



# State Medical Board of Ohio

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September 14, 2005

David Andrew Dougherty, D.O.  
1116 Washington Avenue  
Cuyahoga Falls, OH 44223

Dear Doctor Dougherty:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 14, 2005, 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 an original Notice of Appeal with the State Medical Board of Ohio and a copy of the Notice of Appeal with the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 7002 2410 0002 3141 4847  
RETURN RECEIPT REQUESTED

Cc: Eric J. Plinke, Esq.  
CERTIFIED MAIL NO. 7002 2410 0002 3141 4861  
RETURN RECEIPT REQUESTED

*Mailed 10-11-05*

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 September 14, 2005, 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 David Andrew Dougherty, 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.



\_\_\_\_\_  
Lance A. Talmage, M.D.  
Secretary

(SEAL)

\_\_\_\_\_  
September 14, 2005  
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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DAVID ANDREW DOUGHERTY, D.O. \*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on September 14, 2005.

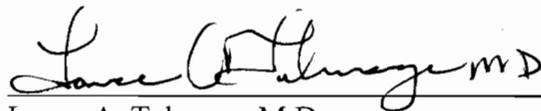
Upon the Report and Recommendation of R. Gregory Porter, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the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

It is hereby ORDERED that:

The certificate of David Andrew Dougherty, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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

(SEAL)



Lance A. Talmage, M.D.  
Secretary

September 14, 2005

Date

**REPORT AND RECOMMENDATION  
IN THE MATTER OF DAVID ANDREW DOUGHERTY, D.O.**

The Matter of David Andrew Dougherty, D.O., was heard by R. Gregory Porter, Esq., Hearing Examiner for the State Medical Board of Ohio, on July 22, 2005.

**INTRODUCTION**

I. Basis for Hearing

- A. In a Notice of Summary Suspension and Opportunity for Hearing dated June 8, 2005, the State Medical Board of Ohio [Board] notified David Andrew Dougherty, D.O., that, pursuant to Section 4731.22(G), Ohio Revised Code, the Board had adopted an Entry of Order summarily suspending Dr. Dougherty's certificate to practice osteopathic medicine and surgery in Ohio. The Board further advised that continued practice would be considered practicing without a certificate, in violation of Section 4731.43, Ohio Revised Code.

Moreover, the Board notified Dr. Dougherty that it had proposed to take disciplinary action against his certificate based upon allegations concerning his history of treatment for substance abuse, his relapse, and his violation of probationary terms, conditions, and limitations as provided in an April 10, 2002, Board Order.

The Board alleged that Dr. Dougherty's conduct constitutes "[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[; and/or] '[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. Dougherty of his right to request a hearing in this matter. (State's Exhibit 1A)

- B. By document received by the Board on July 8, 2005, Eric J. Plinke, Esq., requested a hearing on behalf of Dr. Dougherty. (State's Exhibit 1C)

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Tara L. Berrien, Assistant Attorney General.

- B. On behalf of the Respondent: Eric J. Plinke, Esq.

## **EVIDENCE EXAMINED**

### I. Testimony Heard

- A. Victoria Sanelli, M.D.
- B. Lori Gilbert, Esq.
- C. Kathleen Peterson, Esq.
- D. Angelo Kissos

### II. Exhibits Examined

#### A. Presented by the State

- 1. State's Exhibits 1A through 1K: Procedural exhibits.
- 2. State's Exhibit 2: Certified copies of documents maintained by the Board pertaining to Dr. Dougherty.
- 3. State's Exhibit 3: Copy of a urine screen report concerning a specimen submitted by Dr. Dougherty on March 28, 2005, and identified as specimen number 0453078603.
- 4. State's Exhibit 4A: July 13, 2005, Affidavit of Danielle C. Bickers, Compliance Officer.
- 5. State's Exhibit 4B: Copy of a May 6, 2005, letter to Ms. Bickers from Victoria L. Sanelli, M.D., Center for Akron Psychiatry, Inc.
- 6. State's Exhibit 4C: Copy of a May 27, 2005, letter to Ms. Bickers from Dr. Sanelli, and copies of two fax cover sheets.
- 7. State's Exhibit 5: Copy of a May 12, 2005, letter to Randall Daniels, LabCorp, from Dr. Sanelli, requesting that specimen number 0453078603 be rechecked for urine glucose and ethyl glucuronide [EtG].
- 8. State's Exhibit 6: Curriculum vitae of Dr. Sanelli.
- 9. State's Exhibit 7: Copy of a Report of Investigation from Angelo S. Kissos, Enforcement Investigator for the Board, concerning Dr. Dougherty.

B. Presented by the Respondent

Respondent's Substitute Exhibit A: Statement and Stipulation of David A. Dougherty, D.O.

**PROFFERED MATERIALS**

The following document was neither admitted to the hearing record nor considered by the Hearing Examiner, but is being sealed from public disclosure and held as proffered material:

State's Exhibit 8: Reprint of a newspaper article concerning Dr. Dougherty.

**PROCEDURAL MATTERS**

The hearing record in this matter was held open to give the Respondent an opportunity to submit a signed copy of his Statement and Stipulation. (See Hearing Transcript at 4-6, 71) On July 27, 2005, a signed copy was received in the mail, marked as Respondent's Substitute Exhibit A, and admitted to the hearing record. The hearing record closed on that date.

**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.

1. David Andrew Dougherty, D.O., obtained his degree in osteopathic medicine from the Ohio University College of Osteopathic Medicine in 1992. In 1997, Dr. Dougherty completed a residency in internal medicine and pediatrics at St. Thomas Medical Center and Children's Hospital in Akron, Ohio. In October 1997, Dr. Dougherty entered a group family practice, where he worked until August 2000. After leaving the practice group, Dr. Dougherty opened a private practice. (State's Exhibit [St. Ex.] 2 at 28)
2. On March 14, 2001, Dr. Dougherty entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based upon his violation of Sections 4731.22(B)(12), (B)(19), and (B)(26), Ohio Revised Code. In the Step I Consent Agreement, Dr. Dougherty made certain admissions, which included an admission that he had been diagnosed with alcohol dependence, opioid dependence, cannabis dependence, and major depression. Dr. Dougherty also admitted that, on or about May 24, 2000, he had arrived at work in a semi-inebriated state and that, on or about May 25, 2000, after he had discussed this matter with his employer, he had decided to enter treatment at the Caron Foundation. During his treatment at the Caron Foundation, Dr. Dougherty contacted the

Ohio Physicians Effectiveness Program [OPEP], and learned that the Caron Foundation was not a Board-approved treatment provider. On or about June 21, 2000, after completing twenty-eight days of inpatient treatment, Dr. Dougherty left the Caron Foundation in order to enter treatment with a provider approved by the Board. (St. Ex. 2 at 71)

Further, Dr. Dougherty admitted that, on or about June 23, 2000, he had begun treatment at St. Thomas Medical Center/Summa Health, a Board-approved treatment provider. Subsequently, on July 20, 2000, Dr. Dougherty completed twenty-eight days of inpatient treatment at that facility. (St. Ex. 2 at 71)

Moreover, Dr. Dougherty admitted that, prior to entering the Caron Foundation, he had drunk alcohol two to three times each week, having three to eight drinks each time; he had taken Protuss and hydrocodone samples from his office for his own use, taking 20 mg of hydrocodone twice each week; and he had self-medicated with 100 mg of Zoloft each day. (St. Ex. 2 at 71)

Finally, Dr. Dougherty agreed to certain specified terms, conditions, and limitations, including that his certificate to practice osteopathic medicine and surgery was suspended for an indefinite period of time, but not less than thirty days. On or about May 9, 2001, Dr. Dougherty entered into a Step II Consent Agreement with the Board, whereby his certificate to practice osteopathic medicine and surgery in the State of Ohio was reinstated, subject to certain probationary terms, conditions, and limitations for a period of five years. (St. Ex. 2 at 59-69; 72-78)

3. In a Notice of Summary Suspension and Opportunity for Hearing dated August 8, 2001, the Board notified Dr. Dougherty 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. Furthermore, the Board notified Dr. Dougherty that it had proposed to determine whether or not to limit, revoke, permanently revoke, or suspend his certificate; to refuse to issue or reinstate his certificate; or to reprimand him or place him on probation due to allegations that his conduct constituted any or all of the following:
  - “[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”;
  - “[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness,’ as that clause is used in Section 4731.22(B)(19), Ohio Revised Code”;
  - “[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of a 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”;

- “‘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 4731-15-01(A)(5), Ohio Administrative Code”; and/or,
- “[m]aking a false, fraudulent, deceptive, or misleading statement in 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.”

(St. Ex. 2 at 50-58)

4. On September 6, 2001, a written hearing request was submitted on behalf of Dr. Dougherty, and the matter was heard before a Hearing Examiner for the Board on February 4, 2001. On March 12, 2002, the Hearing Examiner issued a Report and Recommendation in the Matter of David A. Dougherty, D.O. The Report and Recommendation included the following Findings of Fact:
  3. Dr. Dougherty tested positive for cocaine during random urine screenings on June 8 and June 15, 2001, and positive for marijuana during random urine screenings on June 20 and June 26, 2001. All four screenings were confirmed positive by Gas Chromatography/Mass Spectrometry.
  4. During an office conference on June 21, 2001, Dr. Dougherty informed Board staff of his positive drug screenings. Dr. Dougherty had denied, however, any intentional use of cocaine to the staff members. Dr. Dougherty had speculated that he had been exposed to cocaine by smoking a cigarette provided to him by his motorcycle mechanic, and that, unbeknownst to Dr. Dougherty, the cigarette had been laced with cocaine. Dr. Dougherty also denied intentional and deliberate drug use to others involved in Dr. Dougherty’s monitoring process.
  5. In July 2001, the Board ordered Dr. Dougherty to submit to an examination at Shepherd Hill Hospital. [Dr. Dougherty was diagnosed] as being chemically dependent on alcohol, marijuana, opiates, and nicotine; and [was] found \* \* \* to have a history of cocaine abuse. [Dr. Dougherty was further diagnosed] as having a mood disorder, possibly substance induced.

(St. Ex. 2 at 26, 36-37)

5. On April 10, 2002, after amending the Hearing Examiner's Proposed Order to add a stayed, permanent revocation, the Board adopted the Hearing Examiner's Report and Recommendation as amended, and entered an Order that permanently revoked Dr. Dougherty's certificate to practice osteopathic medicine and surgery in the State of Ohio, stayed said permanent revocation, and suspended his certificate to practice osteopathic medicine and surgery for an indefinite period of time, but not less than eighteen months. The Order further provided conditions for reinstatement or restoration. Moreover, following reinstatement or restoration, Dr. Dougherty's certificate would be subject to probationary terms, conditions, and limitations for a period of at least five years. (St. Ex. 2 at 14-49) Finally, these probationary terms, conditions, and limitations included the following:

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

\* \* \*

3. **Appearances:** Dr. Dougherty shall appear in person for quarterly interviews before the Board or its designated representative, or as otherwise directed by the Board. \* \* \*

\* \* \*

5. **Abstention from Alcohol:** Dr. Dougherty shall abstain completely from the use of alcohol, marijuana, or cocaine.

\* \* \*

8. **Random Drug/Alcohol Screening; Supervising Physician:** Dr. Dougherty shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. \* \* \*

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

\* \* \*

14. **Releases:** Dr. Dougherty shall provide authorization, through appropriate written consent forms, for disclosure of evaluated

reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Dougherty's chemical dependency, psychiatric, or related conditions, or for purposes of complying with this Order[.] \* \* \*

(St. Ex. 2 at 19-23)

6. On or about June 10, 2004, the Board reinstated Dr. Dougherty's certificate to practice osteopathic medicine and surgery in the State of Ohio, subject to the probationary terms, conditions, and limitations as set forth in the April 2002 Board Order. (St. Ex. 2 at 2)
7. Victoria L. Sanelli, M.D., testified on behalf of the State. Dr. Sanelli obtained her medical degree in 1996 from the Northeastern Ohio University College of Medicine [NEOUCOM]. From 1996 through 1998, Dr. Sanelli participated in a family medicine residency program at Summa Health System in Akron, Ohio. Subsequently, from 1998 through 2001, Dr. Sanelli participated in a psychiatry residency program at NEOUCOM. Dr. Sanelli was certified by the American Board of Psychiatry and Neurology in June 2003, and by the American Society of Addiction Medicine in December 2004. (St. Ex. 6; Hearing Transcript [Tr.] at 12-13)

Dr. Sanelli is the Associate Medical Director at the Ignatia Hall Drug/Alcohol Treatment Program at St. Thomas Hospital, and Medical Director of the Ignatia Hall Intensive Outpatient Program at that same institution. She is also a Clinical Assistant Professor of Psychiatry at NEOUCOM. Furthermore, she is a Psychiatric Consultant for the Interval Brotherhood Home, and at the Gatehouse of Summit County. Moreover, Dr. Sanelli has a private practice in general adult psychiatry with a special interest in addiction. Finally, Dr. Sanelli holds privileges at Summa Health System and Akron General Medical Center. (St. Ex. 6; Tr. at 12-13)

8. Dr. Sanelli testified that she is familiar with Dr. Dougherty and with his history of dependency. She stated that she had first met Dr. Dougherty in November 2002 when Dr. Dougherty was being treated at St. Thomas Hospital for alcohol and drug use. Dr. Sanelli further testified that in June 2004 she had become Dr. Dougherty's supervising physician for the Board. Dr. Sanelli's duties as Dr. Dougherty's supervising physician include calling him at random, weekly intervals to submit to urine screens, and meeting with him on a periodic basis. Dr. Sanelli testified that she had contacted Dr. Dougherty for his random, weekly urine screens via Dr. Dougherty's cell phone, and that she had never had problems contacting him. (Tr. at 13-14, 17-18)
9. With regard to Dr. Dougherty's random weekly urine screens, Dr. Sanelli testified that the urine samples were sent to a company called LabCorp<sup>1</sup> for testing. LabCorp tested the

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<sup>1</sup> Note that there is evidently some confusion concerning a business relationship between LabCorp and AccuFacts, one being the parent company of the other. That issue is not relevant to the hearing, and the names of the companies are used interchangeably.

sample and then sent the test results to Dr. Sanelli. However, Dr. Sanelli testified that, unbeknownst to her, LabCorp had also been sending the test results to Dr. Dougherty. She stated that she did not discover this until around the end of March 2005. (Tr. at 15-16)

10. A urine toxicology report concerning a specimen submitted by Dr. Dougherty on March 28, 2005, indicates a positive result for urine alcohol. Dr. Sanelli testified that she did not receive that report until April 20, 2005. (St. Ex. 3; Tr. at 19-20) Further, Dr. Sanelli testified that, when she had spoken with Dr. Dougherty on April 20, 2005, concerning the positive urine screen, he informed her that,

he had a very strong family history for adult onset diabetes. The day before this urine drug screen was Easter, and he ate a lot the day before, so he was not surprised that he was positive, perhaps, for glucose, but he was very surprised that it was positive for alcohol. So he was afraid he was prediabetic or diabetic.

(Tr. at 21) In response, Dr. Sanelli asked Dr. Dougherty to submit to a fasting comprehensive metabolic panel. She also asked him to submit another urine sample to check for glucose in the urine. Moreover, Dr. Sanelli testified that, on or about April 21, 2005, she had contacted LabCorp and requested that Dr. Dougherty's March 28, 2005, urine sample be checked for glucose. (Tr. at 20-21)

Dr. Sanelli testified that the glucose results from Dr. Dougherty's comprehensive metabolic panel had been 170 or 171, which is high, the normal being up to 115. Dr. Sanelli further testified that Dr. Dougherty's urine glucose was "plus one," which indicated the presence of glucose in the urine. (Tr. at 23)

Dr. Sanelli explained that, should glucose be found in an individual's urine, it is an indication that the individual is either prediabetic or diabetic. Moreover, Dr. Sanelli testified that, should glucose be found in a urine sample that had tested positive for alcohol, and had the urine sat out for a period of time, the glucose could have fermented and been converted to alcohol, thus yielding a false positive. However, Dr. Sanelli testified that, after checking with LabCorp, she learned that LabCorp had received the sample on March 29, 2005; tested it that day; and obtained the results the following day on March 30, 2005. Furthermore, Dr. Sanelli testified that she had learned from a medical review officer with whom she works that the fermentation process for glucose in the urine would "take days." (Tr. at 21-23)

11. Dr. Sanelli testified that she had waited to receive the results of the additional lab tests before contacting the Board. She further testified that she had repeatedly contacted LabCorp in order to obtain the results of their subsequent tests, but received no response. Dr. Sanelli indicated that Dr. Dougherty had been very concerned, and Dr. Sanelli assured him that she would write to the Board and let the Board know "what [they] were thinking and what might be going on." (Tr. at 24)

By letter dated May 6, 2005, to Danielle Bickers, Compliance Officer for the Board, Dr. Sanelli notified the Board concerning Dr. Dougherty's positive urine screen. Dr. Sanelli also expressed concern that the result could be a false positive because alcohol had not been a problem for Dr. Dougherty in the past, and because Dr. Dougherty had a strong family history of adult onset diabetes. Dr. Sanelli described the results of the fasting comprehensive metabolic panel and urine glucose tests, and noted that she was having difficulty obtaining test results from LabCorp. Dr. Sanelli further reported concerning the experience of one of her colleagues "in which a urine sample sat out for several hours and the glucose fermented to alcohol—producing a false positive on a Urine Drug Screen." She also advised that she had added a Breathalyzer test to Dr. Dougherty's random weekly urine screens. Finally, Dr. Sanelli expressed her belief that the positive result had been a false positive—that she had worked with Dr. Dougherty for three years, was familiar with his recovery history, and believed that Dr. Dougherty had been maintaining sobriety. (St. Ex. 4B; Tr. at 25)

Dr. Sanelli testified that her next appointment with Dr. Dougherty had been on May 10, 2005. Dr. Sanelli noted that Dr. Dougherty had appeared for that appointment, during which a urine sample was taken and a Breathalyzer test was administered, and that neither test yielded a positive result. (Tr. at 25-26)

12. Dr. Sanelli testified that, on May 12, 2005, she had been contacted by Kathleen Peterson, an Enforcement Attorney for the Board. Dr. Sanelli stated that Ms. Peterson had suggested that Dr. Sanelli order an ethyl glucuronide [EtG] test. Dr. Sanelli further testified that she had been unfamiliar with that test until speaking with Ms. Peterson, but learned that it would only yield a positive result if alcohol had actually been consumed. There would be no false positives resulting from fermentation. Dr. Sanelli contacted LabCorp, who informed her that the March 28, 2005, sample would be suitable for EtG testing. Dr. Sanelli immediately faxed a letter to LabCorp ordering urine glucose and EtG tests on Dr. Dougherty's March 28, 2005, urine sample, and requested that they forward the results to her as soon as possible. (St. Ex. 5; Tr. at 26-20)

Dr. Sanelli testified that she had been leaving for vacation on May 12, 2005, and that she did not have a chance to call Dr. Dougherty concerning the EtG test until May 25, 2005. When she called him, he indicated that he had not heard of EtG testing. She explained to him what she knew about the test and that it would not yield any false positives.

Dr. Sanelli testified that Dr. Dougherty had seemed nervous and asked, "[W]hat if it is positive and I didn't drink?" Dr. Sanelli responded that, if the result is positive, it meant that he drank. (Tr. at 28-30)

Dr. Sanelli testified that she has never received the results of the EtG test. She further testified that she had learned on May 25, 2005, that she had been "removed as a contact." Dr. Sanelli testified that LabCorp had advised her that they "would not be sending the results to me and that they couldn't give me any information." Dr. Sanelli stated that she had immediately called Dr. Dougherty, and that Dr. Dougherty apologized to her for taking

her off the contact list. She testified that Dr. Dougherty explained, “I’m really stressed about this, I freaked, I’ll take care of it, I’ll fix it.” (Tr. at 29-30)

13. Dr. Sanelli testified that, on May 25, 2005, the same day that she had discussed with Dr. Dougherty her removal as a contact, she asked Dr. Dougherty to come in for a random urine screen and Breathalyzer test. She testified that Dr. Dougherty responded that he had patients to take care of until around 11:30 a.m., and that she had told him to come to her hospital at noon. However, Dr. Sanelli testified that Dr. Dougherty had not appeared. Further, Dr. Dougherty testified that she had called the hospital lab the following morning, and was informed that Dr. Dougherty had not appeared. Moreover, later that day, Dr. Sanelli attempted to contact Dr. Dougherty “at least three times on his cell phone,” but he did not answer and it did not go into voicemail. Furthermore, Dr. Sanelli indicated that, up to that time, Dr. Dougherty had always answered her calls. Finally, Dr. Sanelli testified that she has not seen or spoken with Dr. Dougherty since May 25, 2005. (Tr. at 30-32)

Dr. Sanelli testified that, on May 26, 2005, after Dr. Dougherty had failed to appear and submit a urine specimen and take a Breathalyzer test, Dr. Sanelli contacted Board staff. She advised that she was convinced that Dr. Dougherty had relapsed, and that he was no longer cooperating with her. (Tr. at 33)

Moreover, on May 27, 2005, Dr. Sanelli sent a letter to Ms. Bickers describing the events that followed Dr. Dougherty’s positive urine screen, including Dr. Sanelli’s removal as a contact by Dr. Dougherty, and his failure to comply with her request on May 25, 2005, that he submit to a urine drug screen and Breathalyzer test. Furthermore, Dr. Sanelli stated that she had contacted AccuFacts to see if Dr. Dougherty had contacted them to reinstate her as a contact. AccuFacts replied that Dr. Dougherty had indeed contacted them, but only to close his account. (St. Ex. 4C; Tr. at 33-34)

14. Dr. Sanelli testified that, should Dr. Dougherty be allowed to practice again, she would not be willing to serve as his supervising physician. (Tr. at 34-35)
15. Kathleen S. Peterson, Esq., testified that she is an Enforcement Attorney for the Board, and that her duties include “supervising and coordinating investigations into complaints against applicants and licensees of the State Medical Board, as well as compiling evidence” needed to prove violations of the Board’s statutes and regulations. Ms. Peterson further testified that she is familiar with Dr. Dougherty’s case, and that she had been assigned to his case in mid-May 2005. (Tr. at 39-40)

Ms. Peterson confirmed that she had contacted Dr. Sanelli on May 12, 2005, concerning Dr. Sanelli’s May 6, 2005, letter. Ms. Peterson indicated that Dr. Sanelli had been concerned that Dr. Dougherty’s positive urine screen result could have been caused by fermentation. Ms. Peterson testified that she had recommended to Dr. Sanelli that Dr. Sanelli request that the urine specimen be tested for EtG, which would not yield a false positive from fermentation. (St. Ex. 4B; Tr. at 40-42)

16. Ms. Peterson further testified that, after having seen Dr. Sanelli's May 27, 2005, letter, and learning that Dr. Dougherty had refused to submit a urine sample as Dr. Sanelli had asked, Ms. Peterson requested that an investigator be assigned to make contact with Dr. Dougherty and obtain a urine specimen. Ms. Peterson also requested that the investigator obtain a release to enable the Board to obtain the records from AccuFacts concerning the EtG test. (Tr. at 43-44)
17. Angelo S. Kissos testified that he is an Enforcement Investigator for the Board. Mr. Kissos further testified that, on May 27, 2005, he had been assigned to contact Dr. Dougherty in person and obtain a urine specimen for testing. Moreover, Mr. Kissos stated that he had been instructed to request that Dr. Dougherty sign a release concerning the results of a previous urine screen. (St. Ex. 7; Tr. at 52-55)

Mr. Kissos testified that on Friday, May 27, 2005, shortly after 11:00 a.m., he had arrived at Dr. Dougherty's office in Cuyahoga Falls. Mr. Kissos entered Dr. Dougherty's office, and encountered a young woman loading boxes. Mr. Kissos identified himself to the woman, gave her his business card, and asked to speak to Dr. Dougherty. The woman indicated that Dr. Dougherty was not present, that he was no longer going to be in practice, and that he was closing his office. She further indicated to Mr. Kissos that she was not certain what had happened, but that Dr. Dougherty had instructed her a couple days earlier that her services would no longer be required. She further stated that Dr. Dougherty had told her that he would pay her to box up medical records and notify patients. Mr. Kissos thanked the woman and left. (St. Ex. 7; Tr. at 55-56)

Mr. Kissos testified that, after leaving Dr. Dougherty's office, he had called Ms. Bickers and advised her what he had learned. Ms. Bickers provided Mr. Kissos with Dr. Dougherty's home address, which was very close to his office, and Mr. Kissos proceeded to that location. Upon arriving, Mr. Kissos found Dr. Dougherty working in his garage. Mr. Kissos identified himself and gave Dr. Dougherty his card. Mr. Kissos explained the purpose of his visit, that he was there to obtain a urine sample from Dr. Dougherty and to obtain Dr. Dougherty's signature on a release. Mr. Kissos stated that Dr. Dougherty had replied that he was through practicing medicine in the State of Ohio. Mr. Kissos asked him to explain, and Dr. Dougherty stated that he no longer intended to practice medicine in Ohio, that he had mailed his medical license to the Board, and that he would not be willing to submit to anything further. Mr. Kissos informed Dr. Dougherty that he did not believe that the process of surrendering a license was that easy. Mr. Kissos then called Board staff, and was advised to speak to Lori S. Gilbert, an Assistant Executive Director for the Board. (St. Ex. 7; Tr. at 56-59)

Mr. Kissos telephoned Ms. Gilbert and explained to her the situation. After some discussion, Ms. Gilbert spoke directly to Dr. Dougherty. Mr. Kissos testified that their conversation had lasted around five to eight minutes. Dr. Dougherty then handed the phone back to Mr. Kissos, and Ms. Gilbert advised Mr. Kissos that she had explained everything to

Dr. Dougherty, and that it would be okay for Mr. Kissos to leave. Mr. Kissos left without having obtained a urine sample or Dr. Dougherty's signature on a release. (St. Ex. 7; Tr. at 59-61)

18. When asked to describe Dr. Dougherty's appearance and demeanor, Mr. Kissos replied that Dr. Dougherty had seemed fine. Mr. Kissos indicated that he had not suspected Dr. Dougherty of being impaired. Moreover, Mr. Kissos stated that he had been a policeman for 21 years, and that he can spot someone who is impaired. In addition, Mr. Kissos testified that, although Dr. Dougherty had been very firm in his decision not to submit to anything further from the Board, he had also been very polite. (St. Ex. 7; Tr. at 61-62)
19. Lori S. Gilbert, Esq., testified that she is an Assistant Executive Director for the Board, and that she has worked for the Board since 1994. Ms. Gilbert testified that she is familiar with Dr. Dougherty's case, and that she had spoken with him on the telephone on May 27, 2005. On that date, Ms. Gilbert received a call from Mr. Kissos. Mr. Kissos informed her that he was in a meeting with Dr. Dougherty and requested that Dr. Dougherty provide a urine specimen. Ms. Gilbert testified that Mr. Kissos had advised that Dr. Dougherty was not willing to submit a urine specimen, and that Dr. Dougherty had informed Mr. Kissos that he had mailed his medical license to the Board and was leaving the State. Ms. Gilbert testified that Mr. Kissos handed his phone to Dr. Dougherty. (Tr. at 36-37)  
  
Ms. Gilbert testified that, after Dr. Dougherty got on the phone, he told her that he had mailed his license to the Board. She informed Dr. Dougherty that a physician cannot unilaterally surrender his/her license, and that the Board must first accept that surrender. Ms. Gilbert further informed Dr. Dougherty that "we only had the authority to accept a permanent surrender of licensure with admissions, and he told me he wasn't willing to do that[.]" She further informed Dr. Dougherty that, consequently, he had not officially surrendered his license, and that he remained subject to the terms of the Board's Order. Moreover, Ms. Gilbert informed Dr. Dougherty that one of the terms of the Board's Order was that he provide a urine specimen on request. Finally, Ms. Gilbert testified that Dr. Dougherty replied that he did not care "because he was not going to be practicing medicine in Ohio." (Tr. at 37-38)
20. Ms. Gilbert noted that Dr. Dougherty's certificate had been received in the Board's offices not long after her conversation with him. (Tr. at 38-39)
21. In a July 13, 2005, Affidavit, Ms. Bickers stated that, pursuant to paragraph C.3 of the April 2002 Board Order, Dr. Dougherty had been scheduled to appear for a quarterly interview on June 6, 2005. Ms. Bickers further stated that Dr. Dougherty had failed to appear, and had not telephoned the Board or sent any written correspondence concerning his failure to appear for that interview. (St. Ex. 4A)

22. Ms. Peterson testified that, after Mr. Kissos met with Dr. Dougherty, she documented the events that had transpired. Ms. Peterson prepared a document outlining the information and evidence that Board staff had assembled, and submitted that document to the Secretary and Supervising Member for the purpose of determining whether it would be appropriate to suspend Dr. Dougherty's certificate. Moreover, Ms. Peterson testified that, on June 6, 2005, she had met with the Secretary<sup>2</sup> and Supervising Member to discuss Dr. Dougherty. Moreover, Ms. Peterson testified that the Secretary and the Supervising Member had been provided with relevant documents, including Dr. Dougherty's earlier consent agreements; the April 2002 Board Order; reports from Dr. Sanelli; a written synopsis of the May 25, 2005, interview of Dr. Dougherty conducted by Mr. Kissos; and the document that Ms. Peterson had prepared. Furthermore, Ms. Peterson testified that, during that meeting, she had inquired of the Secretary and Supervising Member if they had read the documents. Both indicated to her that they had. (St. Ex. 1A; Tr. at 45-48)

Ms. Peterson testified that, after she had ensured that both the Secretary and the Supervising Member had reviewed the necessary documents, she provided them with additional information, which included: Dr. Dougherty's failure to appear for a probationary conference that had been scheduled for earlier that day, and his failure to call to either cancel the appointment or reschedule it; Ms. Gilbert's telephone conversation with Dr. Dougherty; the receipt by the Board of Dr. Dougherty's wall certificate and wallet card in the mail; information that Dr. Dougherty had closed his office; and a call from a patient who said that Dr. Dougherty had advised the patient that he had had to close his office because the Board "made him." (Tr. at 40-49)

Ms. Peterson testified that the Secretary and the Supervising Member determined that there existed sufficient evidence that Dr. Dougherty had relapsed and, as a result, was a danger to the public. Ms. Peterson further testified that, even though Dr. Dougherty had returned his certificate to the Board and closed his practice, he remained a danger to the public. Ms. Peterson explained that he would be able to practice in locum tenens positions, and that claiming that he had closed his office was not sufficient to protect the public. (Tr. at 49-51)

23. In a document entitled Statement and Stipulation of David A. Dougherty, D.O., Dr. Dougherty stated as follows,

I am writing this statement in response to the State Medical Board's charges against me as described in the June 8, 2005, Notice of Opportunity for Hearing and in lieu of personally appearing at the hearing and before the Board. I admit to the charges contained in the Notice of Opportunity for Hearing and I acknowledge and apologize for my relapse and noncompliance. I have complied with the terms of the Summary Suspension and have ceased practice. I understand that the Board will need to discipline me and I will

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<sup>2</sup> Note that the Secretary participated in the meeting via speaker telephone. (Tr. at 45)

accept a revocation of my license. I do not anticipate attempting to return to practice; however, I would prefer that that option not be permanently closed and that the Board be permitted to consider my petition in the future if circumstances change. Therefore, my only request is that the revocation not be made permanent.

(Respondent's Substitute Exhibit A)

### **FINDINGS OF FACT**

1. On or about March 14, 2001, David Andrew Dougherty, D.O., entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based upon his violation of Sections 4731.22(B)(12), (B)(19), and (B)(26), Ohio Revised Code. In the Step I Consent Agreement, Dr. Dougherty made certain admissions, which included an admission that he had been diagnosed with alcohol dependence, opioid dependence, cannabis dependence, and major depression. Dr. Dougherty also admitted that, on or about May 24, 2000, he had arrived at work in a semi-inebriated state and that, on or about May 25, 2000, after he had discussed this matter with his employer, he decided to enter treatment at the Caron Foundation. During his treatment at the Caron Foundation, Dr. Dougherty contacted the Ohio Physicians Effectiveness Program [OPEP], and learned that the Caron Foundation was not a Board-approved treatment provider. On or about June 21, 2000, Dr. Dougherty left the Caron Foundation in order to enter treatment with a provider approved by the Board.

Further, Dr. Dougherty admitted that, on or about June 23, 2000, he had begun treatment at St. Thomas Medical Center/Summa Health, a Board-approved treatment provider. Subsequently, on July 20, 2000, Dr. Dougherty completed twenty-eight days of inpatient treatment at that facility.

Moreover, Dr. Dougherty admitted that, prior to entering treatment, he had drunk alcohol two to three times each week, having three to eight drinks each time; had taken Protuss and hydrocodone samples from his office for his own use, taking 20 mg of hydrocodone twice each week; and had self-medicated with 100 mg of Zoloft each day.

Finally, Dr. Dougherty agreed to certain specified terms, conditions, and limitations, including that his certificate to practice osteopathic medicine and surgery would be suspended for an indefinite period of time, but not less than thirty days. On or about May 9, 2001, Dr. Dougherty entered into a Step II Consent Agreement with the Board, whereby his certificate to practice osteopathic medicine and surgery in the State of Ohio was reinstated, subject to certain probationary terms, conditions, and limitations for a period of five years.

2. In a Notice of Summary Suspension and Opportunity for Hearing dated August 8, 2001, the Board notified Dr. Dougherty 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. Furthermore, the Board notified Dr. Dougherty that it had proposed to determine whether or not to limit, revoke, permanently revoke, or suspend his certificate; refuse to issue or reinstate his certificate; or to reprimand him or place him on probation due to allegations that his acts, conduct, and/or omissions, individually and/or collectively, constituted any or all of the following:

- “[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”;
- “[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness,’ as that clause is used in Section 4731.22(B)(19), Ohio Revised Code”;
- “[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of a 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”;
- “‘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 4731-15-01(A)(5), Ohio Administrative Code”;
- “‘[m]aking a false, fraudulent, deceptive, or misleading statement in 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.”

Moreover, on September 6, 2001, a written hearing request was submitted on behalf of Dr. Dougherty, and the matter was heard before a Hearing Examiner for the Board on February 4, 2001. On March 12, 2002, the Hearing Examiner issued a Report and Recommendation in the Matter of David A. Dougherty, D.O. The Report and Recommendation included the following Findings of Fact:

3. Dr. Dougherty tested positive for cocaine during random urine screenings on June 8 and June 15, 2001, and positive for marijuana during random urine screenings on June 20 and June 26, 2001. All four screenings were confirmed positive by Gas Chromatography/Mass Spectrometry.
4. During an office conference on June 21, 2001, Dr. Dougherty informed Board staff of his positive drug screenings. Dr. Dougherty had denied,

however, any intentional use of cocaine to the staff members. Dr. Dougherty had speculated that he had been exposed to cocaine by smoking a cigarette provided to him by his motorcycle mechanic, and that, unbeknownst to Dr. Dougherty, the cigarette had been laced with cocaine. Dr. Dougherty also denied intentional and deliberate drug use to others involved in Dr. Dougherty's monitoring process.

5. In July 2001, the Board ordered Dr. Dougherty to submit to an examination at Shepherd Hill Hospital. [Dr. Dougherty was diagnosed] as being chemically dependent on alcohol, marijuana, opiates, and nicotine; and [was] found \* \* \* to have a history of cocaine abuse. [Dr. Dougherty was further diagnosed] as having a mood disorder, possibly substance induced.
3. On April 10, 2002, after amending the Hearing Examiner's 27 to add a stayed, permanent revocation, the Board adopted the Hearing Examiner's Report and Recommendation as amended. The Board entered an Order that permanently revoked Dr. Dougherty's certificate to practice osteopathic medicine and surgery in the State of Ohio, stayed said permanent revocation, and suspended his certificate to practice osteopathic medicine and surgery for an indefinite period of time, but not less than eighteen months. The Order further provided conditions for reinstatement or restoration. Moreover, following reinstatement or restoration, Dr. Dougherty's certificate would be subject to probationary terms, conditions, and limitations for a period of at least five years. Finally, these probationary terms, conditions, and limitations included the following:

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

\* \* \*

3. **Appearances:** Dr. Dougherty shall appear in person for quarterly interviews before the Board or its designated representative, or as otherwise directed by the Board. \* \* \*

\* \* \*

5. **Abstention from Alcohol:** Dr. Dougherty shall abstain completely from the use of alcohol, marijuana, or cocaine.

\* \* \*

8. **Random Drug/Alcohol Screening; Supervising Physician:**  
Dr. Dougherty shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. \* \* \*
9. **Provision of Blood or Urine for Screening without Prior Notice:** Dr. Dougherty shall submit blood and/or urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Dougherty's expense.

\* \* \*

14. **Releases:** Dr. Dougherty shall provide authorization, through appropriate written consent forms, for disclosure of evaluated reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Dougherty's chemical dependency, psychiatric, or related conditions, or for purposes of complying with this Order[.] \* \* \*
4. On or about June 10, 2004, the Board reinstated Dr. Dougherty's certificate to practice osteopathic medicine and surgery in the State of Ohio, subject to specified probationary terms, conditions, and limitations as set forth in the April 2002 Board Order.
    - a. Despite the requirements of paragraph C.3 of the 2002 Board Order, on June 6, 2005, Dr. Dougherty failed to appear for his scheduled, quarterly interview with the Supervising Member of the Board.
    - b. Despite the requirements of paragraph C.5 of the 2002 Board Order, a urine specimen that Dr. Dougherty provided on March 28, 2005, tested positive for the presence of alcohol. Further, after Dr. Dougherty's supervising physician had, on or about May 12, 2005, requested that AccuFacts, Inc., perform an ethyl glucuronide (EtG) test on that sample, Dr. Dougherty revoked his authorization allowing AccuFacts, Inc., to disclose the results of the EtG test to his supervising physician.
    - c. On May 25, 2005, Dr. Dougherty's supervising physician contacted him and advised him to appear at her office to provide a urine specimen for his weekly urine screening. Despite the requirements of paragraph C.8 of the 2002 Board Order, Dr. Dougherty failed to provide a urine specimen to be screened for drugs and alcohol.
    - d. Despite the requirements of paragraph C.9 of the 2002 Board Order, on May 27, 2005, Dr. Dougherty refused to supply a urine specimen as requested by a Board investigator.

- e. Despite the requirements of Paragraph C.14 of the 2002 Board Order, on May 27, 2005, Dr. Dougherty refused to provide a Board investigator with authorization for Accufacts, Inc., to disclose to the Board the results of the EtG test on the urine specimen that Dr. Dougherty provided on or about March 28, 2005.
5. Section 4731.22(B)(26), Ohio Revised Code, provides that if the Board determines that an individual's ability to practice is impaired, the Board shall suspend the individual's certificate and, as a condition for continued, reinstated, or renewed certification to practice, shall require the individual to submit to treatment. In addition, before being eligible to apply for reinstatement, the individual must demonstrate to the Board the ability to resume practice in compliance with acceptable and prevailing standards of care, including completing required treatment, providing evidence of compliance with an aftercare contract or written consent agreement, and providing written reports indicating that the individual's ability to practice has been assessed by individuals or providers approved by the Board and that the individual has been found capable of practicing according to acceptable and prevailing standards of care.

Further, Rule 4731-16-02(B)(3), Ohio Administrative Code, provides that, if an examination discloses impairment, or if the Board has other reliable, substantial and probative evidence demonstrating impairment, the Board shall initiate proceedings to suspend the licensee, and may issue an order of summary suspension as provided in Section 4731.22(G), Ohio Revised Code.

### CONCLUSIONS OF LAW

1. The conduct of David Andrew Dougherty, D.O., as set forth in Findings of Fact 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.
2. The conduct of Dr. Dougherty as set forth in Findings of Fact 1 through 4 constitutes "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

\* \* \* \* \*

The evidence clearly demonstrates that Dr. Dougherty suffers from a severe case of impairment. It also demonstrates that the Board has made previous attempts to assist Dr. Dougherty in his efforts to recover. Further, the evidence indicates that, following an earlier hearing concerning Dr. Dougherty's impairment along with other issues, the Board was presented with a Proposed Order that provided for suspension, requirements for reinstatement or restoration, and probation.

The Board amended that Proposed Order to add a stayed permanent revocation, and adopted that as its final Order.

In the present case, Dr. Dougherty ceased to cooperate with the Board after learning that his March 28, 2005, urine sample had tested positive for alcohol. Then, without telling his supervising physician, he withdrew his authorization for her to obtain test results. When she learned what had occurred, Dr. Dougherty indicated that he would "fix it," but never did. Further, Dr. Dougherty failed to submit to a urine drug screen as requested by his supervising physician, ceased answering calls from his supervising physician, declined to provide a Board investigator with a urine sample for testing or with authorization to obtain test results, failed to appear for a scheduled office conference and failed to contact the Board concerning that missed appearance. It should also be noted that, sometime during this period, Dr. Dougherty voluntarily ceased practicing.

Dr. Dougherty's conduct in the present case, standing alone, sufficiently justifies an order of revocation or permanent revocation. However, the Board's addition of a stayed permanent revocation to a previous Proposed Order indicates that the Board had intended that no further violations would be tolerated. Accordingly, the Proposed Order recommends an order of permanent revocation.

### **PROPOSED ORDER**

It is hereby ORDERED that:

The certificate of David Andrew Dougherty, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

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, Esq.", written over a horizontal line.

R. Gregory Porter, Esq.  
Hearing Examiner



# State Medical Board of Ohio

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## EXCERPT FROM THE DRAFT MINUTES OF SEPTEMBER 14, 2005

### REPORTS AND RECOMMENDATIONS

Dr. Davidson announced that the Board would now consider the findings and orders appearing on the Board's agenda. She asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: David Andrew Dougherty, D.O.; John Paul Hanyak, M.D.; and Philip F. Myers, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Saxena	- aye
	Dr. Steinbergh	- aye
	Dr. Davidson	- aye

Dr. Davidson 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. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Robbins	- aye
	Dr. Saxena	- aye

Dr. Steinbergh - aye  
Dr. Davidson - aye

Dr. Davidson 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. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

Dr. Davidson 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.

DAVID ANDREW DOUGHERTY, D.O.

Dr. Davidson directed the Board's attention to the matter of Dr. Dougherty. She advised that no objections were filed to Hearing Examiner Porter's Report and Recommendation.

Dr. Davidson advised that Assistant Attorney General Berrien has filed a motion requesting that the Board find that the Secretary and Supervising Member followed the proper procedures and correctly decided, based upon the facts available to them at the time, that there was clear and convincing evidence that Dr. Dougherty's violations of his Board Order and habitual or excessive use or abuse of substances prevented him from practicing according to acceptable, prevailing standards and, therefore, his continued practice of medicine constituted a danger of immediate and serious harm to the public.

**DR. STEINBERGH MOVED TO AMEND THE FINDINGS OF FACT BY ADDING FINDINGS THAT:**

- 1. THE SECRETARY AND SUPERVISING MEMBER, AT THE TIME THEY MADE THE RECOMMENDATION TO SUMMARILY SUSPEND THE LICENSE OF DR. DOUGHERTY, HAD CLEAR AND CONVINCING EVIDENCE THAT DR. DOUGHERTY HAD VIOLATED THE TERMS OF THE BOARD'S ORDER OF APRIL 10, 2002, AND,**
- 2. THEREFORE, HIS CONTINUED PRACTICE OF MEDICINE CONSTITUTED A DANGER OF IMMEDIATE AND SERIOUS HARM TO THE PUBLIC**

**MR. BROWNING SECONDED THE MOTION.** A vote was taken:

Vote: Mr. Albert - abstain  
Dr. Egner - aye  
Dr. Talmage - abstain

Dr. Varyani	- aye
Dr. Buchan	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Saxena	- aye
Dr. Steinbergh	- aye
Dr. Davidson	- aye

The motion carried.

**MR. BROWNING MOVED TO APPROVE AND CONFIRM MR. PORTER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF DAVID ANDREW DOUGHERTY, D.O. DR. KUMAR SECONDED THE MOTION.**

Dr. Steinbergh noted that Dr. Dougherty has been a chemically dependent practitioner with several relapses. The last time he relapsed, the Board imposed a stayed permanent revocation to stress that another relapse would be a very serious matter. Dr. Dougherty did subsequently relapse, resulting in the summary suspension of his license.

Dr. Steinbergh stated that she supports the Proposed Order of permanent revocation in this case because she doesn't feel that the Board will be able to monitor Dr. Dougherty appropriately. She added that she thinks that Dr. Dougherty understands that he won't be practicing medicine in the future.

Dr. Saxena agreed with Dr. Steinbergh.

Dr. Buchan commented that he found this case to be another personal tragedy to review. He noted that Dr. Dougherty graduated from medical school in 1992, his residency in 1997, and he's just never been able to hold it together. Dr. Buchan stated that he feels that the Board has no recourse but to do exactly what the Report and Recommendation suggests; that is, to permanently revoke Dr. Dougherty's license.

Dr. Kumar stated that he agrees with the Order as proposed. He noted that the Board has been compassionate with Dr. Dougherty, but that only goes so far. Dr. Kumar commented that Dr. Dougherty not only hid things from the Board, but he tried to hide things from his supervising physician, and he thought he would never get caught. When the method of urine testing was changed, things fell apart for Dr. Dougherty. Dr. Kumar stated that he doesn't think that Dr. Dougherty will be rehabilitated, and for that reason, he supports permanent revocation.

Mr. Browning stated that, from a consumer perspective, for all the same reasons, this adds up to permanent revocation.

A vote was taken on Mr. Browning's motion to approve and confirm:

Vote:

Mr. Albert	- abstain
Dr. Egner	- aye
Dr. Talmage	- abstain
Dr. Varyani	- aye
Dr. Buchan	- aye
Dr. Kumar	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Robbins	- aye
Dr. Saxena	- aye
Dr. Steinbergh	- aye
Dr. Davidson	- aye

The motion carried



# State Medical Board of Ohio

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June 8, 2005

David Andrew Dougherty, D.O.  
1116 Washington Ave.  
Cuyahoga Falls, OH 44223

Dear Doctor Dougherty:

Enclosed please find certified copies of the Entry of Order, the Notice of Summary Suspension and Opportunity for Hearing, and an excerpt of the Minutes of the State Medical Board, meeting in regular session on June 8, 2005, including a Motion adopting the Order of Summary Suspension and issuing the Notice of Summary Suspension and Opportunity for Hearing.

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.

Pursuant to Chapter 119, Ohio Revised Code, you are hereby advised that you are entitled to a hearing on the matters set forth in the Notice of Summary Suspension and 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 days of the time of mailing of this notice. Further information concerning such hearing is contained within the Notice of Summary Suspension and Opportunity for Hearing.

THE STATE MEDICAL BOARD OF OHIO

  
Lance A. Talmage, M.D., Secretary

LAT:blt  
Enclosures

*Mailed 6-9-05*



# State Medical Board of Ohio

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## 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 June 8, 2005, to Adopt the Order of Summary Suspension and to Issue the Notice of Summary Suspension and Opportunity for Hearing, constitute true and complete copies of the Motion and Order in the Matter of David Andrew Dougherty, D.O., 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.

A handwritten signature in cursive script, reading "Lance A. Talmage, M.D.", written over a horizontal line.

Lance A. Talmage, M.D., Secretary

(SEAL)

June 8, 2005

Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF :  
 :  
 :  
 DAVID ANDREW DOUGHERTY, D.O. :

**ENTRY OF ORDER**

This matter came on for consideration before the State Medical Board of Ohio the 8th day of June, 2005.

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

Pursuant to their determination, based upon their review of the information supporting the allegations as set forth in the Notice of Summary Suspension and Opportunity for Hearing, that there is clear and convincing evidence that David Andrew Dougherty, D.O., has violated Sections 4731.22(B)(15) and 4731.22(B)(26), Ohio Revised Code, as alleged in the Notice of Summary Suspension and Opportunity for Hearing that is enclosed herewith and fully incorporated herein; and

Pursuant to their further determination, based upon their review of the information supporting the allegations as set forth in the Notice of Summary Suspension and Opportunity for Hearing, that Dr. Dougherty's continued practice presents a danger of immediate and serious harm to the public;

The following Order is hereby entered on the Journal of the State Medical Board of Ohio for the 8th day of June, 2005:

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

It is hereby ORDERED that David Andrew Dougherty, D.O., shall immediately cease the practice of osteopathic medicine and surgery in Ohio and immediately refer all active patients to other appropriate physicians.

This Order shall become effective immediately.

(SEAL)

  
Lance A. Talmage, M.D., Secretary

June 8, 2005  
Date



# State Medical Board of Ohio

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## EXCERPT FROM THE DRAFT MINUTES OF JUNE 8, 2005

### CITATIONS, PROPOSED DENIALS AND ORDER OF SUMMARY SUSPENSION

#### DAVID A. DOUGHERTY, D.O. - ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

-----

**DR. EGNER MOVED TO ENTER AN ORDER OF SUMMARY SUSPENSION IN THE MATTER OF DAVID A. DOUGHERTY, D.O., IN ACCORDANCE WITH SECTION 4731.22(G), OHIO REVISED CODE, AND TO ISSUE THE NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING. MR. BROWNING SECONDED THE MOTION. A vote was taken:**

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Varyani	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye



# State Medical Board of Ohio

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## NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING

June 8, 2005

David Andrew Dougherty, D.O.  
1116 Washington Ave.  
Cuyahoga Falls, OH 44223

Dear Doctor Dougherty:

The Secretary and the Supervising Member of the State Medical Board of Ohio [Board] have determined that there is clear and convincing evidence that you have violated Sections 4731.22(B)(15) and (B)(26), Ohio Revised Code, and have further determined that your continued practice presents a danger of immediate and serious harm to the public, as set forth in paragraphs (1) through (5) below.

Therefore, pursuant to Section 4731.22(G), Ohio Revised Code, and upon recommendation of Lance A. Talmage, M.D., Secretary, and Raymond J. Albert, Supervising Member, you are hereby notified that, as set forth in the attached Entry of Order, your certificate to practice osteopathic medicine or surgery in the State of Ohio is summarily suspended. Accordingly, at this time, you are no longer authorized to practice osteopathic medicine and surgery in Ohio.

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

- (1) On or about March 14, 2001, you entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based upon your violation of Sections 4731.22(B)(12), (B)(19), and (B)(26), Ohio Revised Code. A copy of the Step I Consent Agreement is attached hereto and fully incorporated herein. In the Step I Consent Agreement you made certain admissions, including that you were diagnosed with alcohol dependence, major depression, opioid dependence, and cannabis dependence. You also admitted that on or about May 24, 2000, you arrived at work in a semi-inebriated state and that, after you discussed this matter with your employer, you decided to enter treatment at the Caron Foundation, a non-Board approved treatment provider, on or around May 25, 2001. You admitted that, prior to entering treatment, you drank alcohol two to three times each week, having three to

eight drinks each time; you took Protuss and hydrocodone samples from your office for your own use, taking 20 mg of hydrocodone twice each week; and you self-medicated with 100 mg of Zoloft each day. You admitted that, after completing approximately 28 days of inpatient treatment at the Caron Foundation, you received inpatient treatment at St. Thomas Medical Center, a Board approved treatment provider, from June 23, 2000, to July 20, 2000.

In the Step I Consent Agreement, you also agreed to certain specified terms, conditions, and limitations, including that your certificate to practice osteopathic medicine and surgery was suspended for an indefinite period of time, but not less than thirty days. On or about May 9, 2001, you entered into a Step II Consent Agreement with the Board, whereby your certificate to practice osteopathic medicine and surgery in the State of Ohio was reinstated, subject to certain probationary terms, conditions, and limitations for a period of five years. A copy of the Step II Consent Agreement is attached hereto and fully incorporated herein.

- (2) In a Notice of Summary Suspension and Opportunity for Hearing dated August 8, 2001, a copy of which is attached hereto and fully incorporated herein, the Board notified you that, pursuant to Section 4731.22(G), Ohio Revised Code, the Board had adopted an Order of Summary Suspension of your certificate to practice osteopathic medicine and surgery in Ohio. Furthermore, the Board notified you that it proposed to determine whether or not to limit, revoke, permanently revoke, or suspend your certificate, refuse to issue or reinstate your certificate, or to reprimand you or place you on probation due to allegations that your acts, conduct, and/or omissions, individually and/or collectively, constituted 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, and/or constituted “[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness,” as that clause is used in Section 4731.22(B)(19), Ohio Revised Code, and/or constituted “[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, and/or constituted “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 4731-15-01(A)(5), Ohio Administrative Code, and/or constituted “[m]aking a false, fraudulent, deceptive, or misleading statement in 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.

On or about On September 6, 2001, you submitted a written hearing request, and the matter came to hearing in front of an Attorney Hearing Examiner for the Board, on February 4, 2002. On or about March 12, 2002, the Attorney Hearing Examiner issued a Report and Recommendation In The Matter of David A. Dougherty, D.O. Said Report and Recommendation included the following findings of fact:

[You] tested positive for cocaine during random urine screenings on June 8 and June 15, 2001, and positive for marijuana during random urine screenings on June 20 and June 26, 2001. All four screenings were confirmed positive by Gas Chromatography/Mass Spectrometry.

During an office conference on June 21, 2001, [you] informed Board staff of [your] positive drug screenings ... [You] speculated that [you] had been exposed to cocaine by smoking a cigarette provided to [you] by [your] motorcycle mechanic, and that, unbeknownst to [you], the cigarette had been laced with cocaine. [You] also denied intentional and deliberate drug use to others involved in [your] monitoring process.

In July 2001, the Board ordered [you] to submit to an examination at Shepherd Hill Hospital. During this examination, [you] admitted [your] intentional use of cocaine and marijuana. [You were] diagnosed ... as being chemically dependent on alcohol, marijuana, opiates, and nicotine; and found ... to have a history of cocaine abuse. [You were] further diagnosed ... as having a mood disorder, possibly substance induced.

- (3) On or about April 10, 2002, the Board entered an Order that adopted the Hearing Examiner’s Report and Recommendation as amended, permanently revoked your certificate to practice osteopathic medicine and surgery in the State of Ohio, stayed said permanent revocation, and suspended your certificate to practice osteopathic medicine and surgery for an indefinite period of time, but not less than eighteen months. A copy of the Board’s April 10, 2002, Entry of Order [2002 Board Order] is attached hereto and fully incorporated herein.
- (4) On or about June 10, 2004, the Board reinstated your certificate to practice osteopathic medicine and surgery in the State of Ohio, subject to specified

probationary terms, conditions and limitations, for a period of five years, as set forth in the 2002 Board Order.

- (a) Paragraph (C)(5) of the 2002 Board Order states that you “shall abstain completely from the use of alcohol, marijuana, or cocaine.” Despite the requirements of Paragraph (C)(5), a urine specimen that you provided on or about March 28, 2005, tested positive for the presence of alcohol. Further, after your supervising physician requested, on or about May 12, 2005, that Accufacts, Inc., perform an ethyl glucuronide (EtG) test on said sample, you revoked your authorization allowing Accufacts, Inc., to disclose the results of the EtG test to your supervising physician.
- (b) Paragraph (C)(8) of the 2002 Board Order requires you to “submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board.” On or about May 25, 2005, your supervising physician contacted you and advised you to appear at her office to provide a urine specimen for your weekly urine screening. Despite the requirements of Paragraph (C)(8), on or about May 25, 2005, you failed to provide a urine specimen to be screened for drugs and alcohol.
- (c) Paragraph (C)(9) of the 2002 Board Order requires you to “submit blood and/or urine specimens for analysis without prior notice at such times as the Board may request[.]” Despite the requirements of Paragraph (C)(9), on or about May 27, 2005, you refused to supply a urine specimen as requested by a Board investigator.
- (d) Paragraph (C)(14) of the 2002 Board Order states that you “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 [your] chemical dependency, psychiatric, or related conditions, or for purposes of complying with this Order[.]” Despite the requirements of Paragraph (C)(14), on or about May 27, 2005, you refused authorization for Accufacts, Inc., to disclose to the Board the results of the EtG test on the urine specimen that you provided on or about March 28, 2005.
- (e) Paragraph (C)(3) of the 2002 Board Order provides that you “shall appear in person for quarterly interviews before the Board or its designated representative, or as otherwise directed by the Board.” Despite the requirements of Paragraph (C)(3), on or about June 6, 2005, you failed to appear for your scheduled, quarterly interview with the Supervising Member of the Board.

- (5) Section 4731.22(B)(26), Ohio Revised Code, provides that if the Board determines that an individual's ability to practice is impaired, the Board shall suspend the individual's certificate and shall require the individual, as a condition for continued, reinstated, or renewed certification to practice, to submit to treatment and, before being eligible to apply for reinstatement, to demonstrate to the Board the ability to resume practice in compliance with acceptable and prevailing standards of care, including completing required treatment, providing evidence of compliance with an aftercare contract or written consent agreement, and providing written reports indicating that the individual's ability to practice has been assessed by individuals or providers approved by the Board and that the individual has been found capable of practicing according to acceptable and prevailing standards of care.

Further, Rule 4731-16-02(B)(3), Ohio Administrative Code, provides that if an examination discloses impairment, or if the Board has other reliable, substantial and probative evidence demonstrating impairment, the Board shall initiate proceedings to suspend the licensee, and may issue an order of summary suspension as provided in Section 4731.22(G), Ohio Revised Code.

Your acts, conduct, and/or omissions as alleged in paragraph (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 paragraphs (1) through (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, and Chapter 4731., 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 you or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that “[w]hen the board refuses to grant a certificate to an applicant, revokes an individual’s certificate to practice, refuses to register an applicant, or refuses to reinstate an individual’s certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate.”

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.  
Secretary

LAT/blt  
Enclosures

CERTIFIED MAIL # 7003 0500 0002 4340 7254  
RETURN RECEIPT REQUESTED

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

CERTIFIED MAIL # 7003 0500 0002 4340 7247  
RETURN RECEIPT REQUESTED

John P. Carney, Esq.  
Porter, Wright, Morris & Arthur  
41 South High Street  
Columbus, OH 43215

CERTIFIED MAIL #7003 0500 0002 4340 7230  
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/](http://www.state.oh.us/med/)

April 10, 2002

David A. Dougherty, D.O.  
1318 Meadowood Lane  
Hudson, OH 44236

Dear Doctor Dougherty:

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 April 10, 2002, 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 5146 8746  
RETURN RECEIPT REQUESTED

Cc: Eric J. Plinke, Esq.  
CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5146 8739  
RETURN RECEIPT REQUESTED

*Mailed 4-19-02  
Second Mailing 5-15-02*

David A. Dougherty, D.O.  
Page 2

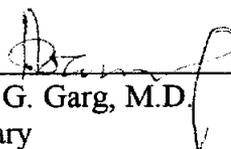
Second Mailing: 1782 Middleton Road  
Hudson, OH 44236-1267  
CERTIFIED MAIL RECEIPT NO. 7000 0600 0024 5146 3932  
RETURN RECEIPT REQUESTED

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 April 10, 2002, 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 David A. Dougherty, 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)

  
\_\_\_\_\_  
Anand G. Garg, M.D.  
Secretary

April 10, 2002  
\_\_\_\_\_  
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF

\*

\*

DAVID A. DOUGHERTY, D.O.

\*

**ENTRY OF ORDER**

This matter came on for consideration before the State Medical Board of Ohio on April 10, 2002.

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

It is hereby ORDERED that:

- A. **STAYED PERMANENT REVOCATION; SUSPENSION OF CERTIFICATE:** The certificate of David A. Dougherty, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. The permanent revocation is stayed, and Dr. Dougherty's certificate is SUSPENDED for an indefinite period of time, but not less eighteen months.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Dougherty's certificate to practice osteopathic medicine and surgery unless all of the following conditions have been met:
1. **Application and Fees:** Dr. Dougherty shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  2. **Completion of Inpatient Treatment:** Dr. Dougherty shall complete a minimum of twenty-eight days of inpatient or residential treatment, or a combination thereof [other than his June 2000 treatment at Ignatia Hall] 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. Dougherty 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. Dougherty's treatment records.

3. **Demonstration of Ability to Resume Practice:** Dr. Dougherty shall demonstrate to the satisfaction of the Board that he can practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include, but not be limited to, the following:
  - a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Dougherty has successfully completed the required inpatient treatment.
  - b. Evidence of continuing full compliance, for at least one year immediately prior to submission of Dr. Dougherty's application for reinstatement or restoration, with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The post-discharge aftercare contract must comply with Rule 4731-16-10 of the Administrative Code.
  - c. Two written reports indicating that Dr. Dougherty's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the Board for making such assessments and shall describe the basis for this determination.
4. **Psychiatric Assessment:** Prior to submitting his application for reinstatement or restoration, Dr. Dougherty shall submit to the Board for its prior approval the name and curriculum vitae of a psychiatrist of Dr. Dougherty's choice. The Board may consider Massood R. Babai, M.D., for such approval.

Upon approval by the Board, Dr. Dougherty shall obtain from the approved psychiatrist an assessment of Dr. Dougherty's current psychiatric status. The assessment shall take place no more than sixty days prior to the submission of

Dr. Dougherty's application for reinstatement, unless otherwise approved by the Board. Prior to the initial assessment, Dr. Dougherty shall furnish the approved psychiatrist copies of the Board's Order, including the Summary of the Evidence, Findings of Fact, and Conclusions, and any other documentation from the hearing record which the Board may deem appropriate or helpful to that psychiatrist.

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

- a. A detailed report of the evaluation of Dr. Dougherty's current psychiatric status and condition;
  - b. A detailed plan of recommended psychiatric treatment, if any, based upon the psychiatrist's informed assessment of Dr. Dougherty's current needs; and
  - c. Any reports upon which the treatment recommendation is based, including reports of physical examination and psychological or other testing.
5. **Absence from Practice**: In the event that Dr. Dougherty has not been engaged in the active practice of osteopathic medicine and surgery for a period in excess of two years prior to the submission of his application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Dougherty's fitness to resume practice.

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

1. **Obey Laws in Ohio**: Dr. Daugherty shall obey all federal, state, and local laws; and all rules governing the practice of medicine in Ohio.
2. **Quarterly Declarations**: Dr. Daugherty shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. **Appearances**: Dr. Daugherty shall appear in person for quarterly interviews before the Board or its designated representative, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
4. **Abstention from Drugs**: Dr. Daugherty 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. Daugherty's history of chemical dependency.
5. **Abstention from Alcohol**: Dr. Daugherty shall abstain completely from the use of alcohol, marijuana, or cocaine.
6. **Rehabilitation Program**: Dr. Daugherty 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. Daugherty 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. Daugherty's quarterly declarations.
7. **Comply with the Terms of the Aftercare Contract**: Dr. Dougherty shall maintain continued compliance with the terms of the aftercare contract entered into with his treatment provider, provided that, where terms of the aftercare contract conflict with terms of this Order, the terms of this Order shall control.
8. **Random Drug/Alcohol Screening; Supervising Physician**: Dr. Dougherty shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Before engaging in any medical practice, unless otherwise determined by the Board, Dr. Dougherty shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Dougherty shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Dougherty. Dr. Dougherty 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. Dougherty 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. Dougherty must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Dougherty 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. Dougherty's quarterly declaration. It is Dr. Dougherty's responsibility to ensure that reports are timely submitted.

9. **Provision of Blood or Urine for Screening without Prior Notice:** Dr. Daugherty shall submit blood and/or urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Daugherty's expense.
10. **Contact An Appropriate Impaired Physicians Committee:** Dr. Daugherty shall contact an appropriate impaired physicians committee, approved by the Board, to arrange for assistance in recovery and/or aftercare.
11. **Monitoring Physician:** Before engaging in any medical practice, or as otherwise determined by the Board, Dr. Dougherty shall 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. Dougherty and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Dougherty and his medical practice, and shall review Dr. Dougherty'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. Dougherty and his medical practice, and on the review of

Dr. Dougherty's patient charts. Dr. Dougherty 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. Dougherty's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Dougherty must immediately so notify the Board in writing. In addition, Dr. Dougherty 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. Dougherty 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.

12. **Continue Psychiatric Treatment Recommended Prior to Reinstatement:** If the psychiatrist approved by the Board prior to Dr. Dougherty reinstatement or restoration recommends that Dr. Dougherty undergo psychiatric treatment, Dr. Dougherty shall continue in psychiatric treatment until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require reports from the approved treating psychiatrist. The psychiatric reports shall contain information describing Dr. Dougherty's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Dougherty's compliance with the treatment plan; Dr. Dougherty's psychiatric status; Dr. Dougherty's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. Dougherty 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. Dougherty's quarterly declaration.

In addition, Dr. Dougherty shall ensure that his treating psychiatrist immediately notifies the Board of Dr. Dougherty's failure to comply with his psychiatric treatment plan and/or any determination that Dr. Dougherty is unable to practice due to his psychiatric disorder.

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

13. **Prohibition against Administering, Personally Furnishing, or Possessing Controlled Substances:** Dr. Dougherty shall not, without prior Board approval, administer, personally furnish, or possess (except as allowed under

Paragraph C.4 above) any controlled substances as defined by state or federal law.

In the event that the Board agrees at a future date to modify this Order to allow Dr. Dougherty to administer or personally furnish controlled substances, Dr. Dougherty shall keep a log of all controlled substances administered or personally furnished. Such log shall be submitted in the format approved by the Board thirty days prior to Dr. Dougherty's personal appearance before the Board or its designated representative, or as otherwise directed by the Board.

14. **Releases**: Dr. Daugherty shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Daugherty's chemical dependency, psychiatric, or related conditions, or for purposes of complying with this Order, whether such treatment or evaluation occurred before or after the effective date of this Order. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.

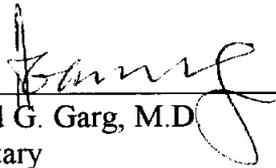
Dr. Daugherty shall provide the Board written consent permitting any treatment provider from whom he obtains treatment to notify the Board in the event he fails to agree to or comply with any treatment contract or aftercare contract. Failure to provide such consent, or revocation of such consent, shall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

15. **Absence from Ohio**: In the event that Dr. Dougherty should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Dougherty must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under the Order, unless otherwise determined by the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
16. **Violation of Probation; Discretionary Sanction Imposed**: If Dr. Dougherty 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.
17. **Tolling of Probationary Period while Out of Compliance**: In the event Dr. Dougherty is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.

- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Dougherty's certificate will be fully restored.
- E. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, Dr. Dougherty 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. Dougherty 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.
- F. **REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, Dr. Dougherty 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. Dougherty 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. Dougherty shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
- G. **SUPERSEDE PREVIOUS CONSENT AGREEMENT:** This Order shall supersede the terms and conditions set forth in the May 9, 2001, Step II Consent Agreement between Dr. Dougherty and the Board.

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

(SEAL)

  
\_\_\_\_\_  
Anand G. Garg, M.D.  
Secretary

April 10, 2002  
\_\_\_\_\_  
Date

**REPORT AND RECOMMENDATION  
IN THE MATTER OF DAVID A. DOUGHERTY, D.O.**

The Matter of David A. Dougherty, D.O., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio, on February 4, 2001.

**INTRODUCTION**

I. Basis for Hearing

- A. In a Notice of Summary Suspension and Opportunity for Hearing dated August 8, 2001, the State Medical Board of Ohio [Board] notified David A. Dougherty, 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 osteopathic medicine or surgery would be considered practicing without a certificate, in violation of Section 4731.43, Ohio Revised Code. (State's Exhibit 1A).

Furthermore, the Board notified Dr. Dougherty that the Board had proposed to take disciplinary action against his certificate based upon, among other things, his history of impairment, his violation of his Step II Consent Agreement with the Board, and his failure to report a relapse to the Board. The Board alleged that Dr. Dougherty's conduct 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.”
- b. “[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness,’ as that clause is used in Section 4731.22(B)(19), Ohio Revised Code.”
- c. “[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.”
- d. “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

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or any rule promulgated by the board,' as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Rule 4731-15-01(A)(5), Ohio Administrative Code.”

- e. “[m]aking a false, fraudulent, deceptive, or misleading statement in 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.”

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

- B. On September 6, 2001, Eric J. Plinke, Esq., submitted a written hearing request on behalf of Dr. Dougherty. (State’s Exhibit 1C).

## II. Appearances

- A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Rebecca J. Albers and Kyle C. Wilcox, Assistant Attorneys General.
- B. On behalf of the Respondent: Eric J. Plinke and John P. Carney, Esqs.

## EVIDENCE EXAMINED

### I. Testimony Heard

- A. Presented by the State
  1. David A. Dougherty, D.O., as upon cross-examination
  2. Danielle Bickers
  3. Frederick N. Karaffa, M.D.
- B. Presented by the Respondent

David A. Dougherty, D.O.

## II. Exhibits Examined

### A. Presented by the State

1. State's Exhibits 1A-1T: Procedural exhibits.
2. State's Exhibit 2: Certified copies of the May 9, 2001, Step II Consent Agreement and the March 14, 2001, Step I Consent Agreement between Dr. Dougherty and the Board.
3. State's Exhibits 3-6: Copies of Dr. Dougherty's positive drug screen results.
4. State's Exhibit 8: Curriculum vitae of Frederick N. Karaffa, M.D.
5. State's Exhibit 9: Copy of a June 21, 2001, monitoring report pertaining to Dr. Dougherty submitted to the Board by Robert A. Liebelt, M.D.
- \* 6. State's Exhibit 10: Certified copies of medical records pertaining to Dr. Dougherty maintained by Massood R. Babai, M.D.
- \* 7. State's Exhibit 12: Copies of medical records pertaining to Dr. Dougherty maintained by Dr. Liebelt.
- \* 8. State's Exhibit 13: Certified copies of medical records pertaining to Dr. Dougherty maintained by Summa Health System, St. Thomas Hospital, Akron, Ohio.
- \* 9. State's Exhibit 14: Certified copies of medical records pertaining to Dr. Dougherty maintained by Shepherd Hill Hospital, Newark, Ohio.

### B. Presented by the Respondent

Respondent's Exhibit A: A September 1, 2001, Certificate of Achievement from Edwin Shaw Hospital, indicating that Dr. Dougherty had attended the rehabilitation phase of treatment.

Note: All exhibits marked with an asterisk [\*] have been sealed to protect patient confidentiality.

## PROCEDURAL MATTERS

The hearing record in this matter was held open to give the parties an opportunity to submit additional evidence. The State had requested an opportunity to obtain and submit Dr. Dougherty's medical records from Shepherd Hill Hospital. These documents were timely

submitted and entered into the record as State's Exhibit 14. In addition, the Respondent had requested an opportunity to obtain and submit Dr. Dougherty's medical records from Edwin Shaw Hospital. On March 5, 2002, Counsel for the Respondent advised the Attorney Hearing Examiner that he had not obtained the medical records from Edwin Shaw Hospital, and would not be submitting them for admission. Accordingly, the hearing record closed at that time. (See Hearing Transcript [Tr.] at 62-64).

### SUMMARY OF THE EVIDENCE

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

1. David A. Dougherty, D.O., testified that he had received his degree in osteopathic medicine from the Ohio University College of Osteopathic Medicine in 1992. In 1997, Dr. Dougherty completed a residency in internal medicine and pediatrics at St. Thomas Medical Center and Children's Hospital in Akron, Ohio. In October 1997, Dr. Dougherty entered a group family practice, and remained there until August 2000. After leaving the group practice, Dr. Dougherty opened a private practice in Akron. (Hearing Transcript [Tr.] at 9-10, 65-67).

Dr. Dougherty testified that his license to practice osteopathic medicine and surgery in Ohio is currently suspended. (Tr. at 9-10).

2. Dr. Dougherty testified that, in May 2000, he had recognized that that he was "having problems" with his use of alcohol and hydrocodone. Dr. Dougherty testified that, upon recognizing his growing dependence, he had sought treatment for alcohol and opioid dependence at the Caron Foundation in Warrenton, Pennsylvania. Dr. Dougherty further testified that, while he was in treatment, he had contacted the Board to advise the Board of his situation. (Tr. at 68).

Dr. Dougherty stated that he had also contacted the Ohio Physicians Effectiveness Program [OPEP] and learned that the Caron Foundation was not a Board-approved treatment provider. Dr. Dougherty testified that, because the Caron Foundation program was not Board-approved, he had left the program after completing twenty-seven days of a twenty-eight day inpatient treatment program. He stated that he had left the Caron Foundation with the intention of finding a program which was approved by the Board. Dr. Dougherty left the program on June 21, 2000. (Tr. at 68, 76; State's Exhibit [St. Ex.] 13).

3. On June 23, 2000, Dr. Dougherty entered Ignatia Hall at St. Thomas Medical Center/Summa Health Systems, a Board-approved treatment provider, in Akron, Ohio. Dr. Dougherty was treated by Robert A. Liebelt, Ph.D., M.D., and completed a

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twenty-eight day program on July 20, 2000. Dr. Dougherty was discharged with diagnoses of: major depression; alcohol dependence; opioid dependence; cannabis dependence. Upon discharge, Dr. Liebelt prescribed Zoloft, and recommended that Dr. Dougherty continue A.A. meetings and aftercare. (Tr. at 68, 76; St. Ex. 13).

4. On March 14, 2001, Dr. Dougherty entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based upon Dr. Dougherty's violation of Sections 4731.22(B)(12), (B)(19), and (B)(26), Ohio Revised Code. In the Step I Consent Agreement, Dr. Dougherty made a number of admissions, which included the following:
  - a. Dr. Dougherty had been diagnosed with major depression; and alcohol, opioid, and cannabis dependence.
  - b. Dr. Dougherty had been drinking alcohol two to three times each week, having three to eight drinks each time. In or about April 2000, Dr. Dougherty had begun taking hydrocodone and Protuss samples from his office for his own use. Dr. Dougherty had also taken twenty milligrams of hydrocodone twice each week.
  - c. Dr. Dougherty had diagnosed himself and self-medicated with Zoloft 100 mg daily.
  - d. On or about May 24, 2000, Dr. Dougherty had arrived at his place of employment in a semi-inebriated state. The following day, after discussing the matter with his employer, Dr. Dougherty had decided to enter treatment at the Caron Foundation. After completing approximately twenty-eight days of inpatient treatment at the Caron Foundation, Dr. Dougherty left the Caron Foundation so he could enter treatment with a Board-approved treatment provider.
  - e. Dr. Dougherty had received inpatient treatment at St. Thomas Medical Center/Summa Health Systems from June 23 to July 20, 2000. Upon discharge, Dr. Dougherty had been directed to seek follow-up care with a psychiatrist and a primary care physician, participate in Alcoholics Anonymous [A.A.] meetings, and continue visitations with Ignatia Hall.
  - f. Finally, Dr. Dougherty had denied having used "any substances" since on or about May 24, 2000.

(State's Exhibit [St. Ex.] 2). In this Step I Consent Agreement, Dr. Dougherty agreed to certain specified 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 thirty days. (St. Ex. 2).

5. On May 9, 2001, Dr. Dougherty entered into a Step II Consent Agreement with the Board, whereby Dr. Dougherty's certificate to practice osteopathic medicine and surgery in the

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State of Ohio was reinstated. In the Step II Consent Agreement, Dr. Dougherty admitted that he had entered into an aftercare contract with St. Thomas Medical Center and that the aftercare contract would remain in effect until April 17, 2003. Moreover, the terms of the aftercare contract required Dr. Dougherty to attend three Alcoholics Anonymous/Narcotics Anonymous [A.A./N.A.] meetings each week; to attend one Aftercare Men's Group meeting per week; to meet monthly with Robert A. Liebelt, Ph.D., M.D., for an individual appointment; to attend professional therapy when indicated; and to meet with a primary physician to resolve any on-going medical problems.

In the Step II Consent Agreement, Dr. Dougherty also admitted that he had been evaluated and/or treated by a number of physicians. He further admitted that he had been diagnosed with alcohol dependency, in remission; opioid abuse and dependency, in remission; cannabis abuse, in remission; major depressive disorder, recurrent; and major depression by history. Nevertheless, the evaluating and treating physicians had determined that Dr. Dougherty was then able to practice osteopathic medicine and surgery according to acceptable and prevailing standards of care so long as treatment and monitoring conditions were imposed.

Moreover, in the Step II Consent Agreement, Dr. Dougherty agreed to certain specified probationary terms, conditions, and limitations. These probationary terms and conditions include the following:

- a. Paragraph 1 states that Dr. Dougherty "shall obey all federal, state and local laws, and all rules governing the practice of osteopathic medicine in Ohio."
- b. Paragraph 8 states that Dr. Dougherty "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. Dougherty's history of chemical dependency."

(St. Ex. 2).

6. Despite the terms of the May 9, 2000, Step II Consent Agreement, Dr. Dougherty tested positive for cocaine by urine samples he submitted for screening on June 8 and June 15, 2001. Moreover, he tested positive for marijuana by urine samples he submitted for screening on June 20 and June 26, 2001. All four screenings were confirmed positive by Gas Chromatography/Mass Spectrometry (GC/MS). (St. Ex. 3).
7. Danielle Bickers testified at hearing on behalf of the State. Ms. Bickers testified that she is currently the Compliance Officer for the Board. Ms. Bickers further testified that, on June 15, 2001, Dr. Dougherty had contacted her and advised that he had had positive urine screens for cocaine. In addition, Ms. Bickers testified that Dr. Dougherty had contacted her on a later date and advised her of the screens which had been positive for marijuana. She

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further stated, however, that Dr. Dougherty had denied any intentional drug use. (Tr. at 19-20, 29-33).

8. Massood R. Babai, M.D., is Dr. Dougherty's treating psychiatrist. Dr. Babai's office notes for June 20, 2001, reveal that Dr. Dougherty had appeared for an appointment that day, and had advised Dr. Babai of the positive screens for cocaine. Dr. Babai's office notes further reveal that Dr. Dougherty had also denied using cocaine, and stated that he did not know how he could have been exposed. Dr. Dougherty had suggested to Dr. Babai that he may have come into contact with cocaine when he accepted a cigarette from his motorcycle mechanic. (St. Ex. 10 at 1).
9. On June 21, 2001, Robert A. Liebelt, Ph.D., M.D., Dr. Dougherty's monitoring physician, submitted a quarterly report to the Board. In the report, Dr. Liebelt advised of the following:
  - a. Dr. Liebelt had met with Dr. Dougherty on June 15, 2001. Dr. Liebelt had been aware of a June 11, 2001 report [based on the urine sample that Dr. Dougherty had submitted on June 8, 2002] which had tested positive for cocaine. Nevertheless, Dr. Dougherty had denied use of cocaine.
  - b. Dr. Dougherty had agreed, among other things, to notify the Board of the positive urine screen in the presence of Dr. Liebelt and to cancel all patient appointments.
  - c. On June 18, Dr. Dougherty had reported to Dr. Liebelt's secretary that a lawyer had told him that he could continue to see patients, and that "a State Board Attorney had no objections."
  - d. Dr. Liebelt indicated that Dr. Dougherty had provided another urine sample for random testing on June 13, 2001. The report revealed that the specimen had been unsuitable, that no valid results could be obtained, and that the creatinine level had been 4.4 mg/dl with the normal level being >20 mg/dl. Dr. Liebelt requested an additional urine screening on June 15, 2001. That screen was positive for cocaine.
  - e. Dr. Dougherty had seen Dr. Babai, his psychiatrist, on June 20, 2001. Dr. Dougherty apprised Dr. Babai of the positive urine screen results. Dr. Babai had required Dr. Dougherty to have an immediate serum drug screen performed.
  - f. Dr. Babai and Dr. Liebelt had discussed Dr. Dougherty's situation. After the conversation, Dr. Liebelt contacted Dr. Dougherty. Dr. Liebelt advised Dr. Dougherty that, despite the advice of Dr. Dougherty's attorney, Dr. Dougherty could not see any patients until the matter was resolved.

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- g. Dr. Liebelt had contacted the Board by telephone to advise of the events taking place. Dr. Liebelt concluded that Dr. Dougherty had suffered a relapse of his substance abuse disorder.

(St. Ex. 9) (See also Dr. Liebelt's medical records for Dr. Dougherty, State's Exhibit 12).

10. Dr. Dougherty testified that he had appeared for a probationary office conference before Board staff members on June 21, 2001. Dr. Dougherty further testified that he had informed Board staff members at the probationary office conference of his positive screenings, but had denied any intentional and deliberate use of cocaine. Dr. Dougherty testified that he had speculated instead that he had been exposed to cocaine by smoking a cigarette he had obtained from his motorcycle mechanic and that, unbeknownst to Dr. Dougherty, the cigarette had been laced with cocaine. (Tr. at 11-12).

At hearing, however, Dr. Dougherty acknowledged that the story he told to Board staff members had not been truthful. (Tr. at 12).

11. At hearing, Dr. Dougherty admitted that he had not advised the Board of his relapse, as required by administrative rules. Dr. Dougherty also admitted that he had denied intentional and deliberate drug use to Dr. Babai and had told Dr. Babai the story about the mechanic. (Tr. at 12, 15).
12. Frederick N. Karaffa, M.D., testified at hearing on behalf of the State. Dr. Karaffa testified that, in 1963, he had received a medical degree from The Ohio State University School of Medicine in Columbus, Ohio. In 1964, he completed a rotating internship at Grant Hospital in Columbus. Thereafter, Dr. Karaffa practiced family medicine in Granville, Ohio, for twenty-four years. In 1989, Dr. Karaffa left that practice to complete an Addictionology Fellowship at Shepherd Hill Hospital in Newark, Ohio. Dr. Karaffa completed the program and was certified by the American Society of Addiction Medicine in 1990. (Tr. at 34-35; St. Ex. 8).

Thereafter, Dr. Karaffa was employed by Shepherd Hill Hospital. He served as its Medical Director from January 1990 through January 1991, and from 1993 through 2001. Dr. Karaffa has retired from Shepherd Hill Hospital, and is currently serving as the Interim Medical Director of OPEP in Worthington, Ohio. (St. Ex. 8).

13. Dr. Karaffa testified that he had performed an evaluation of Dr. Dougherty in July 2001 at the request of the Board. Dr. Karaffa testified that Dr. Dougherty had been admitted to Shepherd Hill Hospital for the evaluation and that, during the initial states of the assessment, Dr. Dougherty had been "in a great deal of denial." Dr. Karaffa further stated that Dr. Dougherty had reported to him that he had come into contact with marijuana and cocaine from cigarettes laced with those substances offered to him by his motorcycle mechanic. (Tr. at 40-41, 45-46, 58; St. Ex. 14).

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Dr. Karaffa testified that staff at Shepherd Hill Hospital had contacted the motorcycle mechanic regarding Dr. Dougherty's story. The motorcycle mechanic had admitted that such substances were available in his garage, but stated that he did not lace his cigarettes with them. The mechanic had further stated that to do so would have been "a waste of money \* \* \* because it dilutes the compounds." (Tr. at 46-47).

Dr. Karaffa testified that Dr. Dougherty had been confronted with the statements of his motorcycle mechanic. Upon being confronted, Dr. Dougherty acknowledged that the motorcycle mechanic may not have been the source of his contact with the chemicals, but Dr. Dougherty did not immediately offer an alternative explanation. Dr. Karaffa testified that, later in the evaluation, Dr. Dougherty admitted that he had knowingly used cocaine and marijuana. (Tr. at 47-48).

Dr. Karaffa testified that he had diagnosed Dr. Dougherty as being chemically dependent upon alcohol, marijuana, opiates, and nicotine, and that he had found Dr. Dougherty to have a history of cocaine abuse. Dr. Karaffa further testified that he had diagnosed Dr. Dougherty as having a mood disorder, possibly substance induced. Dr. Karaffa explained his diagnosis of opiate dependence, stating that there had been a short period in the past during which Dr. Dougherty had used a compound of liquid hydrocodone. Dr. Karaffa further explained that he had diagnosed cocaine abuse rather than cocaine dependence because he had not felt that Dr. Dougherty's use of cocaine had advanced to the level of dependence. (Tr. at 48-49, 53-55).

Doctor Karaffa had also concluded at the time of the evaluation that Dr. Dougherty should not practice osteopathic medicine and surgery until he has established a "fairly long term of bona fide monitored sobriety." Dr. Karaffa further testified that he had recommended that Dr. Dougherty enter Shepherd Hill Hospital for the full treatment program. Dr. Karaffa stated that he had advised Dr. Dougherty that, pursuant to Board rules, Dr. Dougherty had been required to enter treatment within seventy-two hours of Dr. Karaffa's diagnosis. (Tr. at 49-51).

14. At hearing, Dr. Karaffa testified that Dr. Dougherty should not practice osteopathic medicine and surgery at this time. He stated that:

I think if somebody practices medicine they need to be as stable as is possible, especially emotionally and intellectually. Obviously somebody who is relapsing on a somewhat consistent fashion, in a repeated fashion, it would interfere with their ability to think clearly and practice well.

And certainly intermittent use then fires everything back up again causing more chemical imbalance. And I feel that is not a proper frame of mind to be practicing.

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(Tr. at 52). Dr. Karaffa further concluded that, with intense treatment, Dr. Dougherty's prognosis would be "excellent." (Tr. at 58).

15. Despite Doctor Karaffa's recommendation, Dr. Dougherty did not enter inpatient treatment at a Board-approved treatment provider by July 27, 2001. Dr. Dougherty testified that he could not have afforded the three or four month treatment program that was recommended by Shepherd Hill Hospital. (Tr. at 15-16, 71).

Dr. Dougherty testified that, as an alternative, he had entered Edwin Shaw Hospital on August 11, 2001, and had remained there for nineteen days. Dr. Dougherty further testified that he had been discharged from the hospital on September 1, 2001, "as having completed the program." (Tr. at 15-16, 72, 75-76). Dr. Dougherty submitted an uncertified copy of a September 1, 2001, Certificate of Achievement from Edwin Shaw Hospital, indicating that Dr. Dougherty had attended "the rehabilitation phase of treatment." (Respondent's Exhibit [Resp. Ex.] A) [Note, however, that Dr. Dougherty had requested that the hearing record be held open to give him an opportunity to obtain and submit his medical records from Edwin Shaw Hospital. Although the hearing examiner had allowed Dr. Dougherty four weeks to do so, on March 5, 2002, Dr. Dougherty's counsel advised the Attorney Hearing Examiner that he had not been able to obtain the records. See Procedural Matters, above.]

Dr. Dougherty testified that, after Dr. Dougherty had completed nineteen days of inpatient treatment, the counselors at Edwin Shaw Hospital had told him that there was no clinical justification for Dr. Dougherty to remain at the facility for the full twenty-eight days required by the Board. Dr. Dougherty testified that he had not been able to afford the additional nine days of treatment that were not clinically justified, so he left the hospital after nineteen days. (Tr. at 15-16, 73).

Dr. Dougherty testified that, when he left the hospital, he had been aware that he would not be able to reinstate his license to practice osteopathy until he had completed twenty-eight days of inpatient treatment at a Board-approved treatment provider. (Tr. at 74).

Dr. Dougherty further testified that he is not currently in an aftercare program, and he is not being monitored or tested for drug use. (Tr. at 15-16, 73).

16. Ms. Bickers testified that Edwin Shaw Hospital is a Board-approved treatment provider. She further stated that, as a Board-approved treatment provider, the hospital must offer Board licensees who relapse within one year of treatment a twenty-eight day inpatient treatment program. (Tr. at 28-29).

17. Dr. Dougherty testified that his last use of hydrocodone was during the Spring of 2000, his last use of cocaine was June 2001, his last use of alcohol was August 2001, and his last use of marijuana was three or four months prior to the hearing. (Tr. at 67).
18. Dr. Dougherty further testified that he is taking medication for depression. He stated that he believes the medication has been effective, despite the overwhelming losses he has suffered as a result of his addiction and the loss of his license. (Tr. at 78-79).
19. Dr. Dougherty testified that he is currently unemployed. He stated that he has not yet determined whether he will try to return to the practice of osteopathy. He further stated that the decision will largely be affected by his disability insurer, who has not yet established whether he will be covered for disability related to addiction. Dr. Dougherty stated that, if he is not covered by insurance, he will not be able to afford a twenty-eight day inpatient program, or to pay for weekly monitoring and the travel expenses of attending three A.A. meetings per week. He further stated that, if he is covered by insurance, he will strongly consider returning to the practice of medicine in a few years. (Tr. at 16-17, 79).  
Dr. Dougherty testified that, no what matter happens as a result of this hearing, he will not be seeking reinstatement in the near future. (Tr. at 74).

#### FINDINGS OF FACT

1. On March 14, 2001, David A. Dougherty, D.O., entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based upon his violation of Sections 4731.22(B)(12), (B)(19), and (B)(26), Ohio Revised Code. In the Step I Consent Agreement, Dr. Dougherty made a number of admissions, which included the following:
  - a. Dr. Dougherty had been diagnosed with major depression; and alcohol, opioid, and cannabis dependence.
  - b. Dr. Dougherty had been drinking alcohol two to three times each week, having three to eight drinks each time. In or about April 2000, Dr. Dougherty had begun taking hydrocodone and Protuss samples from his office for his own use. Dr. Dougherty had also taken twenty milligrams of hydrocodone twice each week.
  - c. Dr. Dougherty had diagnosed himself and self-medicated with Zoloft 100 mg daily.
  - d. On or about May 24, 2000, Dr. Dougherty had arrived at his place of employment in a semi-inebriated state. The following day, after discussing the matter with his employer, Dr. Dougherty had decided to enter treatment at the Caron Foundation, a non-Board-approved treatment provider in Pennsylvania, for treatment related to alcohol and opioid dependence. After completing approximately twenty-eight days of

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inpatient treatment at the Caron Foundation, Dr. Dougherty left the Caron Foundation so he could enter treatment with a Board-approved treatment provider.

- e. Dr. Dougherty had received inpatient treatment at St. Thomas Medical Center/Summa Health Systems, a Board-approved treatment provider, from June 23 to July 20, 2000. Upon discharge, Dr. Dougherty had been directed to seek follow-up care with a psychiatrist and a primary care physician, participate in Alcoholics Anonymous [A.A.] meetings, and continue visitations with Ignatia Hall.
- f. Finally, Dr. Dougherty had denied having used "any substances" since on or about May 24, 2000.

In this Step I Consent Agreement, Dr. Dougherty agreed to certain specified 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 thirty days.

- 2. On May 9, 2001, Dr. Dougherty entered into a Step II Consent Agreement with the Board, whereby Dr. Dougherty's certificate to practice osteopathic medicine and surgery in the State of Ohio was reinstated. Moreover, Dr. Dougherty agreed to certain specified probationary terms, conditions, and limitations.

Paragraph 1 of this Step II Consent Agreement states that Dr. Dougherty "shall obey all federal, state and local laws, and all rules governing the practice of osteopathic medicine in Ohio."

Paragraph 8 of the Step II Consent Agreement states that Dr. Dougherty "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. Dougherty's history of chemical dependency."

- 3. Dr. Dougherty tested positive for cocaine during random urine screenings on June 8 and June 15, 2001, and positive for marijuana during random urine screenings on June 20 and June 26, 2001. All four screenings were confirmed positive by Gas Chromatography/Mass Spectrometry.
- 4. During an office conference on June 21, 2001, Dr. Dougherty informed Board staff of his positive drug screenings. Dr. Dougherty had denied, however, any intentional use of cocaine to these staff members. Dr. Dougherty had speculated that he had been exposed to cocaine by smoking a cigarette provided to him by his motorcycle mechanic, and that, unbeknownst to Dr. Dougherty, the cigarette had been laced with cocaine. Dr. Dougherty also denied intentional and deliberate drug use to others involved in Dr. Dougherty's monitoring process.

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5. In July 2001, the Board ordered Dr. Dougherty to submit to an examination at Shepherd Hill Hospital. During this examination, Dr. Dougherty admitted his intentional use of cocaine and marijuana. In addition, Frederick Karaffa, M.D., diagnosed Dr. Dougherty as being chemically dependent on alcohol, marijuana, opiates, and nicotine; and found Dr. Dougherty to have a history of cocaine abuse. Dr. Karaffa further diagnosed Dr. Dougherty as having a mood disorder, possibly substance induced.

Doctor Karaffa concluded that Dr. Dougherty should not practice osteopathic medicine and surgery at this time. Dr. Karaffa also recommended that Dr. Dougherty admit himself to inpatient treatment at a Board-approved treatment provider by July 27, 2001. Despite Doctor Karaffa's recommendation, Dr. Dougherty did not enter inpatient treatment at a Board-approved treatment provider by that date.

6. Dr. Dougherty failed to self-report Dr. Dougherty's relapse as required by Rule 4731-15-01(A)(5), Ohio Administrative Code.

#### CONCLUSIONS OF LAW

1. The conduct of David A. Dougherty, D.O., as described in Findings of Fact 3 and 6, 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.
2. The conduct of Dr. Dougherty, as described in Findings of Fact 1, 2, and 5, constitutes "[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness," as that clause is used in Section 4731.22(B)(19), Ohio Revised Code.
3. The conduct of Dr. Dougherty, as described in Findings of Fact 1 through 3 and 5, 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. Dougherty, as described in Findings of Fact 6, 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 4731-15-01(A)(5), Ohio Administrative Code.

5. The conduct of Dr. Dougherty, as described in Findings of Fact 4, constitutes “[m]aking a false, fraudulent, deceptive, or misleading statement in 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.

\* \* \* \* \*

Dr. Dougherty presents a sad history of impairment and relapse, having been through three inpatient treatment programs within the past two years. Moreover, Dr. Dougherty demonstrates an inability or unwillingness to commit to recovery. Dr. Dougherty testified that he is not currently in an aftercare program, and he is not being monitored or tested for drug use. Furthermore, by his own admission, Dr. Dougherty has used marijuana since his most recent treatment experience. Accordingly, in order to ensure protection of the public, the Board must assure that Dr. Dougherty completes a twenty-eight day treatment program as mandated by the Board rules, and provides adequate evidence of compliance with an aftercare contract, including psychiatric counseling and participation in a 12-Step support group, before being allowed to practice osteopathic medicine and surgery in this state.

### PROPOSED ORDER

It is hereby ORDERED that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of David A. Dougherty, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less eighteen months.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Dougherty’s certificate to practice osteopathic medicine and surgery unless all of the following conditions have been met:
  1. **Application and Fees:** Dr. Dougherty shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  2. **Completion of Inpatient Treatment:** Dr. Dougherty shall complete a minimum of twenty-eight days of inpatient or residential treatment, or a combination thereof [other than his June 2000 treatment at Ignatia Hall] 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. Dougherty 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. Dougherty's treatment records.

3. **Demonstration of Ability to Resume Practice**: Dr. Dougherty shall demonstrate to the satisfaction of the Board that he can practice in compliance with acceptable and prevailing standards of care under the provisions of his certificate. Such demonstration shall include, but not be limited to, the following:
  - a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Dougherty has successfully completed the required inpatient treatment.
  - b. Evidence of continuing full compliance, for at least one year immediately prior to submission of Dr. Dougherty's application for reinstatement or restoration, with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The post-discharge aftercare contract must comply with Rule 4731-16-10 of the Administrative Code.
  - c. Two written reports indicating that Dr. Dougherty's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the Board for making such assessments and shall describe the basis for this determination.
4. **Psychiatric Assessment**: Prior to submitting his application for reinstatement or restoration, Dr. Dougherty shall submit to the Board for its prior approval the name and curriculum vitae of a psychiatrist of Dr. Dougherty's choice. The Board may consider Massood R. Babai, M.D., for such approval.

Upon approval by the Board, Dr. Dougherty shall obtain from the approved psychiatrist an assessment of Dr. Dougherty's current psychiatric status. The assessment shall take place no more than sixty days prior to the submission of Dr. Dougherty's application for reinstatement, unless otherwise approved by the Board. Prior to the initial assessment, Dr. Dougherty shall furnish the approved psychiatrist copies of the Board's Order, including the Summary of the Evidence, Findings of Fact, and Conclusions, and any other documentation from the hearing record which the Board may deem appropriate or helpful to that psychiatrist.

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

- a. A detailed report of the evaluation of Dr. Dougherty's current psychiatric status and condition;
  - b. A detailed plan of recommended psychiatric treatment, if any, based upon the psychiatrist's informed assessment of Dr. Dougherty's current needs; and
  - c. Any reports upon which the treatment recommendation is based, including reports of physical examination and psychological or other testing.
5. **Absence from Practice**: In the event that Dr. Dougherty has not been engaged in the active practice of osteopathic medicine and surgery for a period in excess of two years prior to the submission of his application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Dougherty's fitness to resume practice.
- C. **PROBATIONARY CONDITIONS**: Upon reinstatement or restoration, Dr. Dougherty's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
1. **Obey Laws in Ohio**: Dr. Daugherty shall obey all federal, state, and local laws; and all rules governing the practice of medicine in Ohio.
  2. **Quarterly Declarations**: Dr. Daugherty shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Order becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
  3. **Appearances**: Dr. Daugherty shall appear in person for quarterly interviews before the Board or its designated representative, or as otherwise directed by the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
  4. **Abstention from Drugs**: Dr. Daugherty 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. Daugherty's history of chemical dependency.

5. **Abstention from Alcohol**: Dr. Daugherty shall abstain completely from the use of alcohol, marijuana, or cocaine.
6. **Rehabilitation Program**: Dr. Daugherty 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. Daugherty 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. Daugherty's quarterly declarations.
7. **Comply with the Terms of the Aftercare Contract**: Dr. Dougherty shall maintain continued compliance with the terms of the aftercare contract entered into with his treatment provider, provided that, where terms of the aftercare contract conflict with terms of this Order, the terms of this Order shall control.
8. **Random Drug/Alcohol Screening; Supervising Physician**: Dr. Dougherty shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Before engaging in any medical practice, unless otherwise determined by the Board, Dr. Dougherty shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Dougherty shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. Dougherty. Dr. Dougherty 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. Dougherty 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. Dougherty must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Dougherty 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. Dougherty's quarterly declaration. It is Dr. Dougherty's responsibility to ensure that reports are timely submitted.

9. **Provision of Blood or Urine for Screening without Prior Notice**: Dr. Daugherty shall submit blood and/or urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Daugherty's expense.
10. **Contact An Appropriate Impaired Physicians Committee**: Dr. Daugherty shall contact an appropriate impaired physicians committee, approved by the Board, to arrange for assistance in recovery and/or aftercare.
11. **Monitoring Physician**: Before engaging in any medical practice, or as otherwise determined by the Board, Dr. Dougherty shall 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. Dougherty and who is engaged in the same or similar practice specialty.

The monitoring physician shall monitor Dr. Dougherty and his medical practice, and shall review Dr. Dougherty'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. Dougherty and his medical practice, and on the review of Dr. Dougherty's patient charts. Dr. Dougherty 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. Dougherty's quarterly declaration.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Dougherty must immediately so notify the Board in writing. In addition, Dr. Dougherty 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. Dougherty 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.

12. **Continue Psychiatric Treatment Recommended Prior to Reinstatement**: If the psychiatrist approved by the Board prior to Dr. Dougherty reinstatement or restoration recommends that Dr. Dougherty undergo psychiatric treatment, Dr. Dougherty shall continue in psychiatric treatment until such time as the Board determines that no further treatment is necessary. To make this determination, the Board shall require reports from the approved treating psychiatrist. The psychiatric reports shall contain information describing Dr. Dougherty's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Dougherty's compliance with the treatment plan; Dr. Dougherty's psychiatric status; Dr. Dougherty's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. Dougherty 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. Dougherty's quarterly declaration.

In addition, Dr. Dougherty shall ensure that his treating psychiatrist immediately notifies the Board of Dr. Dougherty's failure to comply with his psychiatric treatment plan and/or any determination that Dr. Dougherty is unable to practice due to his psychiatric disorder.

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

13. **Prohibition against Administering, Personally Furnishing, or Possessing Controlled Substances**: Dr. Dougherty shall not, without prior Board approval, administer, personally furnish, or possess (except as allowed under Paragraph C.4 above) any controlled substances as defined by state or federal law.

In the event that the Board agrees at a future date to modify this Order to allow Dr. Dougherty to administer or personally furnish controlled substances, Dr. Dougherty shall keep a log of all controlled substances administered or personally furnished. Such log shall be submitted in the format approved by the Board thirty days prior to Dr. Dougherty's personal appearance before the Board or its designated representative, or as otherwise directed by the Board.

14. **Releases**: Dr. Daugherty shall provide authorization, through appropriate written consent forms, for disclosure of evaluative reports, summaries, and records, of whatever nature, by any and all parties that provide treatment or evaluation for Dr. Daugherty's chemical dependency, psychiatric, or related conditions, or for purposes of complying with this Order, whether such treatment or evaluation occurred before or after the effective date of this Order. The above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43 of the Ohio Revised Code and are confidential pursuant to statute.

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

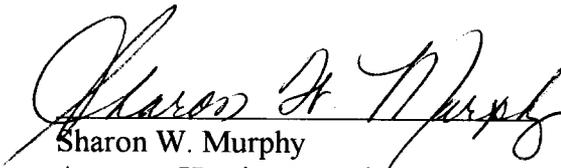
15. **Absence from Ohio**: In the event that Dr. Dougherty should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Dougherty must notify the Board in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under the Order, unless otherwise determined by the Board in instances where the Board can be assured that probationary monitoring is otherwise being performed.
16. **Violation of Probation; Discretionary Sanction Imposed**: If Dr. Dougherty 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.
17. **Tolling of Probationary Period while Out of Compliance**: In the event Dr. Dougherty is found by the Secretary of the Board to have failed to comply with any provision of this Order, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period.
- D. **TERMINATION OF PROBATION**: Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Dougherty's certificate will be fully restored.
- E. **REQUIRED REPORTING BY LICENSEE TO EMPLOYERS AND HOSPITALS**: Within thirty days of the effective date of this Order, Dr. Dougherty 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. Dougherty shall provide a copy of this Order to all employers or entities with which he contracts to provide health care services, or applies for

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

- F. **REQUIRED REPORTING BY LICENSEE TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, Dr. Dougherty 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. Dougherty 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. Dougherty shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.
- G. **SUPERSEDE PREVIOUS CONSENT AGREEMENT:** This Order shall supersede the terms and conditions set forth in the May 9, 2001, Step II Consent Agreement between Dr. Dougherty and the Board.

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

  
Sharon W. Murphy  
Attorney Hearing Examiner



# State Medical Board of Ohio

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## EXCERPT FROM THE DRAFT MINUTES OF APRIL 10, 2002

### REPORTS AND RECOMMENDATIONS

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

Dr. Somani 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: David A. Dougherty, D.O.; Rosemarie Fernandez, M.D.; and Gerard Jirka, P.A. A roll call was taken:

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

Dr. Somani 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. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye
	Dr. Somani	- aye

Dr. Somani noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in

further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

Dr. Somani 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.

.....

DAVID A. DOUGHERTY, D.O.

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

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

Dr. Dougherty was accompanied by his counsel, Eric J. Plinke.

Mr. Plinke advised that they have filed objections to the Hearing Examiner's Report and Recommendation, limited to one particular issue. Mr. Plinke reminded the Board that Dr. Dougherty relapsed early last summer and hasn't practiced medicine since the relapse. He went through the hearing process, and that is why they are before the Board today.

Dr. Dougherty thanked the Board for hearing him today. He asked that the Board accept the proposal arbitrated. In the past year he has gone bankrupt, he's getting a divorce, and he has no house. The reason he's here now and not three months ago was because he had a disability policy that was unclear. His claim was approved, so at this point he feels that he is economically able to make the commitment to sign the contract and follow through with it; whereas, a few months ago, if he didn't have any money, house or means of support, he could sign the agreement but he wouldn't have the means to do the urine testing, the screening, etc., and he doesn't think that that would have been a reasonable or legitimate thing to do.

Dr. Dougherty concluded by stating that he would be glad to answer any questions the Board might have.

Dr. Somani asked whether the Assistant Attorney General wished to respond.

Ms. Albers stated that she believes that the Hearing Examiner did an excellent job in setting out the evidence that was introduced at hearing. As far as Dr. Dougherty's objections are concerned, Dr. Dougherty had asked that the Board consider the treatment already completed, or let the next treatment

provider decide whether or not the treatment he has received should count towards the 28 days. Ms. Albers directed the Board's attention to the number of treatments Dr. Dougherty had undergone prior to his relapse. Ms. Albers urged the Board to adopt the Hearing Examiner's Report and Recommendation requiring the 28-day inpatient treatment.

**DR. TALMAGE MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF DAVID A. DOUGHERTY, D.O. DR. BUCHAN SECONDED THE MOTION.**

Dr. Buchan commended the Hearing Examiner on the record, stating that she did a nice job of stating the facts. This is another sad tale of impairment. Dr. Buchan commented that he's still not sure that Dr. Dougherty understands the gravity of his condition and the seriousness with which the Board takes its job to ensure public protection from impaired physicians.

**DR. BUCHAN MOVED TO AMEND PARAGRAPH A OF THE PROPOSED ORDER BY SUBSTITUTING THE FOLLOWING:**

**STAYED PERMANENT REVOCATION; SUSPENSION OF CERTIFICATE:** The certificate of David A. Dougherty, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED. The permanent revocation is stayed, and Dr. Dougherty's certificate is SUSPENDED for an indefinite period of time, but not less than eighteen months.

**DR. STEINBERGH SECONDED THE MOTION.**

Dr. Steinbergh stated that Dr. Dougherty violated his consent agreement. She stated that the stayed permanent revocation is appropriate.

Dr. Bhati stated that he thinks that Dr. Dougherty has no idea how much trouble he's in. He added that he is very concerned about this physician, who has undergone inpatient treatment on three occasions during the last two years. Dr. Bhati stated that, if that didn't get to him, he has no idea what will. Dr. Dougherty is lucky that the proposed permanent revocation is stayed, adding that the Board could permanently revoke his license with no stay. If Dr. Dougherty doesn't get the message now, he never will. Dr. Dougherty needs to understand that this is probably his last chance.

Dr. Somani stated that the basic issue is that Dr. Dougherty has had a number of relapses despite treatment. Not much progress has been made, and the Board has to take a strong step at this time.

A vote was taken on Dr. Buchan's motion to amend:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye

Dr. Talmage	- aye
Dr. Bhati	- aye
Dr. Buchan	- aye
Mr. Browning	- aye
Ms. Sloan	- aye
Dr. Agresta	- aye
Dr. Steinbergh	- aye
Dr. Somani	- aye

The motion carried.

**DR. BHATI MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER, AS AMENDED, IN THE MATTER OF DAVID A. DOUGHERTY, D.O. DR. STEINBERGH 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. Agresta	- aye
	Dr. Steinbergh	- aye
	Dr. Somani	- aye

The motion carried.



# State Medical Board of Ohio

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## NOTICE OF SUMMARY SUSPENSION AND OPPORTUNITY FOR HEARING

August 8, 2001

David A. Dougherty, D.O.  
1318 Meadowood Lane  
Hudson, Ohio 44236

Dear Doctor Dougherty:

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 August 8, 2001, 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.*  
Anand G. Garg, M.D., Secretary

AGG:bjs  
Enclosures

*Mailed 8.9.01*

**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 August 8, 2001, 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.  
Anand G. Garg, M.D., Secretary 

(SEAL)

AUGUST 8, 2001

Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF:

**DAVID A. DOUGHERTY, D.O.**

:

**ENTRY OF ORDER**

This matter came on for consideration before the State Medical Board of Ohio the 8th day of August, 2001.

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 David A. Dougherty, D.O., has violated Section 4731.22(B)(15), (B)(19), and (B)(26) Ohio Revised Code, as alleged in the 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 Doctor Dougherty's continued practice presents a danger of immediate and serious harm to the public; and further

Pursuant to the Step II Consent Agreement between Doctor Dougherty and the State Medical Board of Ohio, effective May 9, 2001, which states:

If the Secretary and Supervising Member of the BOARD determine that there is clear and convincing evidence that DOCTOR DOUGHERTY has violated any term, condition, or limitation of this CONSENT AGREEMENT, DOCTOR DOUGHERTY 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.

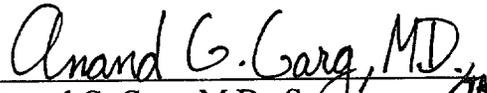
The following Order is hereby entered on the Journal of the State Medical Board of Ohio for the 8th day of August, 2001;

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

It is hereby ORDERED that David A. Dougherty, 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

AUGUST 8, 2001

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Date



# State Medical Board of Ohio

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## EXCERPT FROM THE DRAFT MINUTES OF AUGUST 8, 2001

### DAVID A. DOUGHERTY, 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. STEIBNERGH MOVED TO APPROVE THE ORDER OF SUMMARY SUSPENSION AND TO SEND THE NOTICE OF OPPORTUNITY FOR HEARING TO DR. DOUGHERTY. DR. AGRESTA SECONDED THE MOTION. A vote was taken:**

Vote:	Mr. Albert	- abstain
	Dr. Talmage	- aye
	Dr. Somani	- aye
	Dr. Buchan	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Agresta	- aye
	Dr. Steinbergh	- aye
	Dr. Bhati	- aye

The motion carried.



# State Medical Board of Ohio

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August 8, 2001

David A. Dougherty, D.O.  
1318 Meadowood Lane  
Hudson, Ohio 44236

Dear Doctor Dougherty:

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

- (1)(a) On or about March 14, 2001, you entered into a Step I Consent Agreement with the State Medical Board of Ohio (hereinafter "Board") in lieu of formal proceedings based upon your violation of Sections 4731.22(B)(12), (B)(19), and (B)(26), Ohio Revised Code.

In this Step I Consent Agreement you made certain admissions, including that you were diagnosed with alcohol dependence, major depression, opioid dependence, and cannabis dependence. You also admitted that on or about May 24, 2000, you arrived at work in a semi-inebriated state and that, after you discussed this matter with your employer, you decided to enter treatment at the Caron Foundation, a non-Board approved treatment provider, on or around May 25, 2001. You admitted that prior to entering treatment, you drank alcohol two to three times each week (having three to eight drinks each time); that you took hydrocodone and Protuss samples from your office for your own use; that you took 20 mg of hydrocodone twice each week; and that you diagnosed yourself and self-medicated with Zoloft, 100 mg each day. You admitted that after completing approximately 28 days of inpatient treatment at the Caron Foundation, you received inpatient treatment at St. Thomas Medical Center/Summa Health, a Board approved treatment provider, from June 23, 2000, to July 20, 2000.

In this Step I Consent Agreement, you also agreed to certain specified terms, conditions, and limitations, including that your certificate to practice medicine and surgery in Ohio would be suspended for an indefinite period of time, but not less

*Mailed 8-9-01*

than thirty (30) days. A copy of the Step I Consent Agreement is attached hereto and fully incorporated herein.

- (b) On or about May 9, 2001, you entered into a Step II Consent Agreement with the Board, whereby your certificate to practice osteopathic medicine and surgery in the State of Ohio was reinstated and wherein you agreed to certain specified probationary terms, conditions, and limitations. A copy of this Step II Consent Agreement is attached hereto and fully incorporated herein.
  - (c) To date, you remain subject to all terms of the Step II Consent Agreement.
- (2)(a) Paragraph 8 of this 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 1 of this Step II Consent Agreement states that you “shall obey all federal, state and local laws, and all rules governing the practice of osteopathic medicine in Ohio.”
- (3) You tested positive for cocaine during random urine screenings on June 8 and June 15, 2001, and positive for marijuana during random urine screenings on June 20 and June 26, 2001. All four screenings were Gas Chromatography/Mass Spectrometry (GC/MS) confirmed positive.
- (4) During an office conference on June 21, 2001, following your two positive urine screenings for cocaine, you informed Board staff members of these positive screenings. However, you denied intentional and deliberate use of cocaine to these staff members, speculating that you were possibly exposed to cocaine by smoking a cigarette you bummed from your motorcycle mechanic that, unbeknownst to you, was laced with cocaine. You also denied intentional and deliberate drug use to others involved in your monitoring, offering an account similar to the one you gave to Board staff members during your June 21, 2001, office conference.
- (5) On or around July 16, 2001, and pursuant to Section 4731.22(B)(26), Ohio Revised Code, the Board ordered you to submit to an examination at Shepherd Hill Hospital beginning on July 23, 2001. During this examination, you admitted to deliberate and intentional use of cocaine and marijuana on multiple occasions in June 2001. In addition, Frederick Karaffa, M.D., Ph.D., diagnosed you as being chemically dependent to alcohol, marijuana, opiates, and nicotine; found you to have a history of cocaine abuse; and diagnosed you as having a substance induced mood disorder (dysthymia). Doctor Karaffa also concluded that you should not

practice osteopathic medicine and surgery at this time and that you should admit yourself to inpatient treatment at a Board approved treatment provider by July 27, 2001. Despite Doctor Karaffa's recommendation, you did not enter inpatient treatment at a Board approved treatment provider by July 27, 2001.

- (6) You failed to self-report your relapse as required by Rule 4731-15-01(A)(5), Ohio Administrative Code.

Your acts, conduct, and/or omissions as alleged in paragraphs (3) through (6), 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 paragraphs (1) and (5), above, individually and/or collectively, constitute "[i]nability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness," as that clause is used in Section 4731.22(B)(19), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraphs (1) through (3) and (5), 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 (6), 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 4731-15-01(A)(5), Ohio Administrative 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 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.

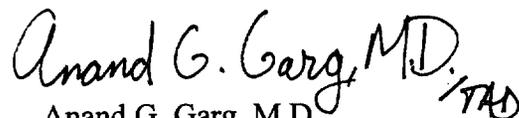
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at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

Enclosures

CERTIFIED MAIL #7000 0600 0024 5148 2513  
RETURN RECEIPT REQUESTED

cc: Eric J. Plinke, Esq.

CERTIFIED MAIL #7000 0600 0024 5148 2520  
RETURN RECEIPT REQUESTED

**STEP II  
CONSENT AGREEMENT  
BETWEEN  
DAVID ANDREW DOUGHERTY, D.O.  
AND  
THE STATE MEDICAL BOARD OF OHIO**

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

DAVID ANDREW DOUGHERTY, 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 a violation of Section 4731.22(B)(12), Ohio Revised Code, “commission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed,” to wit: Section 2925.11, Ohio Revised Code, “Possession of Drugs;” Section 4731.22(B)(19), Ohio Revised Code, “inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills; and 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.”
  
- B. THE STATE MEDICAL BOARD OF OHIO enters into this CONSENT AGREEMENT in lieu of formal proceedings based upon the violation of Sections 4731.22(B)(12), (B)(19) and (B)(26), Ohio Revised Code, as set forth in Paragraph E of the March 2001 Step I Consent Agreement between DAVID ANDREW DOUGHERTY, D.O., and THE STATE MEDICAL BOARD OF OHIO (hereinafter BOARD), a copy of which

is attached hereto and fully incorporated herein, and paragraphs E through H below. 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. DOCTOR DOUGHERTY 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 2001 Step I Consent Agreement.
- D. DOCTOR DOUGHERTY STATES that he is not licensed to practice osteopathic medicine and surgery in any other state.
- E. DOCTOR DOUGHERTY STATES, and the BOARD ACKNOWLEDGES receipt of information to support, that DOCTOR DOUGHERTY completed his twenty-eight (28) day inpatient program at St. Thomas Medical Center/Summa Health, from June 23, 2000, to July 20, 2000. DOCTOR DOUGHERTY further STATES that upon discharge, he was instructed to follow-up with Dr. Babai (a psychiatrist) and Dr. Iemma (a primary care physician), continue attending Alcoholics Anonymous (AA) meetings, and continue visitations at Ignatia Hall. Dr. Dougherty STATES that in his efforts to comply with these instructions, he was treated by Dr. Babai every two months and attended AA meetings biweekly for the period between July 20, 2000, and the date that his Step I Consent Agreement became effective (March 14, 2001). He further STATES that he also saw a marriage counselor approximately eight times and a licensed counselor approximately three times during this same period.
- F. DOCTOR DOUGHERTY STATES, and the BOARD ACKNOWLEDGES receipt of information to support, that DOCTOR DOUGHERTY has entered into an aftercare contract with St. Thomas Medical Center that began April 17, 2001, and will continue through April 17, 2003. DOCTOR DOUGHERTY further STATES that he has complied with the terms of that contract to date. DOCTOR DOUGHERTY also ADMITS that as part of his aftercare contract he is required to attend at least three (3) Alcoholics Anonymous/Narcotics Anonymous meetings per week; attend at least one Aftercare Men's Group meeting per week; meet monthly with Dr. Liebelt for an individual appointment; attend professional therapy when indicated by Dr. Liebelt to resolve family- and work-related problems; and meet with a primary care physician to resolve any ongoing medical problems.
- G. DOCTOR DOUGHERTY STATES, and the BOARD ACKNOWLEDGES, that Robert A. Liebelt, M.D., Ph.D., Medical

Director of St. Thomas Hospital/Summa Health, a BOARD approved treatment provider, evaluated DOCTOR DOUGHERTY on or about March 21, 2001, and clinically diagnosed him with alcohol dependency (in remission since May 2000); opioid dependency (in remission since May 2000) and major depression by history. DOCTOR DOUGHERTY also STATES, and the BOARD ACKNOWLEDGES, that John C. Andreozzi, M.D., of Edwin Shaw Hospital for Rehabilitation, a BOARD approved treatment provider, evaluated DOCTOR DOUGHERTY on or about March 28, 2001, and clinically diagnosed him with alcohol dependency, in remission; opioid abuse, in remission; and cannabis abuse, in remission. DOCTOR DOUGHERTY STATES, and the BOARD ACKNOWLEDGES, that both Doctor Liebelt and Doctor Andreozzi opined that DOCTOR DOUGHERTY is presently 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. DOCTOR DOUGHERTY STATES, and the BOARD ACKNOWLEDGES, that Massood R. Babai, M.D., a psychiatrist approved by the Board, has diagnosed DOCTOR DOUGHERTY as suffering from Major Depressive Disorder, Recurrent; alcohol dependence; hydrocodone abuse; and cannabis abuse. DOCTOR DOUGHERTY STATES, and the BOARD ACKNOWLEDGES, that DOCTOR DOUGHERTY has been under Doctor Babai's treatment since July 13, 2000; that Doctor Babai has stated that DOCTOR DOUGHERTY'S depression is well under control; and that Doctor Babai has opined that DOCTOR DOUGHERTY is presently 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.

#### **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 DAVID ANDREW DOUGHERTY, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be reinstated, and DAVID ANDREW DOUGHERTY, D.O., knowingly and voluntarily agrees with the BOARD, to the following PROBATIONARY terms, conditions, and limitations:

1. DOCTOR DOUGHERTY shall obey all federal, state and local laws, and all rules governing the practice of osteopathic medicine in Ohio;
2. DOCTOR DOUGHERTY 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 DOUGHERTY 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 DOUGHERTY written notification of scheduled appearances, it is DOCTOR DOUGHERTY'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 DOUGHERTY shall immediately submit to the BOARD a written request to be notified of his next scheduled appearance;

4. In the event that DOCTOR DOUGHERTY should leave Ohio for three (3) continuous months, or reside or practice outside the State, DOCTOR DOUGHERTY 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 DOUGHERTY 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 DOUGHERTY 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 DOUGHERTY's personal appearance before the BOARD or its designated representative, or as otherwise directed by the BOARD;
7. DOCTOR DOUGHERTY 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 DOUGHERTY to administer or dispense controlled substances, DOCTOR DOUGHERTY 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 DOUGHERTY's personal appearance before the BOARD or its designated representative, or as otherwise directed by the BOARD;

#### **Sobriety**

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

#### **Drug and Alcohol Screens/Supervising Physician**

10. DOCTOR DOUGHERTY shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the BOARD. DOCTOR DOUGHERTY 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 DOUGHERTY shall submit to the BOARD for its prior approval the name of a supervising physician to whom DOCTOR DOUGHERTY 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 DOUGHERTY. 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 DOUGHERTY 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 DOUGHERTY must immediately notify the BOARD in writing, and make arrangements acceptable to the BOARD for another supervising physician as soon as practicable. DOCTOR DOUGHERTY 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 DOUGHERTY's quarterly declaration. It is DOCTOR DOUGHERTY's responsibility to ensure that reports are timely submitted;

11. The BOARD retains the right to require, and DOCTOR DOUGHERTY agrees to submit, blood or urine specimens for analysis at DOCTOR DOUGHERTY's expense upon the BOARD's request and without prior notice. DOCTOR DOUGHERTY'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 DOUGHERTY shall submit for the BOARD's prior approval the name of a monitoring physician, who shall review DOCTOR DOUGHERTY'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 DOUGHERTY 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 DOUGHERTY'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 DOUGHERTY and provide the BOARD with quarterly reports on the doctor's progress and status. DOCTOR DOUGHERTY 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 DOUGHERTY must immediately so notify the BOARD in writing, and make arrangements acceptable to the BOARD for another monitoring physician as soon as practicable. DOCTOR DOUGHERTY 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 DOUGHERTY's quarterly declaration. It is DOCTOR DOUGHERTY'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 DOUGHERTY 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 DOUGHERTY shall submit with each quarterly declaration required under Paragraph 2 of this CONSENT AGREEMENT acceptable documentary evidence of continuing compliance with this program;

### **Treatment**

14. DOCTOR DOUGHERTY shall continue psychiatric treatment with his treating psychiatrist, Massood R. Babai, M.D., or another psychiatrist approved in advance by the BOARD, at least once every four weeks, or as otherwise directed by the BOARD. DOCTOR DOUGHERTY shall comply with his psychiatric treatment plan, including taking medications as prescribed and/or ordered for his psychiatric disorder. DOCTOR DOUGHERTY shall ensure that psychiatric reports are forwarded by his treating psychiatrist to the BOARD on a quarterly basis, or as otherwise directed by the BOARD. The psychiatric reports shall contain information describing DOCTOR DOUGHERTY's current treatment

plan and any changes that have been made to the treatment plan since the prior report; DOCTOR DOUGHERTY's compliance with his treatment plan; DOCTOR DOUGHERTY's mental status; DOCTOR DOUGHERTY's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. DOCTOR DOUGHERTY shall ensure that his treating psychiatrist will immediately notify the Board of his failure to comply with his psychiatric treatment plan and/or any determination that DOCTOR DOUGHERTY is unable to practice due to his psychiatric disorder. It is DOCTOR DOUGHERTY's responsibility to ensure that quarterly reports are received in the BOARD's offices no later than the due date for DOCTOR DOUGHERTY's quarterly declaration;

#### **Aftercare**

15. DOCTOR DOUGHERTY shall contact an appropriate impaired physicians committee, approved by the BOARD, to arrange for assistance in recovery or aftercare;
16. DOCTOR DOUGHERTY shall maintain continued compliance with the terms of the aftercare contract entered into with his treatment provider, provided, that where terms of the aftercare contract conflict with terms of this CONSENT AGREEMENT, the terms of this CONSENT AGREEMENT shall control;

#### **Releases**

17. DOCTOR DOUGHERTY 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**

18. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR DOUGHERTY shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he/she 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 DOUGHERTY 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;

19. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR DOUGHERTY 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 DOUGHERTY 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 DOUGHERTY shall provide this BOARD with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt;

#### **VIOLATION OF PROBATIONARY TERMS**

20. Any violation of Paragraph 8 or Paragraph 9 of this CONSENT AGREEMENT shall constitute grounds to revoke or permanently revoke DOCTOR DOUGHERTY's certificate. DOCTOR DOUGHERTY 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 DOUGHERTY's certificate based on other violations of this CONSENT AGREEMENT;
21. DOCTOR DOUGHERTY 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 DOUGHERTY 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;
22. DOCTOR DOUGHERTY 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,
23. DOCTOR DOUGHERTY 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.

### **FAILURE TO COMPLY**

If, in the discretion of the Secretary and Supervising Member of the BOARD, DOCTOR DOUGHERTY 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 DOUGHERTY has violated any term, condition, or limitation of this CONSENT AGREEMENT, DOCTOR DOUGHERTY 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**

DOCTOR DOUGHERTY shall not request termination of this CONSENT AGREEMENT for a minimum of five (5) years. In addition, DOCTOR DOUGHERTY shall not request modification to the probationary terms, limitations, and conditions contained herein for at least one (1) year. 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 DOUGHERTY 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.

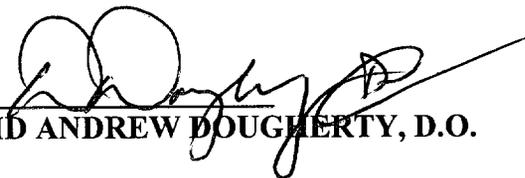
Any action initiated by the BOARD based on alleged violations of this CONSENT AGREEMENT shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

DOCTOR DOUGHERTY 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**

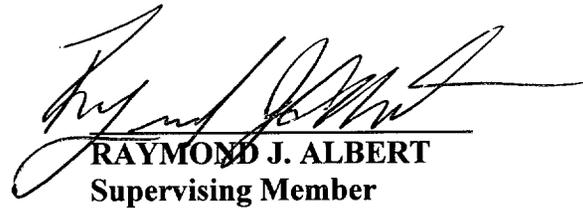
It is expressly understood that this CONSENT AGREEMENT is subject to ratification by the BOARD prior to signature by the Secretary and Supervising Member and that it shall become effective upon the last date of signature below.

  
\_\_\_\_\_  
DAVID ANDREW DOUGHERTY, D.O.

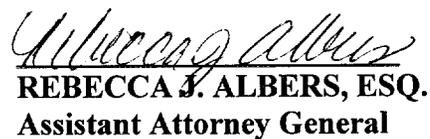
5/7/01  
DATE

  
\_\_\_\_\_  
ANAND G. GARG, M.D.  
Secretary

5/9/01  
DATE

  
\_\_\_\_\_  
RAYMOND J. ALBERT  
Supervising Member

5/9/01  
DATE

  
\_\_\_\_\_  
REBECCA J. ALBERS, ESQ.  
Assistant Attorney General

5/9/01  
DATE

MAR - 2 2001

**STEP I**  
**CONSENT AGREEMENT**  
**BETWEEN**  
**DAVID ANDREW DOUGHERTY, D.O.**  
**AND**  
**THE STATE MEDICAL BOARD OF OHIO**

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

DAVID ANDREW DOUGHERTY, 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, permanently revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for a violation of Section 4731.22(B)(12), Ohio Revised Code, "commission of an act in the course of practice that constitutes a misdemeanor in this state, regardless of the jurisdiction in which the act was committed," to wit: Section 2925.11, Ohio Revised Code, "Possession of Drugs;" Section 4731.22(B)(19), Ohio Revised Code, "inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills;" and 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."
- B. THE STATE MEDICAL BOARD OF OHIO enters into this CONSENT AGREEMENT in lieu of formal proceedings based upon the violations of Section 4731.22(B)(12), (19) and (26), Ohio Revised Code, as set forth in Paragraph E below, and 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. DAVID ANDREW DOUGHERTY, D.O., is licensed to practice osteopathic medicine and surgery in the State of Ohio.
- D. DAVID ANDREW DOUGHERTY, D.O., STATES that he is not licensed to practice osteopathic medicine and surgery in any other state.
- E. DAVID ANDREW DOUGHERTY, D.O., ADMITS that he has been diagnosed with alcohol dependence, major depression, opioid dependence, and cannabis dependence.

DAVID ANDREW DOUGHERTY, D.O., further ADMITS that, prior to entering treatment as described below, he drank alcohol two to three times each week, having three to eight drinks each time. DOCTOR DOUGHERTY further ADMITS that, in or about April 2000, he began taking hydrocodone and Protuss samples from his office for his own use. DOCTOR DOUGHERTY further STATES that he took a 20 mg tablet of hydrocodone twice each week. DOCTOR DOUGHERTY further STATES that he diagnosed himself and self-medicated with Zoloft, 100 mg each day.

DAVID ANDREW DOUGHERTY, D.O., STATES that on or about May 24, 2000, he arrived at work in a semi-inebriated state, and he decided to enter treatment after discussing this matter with his employer. DOCTOR DOUGHERTY further STATES that on or about May 25, 2000, he entered the Caron Foundation, a non-Board approved treatment provider, in Wernersville, Pennsylvania, for treatment related to his alcohol and opioid dependence. While there, DOCTOR DOUGHERTY contacted the Ohio Physician's Effectiveness Program (OPEP), and learned that the Caron Foundation was not a Board approved treatment provider. He left the Caron Foundation on or about June 21, 2000, so he could enter treatment with a Board approved treatment provider.

DAVID ANDREW DOUGHERTY, D.O., ADMITS that he began treatment at St. Thomas Medical Center/Summa Health, a Board approved treatment provider, on June 23, 2000. He completed his twenty-eight (28) day inpatient program on July 20, 2000. DOCTOR DOUGHERTY further ADMITS that, upon his discharge from St. Thomas, it was recommended that he follow-up with Dr. Babai (a psychiatrist), follow-up with Dr. Iemma (primary care physician), continue attending AA meetings, and continue visitations with Ignatia Hall.

DAVID ANDREW DOUGHERTY, D.O., further STATES that he has not abused any substances since on or about May 24, 2000.

**AGREED CONDITIONS**

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, DAVID ANDREW DOUGHERTY, 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 DOUGHERTY to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than thirty (30) days. Said suspension shall begin on March 24, 2001;

**Sobriety**

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

**Releases; Quarterly Declarations and Appearances**

4. DOCTOR DOUGHERTY 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 DOUGHERTY'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 DOUGHERTY 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 DOUGHERTY 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 DOUGHERTY 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 DOUGHERTY written notification of scheduled appearances, it is DOCTOR DOUGHERTY'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 DOUGHERTY shall immediately submit to the BOARD a written request to be notified of his next scheduled appearance;

Drug & Alcohol Screens; Supervising Physician

7. DOCTOR DOUGHERTY shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the BOARD. DOCTOR DOUGHERTY 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 DOUGHERTY shall submit to the BOARD for its prior approval the name of a supervising physician to whom DOCTOR DOUGHERTY 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 DOUGHERTY. 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

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addition, the supervising physician shall immediately inform the BOARD of any positive screening results;

DOCTOR DOUGHERTY 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 DOUGHERTY must immediately notify the BOARD in writing, and make arrangements acceptable to the BOARD for another supervising physician as soon as practicable. DOCTOR DOUGHERTY 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 DOUGHERTY's quarterly declaration. It is DOCTOR DOUGHERTY's responsibility to ensure that reports are timely submitted;

8. Within fourteen (14) days of the effective date of this consent agreement, DOCTOR DOUGHERTY shall enter into an aftercare contract that complies with Rule 4731-16-10, Ohio Administrative Code, with his treatment provider, St. Thomas Medical Center/Summa Health, or another Board approved treatment provider. Further, DOCTOR DOUGHERTY shall provide the BOARD with a copy of such aftercare contract within thirty (30) days of the effective date of this consent agreement.

#### **CONDITIONS FOR REINSTATEMENT**

9. The BOARD shall not consider reinstatement of DOCTOR DOUGHERTY's certificate to practice osteopathic medicine and surgery unless and until all of the following conditions are met:
  - a. DOCTOR DOUGHERTY shall submit an application for reinstatement, accompanied by appropriate fees, if any;
  - b. DOCTOR DOUGHERTY 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 DOUGHERTY has successfully completed any required inpatient treatment;
  - ii. Evidence of continuing full compliance with an aftercare contract and consent agreement;
  - iii. Two written reports indicating that DOCTOR DOUGHERTY's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the BOARD for making such assessments and shall describe the basis for this determination.
  - iv. One written report indicating that DOCTOR DOUGHERTY has been psychiatrically evaluated and that DOCTOR DOUGHERTY's ability to practice has been assessed and that he has been found capable of practicing according to acceptable and prevailing standards of care. The evaluation shall be conducted by a psychiatrist approved in advance by the BOARD. Prior to the assessment, DOCTOR DOUGHERTY shall provide the evaluator with copies of patient records from any psychiatric treatment that he has received and a copy of this CONSENT AGREEMENT. The reports shall describe the bases for the evaluator's determinations and shall include a detailed recommended plan of any care, counseling, and treatment that may be required for DOCTOR DOUGHERTY's psychiatric disorder. The reports shall also include any recommended conditions, restrictions, or limitations that should be imposed on DOCTOR DOUGHERTY's practice.
- c. DOCTOR DOUGHERTY shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the BOARD or, if the BOARD and DOCTOR DOUGHERTY are unable to agree on the terms of a written CONSENT AGREEMENT, then DOCTOR DOUGHERTY 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 DOUGHERTY'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 DOUGHERTY has maintained sobriety.

10. In the event that DOCTOR DOUGHERTY 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 DOUGHERTY's fitness to resume practice.

#### **REQUIRED REPORTING BY LICENSEE**

11. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR DOUGHERTY 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 DOUGHERTY 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 DOUGHERTY shall provide this BOARD with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt.
12. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR DOUGHERTY 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 DOUGHERTY 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

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Chief of Staff at each hospital where he applies for or obtains 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 BOARD, DOCTOR DOUGHERTY 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.

#### **ACKNOWLEDGMENTS/LIABILITY RELEASE**

DOCTOR DOUGHERTY 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 DOUGHERTY 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.

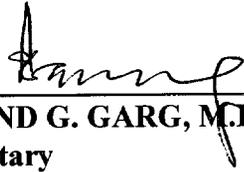
This CONSENT AGREEMENT shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code.

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.

  
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DAVID ANDREW DOUGHERTY, D.O.

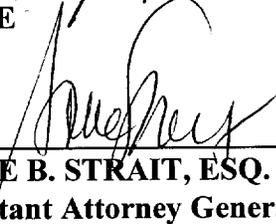
  
\_\_\_\_\_  
ANAND G. GARG, M.D.  
Secretary

2/27/01  
DATE

3/14/01  
DATE

  
\_\_\_\_\_  
RAYMOND J. ALBERT  
Supervising Member

3/14/01  
DATE

  
\_\_\_\_\_  
ANNE B. STRAIT, ESQ.  
Assistant Attorney General

3/14/01  
DATE