatement or Restoration**: Dr. Helphenstine shall submit an application for restoration, accompanied by appropriate fees, if any.
 2. **Compliance with Interim Conditions**: Dr. Helphenstine shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order, unless otherwise determined by the Board.
 3. **Completion of Inpatient Treatment**: Dr. Helphenstine 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. Helphenstine 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. Helphenstine's treatment records.

4. **Demonstration of Ability to Resume Practice:** Dr. Helphenstine 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 Dr. Helphenstine 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. Evidence of continuing full compliance with this Order.
 - d. Two written reports indicating that Dr. Helphenstine'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 Dr. Helphenstine's application for reinstatement or restoration. The reports of evaluation shall describe with particularity the bases for the determination that Dr. Helphenstine has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his practice.

5. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Helphenstine has not been engaged in the active practice of medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.

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

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

2. **Practice Plan**: Prior to Dr. Helphenstine's commencement of practice in Ohio, or as otherwise determined by the Board, Dr. Helphenstine shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Helphenstine's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Helphenstine shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Dr. Helphenstine submits his practice plan, he shall also submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary or Supervising Member will give preference to a physician who practices in the same locale as Dr. Helphenstine and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Helphenstine and his practice, and shall review Dr. Helphenstine's patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Helphenstine and his practice, and on the review of Dr. Helphenstine's patient charts. Dr. Helphenstine 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. Helphenstine's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Helphenstine must immediately so notify the Board in writing. In addition, Dr. Helphenstine shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Helphenstine shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

3. **Ban on Prescribing, Ordering, Administering, Furnishing, or Possessing Controlled Substances; Log**: Dr. Helphenstine shall not prescribe, write orders for, give verbal orders for, administer, personally furnish, or possess (except as allowed under Paragraph B.4) any controlled substances without prior Board approval.

In the event that the Board agrees at a future date to modify this Order to allow Dr. Helphenstine to prescribe, order, administer or personally furnish controlled

substances, Dr. Helphenstine shall keep a log of all controlled substances prescribed, ordered, administered, or personally furnished. Such log shall be submitted in a format approved by the Board thirty days prior to Dr. Helphenstine's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Helphenstine shall make his patient records with regard to such prescribing, administering, or personally furnishing available for review by an agent of the Board upon request.

4. **Tolling of Probationary Period While Out of State:** In the event that Dr. Helphenstine should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Helphenstine 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.
5. **Violation of Terms of Probation:** If Dr. Helphenstine 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.

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

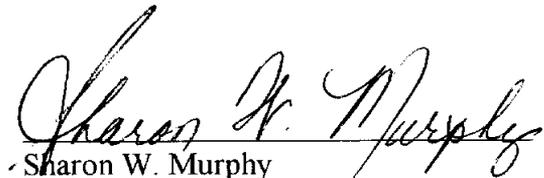
Dr. Helphenstine shall also provide the Board written consent permitting any treatment provider from whom Dr. Helphenstine obtains treatment to notify the Board in the event he fails to agree to or comply with any recommended treatment or with any treatment or aftercare contract. Failure to provide such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

- G. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Dr. Helphenstine 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. Helphenstine 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.

- H. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:**
Within thirty days of the effective date of this Order, Dr. Helphenstine 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. Helphenstine 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. Helphenstine shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
- I. **SUPERSEDE PREVIOUS CONSENT AGREEMENT:** This Order shall supersede the terms and conditions set forth in the January 8, 2003, Board Order.

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


Sharon W. Murphy
Hearing Examiner



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF DECEMBER 10, 2003

REPORTS AND RECOMMENDATIONS

Mr. Browning announced that the Board would now consider the findings and orders appearing on the Board's agenda. He asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and order, and any objections filed in the matter of: James Charles Helphenstine, D.O. A roll call was taken:

ROLL CALL:	Dr. Egner	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Mr. Browning	- aye

Mr. Browning 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. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Mr. Browning	- aye

Mr. Browning 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.

Mr. Browning 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.

JAMES CHARLES HELPHENSTINE, D.O.

.....

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY’S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JAMES CHARLES HELPHENSTINE, D.O. DR. BHATI SECONDED THE MOTION.

.....

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

- | | | |
|-------|----------------|-----------|
| Vote: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Bhati | - nay |
| | Dr. Buchan | - aye |
| | Dr. Kumar | - aye |
| | Ms. Sloan | - nay |
| | Dr. Davidson | - nay |
| | Dr. Robbins | - aye |
| | Dr. Garg | - abstain |
| | Dr. Steinbergh | - aye |
| | Mr. Browning | - aye |

The motion carried.



State Medical Board of Ohio

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January 8, 2003

James Charles Helphenstine, D.O.
845 North Heincke Road
Miamisburg, Ohio 45342

Dear Doctor Helphenstine:

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 osteopathic medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about March 10, 1999, you entered into a Step I Consent Agreement with the Board [March 1999 Step I Consent Agreement] in lieu of formal proceedings based upon your violations of Sections 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents; Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 3719.07, Ohio Revised Code, Improper Records of Controlled Substances; Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(D), Ohio Administrative Code; and Section 4731.22(B)(26), Ohio Revised Code. A copy of the aforementioned March 1999 Step I Consent Agreement is attached hereto and incorporated herein.

In the March 1999 Step I Consent Agreement, you admitted that you suffered from polysubstance dependence, including opiate dependence, barbiturate dependence, benzodiazepine dependence and marijuana dependence. You also admitted that you had self-prescribed controlled substances, had prescribed controlled substances for self-use in the names of family members, had obtained controlled substances samples for self-use from office stock, and had failed to maintain records reflecting such prescribing and dispensing. You further admitted that on or about February 24, 1999, you had been charged with driving under the influence of alcohol or drugs, and had subsequently entered treatment for chemical dependence at a Board approved treatment facility. In the March 1999 Step I Consent Agreement, you also agreed to certain terms, conditions, and limitations, including that your certificate to practice osteopathic medicine and surgery in the State of Ohio would be suspended for an indefinite period of time, but not less than six months, with specified conditions for reinstatement.

Mailed 1-9-03

- (2) On or about September 8, 1999, you entered into a Step II Consent Agreement with the Board [September 1999 Step II Consent Agreement] based upon your violations as set forth in the aforementioned March 1999 Step I Consent Agreement. The September 1999 Step II Consent Agreement provided for reinstatement of your license to practice osteopathic medicine and surgery in the State of Ohio subject to certain terms, conditions, and limitations, including but not limited to, requirements that you abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to you by another so authorized by law who has full knowledge of your history of chemical dependency; that you obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio; and that you submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of the Consent Agreement. A copy of the September 1999 Step II Consent Agreement is attached hereto and incorporated herein.
- (3) On September 11, 2002, the Board summarily suspended your certificate to practice osteopathic medicine and surgery in Ohio and issued to you a Notice of Summary Suspension and Opportunity for Hearing alleging that you were impaired, that you had committed acts that constituted felonies in this state, that you had violated the conditions of limitation placed upon your certificate to practice, that you had made false statements in securing a certificate to practice, and that you had violated certain rules promulgated by the Board related to the utilization of controlled substances and associated medical recordkeeping. This Notice was based upon information reported to the Board by your attorney on or about August 27, 2002, communicating that you had relapsed, having resumed hydrocodone use during or about November 2001 after engaging in a pattern of pill-sharing with at least three of your patients. On November 4, 2002, you appeared for a hearing before an Attorney Hearing Examiner for the Board concerning the Notice of Summary Suspension and Opportunity for Hearing, during which you testified, in part, “. . . first and foremost the most important thing to me in my life is maintaining my sobriety.”
- (4) On November 5, 2002, you submitted a urine specimen that reflected the presence of benzodiazepines. Subsequent GC/MS testing of the specimen confirmed the initial positive finding for benzodiazepines based upon the presence of the drug Oxazepam. The formal laboratory report for the aforementioned positive drug screen, which the Board received on or about November 25, 2002, included a handwritten note dated November 15, 2002, stating “Dr. states he will reenter treatment.” (emphasis in original).

Your acts, conduct, and/or omissions as alleged in paragraph (4) 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.

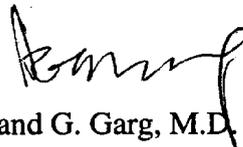
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at 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, 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/blt
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5150 7698
RETURN RECEIPT REQUESTED

cc; Eric Plinke, Esq.
Porter, Wright, Morris & Arthur
41 South High Street
Columbus, Ohio 43215

CERTIFIED MAIL # 7000 0600 0024 5150 7681
RETURN RECEIPT REQUESTED



State Medical Board of Ohio

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January 8, 2003

James Charles Helphenstine, D.O.
845 N. Heincke Road
Miamisburg, OH 45342

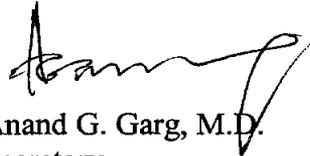
Dear Doctor Helphenstine:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on January 8, 2003, 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 5151 0636
RETURN RECEIPT REQUESTED

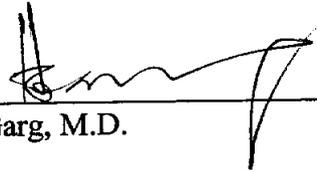
Cc: Eric J. Plinke, Esq.
CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 0629
RETURN RECEIPT REQUESTED

Mailed 1-28-03

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on January 8, 2003 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 James Charles Helphenstine, 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)

January 8, 2003

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

JAMES CHARLES HELPHENSTINE, D.O.*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on January 8, 2003.

Upon the Report and Recommendation of R. Gregory Porter, 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.

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of James Charles Helphenstine, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Helphenstine's certificate shall be SUSPENDED for an indefinite period of time, but not less than two years.
- B. **INTERIM MONITORING:** During the period that Dr. Helphenstine's certificate to practice osteopathic medicine and surgery in Ohio is suspended, Dr. Helphenstine shall comply with the following terms, conditions, and limitations:
1. **Obey the Law:** Dr. Helphenstine shall obey all federal, state, and local laws, and all rules governing the practice of osteopathic medicine and surgery in Ohio.
 2. **Personal Appearances:** Dr. Helphenstine shall appear in person for an interview before the full Board or its designated representative. The first such appearance shall take place on the date his appearance would have been scheduled pursuant to his September 8, 1999, Step II Consent Agreement with 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.

3. **Quarterly Declarations:** Dr. Helphenstine shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the date his quarterly declaration would have been due pursuant to his September 8, 1999, Step II Consent Agreement with the Board. 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:** Dr. Helphenstine 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 Dr. Helphenstine's history of chemical dependency.
5. **Abstention from Alcohol:** Dr. Helphenstine shall abstain completely from the use of alcohol.
6. **Drug & Alcohol Screens; Supervising Physician:** Dr. Helphenstine shall submit to random urine screenings for drugs and/or alcohol on a weekly basis or as otherwise directed by the Board. Dr. Helphenstine 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, or as otherwise determined by the Board, Dr. Helphenstine shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Helphenstine 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 Dr. Helphenstine. Dr. Helphenstine 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. Helphenstine 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, Dr. Helphenstine must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Helphenstine 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. Helphenstine's quarterly declaration. It is Dr. Helphenstine's responsibility to ensure that reports are timely submitted.

7. **Submission of Blood or Urine Specimens upon Request:** Dr. Helphenstine shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Helphenstine's expense.
8. **Rehabilitation Program:** Dr. Helphenstine 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. Dr. Helphenstine 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. Helphenstine's quarterly declarations.
9. **Comply with OPEP Contract:** Dr. Helphenstine shall maintain compliance with his contract with OPEP, unless otherwise determined by the Board.

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

1. **Application for Reinstatement or Restoration:** Dr. Helphenstine shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Compliance with Interim Conditions:** Dr. Helphenstine shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order.
3. **Demonstration of Ability to Resume Practice:** Dr. Helphenstine 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 Dr. Helphenstine 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. Evidence of continuing full compliance with this Order.
 - d. Two written reports indicating that Dr. Helphenstine'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 Dr. Helphenstine's application for restoration. The reports of evaluation shall describe with particularity the bases for the determination that Dr. Helphenstine 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 Dr. Helphenstine has not been engaged in the active practice of osteopathic medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.
- D. **PROBATION:** Upon reinstatement or restoration, Dr. Helphenstine's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Helphenstine shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order, and shall continue to comply with the terms of his aftercare contract as specified in Paragraph C.3.b of this Order.
 2. **Practice Plan:** Prior to Dr. Helphenstine's commencement of practice in Ohio, or as otherwise determined by the Board, Dr. Helphenstine shall submit to the

Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Helphenstine's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Helphenstine shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Dr. Helphenstine submits his practice plan, he shall also submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary or Supervising Member will give preference to a physician who practices in the same locale as Dr. Helphenstine and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Helphenstine and his practice, and shall review Dr. Helphenstine's patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Helphenstine and his practice, and on the review of Dr. Helphenstine's patient charts. Dr. Helphenstine 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. Helphenstine's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Helphenstine must immediately so notify the Board in writing. In addition, Dr. Helphenstine shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Helphenstine shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

3. **Ban on Prescribing, Ordering, Administering, Furnishing, or Possessing Controlled Substances; Log:** Dr. Helphenstine shall not prescribe, write orders for, give verbal orders for, administer, personally furnish, or possess (except as allowed under Paragraph B.4 of this Order) any controlled substances without prior Board approval.

In the event that the Board agrees at a future date to modify this Order to allow Dr. Helphenstine to prescribe, order, administer or personally furnish controlled substances, Dr. Helphenstine shall keep a log of all controlled substances prescribed, ordered, administered, or personally furnished. Such

log shall be submitted in a format approved by the Board thirty days prior to Dr. Helphenstine's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Helphenstine shall make his patient records with regard to such prescribing, administering, or personally furnishing available for review by an agent of the Board upon request.

4. **Tolling of Probationary Period While Out of State:** In the event that Dr. Helphenstine should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Helphenstine 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.
 5. **Violation of Terms of Probation:** If Dr. Helphenstine 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.
- E. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Helphenstine's certificate will be fully restored.
- F. **RELEASES:** Dr. Helphenstine 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 Dr. Helphenstine'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.
- Dr. Helphenstine shall also provide the Board written consent permitting any treatment provider from whom Dr. Helphenstine 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.
- G. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Dr. Helphenstine 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. Helphenstine shall provide a copy of this Order to all employers or entities with which he contracts to provide

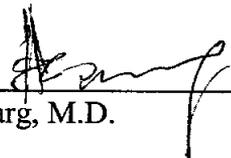
health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

H. REQUIRED REPORTING TO OTHER STATE LICENSING

AUTHORITIES: Within thirty days of the effective date of this Order, Dr. Helphenstine 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. Helphenstine 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. Helphenstine 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)



Anand G. Garg, M.D.
Secretary

January 8, 2003

Date

2002 NOV 27 A 11: 45

**REPORT AND RECOMMENDATION
IN THE MATTER OF JAMES CHARLES HELPHENSTINE, D.O.**

The Matter of James Charles Helphenstine, D.O., was heard by R. Gregory Porter, Attorney Hearing Examiner for the State Medical Board of Ohio, on November 4, 2002.

INTRODUCTION

I. Basis for Hearing

- A. In a Notice of Summary Suspension and Opportunity for Hearing dated September 11, 2002, the State Medical Board of Ohio [Board] notified James Charles Helphenstine, D.O., that, pursuant to Section 4731.22(G), Ohio Revised Code, the Board had adopted an Order of Summary Suspension of his certificate to practice osteopathic medicine and surgery in Ohio. The Board further advised that continued practice of medicine and surgery would be considered practicing without a certificate, in violation of Section 4731.43, Ohio Revised Code. (State's Exhibit 1A).

Moreover, the Board notified Dr. Helphenstine that the Board had proposed to take disciplinary action against his certificate based upon, among other things, his history of impairment and his violation of a consent agreement with the Board. The Board alleged that Dr. Helphenstine's conduct constitutes:

- “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents.”
- “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(D), Ohio Administrative Code, General Provisions; and Rule 4731-11-08, Ohio Administrative Code, Utilizing Controlled Substances for Self and Family Members. Pursuant to Rule 4731-11-02(F), Ohio Administrative Code, a violation of Rule 4731-11-02(D), Ohio Administrative Code, constitutes violation of Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code.”
- “[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.”

- “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,’ as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.”

Accordingly, the Board advised Dr. Helphenstine of his right to request a hearing in this matter. (State’s Exhibit 1A).

- B. By document received by the Board on October 1, 2002, Eric J. Plinke, Esq., requested a hearing on behalf of Dr. Helphenstine. (State’s Exhibit 1B)

II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.
- B. On behalf of the Respondent: Eric J. Plinke, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

James Charles Helphenstine, D.O.

II. Exhibits Examined

(Note: Exhibits marked with an asterisk (*) have been sealed to protect patient confidentiality)

- A. Presented by the State
 1. State’s Exhibits 1A through 1R: Procedural exhibits.
 2. State’s Exhibit 2: Copy of Dr. Helphenstine’s Step I Consent Agreement with the Board.
 3. State’s Exhibit 3: Copy of Dr. Helphenstine’s Step II Consent Agreement with the Board.

- * 4. State's Exhibits 4 and 5: Copies of prescriptions and prescription records. [Note: Portions of these exhibits were redacted post hearing per agreement of the parties. As a result, some page numbers are missing. See Procedural Matters, below.]
 - * 5. State's Exhibit 6: Copies of Dr. Helphenstine's Declarations of Compliance and controlled substance logs, maintained by the Board.
- B. Presented by the Respondent
- * Respondent's Exhibit A: Confidential Patient Key.
- C. Presented by the Attorney Hearing Examiner
- Board Exhibit A: Copy of November 20, 2002, Entry.

PROCEDURAL MATTERS

1. The hearing record in this matter was held open until November 6, 2002, in order to give the Respondent an opportunity to prepare and submit a Confidential Patient Key, which was admitted to the record as Respondent's Exhibit A.
2. Portions of State's Exhibits 4 and 5 were redacted by the Attorney Hearing Examiner post hearing. Copies of these redacted documents were distributed to the parties' Counsel for their review. See Board Exhibit A. No objection was received from either party concerning these exhibits.

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.

Background Information

1. James Charles Helphenstine, D.O., testified that he had obtained his osteopathic medical degree in 1985 from the Ohio University College of Osteopathic Medicine. From 1985 through 1986, Dr. Helphenstine participated in a rotating internship at Grandview Hospital and Medical Center in Dayton, Ohio. Dr. Helphenstine testified that he then went to work for AmCare, Incorporated [AmCare], which operates urgent care facilities.

Dr. Helphenstine testified that, subsequently, from April 1991 through February 1999, he had had a private family practice in Vandalia, Ohio. (Hearing Transcript [Tr.] at 11-13)

Dr. Helphenstine testified that he had been out of practice for one year, starting in March 1999, after his license was suspended by the Board due to substance abuse. Dr. Helphenstine testified that, after that year, he returned to work for AmCare, and practiced in Middletown, Ohio. (Tr. at 11-13)

Dr. Helphenstine's March 10, 1999, Step I Consent Agreement

2. On March 10, 1999, Dr. Helphenstine entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based upon Dr. Helphenstine's violation of Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents; Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 3719.07, Improper Records of Controlled Substances; Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(D), Ohio Administrative Code; and Section 4731.22(B)(26), Ohio Revised Code. (State's Exhibit [St. Ex.] 2 at 1-2)

In the Step I Consent Agreement, Dr. Helphenstine admitted "that he suffers from polysubstance dependence, including opiate dependence, barbiturate dependence, benzodiazepine dependence, and marijuana dependence." Dr. Helphenstine further admitted that he had self-prescribed controlled substances, that he had prescribed controlled substances in the names of family members for his own use, that he had obtained controlled substances from his office supply for his own use, and that he had failed to maintain records of such prescribing and dispensing. Moreover, Dr. Helphenstine admitted that he had been charged with driving while under the influence of alcohol or drugs on or about February 24, 1999, and that he had entered treatment for chemical dependence at a Board-approved treatment facility shortly thereafter. Finally, Dr. Helphenstine agreed to certain terms, conditions, and limitations, including that his certificate to practice osteopathic medicine and surgery in Ohio would be suspended for an indefinite period of time, but not less than six months, with specified conditions for reinstatement. (St. Ex. 2 at 2-3)

3. Dr. Helphenstine testified that he had entered into the Step I Consent Agreement with the Board as a result of his substance abuse problem. Dr. Helphenstine testified that his drug of choice had been hydrocodone, but that he had also developed "some secondary addictions due to tolerance with the hydrocodone." Dr. Helphenstine testified that he had abused benzodiazepines and butalbital because of insomnia resulting from the high tolerance level he had developed. Dr. Helphenstine further testified that he had also occasionally used marijuana. (Tr. at 14-15)

Dr. Helphenstine's September 8, 1999, Step II Consent Agreement

4. On September 8, 1999, Dr. Helphenstine entered into a Step II Consent Agreement with the Board. The Step II Consent Agreement provided for the reinstatement of Dr. Helphenstine's certificate subject to certain probationary terms, conditions, and limitations. Among these probationary terms, conditions and limitations were the following:
 - a. Paragraph 1 states that Dr. Helphenstine "shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio."
 - b. Paragraph 2 states, in part, that Dr. Helphenstine "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 CONSENT AGREEMENT."
 - c. Paragraph 7 states, in part, that Dr. Helphenstine "shall not, without prior BOARD approval, administer, dispense, or possess (except as allowed under Paragraph 8 [of the Step II Consent Agreement]) any controlled substances as defined by state or federal law."
 - d. Paragraph 8 states that Dr. Helphenstine "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 DOCTOR HELPHENSTINE'S history of chemical dependency."

(St. Ex. 3) (Emphasis in original)

5. The Step II Consent Agreement states that Dr. Helphenstine was admitted to Shepherd Hill Hospital in Newark, Ohio [Shepherd Hill], a Board-approved treatment facility, on March 2, 1999, for inpatient treatment for poly-substance dependence. On March 26, 1999, at Dr. Helphenstine's request, he was granted a five day therapeutic leave from Shepherd Hill. Dr. Helphenstine contacted Shepherd Hill on March 31, 1999, and advised that he would not be returning to Shepherd Hill for further treatment. He was discharged from Shepherd Hill, treatment incomplete. (St. Ex. 3 at 2)

Beginning on March 31, 1999, Dr. Helphenstine received intensive outpatient treatment at Green Hall in Xenia, Ohio, a Board-approved treatment facility. Dr. Helphenstine was discharged from that facility on July 25, 1999, upon completion of treatment. On July 26, 1999, Dr. Helphenstine began participation in the Green Hall aftercare program, and entered into an aftercare contract with that facility. (St. Ex. 3 at 2)

Finally, in May 1999, Dr. Helphenstine entered into an advocacy contract with the Ohio Physicians Effectiveness Program [OPEP]. (St. Ex. 3 at 2)

Dr. Helphenstine's Relapse

6. At hearing, Dr. Helphenstine testified that, beginning in November 2001, he had written prescriptions for controlled substances to Patients 1, 2, and 3, and received back portions of the medications after the prescriptions had been filled. Dr. Helphenstine further testified that Patients 1, 2, and 3 had been employees of AmCare who had worked in his office, and whom he had also seen as patients. Moreover, Dr. Helphenstine testified that this pattern of conduct had continued through early August 2002. Dr. Helphenstine estimated that this had occurred about fifteen times during that period. Patient 1 had been involved in the majority of these occurrences; Dr. Helphenstine testified that Patients 2 and 3 had been involved in a total of three occurrences. (Tr. at 20, 34-37, 40-42, 55)
7. Dr. Helphenstine testified that his relapse had begun in November 2001 when Patient 1 pulled him aside and gave him a handful of Vicodin HP tablets. Dr. Helphenstine further testified that he does not know what her motives had been, and that he had not asked for the tablets. Moreover, Dr. Helphenstine testified, "I didn't know what to think, what to say, but I did not act on it appropriately." Dr. Helphenstine testified that that had been the first time that he improperly possessed any controlled substance since entering into his Step II Consent Agreement with the Board. (Tr. at 57-58)

Dr. Helphenstine testified that he did not use any of the Vicodin that Patient 1 gave him on that first occasion. Dr. Helphenstine further testified that he does not believe that he had used any of the medication that was given to him until early 2002. When asked to explain why he would possess controlled substance medication without using it, Dr. Helphenstine testified:

I had—in retrospect, I understand now that months before that happened I had become somewhat lackadaisical with my program. I was going through the motions. I was showing up for my meetings. I was doing my urine drug screens, but the things that an addict or an alcoholic needs to do on a daily basis to put that program into action in your life and to make sure that it works—I started cutting corners, and it was very—it was very subtle. It was very incremental, but that led up to the point of me possessing the medication.

I had enough history of sobriety behind me. I had the fear of God in me about using any of the medication. And as a good friend of mine has discussed with me since that's in the program—he calls it a dry-drunk syndrome, and he feels that that's what I was involved in at the time: actions, behavior, consistent with the abuse but not necessarily abusing.

* * *

That came later.

(Tr. at 58-60)

Dr. Helphenstine testified that the next exchange of medication occurred after Patient 1 had asked Dr. Helphenstine to evaluate her lower back. Dr. Helphenstine testified that he evaluated her, and that she had asked him for pain medication. Dr. Helphenstine testified that Patient 1 told him that if he would write her a prescription, she would bring him back some of the medication. Dr. Helphenstine testified that he had told her that he did not want any of the medication back. Nevertheless, Dr. Helphenstine testified that, after Patient 1 filled the prescription, she put some tablets into his hand in the same manner as before, and he did not refuse them. (Tr. at 60-61)

8. Dr. Helphenstine testified that no formal agreement had existed between himself and patients whereby he would write a prescription for medication for a patient and receive half of the medication back. Dr. Helphenstine testified that he believes that Patient 1 had known of Dr. Helphenstine's history of addiction. Dr. Helphenstine further testified that he also now realizes "that she had a problem of her own, and I think there was a lot that was done in the way of actions between us that maybe there weren't necessarily spoken words. The majority of the time, though, she would say: 'I'll give you some of these pills.' And I didn't refuse them." Moreover, Dr. Helphenstine acknowledged that there had been an informal understanding between them whereby he would write a prescription for Patient 1 for more pills than she needed and she would share some of the pills with him. Finally, Dr. Helphenstine testified that he did not receive pills from every prescription that Patient 1 received, and that the number of pills that he received when he did receive them varied; it was not always an exact fifty/fifty split. (Tr. at 27-28, 30-33)
9. Dr. Helphenstine testified with regard to Patient 2 that Dr. Helphenstine had asked her on one occasion to return some medication to him. Dr. Helphenstine testified that he had written a prescription for Patient 2 for twenty tablets of Vicodin, and that she had given him back ten. Dr. Helphenstine further testified with regard to Patient 3 that there had been two occasions when she had offered pills to him without Dr. Helphenstine asking for them. Dr. Helphenstine testified that one occasion had involved Vicodin, and the other had been a prescription for Soma Compound with Codeine. (Tr. at 40-42)

Dr. Helphenstine testified that Patient 3 had been aware that Dr. Helphenstine had an addiction problem. (Tr. at 42)

10. Dr. Helphenstine testified that he had kept medical records for Patient 1 through 3, but that "there was not a medical record for every encounter." Dr. Helphenstine testified that he evaluated or examined those patients at each encounter, but that those were not always documented. Moreover, Dr. Helphenstine testified that some, but not all, of the prescriptions that form the basis of this action were documented in the medical records. (Tr. at 56)

11. Dr. Helphenstine testified that the office where he was working during his relapse “was not a healthy environment for me to be around with my substance abuse [problem].” Dr. Helphenstine testified that the other physician in the office had substance abuse problems of his own. In addition, “it was not unusual to see the office manager, who was one of the people involved, to be handing out medication that she had to staff members for particular problems that they had, and some of them were scheduled medications.” Dr. Helphenstine stated that he bears responsibility for what occurred; nevertheless, “it was a very different office environment compared to other offices that I worked in for that company.” (Tr. at 42-43)
12. Dr. Helphenstine testified that his use of the hydrocodone that he obtained during his relapse had been minimal. Dr. Helphenstine testified that he had flushed the majority of the pills that he had received down the toilet because he had been afraid of what would happen to him if he took too many. Dr. Helphenstine described his behavior as a “dry-drunk mode,” and that he had “continued that pattern and was tempting [himself] in a bad way.” Dr. Helphenstine testified that he had always been in fear of submitting a positive urine sample to OPEP, or to his employer, who also performed random urine screens. Dr. Helphenstine testified that he had been aware that, if he ingested a large amount of hydrocodone, it could be detected in his urine several days thereafter; therefore, he “did not go on a big physical binge of ingesting a lot of hydrocodone.” Dr. Helphenstine testified that none of the urine screens that were performed during his relapse had been positive. (Tr. at 37-38)

Dr. Helphenstine testified that, during the time of his relapse, he had been undergoing random urine drug screens twice per month, plus random urine drug screens at the request of his employer. Dr. Helphenstine testified that his employer had asked for urine samples two or three times between January and August 2002, including a request “when this whole situation came to be known within the organization.” Further, Dr. Helphenstine testified that all of those urine screens had been observed. Finally, Dr. Helphenstine testified that none of his urine screens tested positive for hydrocodone. (Tr. at 62-63)

Dr. Helphenstine testified that his use of hydrocodone during his relapse had been influenced by the schedule of his urine drug screens. Dr. Helphenstine stated that he would usually use hydrocodone immediately after submitting a urine sample, reasoning that the next one would not be requested for a while. Dr. Helphenstine testified that the urine drug screens and the fear of submitting a positive urine sample made it difficult for him “to fall back into the physical abuse pattern of ingesting the pills[.]” (Tr. at 63-64)

13. Dr. Helphenstine acknowledged that he had been under the Step II Consent Agreement when these incidents transpired. Dr. Helphenstine further acknowledged that his conduct had violated the terms of that agreement. Finally, Dr. Helphenstine acknowledged that he had falsely stated that he had been in compliance with the terms of that agreement when he signed declarations of compliance dated December 1, 2001; March 1, 2002; and June 1, 2002. (St. Ex. 6; Tr. at 43-44)

Dr. Helphenstine signed those declarations of compliance pursuant to paragraph 2 of the Step II Consent Agreement. Each of those declarations of compliance stated as follows:

I hereby declare that I have continued to comply with all the probationary terms, conditions and limitations imposed upon me by the State Medical Board of Ohio.

I understand and acknowledge that this declaration, if false, may subject me to additional disciplinary action by the State Medical Board of Ohio and may additionally subject me to criminal prosecution under Section 2921.13, Ohio Revised Code.

(St. Ex. 6)

14. Dr. Helphenstine testified that the frequency or quantity of his hydrocodone use did not increase during the course of his relapse, but stated, “Where I was emotionally in my relapse, I was—that was more intense.” Dr. Helphenstine testified that he had been merely “going through the motions” of his recovery program, and was consequently not obtaining “some level of inner peace.” Dr. Helphenstine testified that his wife had sensed that something was wrong during this period. Dr. Helphenstine further testified that on a Saturday in August 2002, after he received what would be his last supply of medication, he “couldn’t take how [he] was feeling any longer,” and confessed to his wife that he had relapsed. Dr. Helphenstine testified that his wife flushed the medication down the toilet. (Tr. at 64-66)

Dr. Helphenstine testified that he had had medical insurance at that time, and had decided with his wife that he would “go speak to someone individually[.]” Dr. Helphenstine further testified that the following Tuesday, “before much of anything could be implemented,” Patient 1 “had gone to the other doctor in the office and had told him everything that was going on[.]” (Tr. at 66)

15. Dr. Helphenstine testified that, on August 27, 2002, he reported his relapse to the Board through Eric Plinke, his attorney. Dr. Helphenstine further testified that, on or about September 9, 2002, he was interviewed by Board Investigator Randy Beck at Mr. Plinke’s office. Dr. Helphenstine testified that Mr. Plinke was present during the interview. Dr. Helphenstine further testified that, during the interview, he had admitted that he had obtained hydrocodone on several occasions by writing prescriptions for Vicodin to staff members at AmCare who had also been his patients, and subsequently split the filled prescriptions with those persons. Dr. Helphenstine testified that one patient/staff member had received the majority of the prescriptions, but that there had been a total of three patient/staff members involved. (Tr. at 19-21, 71-72)

Dr. Helphenstine further acknowledged that he had not in all cases properly and accurately documented the prescriptions in his medical records. Moreover, Dr. Helphenstine acknowledged that he had not in all cases documented those prescriptions in the prescription logs that he kept pursuant to the Step II Consent Agreement. (Tr. at 21)

Finally, Dr. Helphenstine testified that he has not sought treatment since his relapse due to his difficult financial circumstances, although he has spoken to a psychologist. Dr. Helphenstine testified that he plans to contact Dr. Goldberg at Green Hall about entering the outpatient program there. (Tr. at 21-22)

16. At hearing, Dr. Helphenstine denied that he had admitted during the interview with Investigator Beck that he had loaned money to a patient staff member to purchase a prescription, as had been alleged in the Board's September 11, 2002, notice of opportunity for hearing. (St. Ex. 1A; Tr. at 20) Dr. Helphenstine testified that Patient 1 had had financial difficulties and had filed for bankruptcy, and had asked Dr. Helphenstine to loan her money. Dr. Helphenstine did loan her the money. Dr. Helphenstine further testified that Patient 1 and her husband "had gotten behind in a situation with some type of cash-advance office." Moreover, Dr. Helphenstine testified that he had loaned her the money with the understanding that she would pay him back within a week. Finally, Dr. Helphenstine testified that "[t]here was nothing implied or assumed regarding that money in relation to anything related to any type of prescription drug." (Tr. at 44-47)
17. Evidence presented at the hearing indicated that Dr. Helphenstine wrote the following prescriptions for Patient 1:
 - a. Dr. Helphenstine testified that on September 6, 2001, he had written a prescription for Patient 1 for Percocet 5 mg #20. Dr. Helphenstine testified that he had issued that prescription because Patient 1 had had an abscessed tooth. Dr. Helphenstine further testified that he had not received any of that medication. Nevertheless, Dr. Helphenstine acknowledged that he had failed to document that prescription in his controlled substance log. However, Dr. Helphenstine further testified that, to the best of his recollection, he had documented that prescription in the patient medical records. Finally, Dr. Helphenstine testified that this prescription had occurred prior to the time of his relapse. (St. Ex. 5 at 22a and 28; St. Ex. 6 at 19; Tr. at 23-25, 56-57)
 - b. On September 12, 2001, Dr. Helphenstine issued a prescription for Patient 1 for Vicodin HP #24. This prescription was not recorded in his controlled substance log. (St. Ex. 4 at 1 and 15; St. Ex. 6 at 19)
 - c. On September 20, 2001, Dr. Helphenstine issued a prescription for Patient 1 for Vicodin HP #18. This prescription was not recorded in his controlled substance log. (St. Ex. 4 at 1 and 14; St. Ex. 6 at 20)

- d. On October 12, 2001, Dr. Helphenstine issued a prescription for Patient 1 for Vicodin HP #15. This prescription was not recorded in his controlled substance log. (St. Ex. 4 at 1 and 10; St. Ex. 6 at 21-22)
- e. On December 5, 2001, Dr. Helphenstine issued a prescription for Patient 1 for Vicodin HP #30. This prescription was accurately recorded in his controlled substance log. (St. Ex. 4 at 1 and 8; St. Ex. 6 at 27)
- f. On December 29, 2001, Dr. Helphenstine issued a prescription for Patient 1 for Vicodin HP #30. This prescription was accurately recorded in his controlled substance log. (St. Ex. 4 at 1 and 7; St. Ex. 6 at 29)
- g. On January 8, 2002, Dr. Helphenstine issued a prescription for Patient 1 for “DVN-100” #30, which was recorded on the pharmacy statement as “Propoxy-N/APAP.” This prescription does not appear in his controlled substance log. (St. Ex. 5 at 11a and 28; St. Ex. 6 at 30)
- h. On January 12, 2002, Dr. Helphenstine issued a prescription for Patient 1 for Vicodin HP #30. This prescription does not appear on Dr. Helphenstine’s controlled substance log. [Note that there appears to be a page missing from this log, as there are no entries between January 10 and January 25, 2002, and a blank page between those dates.] (St. Ex. 5 at 11a and 28; St. Ex. 6 at 30-32)
- i. Dr. Helphenstine testified that on January 24, 2002, he had written a prescription for Patient 1 for Vicodin HP #40. Dr. Helphenstine acknowledged, however, that he had documented only #20 of this medication for Patient 1 in his controlled substance log. Dr. Helphenstine stated, “I think at the time I when I was filling this out and—given my state of mind due to my relapse, my thought was I didn’t want to draw attention to [the fact that] I had prescribed No. 40.” Dr. Helphenstine further testified that he may have received some pills from this prescription, although he stated that he could not recall specific dates when that had occurred. (St. Ex. 4 at 1 and 6; St. Ex. 6 at 32; Tr. at 25-27)
- j. Dr. Helphenstine testified that on February 20, 2002, he had written a prescription for Patient 1 for Vicodin HP #40. Dr. Helphenstine acknowledged, however, that he had documented only #20 of this medication for Patient 1 in his controlled substance log. Dr. Helphenstine reiterated that he is not certain that he had received any medication back on that date. Dr. Helphenstine further testified that he did not receive medication back from Patient 1 for every prescription that he wrote for her, and could not identify those for which he did or those for which he did not. (St. Ex. 4 at 1 and 5; St. Ex. 6 at 35; Tr. at 33-34)

- k. Dr. Helphenstine testified that on April 8, 2002, he wrote a prescription for Patient 1 for Vicodin HP #40. Dr. Helphenstine acknowledged, however, that he had documented only #20 of this medication for Patient 1 in his controlled substance log. Dr. Helphenstine testified that he had recorded only 20 in his controlled substance log because of his frame of mind, “being in a relapse mode,” and to avoid drawing attention to that prescription. Dr. Helphenstine further testified that he did not normally prescribe as many as forty tablets of such medication to his patients, and he did not want that prescription to stand out. (St. Ex. 4 at 16a and 27; St. Ex. 6 at 39; Tr. at 28-30)
- l. On May 2, 2002, Dr. Helphenstine issued a prescription for Patient 1 for Vicodin HP #40. [Note that the most recent entry in Dr. Helphenstine’s controlled substance log was April 30, 2002.] (St. Ex. 5 at 15a and 27; St. Ex. 6 at 40)
- m. On May 22, 2002, Dr. Helphenstine issued a prescription for Patient 1 for Vicodin HP #40. (St. Ex. 4 at 1 and 4)
- n. On June 29, 2002, Dr. Helphenstine issued a prescription for Patient 1 for Vicodin HP #40. (St. Ex. 4 at 1 and 3)
- o. On August 10, 2002, Dr. Helphenstine issued a prescription for Patient 1 for Vicodin HP #40. (St. Ex. 4 at 1 and 2)

Additional Information

18. Dr. Helphenstine testified concerning why he had not reported his relapse to the Board prior to August 27, 2002:

Because of being a drug addict and having fear of what I’m going through right now and being where I was mentally, not facing the reality of the situation. And that was solely my fault. I’m the one to blame for that because of what I wasn’t doing in my program.

You have to understand. If you don’t do what you need to do on a daily basis, that’s when the other behaviors of drug addiction take over. It’s not just a matter of taking pills and getting high. It affects your daily—how you interact with people, how you interact with your family, your wife, people around you at work. It affects the way you’re thinking, and the way I was thinking was certainly not to run to the Board and say: ‘Look what I’m doing.’

I mean, I don’t know that there was a thought that: ‘Oh, I can get away with this. I can pull this off,’ because I can—well I can honestly say there was never a thought like that. I had nothing but fear running through me, and that

is a major emotion and a disabling emotion and status of an addict or an alcoholic, fear. And that promotes you to do things that just are unacceptable in society and with other people. And it's just—it is just part of the crippling nature of drug abuse.

(Tr. at 72-73)

19. Dr. Helphenstine acknowledged that he now realizes that the conduct that he had engaged in could constitute behavior that could be charged as a felony, but stated that he “certainly wasn’t thinking in those terms at that time.” (Tr. at 34-37)
20. Dr. Helphenstine testified that he obtains a euphoric effect from using hydrocodone. Dr. Helphenstine testified, “It’s just part of how I am wired physically and definitely genetically given the strong family history, including my father’s substance abuse.” Dr. Helphenstine believes that hydrocodone causes him to have feelings of euphoria to a greater extent than most other people who take that medication. (Tr. at 39)
21. Dr. Helphenstine testified that he did not use substances other than hydrocodone during his relapse. Dr. Helphenstine further testified that his previous polysubstance abuse “came along as a result of [his] tolerance level [to hydrocodone] that [he] had developed during [his] addiction.” (Tr. at 39)
22. Dr. Helphenstine testified that he never used medication when he was working. (Tr. at 40)
23. Dr. Helphenstine testified that, since his relapse came to light, he has discussed it with friends and it has “been the main topic of many meetings that [he has] been to.” Dr. Helphenstine further testified that he has continued to attend meetings and has resumed abiding by his contract with OPEP. (Tr. at 66-67)
24. Dr. Helphenstine attributed his relapse to “getting caught up in [his] day-to-day activities and putting them before what [he] needed to do in the way of [his] recovery.” Dr. Helphenstine further testified that he had become over confident by the fact that he had had two years of continuous sobriety. He stated that this led to little things such as failing to set aside time each morning for his daily devotions, which had helped keep him centered. Dr. Helphenstine stated that that in turn led him to become mentally disconnected from his recovery program, although he still physically attended meetings. Moreover, Dr. Helphenstine testified concerning what he needs to change in order for him to reclaim his sobriety:

I’m very aware of how insidious this disease can be, and I’m very aware of [how] I cannot take for granted any given day of sobriety. You have to be aggressive and selfish about your sobriety, and I went through a period where I wasn’t selfish about my sobriety.

I have to claim my sobriety on a daily basis and not take any day for granted, in terms of what I need to do. I am—seven days a week, 356 days a year I have to be aggressive in my program and going to my meetings, doing my devotional work, working the steps, and working with [my] sponsor.

(Tr. at 68-69)

25. Dr. Helphenstine testified as follows concerning his current activities:

My wife and I were just climbing out of the [financial] hole that I was responsible for creating from the first go around in 1999, and this has hurt us tremendously. I did not have any great cash reserves to be able to go off and go to Shepherd Hill or to go into any other program.

I'm going to meetings almost on a daily basis, at least five a week, and I've been forced to work—or I shouldn't say I've been forced to work. I'm in a position where I need to work. I have a good friend who's in the program. * * * He's a Realtor, and he was able to get me in touch with some people that he knows in terms of picking up some work.

I've been painting a lot of houses, doing a lot of fall landscaping, and I've been assessing—or taking time to assess what if I'm not fortunate and I'm—in that I'm not able to get my license back.

* * *

If I was never a physician again, I still have to be aggressive on a daily basis about my sobriety. My identity isn't tied up in being a physician. I'd like to be a physician, and I think that I have a lot to offer as long as I'm sober and doing the things that I need to keep my license and keep my sobriety. But if that doesn't happen, first and foremost the most important thing to me in my life is maintaining my sobriety.

(Tr. at 69-71)

FINDINGS OF FACT

1. On March 10, 1999, James Charles Helphenstine, D.O., entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based upon his violations of Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents; Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 3719.07, Ohio Revised Code, Improper Records of Controlled Substances; Section

4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(D), Ohio Administrative Code; and Section 4731.22(B)(26), Ohio Revised Code.

In the Step I Consent Agreement, Dr. Helphenstine made the following admissions:

- he suffered from polysubstance dependence, including opiate dependence, barbiturate dependence, benzodiazepine dependence and marijuana dependence.
- he had self-prescribed controlled substances, had prescribed controlled substances for self-use in the names of family members, had obtained controlled substance samples for self-use from office stock, and had failed to maintain records reflecting such prescribing and dispensing.
- on or about February 24, 1999, he had been charged with driving under the influence of alcohol or drugs, and had subsequently entered treatment for chemical dependence at a Board-approved treatment facility.

In the Step I Consent Agreement, Dr. Helphenstine agreed to certain terms, conditions, and limitations, including that his certificate to practice osteopathic medicine and surgery in Ohio would be suspended for an indefinite period of time, but not less than six months, with specified conditions for reinstatement.

2. On September 8, 1999, Dr. Helphenstine entered into a Step II Consent Agreement with the Board that provided for reinstatement of his license to practice osteopathic medicine and surgery in the State of Ohio subject to certain terms, conditions, and limitations.
3. The probationary terms, conditions and limitations of the Step II Consent Agreement included the following:
 - a. Paragraph 1 states that Dr. Helphenstine “shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio.”
 - b. Paragraph 7 states, in part, that Dr. Helphenstine “shall not, without prior BOARD approval, administer, dispense, or possess (except as allowed under Paragraph 8 [of the Step II Consent Agreement]) any controlled substances as defined by state or federal law.”
 - c. Paragraph 8 states that Dr. Helphenstine “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 DOCTOR HELPHENSTINE’S history of chemical dependency.”

Despite these provisions, on August 27, 2002, the Board was informed through communication by Dr. Helphenstine's attorney that Dr. Helphenstine had relapsed. Further, on or about September 9, 2002, a Board Investigator interviewed Dr. Helphenstine in the presence of Dr. Helphenstine's attorney. During that interview Dr. Helphenstine admitted to the Investigator that he had relapsed; that he had obtained hydrocodone on several occasions by writing prescriptions for Vicodin to a patient/staff member who returned a portion of the filled prescriptions to him; that he had involved two other patient/staff members in similar drug-seeking activity; and that he had failed to document all of those prescriptions in the medical records.

Dr. Helphenstine acknowledged at hearing that he had relapsed in November 2001 by obtaining possession of hydrocodone. Dr. Helphenstine further acknowledged that he had ingested hydrocodone intermittently beginning in early 2002. Finally, Dr. Helphenstine acknowledged that he had not yet sought treatment for his relapse due to financial circumstances.

4. Paragraph 2 of the Step II Consent Agreement states, in part, that Dr. Helphenstine "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 CONSENT AGREEMENT."

Although Dr. Helphenstine submitted quarterly declarations as required by this provision on December 1, 2001, March 1, 2002, and June 1, 2002, he falsely stated in these declarations that he was in compliance with all the conditions of the Step II Consent Agreement.

5. The evidence is insufficient to support a finding that Dr. Helphenstine admitted to a Board Investigator that Dr. Helphenstine had provided a patient/staff member with a loan of money that she used to purchase prescription medication.

CONCLUSIONS OF LAW

1. The conduct of James Charles Helphenstine, D.O., as set forth in Findings of Fact 3, constitutes "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents.
2. Rule 4731-11-02(D), Ohio Administrative Code, states as follows:

A physician shall complete and maintain accurate medical records reflecting the physician's examination, evaluation, and treatment of all the physician's patients. Patient medical records shall accurately reflect the utilization of any

controlled substances in the treatment of a patient and shall indicate the diagnosis and purpose for which the controlled substance is utilized, and any additional information upon which the diagnosis is based.

Ohio Adm.Code 4731-11-02(D). Further, Rule 4731-11-08, Ohio Administrative Code, states, in pertinent part, as follows:

- (A) Accepted and prevailing standards of care presuppose a professional relationship between a patient and physician when the physician is utilizing controlled substances. By definition, a physician may never have such a relationship with himself or herself. Thus, a physician may not self-prescribe or self-administer controlled substances. * * *

Ohio Adm.Code 4731-11-02(D).

Accordingly, as set forth in Findings of Fact 3, the conduct of Dr. Helphenstine constitutes “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(D), Ohio Administrative Code, General Provisions; and Rule 4731-11-08, Ohio Administrative Code, Utilizing Controlled Substances for Self and Family Members. Pursuant to Rule 4731-11-02(F), Ohio Administrative Code, a violation of Rule 4731-11-02(D), Ohio Administrative Code, constitutes violation of Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code.

3. The conduct of Dr. Helphenstine, as set forth in Findings of Fact 3, 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.
4. The conduct of Dr. Helphenstine, as set forth in Findings of Fact 3 and 4, constitutes a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

* * * * *

The evidence is undisputed that Dr. Helphenstine relapsed on hydrocodone while subject to a Step II Consent Agreement with the Board. Further, Dr. Helphenstine involved third parties in his efforts to obtain that medication. Moreover, Dr. Helphenstine provided false information to the Board in declarations of compliance and controlled substance logs. Finally, Dr. Helphenstine acknowledged that he had not always properly and accurately documented prescriptions for controlled substances in his medical records. Such conduct would justify the Board in permanently revoking Dr. Helphenstine’s certificate.

Nevertheless, there is mitigating evidence in Dr. Helphenstine's favor. Dr. Helphenstine self-reported his relapse to the Board, and appears to have been honest with the Board in its investigation of this matter and forthright in his testimony at hearing. Further, Dr. Helphenstine had previously maintained sobriety for two years prior to relapsing. Moreover, Dr. Helphenstine seems to have good insight into the reasons behind his relapse and had developed strategies to avoid future relapses. Under these circumstances, the Board may wish to allow Dr. Helphenstine the opportunity to return to practice under stringent monitoring conditions following time out of practice to obtain the required treatment and establish a solid recovery.

PROPOSED ORDER

- A. **PERMANENT REVOCATION, STAYED; SUSPENSION:** The certificate of James Charles Helphenstine, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. Such permanent revocation is STAYED, and Dr. Helphenstine's certificate shall be SUSPENDED for an indefinite period of time, but not less than eighteen months.
- B. **INTERIM MONITORING:** During the period that Dr. Helphenstine's certificate to practice osteopathic medicine and surgery in Ohio is suspended, Dr. Helphenstine shall comply with the following terms, conditions, and limitations:
1. **Obey the Law:** Dr. Helphenstine shall obey all federal, state, and local laws, and all rules governing the practice of osteopathic medicine and surgery in Ohio.
 2. **Personal Appearances:** Dr. Helphenstine shall appear in person for an interview before the full Board or its designated representative. The first such appearance shall take place on the date his appearance would have been scheduled pursuant to his September 8, 1999, Step II Consent Agreement with 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.
 3. **Quarterly Declarations:** Dr. Helphenstine shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the date his quarterly declaration would have been due pursuant to his September 8, 1999, Step II Consent Agreement with the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

4. **Abstinence from Drugs**: Dr. Helphenstine 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 Dr. Helphenstine's history of chemical dependency.
5. **Abstinence from Alcohol**: Dr. Helphenstine shall abstain completely from the use of alcohol.
6. **Drug & Alcohol Screens; Supervising Physician**: Dr. Helphenstine shall submit to random urine screenings for drugs and/or alcohol on a weekly basis or as otherwise directed by the Board. Dr. Helphenstine 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, or as otherwise determined by the Board, Dr. Helphenstine shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Helphenstine 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 Dr. Helphenstine. Dr. Helphenstine 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. Helphenstine 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, Dr. Helphenstine must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Helphenstine 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. Helphenstine's quarterly declaration. It is Dr. Helphenstine's responsibility to ensure that reports are timely submitted.

7. **Submission of Blood or Urine Specimens upon Request:** Dr. Helphenstine shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Helphenstine's expense.
8. **Rehabilitation Program:** Dr. Helphenstine 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. Dr. Helphenstine 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. Helphenstine's quarterly declarations.
9. **Comply with OPEP Contract:** Dr. Helphenstine shall maintain compliance with his contract with OPEP, unless otherwise determined by the Board.

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

1. **Application for Reinstatement or Restoration:** Dr. Helphenstine shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Compliance with Interim Conditions:** Dr. Helphenstine shall have maintained compliance with all the terms and conditions set forth in Paragraph B of this Order.
3. **Demonstration of Ability to Resume Practice:** Dr. Helphenstine 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 Dr. Helphenstine 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. Evidence of continuing full compliance with this Order.

- d. Two written reports indicating that Dr. Helphenstine'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 Dr. Helphenstine's application for restoration. The reports of evaluation shall describe with particularity the bases for the determination that Dr. Helphenstine 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 Dr. Helphenstine has not been engaged in the active practice of osteopathic medicine and surgery for a period in excess of two years prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222 of the Revised Code to require additional evidence of his fitness to resume practice.
- D. **PROBATION:** Upon reinstatement or restoration, Dr. Helphenstine's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
1. **Terms, Conditions, and Limitations Continued from Suspension Period:** Dr. Helphenstine shall continue to be subject to the terms, conditions, and limitations specified in Paragraph B of this Order, and shall continue to comply with the terms of his aftercare contract as specified in Paragraph C.3.b of this Order.
 2. **Practice Plan:** Prior to Dr. Helphenstine's commencement of practice in Ohio, or as otherwise determined by the Board, Dr. Helphenstine shall submit to the Board and receive its approval for a plan of practice in Ohio. The practice plan, unless otherwise determined by the Board, shall be limited to a supervised structured environment in which Dr. Helphenstine's activities will be directly supervised and overseen by a monitoring physician approved by the Board. Dr. Helphenstine shall obtain the Board's prior approval for any alteration to the practice plan approved pursuant to this Order.

At the time Dr. Helphenstine submits his practice plan, he shall also submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary or Supervising Member will give preference to a physician who practices in the same locale as Dr. Helphenstine and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Helphenstine and his practice, and shall review Dr. Helphenstine's patient charts. The chart review may be done on a random

basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. Helphenstine and his practice, and on the review of Dr. Helphenstine's patient charts. Dr. Helphenstine 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. Helphenstine's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Helphenstine must immediately so notify the Board in writing. In addition, Dr. Helphenstine shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. Helphenstine shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

3. **Ban on Prescribing, Ordering, Administering, Furnishing, or Possessing Controlled Substances; Log:** Dr. Helphenstine shall not prescribe, write orders for, give verbal orders for, administer, personally furnish, or possess (except as allowed under Paragraph B.4 of this Order) any controlled substances without prior Board approval.

In the event that the Board agrees at a future date to modify this Order to allow Dr. Helphenstine to prescribe, order, administer or personally furnish controlled substances, Dr. Helphenstine shall keep a log of all controlled substances prescribed, ordered, administered, or personally furnished. Such log shall be submitted in a format approved by the Board thirty days prior to Dr. Helphenstine's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Helphenstine shall make his patient records with regard to such prescribing, administering, or personally furnishing available for review by an agent of the Board upon request.

4. **Tolling of Probationary Period While Out of State:** In the event that Dr. Helphenstine should leave Ohio for three consecutive months, or reside or practice outside the State, Dr. Helphenstine 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.
5. **Violation of Terms of Probation:** If Dr. Helphenstine 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.

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

Dr. Helphenstine shall also provide the Board written consent permitting any treatment provider from whom Dr. Helphenstine 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.

- G. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Dr. Helphenstine 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. Helphenstine 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.
- H. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, Dr. Helphenstine 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. Helphenstine 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. Helphenstine 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.

A handwritten signature in black ink, appearing to read 'R. Gregory Porter', written over a horizontal line.

R. Gregory Porter
Attorney Hearing Examiner



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF JANUARY 8, 2003

REPORTS AND RECOMMENDATIONS

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

Mr. Browning asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Mohammad A. Adas, M.D.; Rodrigo P. Arzadon, P.A.; James Charles Helphenstine, D.O.; and Effie M. Lee, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Mr. Browning	- aye

Mr. Browning 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. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye

Dr. Agresta - aye
Dr. Garg - aye
Dr. Steinbergh - aye
Mr. Browning - aye

Mr. Browning 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.

Mr. Browning 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.

.....
JAMES CHARLES HELPHENSTINE, D.O.

Mr. Browning directed the Board's attention to the matter of James Charles Helphenstine, D.O. He advised that objections were filed to Hearing Examiner Porter's Report and Recommendation and were previously distributed to Board members.

Mr. Browning continued that a request to address the Board has been timely filed on behalf of Dr. Helphenstine. Five minutes would be allowed for that address.

Dr. Helphenstine was accompanied to the meeting by Eric J. Plinke, his attorney.

Mr. Plinke stated that they do not have any substantial objections to Mr. Porter's Report and Recommendation. They thought the Findings of Fact and Conclusions of Law were accurate, and that the recommended discipline was an appropriate measure based on the conduct underlying Dr. Helphenstine's relapse. Mr. Plinke at this time deferred to Dr. Helphenstine.

Dr. Helphenstine stated that he's here today because he's a drug addict and he relapsed. His relapse came about as a result of his self-centeredness, laziness, and lack of doing the things that he needs to do on a daily basis in his twelve-step program. Dr. Helphenstine stated that he feels fortunate that he's able to address the Board and to tell the Board that, as of today, he's a lot happier than he was several months ago. He's working with a new sponsor. He's committed to doing 90 meetings in 90 days, starting January 1. He added that he's very content with his program, although he's not in a position to be confident or cocky about it, as before.

Dr. Helphenstine stated that he understands the Findings of Fact and Recommendation of an 18-month suspension. He feels fortunate that that's the recommendation, given the actions that occurred and what he did, and the laws that he broke. The most important thing to him at this point in time is maintaining his sobriety, whether he is ever allowed to practice medicine again or not. He wants to be sober. He wants to live his life, he wants to have his family and friends. That's at the heart of why he's working his program as hard as he is right now. His ultimate goal is not getting his license back. He wants sobriety on a daily basis.

Dr. Helphenstine thanked the Board for the opportunity to speak today.

Mr. Browning asked whether the Assistant Attorney General wished to respond.

Dr. Steinbergh asked whether she could first ask a question of Dr. Helphenstine. She asked when he last practiced.

Dr. Helphenstine stated that the last time he practiced was in late August.

Mr. Wilcox stated that he supports the Report and Recommendation in this matter. He added that he thinks Mr. Porter did a thorough job of summarizing the facts in this case, and he does believe that the Proposed Order of 18 months' suspension is appropriate under the circumstances.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF JAMES CHARLES HELPHENSTINE, D.O. DR. SOMANI SECONDED THE MOTION.

Mr. Browning stated that he would now entertain discussion in the above matter.

Dr. Steinbergh stated that she basically supports this Report and Recommendation. She feels very badly for Dr. Helphenstine and his situation. Dr. Steinbergh stated that probably one of the most important things in this case, besides taking Dr. Helphenstine out of practice and allowing him to heal, is that when Dr. Helphenstine ultimately gets back into practice, he needs to make a better choice of where to practice. She believes that the requirement of a practice plan is an appropriate one. Dr. Helphenstine is going to need to make some choices about the people with whom he deals on a daily basis. He needs to put himself in a place where other people don't threaten him, or that he doesn't allow himself to be re-threatened; and he needs to see this as an ongoing disease and an ongoing problem and that he must take charge of where he puts himself in life.

Dr. Steinbergh stated that the only other concern she has is the language of the suspension itself. If she were just looking at this case, she would suspend him for a total of two years, retroactive to the time he last practiced, in being consistent with these types of relapse. She commented that it is only a difference of one month.

Dr. Somani stated that he was very much concerned about this case, too, because it is not a simple matter of relapse, but the way he was relapsing, plus the way he was working with his patients to be able to get those kinds of medications. This was not simply an alcohol problem. It was more serious than the usual types of impairment the Board sees.

Dr. Somani stated that the second thing he thought was very disturbing was the way Dr. Helphenstine figured out how to game the system while being monitored. As soon as he was asked to give a random sample, he realized that he wouldn't be checked for a few days and that would be the time to starting using medication. Dr. Somani stated that he figured out how to beat the system and continued to abuse drugs. For that reason, he agrees with Dr. Steinbergh that Dr. Helphenstine needs a longer time out to be able to reach a point where he understands the problem, the gravity of the situation. He stated that he would support the two-year suspension.

Dr. Steinbergh noted that her suggestion is for a two-year suspension, retroactive to the day he last practiced.

Dr. Somani agreed.

Dr. Steinbergh stated that it does give one thought about the kinds of decisions that an impaired physician will make in regard to urine screens and so forth. This was a little bit enlightening to her. She advised that her huge concern was the practice that he was in, and whether a patient comes to him and just sort of hands him pills. The whole thing was very unsettling.

Dr. Egner stated that she supports the Report and Recommendation, but added that this case does call into question the Board's monitoring systems, how much the Board trusts it, and how much will the Board trust this doctor when he comes back in and has to abide by the same monitoring system that he had had before. Dr. Helphenstine can skirt through that system. Part of it will take some improvements on the Board's part, and some of it will also mean that, perhaps, the Board shouldn't be so trusting of its own monitoring systems. Dr. Egner stated that Dr. Helphenstine has a stayed revocation. She hopes that he understands that he will be permanently revoked if he does relapse. The Board's system is not working for him. Whether that's Dr. Helphenstine's fault or the Board's, it's not working.

Dr. Bhati stated that the fact is that Dr. Helphenstine relapsed, and he wants Dr. Helphenstine to know that this is the last stop. If he relapses again, he will not have a license.

DR. STEINBERGH MOVED TO AMEND THE LANGUAGE THAT THE SUSPENSION WOULD BE FOR AN INDEFINITE PERIOD OF TIME, BUT NOT LESS THAN TWO YEARS, RETROACTIVE TO THE LAST DATE OF PRACTICE.

Mr. Dilling suggested clarifying what the last date of practice was so that all Board members have a good understanding of when that will be.

Dr. Talmage commented that, as Dr. Steinbergh earlier said, that only makes a difference of one month.

Dr. Steinbergh stated that she wants to be consistent with the language for a relapse like this.

Dr. Egner stated that the Board would be taking Dr. Helphenstine's word for when he last practiced, and the record shows that Dr. Helphenstine's word is not reliable. The Board either needs to find out what the exact date he last practiced is and ensure that it's accurate or stick with what the record says.

Dr. Bhati stated that he would prefer to stay with the Report and Recommendation, as is.

Dr. Somani stated that the problem in this case is that, not only did he relapse, but he engaged in deceptive behavior to game the system. He also used his patients to get medications. Dr. Somani stated that both of those points are very important in this case. Two years should be the minimum suspension period.

Dr. Bhati agreed that two years would be appropriate.

Dr. Steinbergh stated that the Board's summary suspension of Dr. Helphenstine's license was dated September 11, 2002. She agreed that a two-year suspension would be appropriate, and restated her motion, as follows:

DR. STEINBERGH MOVED TO AMEND THE PROPOSED ORDER TO CHANGE THE MINIMUM SUSPENSION PERIOD TO TWO YEARS. DR. SOMANI SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF JAMES CHARLES HELPHENSTINE, D.O. DR. SOMANI SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Somani	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Agresta	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.



State Medical Board of Ohio

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NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING

September 11, 2002

James Charles Helphenstine, D.O.
845 North Heincke Road
Miamisburg, Ohio 45342

Dear Doctor Helphenstine:

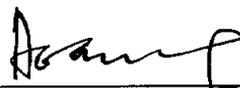
Enclosed please find certified copies of the Entry of Order, the Notice of Opportunity for Hearing, and an excerpt of the Minutes of the State Medical Board, meeting in regular session on September 11, 2002, including a Motion adopting the Order of Summary Suspension and issuing the Notice of Opportunity for Hearing pursuant to Section 4731.22(G), Ohio Revised Code.

You are advised that continued practice after receipt of this Order shall be considered practicing without a certificate, in violation of Section 4731.43, Ohio Revised Code.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order of Summary Suspension. Such an appeal may be taken to the Franklin County Court of Common Pleas only. Such an appeal, setting forth the Order appealed from and the grounds of appeal, must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Court within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

Additionally, pursuant to Chapter 119, Ohio Revised Code, you are hereby advised that you are entitled to a hearing on the allegations set forth in the Notice of Opportunity for Hearing. If you wish to request such hearing, that request must be made in writing and be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice. Further information concerning such hearing is contained within the Notice of Opportunity for Hearing.

THE STATE MEDICAL BOARD OF OHIO



Anand G. Garg, M.D., Secretary

AGG:blt
Enclosures

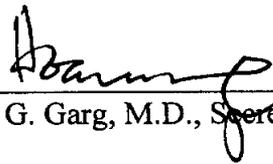
CC: Eric Plinke, Esq.
Porter, Wright, Morris & Arthur
41 South High Street
Columbus, Ohio 43215

mailed 9/12/02

CERTIFICATION

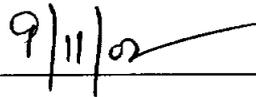
I hereby certify that the attached copies of the Entry of Order of the State Medical Board of Ohio and the Motion by the State Medical Board, meeting in regular session on September 11, 2002, to Adopt the Order of Summary Suspension and to Issue the Notice of Opportunity for Hearing, constitute true and complete copies of the Motion and Order as they appear in the Journal of the State Medical Board of Ohio.

This certification is made under the authority of the State Medical Board of Ohio and in its behalf.



Anand G. Garg, M.D., Secretary

(SEAL)



Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :

JAMES C. HELPHENSTINE, D.O. :

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 11th day of September, 2002.

Pursuant to Section 4731.22(G), Ohio Revised Code, and upon recommendation of Anand G. Garg, M.D., Secretary, and Raymond J. Albert, Supervising Member; and

Pursuant to their determination that there is clear and convincing evidence that James C. Helphenstine, D.O., has violated Section 4731.22(B)(15) and (26), Ohio Revised Code, as alleged in Notice of Summary Suspension and Opportunity for Hearing which is enclosed herewith and fully incorporated herein, which determination is based upon review of information received pursuant to an investigation; and

Pursuant to their further determination that Dr. Helphenstine's continued practice presents a danger of immediate and serious harm to the public; and further

Pursuant to the terms of the Step II Consent Agreement between James C. Helphenstine, D.O., and the State Medical Board of Ohio, effective September 8, 1999, which states:

If the Secretary and Supervising Member of the BOARD determine that there is clear and convincing evidence that DOCTOR HELPHENSTINE has violated any term, condition or limitation of this CONSENT AGREEMENT, DOCTOR HELPHENSTINE agrees that the violation, as alleged, also constitutes clear and convincing evidence that his continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to Section 4731.22(G), Ohio Revised Code.

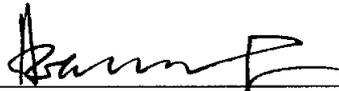
The following Order is hereby entered on the Journal of the State Medical Board of Ohio for the 11th day of September, 2002;

It is hereby ORDERED that the certificate of James C. Helphenstine, D.O., to practice osteopathic medicine or surgery in the State of Ohio be summarily suspended.

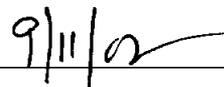
It is hereby ORDERED that James C. Helphenstine, D.O., shall immediately close all his medical offices and immediately refer all active patients to other appropriate physicians.

This Order shall become effective immediately.

(SEAL)



Anand G. Garg, M.D., Secretary



Date



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF SEPTEMBER 11, 2002

JAMES C. HELPHENSTINE, D.O. ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

At this time the Board read and considered the proposed Order of Summary Suspension and Notice of Opportunity For Hearing in the above matter, a copy of which shall be maintained in the exhibits section of this Journal.

DR. STEINBERGH MOVED TO APPROVE THE ORDER OF SUMMARY SUSPENSION AND TO SEND THE NOTICE OF OPPORTUNITY FOR HEARING TO DR. HELPHENSTINE. DR. BHATI SECONDED THE MOTION. A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.



State Medical Board of Ohio

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September 11, 2002

James Charles Helphenstine, D.O.
845 North Heincke Road
Miamisburg, Ohio 45342

Dear Doctor Helphenstine:

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 osteopathic medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about March 10, 1999, you entered into a Step I Consent Agreement with the Board [Step I Consent Agreement] in lieu of formal proceedings based upon your violations of Sections 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents; Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 3719.07, Ohio Revised Code, Improper Records of Controlled Substances; Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(D), Ohio Administrative Code; and Section 4731.22(B)(26), Ohio Revised Code. A copy of the aforementioned Step I Consent Agreement is attached hereto and incorporated herein.

In the Step I Consent Agreement, you admitted that you suffered from polysubstance dependence, including opiate dependence, barbiturate dependence, benzodiazepine dependence and marijuana dependence. You admitted that you had self-prescribed controlled substances, had prescribed controlled substances for self-use in the names of family members, had obtained controlled substances samples for self-use from office stock, and had failed to maintain records reflecting such prescribing and dispensing. You further admitted that on or about February 24, 1999, you had been charged with driving under the influence of alcohol or drugs, and had subsequently entered treatment for chemical dependence at a Board approved treatment facility. In the Step I Consent Agreement, you also agreed to certain terms, conditions, and limitations, including that your certificate to practice osteopathic medicine and surgery in the State of Ohio would be suspended for an indefinite period of time, but not less than six months, with specified conditions for reinstatement.

- (2) On or about September 8, 1999, you entered into a Step II Consent Agreement with the Board [Step II Consent Agreement] which provided for reinstatement of your license to practice osteopathic medicine and surgery in the State of Ohio subject to certain terms, conditions, and limitations. A copy of the aforementioned Step II Consent Agreement, which remains in effect to date, is attached hereto and incorporated herein.
- (3)(a) Paragraph 8 of the Step II Consent Agreement states that you “shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to [you] by another so authorized by law who has full knowledge of [your] history of chemical dependency.”
- (b) Paragraph 7 of the Step II Consent Agreement states that you “shall not, without prior Board approval, administer, dispense, or possess (except as allowed under Paragraph 8 [of the Step II Consent Agreement]) any controlled substances as defined by state or federal law.”
- (c) Paragraph 1 of the Step II Consent Agreement states that you “shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio.”
- (d) Despite these provisions, on or about August 27, 2002, the Board was informed through communication by your attorney that you have relapsed, having resumed hydrocodone use during or about November 2001; that your use of controlled substances has continued intermittently since that time; that you have not sought treatment for such relapse; and that you have been obtaining hydrocodone for self-use in concert with a patient/staff member by writing prescriptions to the patient/staff member and having her return a portion of the medication to you.

Further, on or about September 9, 2002, in the presence of your attorney, you were interviewed by a Board Investigator. During that interview you confirmed the information communicated to the Board through your attorney as outlined above, and admitted to the Investigator that you have relapsed, having obtained hydrocodone on several occasions by writing prescriptions for Vicodin to a patient/staff member and subsequently splitting the filled prescriptions with her, on one occasion providing this patient/staff member with a “loan” of the money she used to purchase such prescription; that you have involved at least two other patient/staff members in similar drug-seeking activity; and that you failed to document these prescriptions in the medical records. You further admitted that you have not sought treatment for your relapse.

- (4) Paragraph 2 of the Step II Consent Agreement states that you “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 Consent Agreement.”

Although you submitted quarterly declarations as required by this provision on December 1, 2001, March 1, 2002, and June 1, 2002 you falsely stated in these declarations that you were in compliance with all the conditions of the Step II Consent Agreement.

Your acts, conduct, and/or omissions as alleged in paragraph (3) above, individually and/or collectively, constitute “[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed,” as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents.

Further, your acts, conduct, and/or omissions as alleged in paragraph (3) above, individually and/or collectively, constitute “violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board,” as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-11-02(D), Ohio Administrative Code, General Provisions; and Rule 4731-11-08, Ohio Administrative Code, Utilizing Controlled Substances for Self and Family Members. Pursuant to Rule 4731-11-02(F), Ohio Administrative Code, a violation of Rule 4731-11-02(D), Ohio Administrative Code, constitutes violation of Sections 4731.22(B)(2) and (B)(6), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (3) 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.

Further your acts, conduct, and/or omissions as alleged in paragraphs (3) and (4) above, individually and/or collectively, constitute a “[v]iolation of the conditions of limitation placed by the board upon a certificate to practice,” as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (4) 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.

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/blt
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5151 5815
RETURN RECEIPT REQUESTED

James Charles Helphenstine, D.O.
Page 5

cc; Eric Plinke, Esq.
Porter, Wright, Morris & Arthur
41 South High Street
Columbus, Ohio 43215

CERTIFIED MAIL # 7000 0600 0024 5151 5822
RETURN RECEIPT REQUESTED

STEP II
CONSENT AGREEMENT
BETWEEN
JAMES C. HELPHENSTINE, D.O.
AND
THE STATE MEDICAL BOARD OF OHIO

This CONSENT AGREEMENT is entered into by and between JAMES C. HELPHENSTINE, D.O., and THE STATE MEDICAL BOARD OF OHIO, a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

JAMES C. HELPHENSTINE, D.O., enters into this CONSENT AGREEMENT being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This CONSENT AGREEMENT is entered into on the basis of the following stipulations, admissions and understandings:

- A. THE STATE MEDICAL BOARD OF OHIO is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violations of Section 4731.22(B)(26), Ohio Revised Code, "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," Section 4731.22(B)(10), Ohio Revised Code, "[c]ommission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed," Section 4731.22(B)(12), Ohio Revised Code, "[c]ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice," and Section 4731.22(B)(20), Ohio Revised Code, "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board."
- B. THE STATE MEDICAL BOARD OF OHIO enters into this CONSENT AGREEMENT in lieu of formal proceedings based upon the violations of Ohio Revised Code Sections 4731.22(B)(26); (B)(10), to wit: Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents;

(B)(12), to wit: Section 3719.07, Improper Records of Controlled Substances; and (B)(20), to wit: Rule 4731-11-02(D), Ohio Revised Code, as set forth in Paragraph E of the March 1999 Consent Agreement between JAMES C. HELPHENSTINE, D.O., and THE STATE MEDICAL BOARD OF OHIO, a copy of which is attached hereto and fully incorporated herein. The BOARD expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement.

- C. JAMES C. HELPHENSTINE, D.O., is applying for reinstatement of his license to practice osteopathic medicine and surgery in the State of Ohio, which was suspended pursuant to the terms of the above referenced March 1999 Consent Agreement.
- D. JAMES C. HELPHENSTINE, D.O. STATES that he is not licensed to practice osteopathic medicine and surgery in any other state or jurisdiction.
- E. JAMES C. HELPHENSTINE, D.O., ADMITS that on March 2, 1999, he entered Shepherd Hill Hospital in Newark, Ohio, a BOARD approved treatment facility, for inpatient treatment for his poly-substance dependence. DOCTOR HELPHENSTINE further ADMITS that on March 26, 1999, upon his request, he was granted a five day therapeutic leave from Shepherd Hill. DOCTOR HELPHENSTINE further ADMITS that after contacting the staff of Shepherd Hill on March 31, 1999, and advising that he would not be returning to Shepherd Hill for further treatment, he was discharged from Shepherd Hill Hospital, treatment incomplete.

DOCTOR HELPHENSTINE further ADMITS that he thereafter received intensive outpatient treatment at Green Hall in Xenia, Ohio, a BOARD approved treatment provider, from March 31, 1999, through July 25, 1999, at which time he was discharged upon completion of treatment. DOCTOR HELPHENSTINE further ADMITS that on July 26, 1999, he began participation in the Greene Hall aftercare program, and further ADMITS that he has entered into an aftercare contract with Greene Hall.

- F. JAMES C. HELPHENSTINE, D.O., STATES, and the STATE MEDICAL BOARD OF OHIO ACKNOWLEDGES receipt of information to support, that he has remained fully compliant with the advocacy contract into which he entered with the Ohio Physicians Effectiveness Program in May 1999 and his aftercare contract with his treatment provider, Greene Hall. DOCTOR HELPHENSTINE ADMITS that such advocacy and aftercare contracts remain in effect to date.

- G. JAMES C. HELPHENSTINE, D.O., STATES, and the STATE MEDICAL BOARD OF OHIO ACKNOWLEDGES, that John J. Peterangelo, D.O., of Greene Hall in Xenia, Ohio, a BOARD approved treatment provider, and Tom H. Pepper, M.D., and Kenneth R. Yeager, MSW, CCDC III, of Talbot Recovery Services at Park Medical Center in Columbus, Ohio, a BOARD approved treatment provider, have provided written reports indicating that DOCTOR HELPHENSTINE's ability to practice has been assessed and that he has been found capable of practicing osteopathic medicine and surgery according to acceptable and prevailing standards of care, so long as certain treatment and monitoring requirements are in place.
- H. JAMES C. HELPHENSTINE, D.O., STATES, and THE STATE MEDICAL BOARD OF OHIO ACKNOWLEDGES, that DOCTOR HELPHENSTINE has fulfilled the conditions for reinstatement of his certificate to practice osteopathic medicine and surgery in the State of Ohio, as established in the March 1999 Consent Agreement between JAMES C. HELPHENSTINE, D.O., and THE STATE MEDICAL BOARD OF OHIO.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, the certificate of JAMES C. HELPHENSTINE, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be reinstated, and JAMES C. HELPHENSTINE, D.O., knowingly and voluntarily agrees with THE STATE MEDICAL BOARD OF OHIO, (hereinafter BOARD), to the following PROBATIONARY terms, conditions and limitations:

1. DOCTOR HELPHENSTINE shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio;
2. DOCTOR HELPHENSTINE 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 CONSENT AGREEMENT. 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 the CONSENT AGREEMENT becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the BOARD's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the BOARD's offices on or before the first day of every third month;

3. DOCTOR HELPHENSTINE shall appear in person for quarterly interviews before the BOARD or its designated representative, or as otherwise directed 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. (Example: The first quarterly appearance is scheduled for February, but based upon the doctor's serious personal illness he is permitted to delay appearance until April. The next appearance will still be scheduled for May, three months after the appearance as originally scheduled.) Although the BOARD will normally give DOCTOR HELPHENSTINE written notification of scheduled appearances, it is DOCTOR HELPHENSTINE's responsibility to know when personal appearances will occur. If he does not receive written notification from the BOARD by the end of the month in which the appearance should have occurred, DOCTOR HELPHENSTINE shall immediately submit to the BOARD a written request to be notified of his next scheduled appearance;

4. In the event that DOCTOR HELPHENSTINE should leave Ohio for three (3) continuous months, or reside or practice outside the State, DOCTOR HELPHENSTINE 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 CONSENT AGREEMENT, unless otherwise determined by motion of the BOARD in instances where the BOARD can be assured that probationary monitoring is otherwise being performed;
5. In the event DOCTOR HELPHENSTINE is found by the Secretary of the BOARD to have failed to comply with any provision of this CONSENT AGREEMENT, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under the CONSENT AGREEMENT;

MONITORING OF REHABILITATION AND TREATMENT

Drug Associated Restrictions

6. DOCTOR HELPHENSTINE shall keep a log of all controlled substances prescribed. Such log shall be submitted in the format approved by the BOARD thirty (30) days prior to DOCTOR HELPHENSTINE's personal appearance before the BOARD or its designated representative, or as otherwise directed by the BOARD;

7. DOCTOR HELPHENSTINE shall not, without prior BOARD approval, administer, dispense, or possess (except as allowed under Paragraph 8 below) any controlled substances as defined by state or federal law. In the event that the BOARD agrees at a future date to modify this CONSENT AGREEMENT to allow DOCTOR HELPHENSTINE to administer or dispense controlled substances, DOCTOR HELPHENSTINE shall keep a log of all controlled substances prescribed, administered or dispensed. Such log shall be submitted in the format approved by the BOARD thirty (30) days prior to DOCTOR HELPHENSTINE's personal appearance before the BOARD or its designated representative, or as otherwise directed by the BOARD;

Sobriety

8. DOCTOR HELPHENSTINE 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 DOCTOR HELPHENSTINE's history of chemical dependency;
9. DOCTOR HELPHENSTINE shall abstain completely from the use of alcohol;

Drug and Alcohol Screens/Supervising Physician

10. DOCTOR HELPHENSTINE shall continue to submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the BOARD. DOCTOR HELPHENSTINE 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 (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR HELPHENSTINE shall submit to the BOARD for its prior approval the name of a supervising physician to whom DOCTOR HELPHENSTINE 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 DOCTOR HELPHENSTINE. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the BOARD of any positive screening results;

DOCTOR HELPHENSTINE shall ensure that the supervising physician provides quarterly reports to the BOARD, on forms approved or provided by the BOARD, verifying whether all urine screens have been conducted in compliance with this CONSENT AGREEMENT, whether all urine screenings have been negative, and whether the supervising physician remains willing and able to continue in his responsibilities;

In the event that the designated supervising physician becomes unable or unwilling to so serve, DOCTOR HELPHENSTINE must immediately notify the BOARD in writing, and make arrangements acceptable to the BOARD for another supervising physician as soon as practicable. DOCTOR HELPHENSTINE shall further ensure that the previously designated supervising physician also notifies the BOARD directly of the 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 DOCTOR HELPHENSTINE's quarterly declaration. It is DOCTOR HELPHENSTINE's responsibility to ensure that reports are timely submitted;

11. The BOARD retains the right to require, and DOCTOR HELPHENSTINE agrees to submit, blood or urine specimens for analysis at DOCTOR HELPHENSTINE's expense upon the BOARD's request and without prior notice. DOCTOR HELPHENSTINE's refusal to submit a blood or urine specimen upon request of the BOARD shall result in a minimum of one year of actual license suspension;

Monitoring Physician

12. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR HELPHENSTINE shall submit for the BOARD's prior approval the name of a monitoring physician, who shall review DOCTOR HELPHENSTINE's patient charts and shall submit a written report of such review to the BOARD on a quarterly basis. In approving an individual to serve in this capacity, the BOARD will give preference to a physician who practices in the same locale as DOCTOR HELPHENSTINE and who is engaged in the same or similar practice specialty. Such chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the BOARD. It shall be DOCTOR HELPHENSTINE's responsibility to ensure that the monitoring physician's quarterly reports are submitted to the BOARD on a timely basis;

Further, the monitoring physician shall otherwise monitor DOCTOR HELPHENSTINE and provide the BOARD with quarterly reports on the doctor's progress and status. DOCTOR HELPHENSTINE shall ensure that such reports are forwarded to the BOARD on a quarterly basis. In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, DOCTOR HELPHENSTINE must immediately so notify the BOARD in writing, and make arrangements acceptable to the BOARD for another monitoring physician as soon as practicable. DOCTOR HELPHENSTINE shall further ensure that the previously designated monitoring physician also notifies the BOARD directly of the inability to continue to serve and the reasons therefore;

All monitoring physician reports required under this paragraph must be received in the BOARD's offices no later than the due date for DOCTOR HELPHENSTINE's quarterly declaration. It is DOCTOR HELPHENSTINE's responsibility to ensure that reports are timely submitted;

Rehabilitation Program

13. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR HELPHENSTINE shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or Caduceus, no less than three (3) times per week. Substitution of any other specific program must receive prior BOARD approval;

DOCTOR HELPHENSTINE shall submit with each quarterly declaration required under Paragraph 2 of this CONSENT AGREEMENT acceptable documentary evidence of continuing compliance with this program;

Aftercare

14. DOCTOR HELPHENSTINE shall maintain continued compliance with the terms of the advocacy contract entered into with the Ohio Physicians Effective Program and with the aftercare contract entered into with his treatment provider, provided, that where terms of the advocacy contract or aftercare contract conflict with terms of this CONSENT AGREEMENT, the terms of this CONSENT AGREEMENT shall control;

Releases

15. DOCTOR HELPHENSTINE shall provide continuing authorization, through appropriate written consent forms, for disclosure by his treatment provider to the BOARD, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations;

Required Reporting by Licensee

16. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR HELPHENSTINE shall provide a copy of this CONSENT AGREEMENT 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, DOCTOR HELPHENSTINE shall provide a copy of this CONSENT AGREEMENT 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;
17. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR HELPHENSTINE shall provide a copy of this CONSENT AGREEMENT by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. DOCTOR HELPHENSTINE further agrees to provide a copy of this CONSENT AGREEMENT 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 of any professional license. Further, DOCTOR HELPHENSTINE shall provide this BOARD with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt;

FAILURE TO COMPLY

18. Any violation of Paragraph 8 or Paragraph 9 of this CONSENT AGREEMENT shall constitute grounds to revoke or permanently revoke DOCTOR HELPHENSTINE's certificate. DOCTOR HELPHENSTINE agrees that the minimum discipline for such a violation shall include actual license suspension. This paragraph does not limit the BOARD's authority to suspend, revoke or permanently revoke DOCTOR HELPHENSTINE's certificate based on other violations of this CONSENT AGREEMENT;

19. DOCTOR HELPHENSTINE AGREES that if any declaration or report required by this CONSENT AGREEMENT is not received in the BOARD's offices on or before its due date, DOCTOR HELPHENSTINE shall cease practicing beginning the day next following receipt from the BOARD of notice of non-receipt, either by writing, by telephone, or by personal contact until the declaration or report is received in the BOARD offices. Any practice during this time period shall be considered unlicensed practice in violation of Section 4731.43 of the Revised Code;
20. DOCTOR HELPHENSTINE AGREES that if, without prior permission from the BOARD, he fails to submit to random screenings for drugs and alcohol at least as frequently as required by Paragraph 10 of this CONSENT AGREEMENT, he shall cease practicing immediately upon receipt from the BOARD of notice of the violation and shall refrain from practicing for thirty (30) days for the first instance of a single missed screen. Practice during this time period shall be considered unlicensed practice in violation of Section 4731.43 of the Revised Code; and,
21. DOCTOR HELPHENSTINE AGREES that if he fails to participate in an alcohol and drug rehabilitation program at least as frequently as required by Paragraph 13 of this CONSENT AGREEMENT, he shall cease practicing immediately upon receipt from the BOARD of notice of the violation, and shall refrain from practicing for fifteen (15) days following a first missed meeting. Practice during this time period shall be considered unlicensed practice in violation of Section 4731.43 of the Revised Code.

If, in the discretion of the Secretary and Supervising Member of the BOARD, DOCTOR HELPHENSTINE appears to have violated or breached any term or condition of this CONSENT AGREEMENT, the BOARD reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including, but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this CONSENT AGREEMENT.

If the Secretary and Supervising Member of the BOARD determine that there is clear and convincing evidence that DOCTOR HELPHENSTINE has violated any term, condition or limitation of this CONSENT AGREEMENT, DOCTOR HELPHENSTINE agrees that the violation, as alleged, also constitutes clear and convincing evidence that his continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to Section 4731.22(G), Ohio Revised Code.

DURATION/MODIFICATION OF TERMS

This CONSENT AGREEMENT shall remain in force for a minimum of (5) years prior to any request for termination of said CONSENT AGREEMENT. Otherwise, the above described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties.

ACKNOWLEDGMENTS/LIABILITY RELEASE

DOCTOR HELPHENSTINE acknowledges that he has had an opportunity to ask questions concerning the terms of this CONSENT AGREEMENT and that all questions asked have been answered in a satisfactory manner.

Any action initiated by the BOARD based on alleged violations of this CONSENT AGREEMENT shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

DOCTOR HELPHENSTINE hereby releases THE STATE MEDICAL BOARD OF OHIO, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This CONSENT AGREEMENT shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies.

EFFECTIVE DATE

It is expressly understood that this CONSENT AGREEMENT is subject to ratification by the BOARD prior to signature by the Secretary and Supervising Member and that it shall become effective upon the last date of signature below.



JAMES C. HELPHENSTINE, D.O.



ANAND G. GARG, M.D.
Secretary

August 31, 1999

DATE

9/8/99

DATE


ERIC J. PLINKE, ESQ.
Attorney for Dr. Helphenstine


RAYMOND J. ALBERT
Supervising Member

August 30, 1999
DATE

9/8/99
DATE


ANNE B. STRAIT, ESQ.
Assistant Attorney General

9/8/99
DATE

STEP I
CONSENT AGREEMENT
BETWEEN
JAMES C. HELPHENSTINE, D.O.
AND
THE STATE MEDICAL BOARD OF OHIO

This CONSENT AGREEMENT is entered into by and between JAMES C. HELPHENSTINE, D.O., and THE STATE MEDICAL BOARD OF OHIO, a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

JAMES C. HELPHENSTINE, D.O., enters into this CONSENT AGREEMENT being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This CONSENT AGREEMENT is entered into on the basis of the following stipulations, admissions and understandings:

- A. THE STATE MEDICAL BOARD OF OHIO is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violations of Section 4731.22(B)(26), Ohio Revised Code, "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," Section 4731.22(B)(10), Ohio Revised Code, "[c]ommission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed," Section 4731.22(B)(12), Ohio Revised Code, "[c]ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice," and Section 4731.22(B)(20), Ohio Revised Code, "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board."
- B. THE STATE MEDICAL BOARD OF OHIO enters into this CONSENT AGREEMENT in lieu of formal proceedings based upon the violation of Ohio Revised Code Sections 4731.22(B)(26); (B)(10), to wit: Section

2925.23, Ohio Revised Code, Illegal Processing of Drug Documents; (B)(12), to wit: Section 3719.07, Improper Records of Controlled Substances; and (B)(20), to wit: Rule 4731-11-02(D), Ohio Revised Code, as set forth in Paragraph E. below. THE STATE MEDICAL BOARD OF OHIO expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement.

- C. JAMES C. HELPHENSTINE, D.O., is licensed to practice osteopathic medicine and surgery in the State of Ohio.
- D. JAMES C. HELPHENSTINE, D.O., STATES that he is not licensed to practice osteopathic medicine and surgery in any other state or jurisdiction.
- E. JAMES C. HELPHENSTINE, D.O., ADMITS that he suffers from poly-substance dependence, including opiate dependence, barbiturate dependence, benzodiazepine dependence, and marijuana dependence. DOCTOR HELPHENSTINE further ADMITS that his drugs of choice have included Vicodin, Valium, Fioricet and Phrenilin, and that his inappropriate use of controlled substances dates to approximately 1988.

Further, DOCTOR HELPHENSTINE ADMITS that he has self-prescribed controlled substances; that he has prescribed controlled substances in the names of his parents, though such controlled substances were intended for his own use; and that he has obtained controlled substance samples from his office supply for his own use. DOCTOR HELPHENSTINE further ADMITS that he maintains no patient records for himself or his parents reflecting such prescribing, and that he maintains no records of controlled substances dispensed.

Further, DOCTOR HELPHENSTINE ADMITS that on or about February 24, 1999, he was charged with driving while under the influence of alcohol or drugs.

Further, DOCTOR HELPHENSTINE ADMITS that on February 25, 1999, he was admitted to Bethesda Oak Hospital in Cincinnati, Ohio, a BOARD approved treatment facility, for detoxification.

Further, DOCTOR HELPHENSTINE ADMITS that on March 2, 1999, he entered Shepherd Hill Hospital in Newark, Ohio, a BOARD approved treatment facility, for inpatient treatment for his poly-substance dependence.

DOCTOR HELPHENSTINE further ADMITS that such inpatient treatment continues to date.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, JAMES C. HELPHENSTINE, D.O., knowingly and voluntarily agrees with THE STATE MEDICAL BOARD OF OHIO, (hereinafter BOARD), to the following terms, conditions and limitations:

SUSPENSION OF CERTIFICATE

1. The certificate of DOCTOR HELPHENSTINE, to practice osteopathic medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than six (6) months;

Sobriety

2. DOCTOR HELPHENSTINE 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 DOCTOR HELPHENSTINE's history of chemical dependency;
3. DOCTOR HELPHENSTINE shall abstain completely from the use of alcohol;

Releases; Quarterly Declarations and Appearances

4. DOCTOR HELPHENSTINE 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 DOCTOR HELPHENSTINE's chemical dependency or related conditions, or for purposes of complying with the CONSENT AGREEMENT, whether such treatment or evaluation occurred before or after the effective date of this CONSENT AGREEMENT. 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. DOCTOR HELPHENSTINE further agrees to 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 CONSENT AGREEMENT.

5. DOCTOR HELPHENSTINE 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 CONSENT AGREEMENT. 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 the consent agreement becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the Board's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the BOARD's offices on or before the first day of every third month;
6. DOCTOR HELPHENSTINE shall appear in person for quarterly interviews before the BOARD or its designated representative, or as otherwise directed 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. (Example: The first quarterly appearance is scheduled for February, but based upon the doctor's serious personal illness he is permitted to delay appearance until April. The next appearance will still be scheduled for May, three months after the appearance as originally scheduled.) Although the BOARD will normally give DOCTOR HELPHENSTINE written notification of scheduled appearances, it is DOCTOR HELPHENSTINE's responsibility to know when personal appearances will occur. If he does not receive written notification from the BOARD by the end of the month in which the appearance should have occurred, DOCTOR HELPHENSTINE shall immediately submit to the BOARD a written request to be notified of his next scheduled appearance;

Drug & Alcohol Screens; Supervising Physician

7. DOCTOR HELPHENSTINE shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the BOARD. DOCTOR HELPHENSTINE 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 (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR HELPHENSTINE shall submit to the BOARD for its prior approval the name of a supervising physician to whom DOCTOR HELPHENSTINE shall submit the required urine specimens. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable

person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the BOARD of any positive screening results;

DOCTOR HELPHENSTINE shall ensure that the supervising physician provides quarterly reports to the BOARD, on forms approved or provided by the BOARD, 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 responsibilities;

In the event that the designated supervising physician becomes unable or unwilling to so serve, DOCTOR HELPHENSTINE must immediately notify the BOARD in writing, and make arrangements acceptable to the BOARD for another supervising physician as soon as practicable. DOCTOR HELPHENSTINE shall further ensure that the previously designated supervising physician also notifies the BOARD directly of the 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 DOCTOR HELPHENSTINE's quarterly declaration. It is DOCTOR HELPHENSTINE's responsibility to ensure that reports are timely submitted;

CONDITIONS FOR REINSTATEMENT

8. The BOARD shall not consider reinstatement of DOCTOR HELPHENSTINE's certificate to practice osteopathic medicine and surgery unless and until all of the following conditions are met:
 - a. DOCTOR HELPHENSTINE shall submit an application for reinstatement, accompanied by appropriate fees, if any;
 - b. DOCTOR HELPHENSTINE 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:
 - i. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that DOCTOR HELPHENSTINE has successfully completed any required inpatient treatment;

- ii. Evidence of continuing full compliance with an aftercare contract or consent agreement;
 - iii. Two written reports indicating that DOCTOR HELPHENSTINE's ability to practice, including his cognitive 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.
- c. DOCTOR HELPHENSTINE shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the BOARD or, if the BOARD and DOCTOR HELPHENSTINE are unable to agree on the terms of a written CONSENT AGREEMENT, then DOCTOR HELPHENSTINE further agrees to abide by any terms, conditions and limitations imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Ohio Revised Code.

Further, upon reinstatement of DOCTOR HELPHENSTINE's certificate to practice osteopathic medicine and surgery in this state, the BOARD shall require continued monitoring which shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by Board Order after a hearing conducted pursuant to Chapter 119. of the Revised Code and, upon termination of the consent agreement or Board Order, submission to the BOARD for at least two years of annual progress reports made under penalty of BOARD disciplinary action or criminal prosecution stating whether DOCTOR HELPHENSTINE has maintained sobriety.

9. In the event that DOCTOR HELPHENSTINE has not been engaged in the active practice of osteopathic medicine and surgery for a period in excess of two years prior to application for reinstatement, the BOARD may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of DOCTOR HELPHENSTINE's fitness to resume practice.

REQUIRED REPORTING BY LICENSEE

10. Within thirty (30) days of the effective date of this Agreement, DOCTOR HELPHENSTINE shall provide a copy of this CONSENT AGREEMENT by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds a license to practice. DOCTOR HELPHENSTINE further agrees to provide a copy of this CONSENT AGREEMENT by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for licensure or reinstatement of licensure. Further, DOCTOR HELPHENSTINE shall provide this BOARD with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt.

11. Within thirty (30) days of the effective date of this Agreement, DOCTOR HELPHENSTINE shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he is under contract to provide physician services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments.

The above described terms, conditions and limitations may be amended or terminated in writing at any time upon the agreement of both parties.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of THE STATE MEDICAL BOARD OF OHIO, DOCTOR HELPHENSTINE appears to have violated or breached any term or condition of this Agreement, THE STATE MEDICAL BOARD OF OHIO reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Agreement.

ACKNOWLEDGMENTS/LIABILITY RELEASE

DOCTOR HELPHENSTINE acknowledges that he has had an opportunity to ask questions concerning the terms of this Agreement and that all questions asked have been answered in a satisfactory manner.

Any action initiated by the BOARD based on alleged violations of this CONSENT AGREEMENT shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

DOCTOR HELPHENSTINE hereby releases THE STATE MEDICAL BOARD OF OHIO, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This CONSENT AGREEMENT shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code.

Further, this information may be reported to appropriate organizations, data banks and governmental bodies.

EFFECTIVE DATE

It is expressly understood that this CONSENT AGREEMENT is subject to ratification by the BOARD prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.

James C. Helphenstine D.O.
JAMES C. HELPHENSTINE, M.D.

Anand G. Garg
ANAND G. GARG, M.D.
Secretary

3-8-99
DATE

3-10-99
DATE

Eric J. Plinke, Esq. as his agent JCN
ERIC J. PLINKE, Esq.
Attorney for Dr. Helphenstine

Raymond J. Albert
RAYMOND J. ALBERT
Supervising Member

3-8-99
DATE

3/10/99
DATE

Anne B. Strait
ANNE B. STRAIT, ESQ.
Assistant Attorney General

3/10/99
DATE