# State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

**Richard A. Whitehouse, Esq.**
Executive Director

**(614) 466-3934**
**med.ohio.gov**


October 8, 2008

Robert Rowan Summers, D.O.
1497 Pinehurst
Defiance, OH 43512

RE: 08-CRF-094

Dear Doctor Summers:

Please find enclosed a certified copy of the Findings, Order and Journal Entry approved and confirmed by the State Medical Board meeting in regular session on October 8, 2008.

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 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 of the Ohio Revised Code.

Very truly yours,

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. 91 7108 2133 3934 3486 2614
RETURN RECEIPT REQUESTED

Mailed 10.09.08

CERTIFICATION

I hereby certify that the attached copy of the Findings, Order and Journal Entry approved by the State Medical Board, meeting in regular session on October 8, 2008, constitutes a true and complete copy of the Findings, Order and Journal Entry in the Matter of Robert Rowan Summers, D.O., Case Number 08-CRF-094, as it appears in the Journal of the State Medical Board of Ohio.

This Certification is made by the authority of the State Medical Board of Ohio in its behalf.

Lance A. Talmage, M.D.
Secretary

(SEAL)

October 8, 2008
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

| | | |
|---|---|---|
| IN THE MATTER OF | : | |
| | : | Case No. 08-CRF-094 |
| ROBERT ROWAN SUMMERS, D.O. | : | |

**FINDINGS, ORDER AND JOURNAL ENTRY**

This matter came on for consideration before the State Medical Board of Ohio on October 8, 2008, pursuant to a Notice of Summary Suspension and Opportunity for Hearing issued to Robert Rowan Summers, D.O., on July 9, 2008. No request for hearing having been received within the statutorily mandated time period, Hearing Examiner Patricia A. Davidson, Esq., on behalf of the Board, reviewed and summarized evidence supporting the Notice, and prepared Proposed Findings and a Proposed Order.

WHEREFORE, having reviewed Ms. Davidson's Proposed Findings and Proposed Order, which is attached hereto and incorporated herein, the Board hereby adopts the Proposed Findings and Proposed Order.

Accordingly, it is hereby ORDERED that:

> The certificate of Robert Rowan Summers, D.O., to practice as osteopathic medicine in the State of Ohio is hereby REVOKED.

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

Lance A. Talmage, M.D.
Secretary

(SEAL)

October 8, 2008
Date

STATE MEDICAL BOARD
2008 SEP -8 P 4: 17

**PROPOSED FINDINGS AND PROPOSED ORDER**
**IN THE MATTER OF ROBERT ROWAN SUMMERS, D.O.**
**Case No. 08-CRF-094**

The Matter of Robert Rowan Summers, D.O., was reviewed by Patricia A. Davidson, Hearing Examiner for the State Medical Board of Ohio.

## INTRODUCTION

Basis for Review

1. In a letter and entry dated July 9, 2008 [Notice], the State Medical Board of Ohio notified Robert Rowan Summers, D.O., that the Board had adopted an order summarily suspending his certificate to practice osteopathic medicine and surgery in Ohio. The Board stated that this action was based on clear and convincing evidence that Dr. Summers was impaired pursuant to Ohio Revised Code Section [R.C.] 4731.22(B)(26), that he had violated the terms and conditions of a Board order, thus violating R.C. 4731.22(B)(15), and that his impairment and conduct presented a danger of immediate and serious harm to the public, thus authorizing summary suspension pursuant to R.C. 4731.22(G).

   In addition, the Board notified Dr. Summers that it intended to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to issue or reinstate his certificate, or to reprimand him or place him on probation, based on alleged violations of R.C. 4731.22(B)(5), 4731.22(B)(15) and 4731.22(B)(26). (Exhibit [Ex.] 3 at 64-109)

   The Board notified Dr. Summers that he was entitled to a hearing if he submitted a written request that was "received in the offices of the Board within thirty days of the time of mailing of this notice." The Board further notified Dr. Summers that, in the event that no hearing request was received within thirty days of the notice's mailing, the Board may determine, in his absence and on consideration of the matter, whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate his certificate to practice or to reprimand him or place him on probation. (Ex. 3 at 70)

2. On June 15, 2008, a Board investigator hand-delivered the Notice to Dr. Summers, who signed an acknowledgement of receipt on that date. The Board also mailed the Notice to Dr. Summers by certified mail to his most recent address of record. The U.S. Postal Service provided a receipt showing that the Notice had been forwarded to a new address and was received by Dr. Summers on July 19, 2008. (Ex. 3 at 110)

3. The Board's Public Services Administrator stated under oath that, as of August 19, 2008, Dr. Summers had not submitted a written hearing request to the Board. (Ex. 3 at 1)

4. In a memorandum dated August 27, 2001, the Public Services Administrator requested that a Hearing Examiner review the documentary evidence, as provided, in the *Matter of Robert Rowan Summers, D.O.,* Case No. 08-CRF-094, and prepare proposed findings and a proposed order [PFPO report] for the Board. (Ex. 6)

## EVIDENCE EXAMINED

Exhibit 1: Affidavit of Danielle Bickers, Compliance Supervisor for the Board, with attachments:

Exhibit 1-1: Toxicology screen for urine specimen provided by Dr. Summers on May 29, 2008.

Exhibit 1-2: Additional test results for the specimen provided May 29, 2008.

Exhibit 1-3: Toxicology screen for urine specimen provided June 25, 2008.

Exhibit 1-4: Dr. Summers' declaration of compliance dated May 30, 2008.

Exhibit 2: Affidavit of Karen Mortland, Enforcement Attorney for the Board

Exhibit 3: Affidavit of Barbara A. Jacobs, Public Services Administrator, with attachments that are not individually numbered:

- March 2002 - Step I Consent Agreement — page 3
- April 2003 - Step II Consent Agreement — page 11
- October 2007 - Entry of Order and Notice of Summary Suspension and Opportunity to be Heard in Case No. 07-CRF-005 — page 20
- December 12, 2007 - Entry of Order in Case No. 07-CRF-005, mailed January 4, 2008, with attachments: — page 27
  - Hearing Examiner's Report and Recommendation in November 2007, following hearing held October 30, 2007 — page 36
  - Excerpt from the Draft Minutes of the Board's Meeting on December 12, 2007 — page 59
- July 9, 2008 – Entry of Order and Notice of Summary Suspension and Opportunity to be Heard in Case No. 08-CRF-094, with attachments: — page 64
  - December 2007 Entry of Order mailed January 4, 2008, in Case No. 07-CRF-005 (duplicate at p. 27) — page 72
  - Hearing Examiner's Report and Recommendation, November 2007 (duplicate at p. 36) — page 81
  - Excerpt from the Draft Minutes of the Board's Meeting on December 12, 2007 (duplicate at p. 59) — page 104
  - Documentation of service on Dr. Summers of the July 2008 Entry and Notice in Case No. 08-CRF-094 — page 109

Exhibit 4: Affidavit of Debra L. Jones, Continuing Medical Education and Renewal Officer, verifying Dr. Summers' address of record.

Exhibit 5: Affidavit of Chad E. Yoakam, Enforcement Investigator, regarding the random urine sample obtained from Dr. Summers in June 2008, with attached chain-of-custody form. [Note: In the list of evidence provided to the Hearing Unit for the present PFPO report (see Exhibit 6, below), the Yoakam affidavit is not listed. However, the affidavit was included in the package of evidence provided to the Hearing Unit and has therefore been considered with the other evidence provided.]

Exhibit 6: Memorandum to the Chief Hearing Examiner dated August 27, 2008, requesting preparation of a PFPO report.

## SUMMARY OF THE EVIDENCE

**Previous Summary Suspension in 2007 – Final Order in January 2008**

1. The July 2008 summary suspension, at issue in the present matter, is not the first summary suspension that the Board has ordered against the certificate of Robert Rowan Summers, D.O., to practice osteopathic medicine and surgery in Ohio. On October 10, 2007, the Board previously ordered a summary suspension of his certificate. The prior action, Case No. 07-CRF-005, was based on Dr. Summers' history of treatment for substance abuse, his relapse, his violation of a 2003 consent agreement, and the impairment of his ability to practice. In the October 2007 notice of opportunity for hearing, the Board alleged that Dr. Summers was impaired as defined in R.C. 4731.22(B)(26) and applicable rules, and that he had violated R.C. 4731.22(B)(15) by violating certain terms and conditions in the consent agreement. (Ex. 3 at 22-26)

2. Dr. Summers requested a hearing, which was held on October 30, 2007. Four witnesses testified, including Dr. Summers and Gregory B. Collins, M.D., the physician who had treated him at the Alcohol and Drug Recovery Center of the Cleveland Clinic Foundation in 2007. (Ex. 3 at 36-37) The hearing examiner submitted a detailed Report and Recommendation in November 2007, which included a review of the following:

   - Dr. Summers' education and training, and his medical practice;
   - Dr. Summers' poly-substance abuse and his 1988 inpatient treatment for chemical dependency ;
   - his 1998 relapse on Ultram (the brand name for tramadol), and his 2000 readmission for inpatient treatment to treat his chemical dependency;
   - Dr. Summers' 2001 relapse on alcohol and Vicoprofen, and his unlawful conduct to obtain Vicoprofen during that relapse, together with his successful evasion of detection of this relapse despite urine-testing;
   - his 2002 self-report that he had relapsed in 2001, following by his third admission for inpatient treatment in 2002;
   - the Step I Consent Agreement that Dr. Summers and the Board entered in March 2002, pursuant to which Dr. Summers' certificate to practice was suspended;
   - the Step II Consent Agreement that Dr. Summers and the Board entered in April 2003, pursuant to which Dr. Summers' certificate to practice was reinstated, and which required

him to abstain completely from using drugs except those lawfully prescribed, dispensed or administered by an individual with full knowledge of Dr. Summers' history of chemical dependency;

- the August 2007 prescribing of Ultram for Dr. Summers by another physician;
- Dr. Summers' relapse on Ultram in August 2007 (first relapse since entering consent agreements with Board);
- Dr. Summers' inpatient treatment at the Cleveland Clinic for approximately fourteen days in September 2007;
- the diagnosis by Dr. Collins, pursuant to the treatment at the Cleveland Clinic, that Dr. Summers was suffering from depression, which had been a predisposing factor in Dr. Summers' relapse in August 2007; and
- Dr. Collins' opinion that the relapse was a very mild one, that Dr. Summers was a good physician with a good prognosis for continued recovery, that Dr. Summers was "not impaired," and that he was capable of practicing medicine according to acceptable and prevailing standards of care if he was monitored by the Board for a minimum of two years. (Ex. 3 at 38-45)

3. In November 2007, the Hearing Examiner issued a Report and Recommendation, setting forth Findings of Fact and Conclusions of Law that were subsequently approved and confirmed by the Board, as follows:

**FINDINGS OF FACT[1]**

*1.* Pursuant to a Step I Consent Agreement between Robert Rowan Summers, D.O., and the State Medical Board of Ohio [Board], effective March 14, 2002, Dr. Summers' certificate to practice osteopathic medicine and surgery in the State of Ohio was suspended for an indefinite period of time, but not less than one year, for violations of Ohio Revised Code Sections 4731.22(A); 4731.22(B)(26); 4731.22(B)(5); 4731.22(B)(10), to wit, Section 2925.22(A), Ohio Revised Code, Deception to obtain a Dangerous Drug; and 4731.22(B)(20), to wit, Rule 4731-11-08, Ohio Administrative Code, Utilizing Controlled Substances for Self and Family Members.

*2.* Pursuant to a Step II Consent Agreement between Dr. Summers and the Board, effective April 2, 2003, Dr. Summers' certificate was reinstated subject to the probationary terms, conditions and limitations contained therein. Dr. Summers' Step II Consent Agreement remains in effect.

*3.* Paragraph 8 of the Dr. Summers' Step II Consent Agreement contains the following provision:

[1] The paragraph numbers in the blocked quotation are italicized to distinguish them from the paragraph numbers in the main body of the report.

Dr. Summers 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. Summers' history of chemical dependency.

Sometime in early August 2007, Dr. Summers injured the fifth digit of his left hand by catching it on a doorframe at work. The following day, he consulted with an orthopedic surgeon who works in the same practice as Dr. Summers and asked that he examine the injured finger. Dr. Summers' colleague conducted a "curbside consult" in the hallway of his office, and noted that Dr. Summers exhibited symptoms including pain, swelling and limited motion in his injured finger. Given Dr. Summers' history of chemical dependency, which was known to Dr. Summers' colleague, Dr. Summers' colleague prescribed eight Ultram 50 mg and instructed Dr. Summers to take one every six to eight hours.

Despite the limitation set forth in Paragraph 8 of his Step II Consent Agreement, Dr. Summers took samples of Ultram ER from medical office stock rather than filling the aforementioned prescription. Dr. Summers took these samples from about August 10 through about August 21, 2007, and took as many as four tablets at a time.

*4.* On or about August 30, 2007, the Board was notified that a urine sample submitted by Dr. Summers on August 13, 2007, had tested positive and was GC/MS confirmed for tramadol, the generic name of Ultram. The toxicology results also indicated that the urine sample exhibited low specific gravity and creatinine levels, although not to a level that would indicate dilution of the sample.

*5.* On September 7, 2007, Dr. Summers was admitted to the Alcohol and Drug Recovery Center at the Cleveland Clinic, a Board-approved treatment provider, where he reported that he had relapsed on Ultram. After receiving treatment deemed appropriate by Gregory B. Collins, M.D., Medical Director of the Alcohol and Drug Recovery Center at the Cleveland Clinic, Dr. Summers was discharged on or about September 20, 2007. Dr. Collins opined that Dr. Summers is capable of practicing medicine according to acceptable and prevailing standards of care only if Dr. Summers is monitored.

*6.* 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.
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. The Rule further provides that an individual's relapse following treatment constitutes independent proof of impairment and shall support license suspension without the need for an examination.

Finally, Dr. Summers' Step II Consent Agreement provides that, if the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that Dr. Summers has violated any term, condition or limitation of such consent agreement, Dr. Summers agreed that the violation, as alleged, 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.

**CONCLUSIONS OF LAW**

*1.* The conduct of Robert Rowan Summers, D.O., as described in Findings of Fact 1 through 5, above, demonstrates "[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.

*2.* The conduct of Dr. Summers, as described in Findings of Fact 3 through 5, above, 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.

(Ex. 3 at 29, 48-50)

4. At the Board's meeting on December 12, 2007, the Board considered the matter (Ex. 3 at 60-63) and approved the recommended findings and conclusions. The Board imposed sanctions including the following:

- suspension of Dr. Summers' certificate for a minimum of 90 days (starting from October 15, 2007), with conditions for reinstatement;
- probation for a minimum of seven years upon reinstatement of the certificate; and
- terms, conditions, and limitations to apply during probation, including quarterly declarations of compliance by Dr. Summers, complete abstention from alcohol, complete abstention from drugs (except as specifically permitted), participation in an alcohol/drug rehabilitation program such as AA, NA, CA or Caduceus at least three times per week, psychiatric treatment, participation in a program of random urine screening, and submission of blood or urine specimens on request by the Board.

(Ex. 3 at 27-35) The Board's order became effective upon mailing on January 4, 2008. (Ex. 3 at 27, 35)

**Reinstatement of Dr. Summers' Certificate**

5. On February 14, 2008, the Board reinstated Dr. Summers' certificate.[2] The reinstatement was subject to the probationary terms, conditions and limitations set forth in the order that was dated December 12, 2007, and mailed January 4, 2008. (Ex. 3 at 27, 35)

6. On June 3, 2008, the Board received Dr. Summers' quarterly declaration of compliance, which he had signed, and which was dated May 30, 2008. In it, Dr. Summers declared under penalty of additional Board discipline and/or criminal prosecution under R.C. 2921.13, that he was in full compliance with the probationary terms, conditions and limitations imposed on him by the Board. (Ex. 1, 1-4)

**Dr. Summers' Relapse in 2008**

7. On June 23, 2008, Danielle Bickers, the Compliance Supervisor for the Board, received a toxicology report regarding a urine specimen that Dr. Summers had provided on May 29, 2008. The report showed that his urine has tested positive for alcohol. (Exs. 1, 1-1)

   Additional testing was performed on that specimen at the request of the Ohio Physicians Health Program. The results of EtG and EtS testing confirmed the presence of alcohol in Dr. Summers' urine. (Exs. 1, 1-1, 1-2)

8. On June 25, 2008, a Board investigator, Chad Yoakam, went to Dr. Summers' place of employment to obtain a urine specimen from him. Dr. Summers provided the specimen, which was delivered to LabCorp in Toledo, Ohio. Mr. Yoakam asked Dr. Summers whether the specimen would be clean, and Dr. Summers stated that it would be. (Exs. 1, 5)

9. However, after Mr. Yoakam left, Dr. Summers telephoned Ms. Bickers, advising her that he had just provided a urine specimen to the investigator and that he "had some drinking issues going on." Dr. Summers stated that the stress of returning to work had been too much for him, and he admitted that he had started drinking alcohol a couple of months ago. Dr. Summers also stated that he had most recently taken a drink of alcohol on June 23, 2008. (Ex. 1)

10. The toxicology report on the urine specimen Dr. Summers provided on June 25, 2008, confirmed the presence of alcohol. (Ex. 1, 1-3)

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[2]Although the present Notice alleges that Dr. Summers' certificate was reinstated on or about February 14, 2008, evidence to support that allegation is not included in the materials provided to the Hearing Unit. However, the Hearing Examiner takes judicial notice (sometimes called "administrative notice" in the context of administrative hearings) of the minutes of the Board's meeting on February 14, 2008, which are a public record. The minutes state, on pages 17348 and 17349, that the Board voted to approve the request of Robert R. Summers, D.O., to reinstate his certificate, which had been suspended by order dated December 12, 2007. The Board noted that the reinstatement was subject to previously ordered probationary terms, conditions and limitations.

## PROPOSED FINDINGS

1. In March 2002, pursuant to the terms of the Step I Consent Agreement between Robert Rowan Summers, D.O., and the State Medical Board of Ohio, Dr. Summers' certificate to practice osteopathic medicine and surgery in Ohio was suspended for an indefinite period of not less than one year, based on violations of R.C. 4731.22(B)(5), 4731.22(A), and 4731.22(B)(26). In addition, the Board relied on violation of 4731.22(B)(10), commission of an act that constitutes a felony, with respect to R.C. 2925.22(A), Deception to obtain a Dangerous Drug, and violation of R.C. 4731.22(B)(20) with respect to Ohio Adm.Code 4731-11-08, Utilizing Controlled Substances for Self and Family Members.

2. In April 2003, pursuant to the terms of a Step II Consent Agreement between Dr. Summers and the Board, Dr. Summers' certificate was reinstated subject to probationary terms, conditions and limitations.

3. On October 10, 2007, Dr. Summers' certificate was summarily suspended pursuant to 4731.22(B)(15), R.C. 4731.22(B)(26), and R.C. 4731.22(G).

4. In an Order effective on January 4, 2008, the Board suspended Dr. Summers' certificate for an indefinite period, but not less than 90 days beginning on October 15, 2007. The January 2008 Order also set forth the conditions for reinstatement of his certificate, and it imposed probationary terms, conditions, and limitations on his certificate for a period of seven years. The January 2008 Order required, among other things, that Dr. Summers "shall abstain completely from the use of alcohol," and "shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order."

5. On February 14, 2008, Dr. Summers' certificate was reinstated, subject to the probationary terms, conditions and limitations set forth in the January 2008 Order.

6. Despite the terms and conditions in the January 2008 Order, Dr. Summers began drinking alcohol following the reinstatement of his certificate. In a conversation with the Board's Compliance Supervisor on June 25, 2008, Dr. Summers admitted that he had "drinking issues going on" and that he had started drinking a couple of months earlier. He stated that he had most recently taken a drink on June 23, 2008. Moreover, toxicology reports on Dr. Summers' urine specimens provided on May 29, 2008, and June 25, 2008, confirmed the presence of alcohol in his urine.

7. On June 3, 2008, the Board received Dr. Summers' declaration of compliance that he had signed on May 30, 2008. In this declaration of compliance, Dr. Summers stated that he was in full compliance with the probationary terms, conditions and limitations imposed on him by the Board. By signing the May 2008 declaration of compliance, Dr. Summers acknowledged that the declaration, if false, may subject him to additional disciplinary action by the Board and/or criminal prosecution under R.C. 2921.13. However, due to his

relapse that had occurred prior to June 2008, Dr. Summers' declaration of compliance submitted on June 3, 2008, was false.

8. R.C. 4731.22(B)(26) provides, in pertinent part:

> The board * * * shall * * * limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:
>
> * * *
>
> (26) Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice.

9. Ohio Adm.Code 4731-16-01(A) further defines the term "impairment" as follows:

> "Impairment" means 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. Impairment includes inability to practice in accordance with such standards, and inability to practice in accordance with such standards without appropriate treatment, monitoring or supervision.

In addition, Ohio Adm.Code 4731-16-02(B)(3) 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 R.C. 4731.22(G). Further, Ohio Adm.Code 4731-16-02(B)(3) provides that an individual's relapse following treatment constitutes independent proof of impairment and shall support license suspension without the need for an examination.

10. The facts established by the evidence, as set forth above in Proposed Findings 1 through 6, demonstrate the "impairment of [Dr. Summers'] 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," pursuant to R.C. 4731.22(B)(26) and applicable administrative rules.

11. In addition, Dr. Summers' acts, conduct, and/or omissions as set forth above in Proposed Findings 6 and 7, constitute the "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that language is used in R.C. 4731.22(B)(15).

12. Further, Dr. Summers' acts, conduct, and/or omissions, as set forth in Proposed Finding 7, constitute the making of "a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, 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 language is used in R.C. 4731.22(B)(5).

* * * * *

Dr. Summers' first inpatient treatment for chemical dependency was in 1988, twenty years ago. Since then, he has relapsed repeatedly and has entered inpatient treatment several times. His most recent relapse began soon after the Board reinstated his certificate in February 2008, and he has now violated the Board's January 2008 order. Further, Dr. Summers made a false declaration of compliance to the Board, knowing that his false representation could result in further discipline.

At October 2007 hearing (regarding the 2007 citation of violations and summary suspension), Dr. Summers expressed a desire to continue working with the Board and to comply with any requirements imposed. However, he was unable to comply with the requirements for more than a short period of time following the January 2008 Order. In addition, after receiving the most recent notice of summary suspension and citation of violations in July 2008, Dr. Summers did not request a hearing. There is no indication he is interested in further Board-supervised rehabilitation or believes he can comply with a new Board order. Under these circumstances, revocation of his certificate to practice is warranted.

## PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Robert Rowan Summers, D.O., to practice osteopathic medicine and surgery in the State of Ohio is hereby REVOKED.

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

P.A. Davidson
Hearing Examiner

# State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov


July 9, 2008

Case number: 08-CRF-094

Robert Rowan Summers, D.O.
1450 Riverbend Drive
Defiance, OH 43512

Dear Doctor Summers:

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 July 9, 2008, 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/KHM/flb
Enclosures

Duplicate Mailing:

Robert Rowan Summers, D.O.
1497 Pinehurst Drive
Defiance, Ohio 43512

Mailed 7.10.08

## 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 July 9, 2008, 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 Robert Rowan Summers, D.O., Case number: 08-CRF-094 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.

Lance A. Talmage, M.D., Secretary

(SEAL)

July 9, 2008
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

| | |
|---|---|
| IN THE MATTER OF | : |
| | : |
| ROBERT ROWAN SUMMERS, D.O. | : |

Case number: 08-CRF- 094

**ENTRY OF ORDER**

This matter came on for consideration before the State Medical Board of Ohio the 9th day of July, 2008.

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 Robert Rowan Summers, D.O., has violated Sections 4731.22(B)(26) and (B)(15), 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. Summers' 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 9th day of July, 2008:

> It is hereby ORDERED that the certificate of Robert Rowan Summers, D.O., to practice osteopathic medicine or surgery in the State of Ohio be summarily suspended.
>
> It is hereby ORDERED that Robert Rowan Summers, 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.

Lance A. Talmage, M.D., Secretary

(SEAL)

July 9, 2008
Date

# State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
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EXCERPT FROM THE DRAFT MINUTES OF JULY 9, 2008

ROBERT ROWAN SUMMERS, D.O. – ORDER OF SUMMARY SUSPENSION AND NOTICE OF OPPORTUNITY FOR HEARING

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

**DR. STEINBERGH MOVED TO ENTER AN ORDER OF SUMMARY SUSPENSION IN THE MATTER OF ROBERT ROWAN SUMMERS, 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. HAIRSTON SECONDED THE MOTION.** A vote was taken:

| | | |
|---|---|---|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Suppan | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Amato | - aye |
| | Dr. Mahajan | - abstain |
| | Dr. Steinbergh | - aye |
| | Dr. Varyani | - aye |

The motion carried.

# State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov


**NOTICE OF SUMMARY SUSPENSION**
**AND**
**OPPORTUNITY FOR HEARING**

July 9, 2008

Case number: 08-CRF-094

Robert Rowan Summers, D.O.
1450 Riverbend Drive
Defiance, OH 43512

Dear Doctor Summers:

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 Section 4731.22(B)(26) and (B)(15), 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 and 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 Board intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery, or to reprimand you or place you on probation for one or more of the following reasons:

(1) On or about March 14, 2002, pursuant to the terms of the Step I Consent Agreement Between Robert Rowan Summers, D.O., and the State Medical Board of Ohio, [March 2002 Step I Consent Agreement], your certificate to practice osteopathic medicine and surgery in the state of Ohio [certificate] was suspended for an indefinite period of time, but not less than one year, for violations of Ohio Revised Code Sections 4731.22(A); 4731.22(B)(26); 4731.22(B)(5); 4731.22(B)(10), to wit, Section 2925.22(A), Ohio Revised Code, Deception to obtain a Dangerous Drug; and 4731.22(B)(20), to wit, Rule 4731-11-08, Ohio Administrative Code, Utilizing Controlled Substances for Self and Family Members.

(2) On or about April 2, 2003, pursuant to the terms of the Step II Consent Agreement Between Robert Rowan Summers, D.O., and the State Medical Board of Ohio, [April 2003 Step II Consent Agreement], your certificate was reinstated subject to the probationary terms, conditions and limitations contained therein.

(3) On or about October 10, 2007, your certificate was summarily suspended based upon violations of Sections 4731.22(B)(26) and (B)(15), Ohio Revised Code. By Order effective on or about January 4, 2008 [January 2008 Board Order], the Board suspended your certificate for an indefinite period of time, but not less than 90 days from October 15, 2007, provided for conditions for reinstatement or restoration of your certificate, and imposed probationary terms, conditions, and limitations upon your certificate for a period of seven years following reinstatement or restoration. A copy of the January 2008 Board Order is attached hereto and incorporated herein.

On or about February 14, 2008, your certificate was reinstated.

(4) Paragraph B.5. of the January 2008 Board Order provides:

> **Abstention from Alcohol**: Dr. Summers shall abstain completely from the use of alcohol.

Despite the above provision, on or about June 20, 2008, the Board was notified that your toxicology screen drawn on or about May 29, 2008, tested positive for alcohol. On or about June 25, 2008, following an unannounced request for a urine screen by a Board Investigator, you phoned a Board staff employee and admitted that you had some "drinking issues going on," that you started drinking a couple of months prior to the phone conversation with the Board staff member, and that you had taken your last drink on June 23, 2008. The urine sample you submitted to the Board Investigator on June 25, 2008, also tested positive for the presence of alcohol.

(5) Paragraph B.3. of the January 2008 Board Order provides:

> **Quarterly Declarations**. Dr. Summers shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order.

On or about June 3, 2008, you caused to be submitted a Declaration of Compliance to the Board signed by you on May 30, 2008 [May 2008 Declaration of Compliance], wherein you stated that you were in full compliance with the probationary terms, conditions and limitations imposed upon you by the Board. By signing the May 2008 Declaration of Compliance, you acknowledged that the declaration, if false, may subject you to additional disciplinary action by the Board and may subject you to criminal prosecution under Section 2921.13, Ohio Revised Code.

In fact, at the time you signed your Declaration of Compliance, you had relapsed by drinking alcohol and were not in compliance with the terms of your January 2008 Board Order.

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. Additionally, Rule 4731-16-02(B)(3), Ohio Administrative Code, further provides that an individual's relapse following treatment constitutes independent proof of impairment and shall support license suspension without the need for an examination.

Your acts, conduct, and/or omissions as alleged in paragraph (1) through (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 paragraphs (4) and (5), above, individually and/or collectively, constitute a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (5), above, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, 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, and Chapter 4731., Ohio Revised Code, you are hereby advised that you are entitled to a hearing concerning these matters. 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/KHM/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3934 3687 3182
RETURN RECEIPT REQUESTED

Duplicate Mailing:

Robert Rowan Summers, D.O.
1497 Pinehurst Drive
Defiance, Ohio 43512

CERTIFIED MAIL #91 7108 2133 3934 3687 3199
RETURN RECEIPT REQUESTED
RESTRICTED DELIVERY

# State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov


December 12, 2007

Robert Rowan Summers, D.O.
1450 Riverbend Drive
Defiance, OH 43512
Case Number: 07-CRF-005

Dear Doctor Summers:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of R. Gregory Porter, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on December 12, 2007, 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 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 MD

Lance A. Talmage, M.D. RW
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3931 8317 8783
RETURN RECEIPT REQUESTED

Cc: Eric J. Plinke, Esq.
CERTIFIED MAIL NO. 91 7108 2133 3931 8317 8790
RETURN RECEIPT REQUESTED

Mailed 1-04-08

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 December 12, 2007, 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 Robert Rowan Summers, D.O., Case Number 07-CRF-005, 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 MD

Lance A. Talmage, M.D. RW
Secretary

(SEAL)

December 12, 2007
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

ROBERT ROWAN SUMMERS, D.O.
CASE NUMBER: 07-CRF-005 *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on December 12, 2007.

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

It is hereby ORDERED that:

A. **SUSPENSION OF CERTIFICATE:** The certificate of Robert Rowan Summers, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than 90 days from October 15, 2007, the effective date of the summary suspension of Dr. Summers' certificate.

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

1. **Obey the Law**: Dr. Summers shall obey all federal, state, and local laws, and all rules governing the practice of osteopathic medicine and surgery in Ohio.

2. **Personal Appearances**: Dr. Summers shall appear in person for quarterly interviews before the Board or its designated representative. The first such appearance shall take place on the date his appearance would have been scheduled pursuant to his April 2, 2003, Step II Consent Agreement with the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

3. **Quarterly Declarations**: Dr. Summers shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there

has been compliance with all the conditions of this Order. The first quarterly declaration must be received in the Board's offices on the date his quarterly declaration would have been due pursuant to his April 2, 2003, Step II Consent Agreement with the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

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

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

6. **Comply with the Terms of the Aftercare Contract**: Dr. Summers 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.

7. **Continued Compliance with a Contract with an Impaired Physicians Committee**: Dr. Summers shall maintain continued compliance with the terms of the contract entered into with the Ohio Physicians Health Program [OPHP], or with another impaired physicians committee, approved by the Board, to assure continuous assistance in recovery and/or aftercare.

8. **Rehabilitation Program**: Dr. Summers 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. Summers 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. Summers' quarterly declarations.

9. **Drug & Alcohol Screens; Supervising Physician**: Dr. Summers shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Summers 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.

   Dr. Summers shall abstain from consumption of poppy seeds or any other food or liquid that may produce false results in a toxicology screen.

   The person or entity previously approved by the Board to serve as Dr. Summers' supervising physician pursuant to the April 2, 2003, Step II Consent Agreement is hereby approved to continue as Dr. Summers' designated supervising physician under this Order, unless within thirty days of the effective date of this Order, Dr. Summers submits to the Board for its prior approval the name and curriculum vitae of an alternative supervising physician to whom Dr. Summers 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. Summers. Dr. Summers 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.

The Board expressly reserves the right to disapprove any person or entity proposed to serve as Dr. Summers' designated supervising physician, or to withdraw approval of any person or entity previously approved to serve as Dr. Summers' designated supervising physician, in the event that the Secretary and Supervising Member of the Board determine that any such supervising physician has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

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

In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Summers must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Summers 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. Summers' quarterly declaration. It is Dr. Summers' responsibility to ensure that reports are timely submitted.

10. **Submission of Blood or Urine Specimens upon Request**: Dr. Summers shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Summers' expense.

11. **Psychiatric Treatment**: Dr. Summers shall undergo and continue treatment for depression as directed by his current psychiatrist, Gregory B. Collins, M.D., or another psychiatrist approved in advance by the Board. Dr. Summers shall comply with his psychiatric treatment plan, including taking medications as prescribed and/or ordered. Dr. Summers 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 Dr. Summers' current treatment plan and any changes that have been made to the treatment plan since the prior report, Dr. Summers' compliance with his treatment plan, Dr. Summers' mental status, Dr. Summers' progress in treatment, and results of any laboratory studies that have been conducted since the prior report. Dr. Summers shall ensure that his treating psychiatrist immediately notifies the Board of Dr. Summers' failure to comply with his psychiatric

treatment plan and/or any determination that Dr. Summers is unable to practice. It is Dr. Summers' responsibility to ensure that quarterly reports are received in the Board's offices no later than the due date for Dr. Summers' quarterly declaration.

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

The Board expressly reserves the right to disapprove any psychiatrist proposed to serve as Dr. Summers' designated treating psychiatrist, or to withdraw approval of any psychiatrist previously approved to serve as Dr. Summers' designated treating psychiatrist, in the event that the Secretary and Supervising Member of the Board determine that any such psychiatrist has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

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

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

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

1. **Application for Reinstatement or Restoration**: Dr. Summers shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.

2. **Compliance with Interim Conditions**: Dr. Summers shall have maintained compliance with all the terms and conditions set forth in Subsection B of this Order.

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

a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Summers has successfully completed any required inpatient treatment.

b. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.

c. Evidence of continuing full compliance with this Order.

d. Two written reports indicating that Dr. Summers' ability to practice has been evaluated for chemical dependency and/or impairment and that he has been found capable of practicing according to acceptable and prevailing standards of care. The evaluations shall have been performed by individuals or providers approved by the Board for making such evaluations. Moreover, the evaluations shall have been performed within sixty days prior to Dr. Summers' application for reinstatement or restoration. The reports of evaluation shall describe with particularity the bases for the determination that Dr. Summers has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his practice.

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

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

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

2. **Monitoring Physician**: The person or entity previously approved by the Board to serve as Dr. Summers' monitoring physician pursuant to the April 2, 2003, Step II Consent Agreement is hereby approved to continue to as Dr. Summers' designated monitoring physician under this Order, unless within thirty days of the effective date of this Order, Dr. Summers submits to the Board for its prior approval the name and curriculum vitae of an alternative monitoring physician. In approving an individual to serve in this capacity, the Secretary and Supervising Member will give preference to a physician who practices in the same locale as Dr. Summers and who is engaged in the same or similar practice specialty.

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

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Summers must immediately so notify the Board in writing. In addition, Dr. Summers 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. Summers shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

3. **Controlled Substances Log**: Dr. Summers shall keep a log of all controlled substances he prescribes. Such log shall be submitted in a format approved by the Board thirty days prior to Dr. Summers' personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Summers shall make his patient records with regard to such controlled substance prescribing available for review by an agent of the Board upon request.

4. **Ban on Administering, Furnishing, or Possessing Controlled Substance; Log**: Dr. Summers shall not, without prior Board approval, administer, personally furnish, or possess (except as allowed under Paragraph B4) 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. Summers to administer or personally furnish controlled substances, Dr. Summers shall keep a log of all controlled substances administered or personally furnished. Such log shall be submitted in a format approved by the Board thirty days prior to Dr. Summers' personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Summers shall make his patient records with regard to such administering, or personally furnishing available for review by an agent of the Board upon request.

5. **Absence from Ohio**: Dr. Summers shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.

6. **Noncompliance Will Not Reduce Probationary Period**: In the event Dr. Summers 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 under this Order.

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

F. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS**: Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Summers 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. Summers 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. This requirement shall continue until Dr. Summers receives from the Board written notification of his successful completion of probation.

G. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES**: Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Summers 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. Summers shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration or restoration of any professional license. Further, Dr. Summers shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board. This requirement shall continue until Dr. Summers receives from the Board written notification of his successful completion of probation.

H. **SUPERSEDE PREVIOUS CONSENT AGREEMENT**: This Order shall supersede the terms and conditions set forth in the April 2, 2003, Step II Consent Agreement between Dr. Summers and the Board.

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

Lance A. Talmage MD

Lance A. Talmage, M.D. RW
Secretary

(SEAL)

December 12, 2007
Date

STATE MEDICAL BOARD
OF OHIO

2007 NOV 15 P 2: 08

# REPORT AND RECOMMENDATION
# IN THE MATTER OF ROBERT ROWAN SUMMERS, D.O.
# Case Number 07-CRF-005

The Matter of Robert Rowan Summers, D.O., was heard by R. Gregory Porter, Hearing Examiner for the State Medical Board of Ohio, on October 30, 2007.

## INTRODUCTION

Basis for Hearing

In a Notice of Summary Suspension and Opportunity for Hearing dated October 10, 2007, the State Medical Board of Ohio [Board] notified Robert Rowan Summers, D.O., that, pursuant to Section 4731.22(G), Ohio Revised Code, the Board had adopted an Entry of Order summarily suspending Dr. Summers' 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. Summers 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 2, 2003, Consent Agreement.

The Board alleged that Dr. Summers' 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."

The Board advised Dr. Summers of his right to request a hearing, and received his written request for hearing on October 17, 2007. (State's Exhibits 1A, 1B)

Appearances

On behalf of the State of Ohio: Mark Dann, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.

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

## EVIDENCE EXAMINED

Testimony Heard

A. Presented by the State

Robert Rowan Summers, D.O., as upon cross-examination
Gregory B. Collins, M.D.
Karen H. Mortland, Esq.

B. Presented by the Respondent

Nathan A. Fogt, D.O.
Robert Rowan Summers, D.O.

Exhibits Examined

A. Presented by the State

State's Exhibits 1A through 1K: Procedural exhibits.

* State's Exhibit 2: Copies of medical records concerning Dr. Summers maintained by The Cleveland Clinic Foundation.

State's Exhibit 3: Certified copies of documents concerning Dr. Summers maintained by the Board.

* State's Exhibit 4: Copy of September 2007 faxed correspondence between Karen Mortland, Board Enforcement Attorney, and Gregory B. Collins, M.D., with attachments.

* State's Exhibit 5: Copy of a September 21, 2007, letter to Ms. Mortland from Dr. Collins.

* State's Exhibit 6: Copy of a urine screen report concerning a specimen submitted by Dr. Summers on August 13, 2007.

* State's Exhibit 7: Copy of Dr. Summers' May 13, 2002, Advocacy Contract with the Ohio Physicians Effectiveness Program, now known as the Ohio Physicians Health Program [OPHP].

B. Presented by the Respondent

Respondent's Exhibit A: Copy of October 26, 2007, letter to Eric J. Plinke, Counsel for Dr. Summers, from John J. Racciato, M.D., Dr. Summers' monitoring physician.

Respondent's Exhibit B: Copy of October 26, 2007, letter to the Board from Chad L. Peter, Chief Executive Officer, and Allen L. Gaspar, M.D., President of the Defiance Clinic in Defiance, Ohio, where Dr. Summers practices.

Respondent's Exhibits C through E: Letters of support for Dr. Summers.

Respondent's Exhibits F and G: Copies of September 7, 2007, e-mail correspondence between Mr. Plinke and Jean Gillman, Compliance Officer for the Board.

Respondent's Exhibit H: Copy of August 31, 2007, letter to Jason Jones of OPHP from Dr. Fogt.

* Respondent's Exhibit I: Copy of a urine screen report concerning a specimen submitted by Dr. Summers on August 21, 2007.

* Exhibits marked with an asterisk (*) have been sealed to protect the confidentiality of patient records and/or documents related to alcohol and drug abuse treatment. See Section 4731.22(F)(5), Ohio Revised Code, and 42 U.S.C. 290ee-3.

## PROCEDURAL MATTERS

The hearing record in this matter was held open to give the Respondent an opportunity to submit additional exhibits. (See Hearing Transcript at 4-6, 71) On November 5, 2007, the additional exhibits were received by the Hearing Examiner. The State did not object to the admission of the new exhibits. The Hearing Examiner marked the new exhibits Respondent's Exhibits H and I, and admitted them to the hearing record. The hearing record closed on November 5, 2007.

## SUMMARY OF THE EVIDENCE

All exhibits and transcripts of testimony were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

### Background Information

1. Robert Rowan Summers, D.O., testified that he had obtained a nursing degree in 1983 from Southern West Virginia Community College and worked as a registered nurse for about eight years prior to attending medical school. In 1995, Dr. Summers obtained his osteopathic medical degree from the Ohio University College of Osteopathic Medicine. From 1995 through 1999, Dr. Summers participated in an internship and OB/GYN

residency at St. Vincent Mercy Medical Center in Toledo, Ohio. (Hearing Transcript [Tr.] at 16-18)

Dr. Summers testified that, following completion of his residency, he went into private practice with an OB/GYN group in Findlay, Ohio. He worked there until 2002, at which time he entered into a Step I Consent Agreement with the Board that suspended his license. (Dr. Summers' consent agreements are discussed in detail later in this report.) Subsequently, after his license was reinstated in 2003, Dr. Summers obtained a position with his current employer, the Defiance Clinic, a multi-specialty group in Defiance, Ohio. (Tr. at 18-19)

Dr. Summers testified that he holds privileges at Defiance Regional Medical Center and at Mercy Defiance Hospital. (Tr. at 19)

**Prior Action by the Board**

2. Effective March 14, 2002, Dr. Summers entered into a Step I Consent Agreement with the Board in lieu of formal proceedings based upon his violation of Ohio Revised Code Sections 4731.22(A); 4731.22(B)(26); 4731.22(B)(5); 4731.22(B)(10), to wit, R.C. 2925.22(A), Deception to obtain a Dangerous Drug; and 4731.22(B)(20), to wit, Rule 4731-11-08, Ohio Administrative Code, Utilizing Controlled Substances for Self and Family Members. Pursuant to the Step I Consent Agreement, Dr. Summers' certificate to practice osteopathic medicine and surgery in the state of Ohio was suspended for an indefinite period of time, but not less than one year. (State's Exhibit [St. Ex.] 3 at 17-25)

   In the Step I Consent Agreement, Dr. Summers made certain admissions. These admissions include the following:

   > Dr. Summers admits that he initially received treatment for chemical dependence, including poly-substance abuse, at Greene Hall/Peachtree Recovery in Atlanta, Georgia, as an inpatient in 1988. Dr. Summers states that following his treatment he maintained sobriety until 1998.
   >
   > Dr. Summers admits that in 1998, after receiving Ultram from his treating physician for treatment of an elbow injury, Dr. Summers relapsed and began taking Ultram samples from stock. Dr. Summers states that in June 2000, he contacted the Ohio Physicians Effectiveness Program [now known as the Ohio Physicians Health Program (OPHP)] to self-report his relapse on Ultram and that he entered into an advocacy contract with [OPHP] on or about July 7, 2000. Dr. Summers admits that after contacting [OPHP], he completed a twenty-eight-day inpatient treatment program for chemical dependency at Brighton Hospital, a Board-approved treatment provider, in Brighton, Michigan.

> Dr. Summers admits that during or about the summer of 2001 he began drinking beer occasionally and that during or about the fall of 2001 he intermittently began using Vicoprofen, a Schedule III controlled substance. Dr. Summers admits that he obtained Vicoprofen by calling in and writing prescriptions in his name and in the name of another physician for Dr. Summers's wife, although the Vicoprofen was intended for Dr. Summers's own use. Dr. Summers states that he believes that neither his use of Vicoprofen or alcohol was detected through the random urine screening process because he used those substances immediately after submitting a urine sample for screening. Dr. Summers states that he ceased using Vicoprofen on February 20, 2002. Dr. Summers states that he self-reported his substance abuse relapse to [OPHP] on February 25, 2002, and reported his relapse to the Board through his attorney on February 26, 2002. Dr. Summers states that he did not use alcohol or drugs while working and that he was not under the influence of alcohol or drugs while working.
>
> * * *
>
> Dr. Summers states that he entered residential treatment at Shepherd Hill Hospital, Newark, Ohio, a Board-approved treatment provider, on March 6, 2002, and that he remains in residential treatment there to date.

(St. Ex. 3 at 18-19)

3. Effective April 2, 2003, Dr. Summers entered into a Step II Consent Agreement, which reinstated his certificate subject to the probationary terms, conditions and limitations contained therein. (St. Ex. 3 at 9-16)

Among the probationary terms, conditions, and limitations contained in Dr. Summers' Step II Consent Agreement, paragraph 8 provides as follows:

> Dr. Summers 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. Summers' history of chemical dependency.

(St. Ex. 3 at 12)

In addition, the Step II Consent Agreement provides as follows:

> If the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that Dr. Summers has violated any term, condition or limitation of this Consent Agreement, Dr. Summers agrees that the violation, as alleged, 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.

(St. Ex. 3 at 15)

**Dr. Summers' August 2007 Relapse**

4. A urine toxicology report concerning a specimen submitted by Dr. Summers on August 13, 2007, indicates a positive result for tramadol,[1] and further states that that result was confirmed via gas chromatography/mass spectrometry [GC/MS]. (St. Ex. 6)

   In addition, the urine toxicology report indicates that Dr. Summers' urine creatinine level was low at 16.3 mg/dl, with the reference range being 20-350 mg/dl, and that the specific gravity of the urine sample was low at 1.007, with the reference range being 1.010-1.025. Further, in regard to specific gravity, the report states, "Levels less than 1.003 may indicate dilution * * *." (St. Ex. 6)

   OPHP sent the urine toxicology report to the Board on August 30, 2007. (St. Ex. 6)

5. By letter dated September 21, 2007, Gregory B. Collins, M.D., Section Head of the Alcohol and Drug Recovery Center, Department of Psychiatry and Psychology of The Cleveland Clinic Foundation, advised Karen Mortland, Enforcement Attorney for the Board, that Dr. Summers had been seen and treated at that facility. Dr. Collins stated that Dr. Summers had been admitted to the Alcohol and Drug Recovery Center on September 7, 2007, and remained in residential treatment until his discharge on September 20, 2007. Dr. Collins further stated:

   > [Dr. Summers] satisfactorily completed all requirements of the program during that time. His attitude, although reflecting depression, sadness and guilt at first, improved dramatically during his treatment at the Clinic. It became evident that he had difficulty with residual grief and loss over his divorce and loss of contact with his daughter, and he did much constructive work around this particular theme. He was additionally placed on Prozac 20 mg daily with notable improvement in his mood as a result. He was also able to do some constructive work regarding improving his spirituality supports as part of his AA-based recovery program. Dr. Summers exhibited full and total cooperation as well as sense of remorse for his misuse of Ultram. On September 20, 2007, he was able to be discharged back to his home and back to work. At this time he is fully recovered and stable and he is able to return to the active practice of medicine according to the usual and customary

[1] Dr. Summers testified that tramadol is the generic name for Ultram. (Tr. at 59)

> standards. His prognosis is good, but I would recommend to the Board that his probationary monitoring be extended for a minimum of two years.

(St. Ex. 5)

Dr. Collins attached to his letter a copy of Dr. Summers' September 20, 2007, aftercare contract with the Cleveland Clinic Foundation Alcohol and Drug Recovery Center. Among the terms of that contract, Dr. Summers is required to attend "[s]upervised aftercare for two years, 104 weekly sessions at Toledo Hospital," and "[c]ase management/medication management visit with Dr. Collins or his representative quarterly for two years." (St. Ex. 5)

6. By faxed letter dated September 27, 2007, Ms. Mortland asked Dr. Collins for more information concerning Dr. Summers. Dr. Collins responded the following day. Dr. Collins stated that, based upon his assessment of Dr. Summers, it is his opinion that Dr. Summers is capable of practicing medicine according to acceptable and prevailing standards of care only if he is monitored by the Board for a minimum of two years. Dr. Collins further stated that he had based that opinion of Dr. Summers' recent use of Ultram. (St. Ex. 4 at 1)

**The Board's October 10, 2007, Summary Suspension of Dr. Summers' Certificate**

7. Ms. Mortland testified that her duties as a Board Enforcement Attorney include coordinating the investigation of complaints and gathering evidence to support or refute the allegations in those complaints. (Tr. at 67)

   Ms. Mortland testified that she had been assigned to Dr. Summers' case in September 2007. She further testified that she assembled information concerning Dr. Summers and presented it to the Secretary and the Supervising Member of the Board. Moreover, Ms. Mortland testified that, based upon that information, the Secretary and Supervising Member found "that there was clear and convincing evidence that Dr. Summers' continued practice was an immediate and serious danger to the public." (Tr. at 69-70)

   Ms. Mortland testified that the information that she provided to the Secretary and the Supervising Member of the Board had consisted of copies of the following: Dr. Collins' September 21, 2007, letter to Ms. Mortland; Ms. Mortland's September 27, 2007, questions for Dr. Collins and Dr. Collins' responses; a urine toxicology report concerning Dr. Summers' positive August 13, 2007, urine sample along with OPHP's fax cover sheet to Board staff; and Dr. Summers' Step II Consent Agreement. (St. Ex. 4; Tr. at 73)

8. By Notice of Summary Suspension and Opportunity for Hearing dated October 10, 2007, the Board summarily suspended Dr. Summers' certificate. (St. Ex. 1A)

**Testimony of Dr. Collins**

9. Dr. Collins testified that Dr. Summers had presented to the Alcohol and Drug Recovery Center at the Cleveland Clinic Foundation on September 7, 2007. Dr. Collins further testified that, by that time, Dr. Summers had discontinued using Ultram. (Tr. at 26-27, 37)

   Dr. Collins testified that Ultram is a weak opiate-active medication, analogous to "a very weak Darvon." Dr. Collins further testified that it is regulated only by prescription and it is not a controlled substance. Nevertheless, Dr. Collins noted that it does have abuse potential. He testified: "It's not a preferred drug as a rule, but if you take enough of it, you can get a buzz off of it. So knowledgeable people know how to take a lot of it and do it." Ultram is a risky drug to abuse, however. Dr. Collins testified: "I have some problems with the drug because if you exceed the normal therapeutic dose by just a little bit of a margin, you can have seizures with it. It's kind of a dangerous drug in that sense. Its margin of safety is rather low." (Tr. at 27-28)

10. Dr. Collins testified that Dr. Summers successfully completed the inpatient treatment program at the Cleveland Clinic, and that Dr. Collins had been "very satisfied with his progress." Dr. Collins further testified that Dr. Summers benefitted from being re-immersed "in the recovery milieu," and "also was able to re-establish * * * a little friendlier contact with his ex-wife * * *." (Tr. at 39-41)

11. Dr. Collins testified that he believes that depression had been a predisposing factor in Dr. Summers' relapse. Dr. Summers' depression had been associated with a divorce and loss of contact with his daughter. Dr. Collins noted that Dr. Summers had been significantly depressed and in a lot of emotional pain when he presented the Cleveland Clinic. Moreover, Dr. Collins testified that "when people are in that kind of clinical emotional position, they're more likely to get into self-medication." Dr. Collins believes that Dr. Summers' depression had "predisposed him to this type of misuse of this drug." (Tr. at 30, 38)

    Dr. Collins testified that he would recommend that Dr. Summers "follow-up with individual sessions with competent psychiatrists." Dr. Collins testified that Dr. Summers would be welcome to come to him, but recommended that Dr. Summers see a psychiatrist in Toledo, which is closer to Dr. Summers' home. (Tr. at 35-36)

12. Dr. Collins believes that Dr. Summers is a good physician and that his prognosis for continued recovery is good. Moreover, Dr. Collins testified: "The relapse that we had here was of a very mild degree with a very weak drug and did not extend into anything major at all. There really were no consequences from it except a dirty urine." In addition, Dr. Collins testified: "I don't see why we would take this fellow out of active practice. He's a good doctor. He's an intelligent guy. He's not impaired." Finally, Dr. Collins testified that he believes that Dr. Summers' continued practice subject to continued Board

monitoring would be in the best interests of the Board, Dr. Summers, and the public. (Tr. at 33-35)

13. Dr. Collins testified concerning the monitoring requirements that he recommends for Dr. Summers. These include urine screens through OPHP, attendance at AA meetings, weekly Caduceus meetings, and periodic meetings with the Board. In addition, Dr. Collins recommended "psychiatric follow-up on at least a monthly basis, and ongoing anti-depressant medication." (Tr. at 42)

**Testimony of Dr. Summers**

14. Dr. Summers testified that he has a long history of substance abuse, beginning with alcohol when he was fifteen. His abuse continued during college and beyond, and progressed to include other substances, such as marijuana, Demerol, Dilaudid, and Percocet. Dr. Summers received treatment in 1988 for polysubstance abuse, and remained sober until 1998. (St. Ex. 3; Tr. at 21-22)

    Dr. Summers testified that, in 1998, after nearly ten years of sobriety, he had relapsed using Ultram following an elbow injury. Dr. Summers testified that that episode was similar to the recent episode in that he had taken samples of Ultram from the medicine room where he worked. Dr. Summers began by taking a limited number of pills but, as time progressed "that got way out of hand." Dr. Summers testified that he might have been taking as many as 20 tablets of Ultram per day, "[e]nough to have a seizure." In fact, Dr. Summers testified that he had had two seizures as a result of his misuse of Ultram. (Tr. at 46-48)

    Dr. Summers testified that, in 2000, he entered into a contract with OPHP and sought treatment at Brighton Hospital. (Tr. at 49)

    Dr. Summers testified that, approximately one-and-one-half years following his treatment at Brighton Hospital, he relapsed using Vicoprofen. Dr. Summers testified that, some time after his relapse,[2] in February 2002, he notified OPHP and the Board, and obtained treatment at Shepherd Hill Hospital [Shepherd Hill]. Dr. Summers also entered into the Step I and Step II consent agreements with the Board following his relapse on Vicoprofen. (Tr. at 50-51)

15. Dr. Summers testified that, in August 2007, he had injured the small finger of his left hand at work by catching it on a door. The following day, he sought the assistance of an orthopedist colleague, Dr. Fogt, who examined the finger and went over various options with Dr. Summers. Dr. Summers testified that anti-inflammatory medication had not been very effective, and he had not wanted to take narcotic analgesics. Dr. Summers testified

[2] Dr. Summers could not specifically recall the period of time between his Vicoprofen relapse and his self-report, but stated that it had been months. (Tr. at 50)

that Dr. Fogt wrote a prescription for eight Ultram 50 mg tablets and instructed Dr. Summers to take one every six to eight hours.[3] (Tr. at 51-55)

Dr. Summers acknowledged that, rather than fill his prescription for Ultram 50 mg, he took samples of Ultram ER from office samples. Dr. Summers testified that Ultram ER contains a 100 mg, timed-release dose and is meant to be taken once per day. Dr. Summers got to the level where he was taking four Ultram ER at one time at night. Dr. Summers testified that he had used Ultram ER from about August 10 to about August 21, 2007, although it may have ended sooner.[4] Finally, Dr. Summers testified that he had used it every night for the first three to five days and then tapered off his use. (Tr. at 52, 55-57)

When asked why he had taken office samples instead of simply filling his prescription, Dr. Summers testified that he does not know why. He testified that "it just seemed like it's going to be a short-term thing, there's samples available, it will be over, boom." (Tr. at 55-56)

16. Dr. Summers testified that on August 30, 2007, Jason Jones, a Field Representative for OPHP, called and told him that his August 13 urine sample had tested positive for tramadol. Dr. Summers testified that he then talked to Dr. Sateren, the President and Medical Director of OPHP, who advised him to contact Shepherd Hill. Dr. Summers contacted Shepherd Hill but would have had to wait until September 17 to be admitted. He instead called the Cleveland Clinic and was admitted for treatment on September 7, 2007. (Tr. at 59-60)

    Dr. Summers testified that, after he had been notified of his positive urine screen, he had asked his attorney to notify the Board. (Tr. at 60)

17. Dr. Summers testified that he has submitted urine samples for screening through OPHP since 2000, and had never had a positive result prior to the August 13, 2007, sample. (Tr. at 51)

18. Dr. Summers testified that his divorce and geographical separation from his daughter occurred in July 2006. Dr. Summers' daughter now lives about six hours away from him. Dr. Summers testified that, prior to his September 2007 treatment at the Cleveland Clinic, he had not sought psychiatric treatment to help him deal with those events. When asked why, Dr. Summers replied that he had been in denial and "unwilling to entertain it." Dr. Summers further testified, "I think my history is pretty evident that I'm not always willing to seek help, particularly when I might need it the most." Moreover, Dr. Summers

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[3] Dr. Summers testified that he knows that Dr. Fogt had been aware of Dr. Summers' history of substance abuse, and that he also believes that Dr. Fogt had been aware of his prior abuse of Ultram. Dr. Summers testified, however, that he had not reminded Dr. Fogt of his prior Ultram abuse on the day Dr. Fogt wrote the prescription. (Tr. at 54-55)

[4] Dr. Summers testified that he had submitted a urine sample on August 21, 2007, that was negative for tramadol. (Resp. Ex. I; Tr. at 56-57)

testified that he had not even been aware of the emotional stress he was under. He avoided talking about it and "would just try to play it off" that he was okay. (Tr. at 91-93)

Dr. Summers testified that he continues to take Prozac as prescribed by Dr. Collins and believes that it has benefited him. Dr. Summers further testified that he is scheduled to see Dr. Collins again in November 2007. (Tr. at 91-92)

19. Dr. Summers testified that he is currently attending a total of four meetings per week of Alcoholics Anonymous [AA] and Caduceus. He has obtained a sponsor who has 20 years of sobriety. He is also meeting with a recovering physician from Defiance, and he finds their discussions helpful. (Tr. at 101)

20. Dr. Summers testified that, prior to his recent relapse, he had been going through the motions of his recovery program. Dr. Summers further testified: "I think at a certain level over the past few months I've been showing up [at meetings] and I've been a little bit nonattentive. And this two weeks in Cleveland actually gave me a chance to reflect on that pretty strongly and actually increase the intensity, if you will." (Tr. at 102)

21. Dr. Summers denied that he had ever attempted to thwart a drug screen by drinking excessive amounts of water. Dr. Summers testified that he has a history of kidney stones and has had a couple of reports that he had low creatinine or low specific gravity, but that he has never intentionally overhydrated. (Tr. at 61)

**Testimony of Dr. Fogt**

22. Nathan A. Fogt, D.O., testified that he is an orthopedic surgeon and that he practices at the Defiance Clinic. Dr. Fogt further testified that he has known Dr. Summers since medical school for approximately fifteen years and that he and Dr. Summers had gone to medical school together. Moreover, Dr. Fogt testified that he had been involved in the Defiance Clinic's recruitment of Dr. Summers. Dr. Fogt noted that Dr. Summers has worked at the Defiance for three or four years. (Tr. at 78)

23. Dr. Fogt testified that, prior to Dr. Summers taking a position at the Defiance Clinic, he had been aware of Dr. Summers' history of substance abuse and involvement with the Board. Dr. Fogt further testified that Dr. Summers has always been very open about those issues. In addition, Dr. Fogt testified that he had been aware of Dr. Summers' history of abuse of Ultram, and his subsequent abuse of narcotic medication. (Tr. at 78-80)

24. Dr. Fogt testified that, in August 2007, Dr. Summers had come to see him in the hallway for what Dr. Fogt described as a "curbside consult." Dr. Summers had caught his fifth digit in a doorjamb and injured it. Dr. Fogt further testified: "[Dr. Summers] had significant pain to the IP joint in that finger. When I saw it, it was very swollen. There was a small amount of bruising involved with it." Dr. Fogt testified that he thought at first that Dr. Summers had dislocated the joint, but later determined that he had probably "subluxed"

it. Dr. Fogt explained that the joint probably had been partially pulled apart but settled back into place. Dr. Fogt stated that there had been significant injury to the joint capsule and the ligaments around the joint. (Tr. at 80-81)

Dr. Fogt testified that he and Dr. Summers discussed the treatment options available, which included icing, taping the finger to the adjacent finger to immobilize it, and therapy to decrease the swelling and increase the range of motion. Dr. Fogt added that he also addressed the issue of pain medication. Dr. Fogt testified:

> I want to make it extremely clear that I'm the one that broached it. He did not.
>
> I can tell you with 100 percent assurance that even when I broached the subject, he was extremely, extremely hesitant about it.
>
> I knew that, again, Rob had had problems in the past. We talked about pain medication at length. My feeling was because his most recent relapse had involved a narcotic, that I was a little uncomfortable with that, as he was. That's when I broached the issue of Ultram, even though I did realize that he had had a problem with that in the past, but it was not his most recent problem and as a result, I felt that was a more logical choice.

(Tr. at 82)

Dr. Fogt testified that he had given Dr. Summers a prescription for several Ultram 50 mg. (Tr. at 82-83)

**Additional Information**

25. In a letter dated October 26, 2007, John J. Racciato, M.D., stated that he is Dr. Summers' supervising physician for purposes of obtaining urine samples,[5] and that he has served in that capacity since Dr. Summers joined the Defiance Clinic in 2003. Dr. Racciato further stated that he always personally observes Dr. Summers urinate into two specimen cups, and that Dr. Racciato personally closes and seals the cups, places them in a sealed plastic bag, and delivers them to the clinic mail distribution center for mailing to the lab. Dr. Racciato stated: "During the entire process the urine specimen never [leaves] my sight and the chain of custody [is] never broken." Finally, Dr. Racciato stated that there is no way that any of Dr. Summers' urine samples could be diluted or tampered with during that process. (Resp. Ex. A)

26. By letter to the Board dated October 26, 2007, Chad L. Peter, Chief Executive Officer, and Allen L. Gaspar, M.D., President of the Defiance Clinic, expressed support for

[5] Dr. Racciato actually described himself as Dr. Summers' "monitoring" physician; however, his description of his duties makes clear that he is Dr. Summers' "supervising" physician as that term is used in the Step II Consent Agreement. (St. Ex. 3 at 12-13; Resp. Ex. A)

Dr. Summers. Among other things, they stated, "[W]e will offer our complete support in working with the board and Dr. Summers to maintain monitoring, counseling, and any other safeguard that the board would see fit." (Resp. Ex. B)

27. Dr. Summers presented additional letters of support from members of his medical community. All describe Dr. Summers as a competent and compassionate physician. (Resp. Exs. C-F)

28. Dr. Summers testified that, following his recent relapse, he had strongly considered giving up his medical career. He testified that, after he received the phone call from OPHP on August 30, he went to the administrators of the Defiance Clinic and told them he wanted to resign. However, Dr. Summers testified that he received "a tremendous amount of support" from the clinic, hospitals, and colleagues. (Tr. at 94)

29. Dr. Summers testified that he would like the Board to know that he takes full responsibility for his conduct. He stated that this recent episode has prompted him to re-evaluate his efforts toward recovery. He testified that the time he spent at the Cleveland Clinic was very beneficial. In addition, he has obtained a new sponsor. Moreover, Dr. Summers testified: "[E]ven if I'm not a physician, I'm still a father, I'm still a friend * * *. And I lost sight of a lot of that." In addition, Dr. Summers testified that he would like to consider that, although he has struggled with addiction for twenty years, he has been sober for seventeen of those years. Furthermore, Dr. Summers testified that he knows that "it is a privilege to practice medicine." Dr. Summers also testified that he would welcome continued monitoring by the Board. Finally, Dr. Summers testified that he will be willing to comply with anything the Board requires of him, and he will do anything that he needs to do to continue practicing medicine. (Tr. at 95-97)

## LEGAL ISSUE

Should the Board deem it necessary to impose a probationary requirement that Dr. Summers continue treatment for depression, as was imposed in his Step II Consent Agreement, Dr. Summers stated that he would not object, even though his notice of opportunity for hearing did not allege impairment caused by depression.[6] (Tr. at 113)

## FINDINGS OF FACT

1. Pursuant to a Step I Consent Agreement between Robert Rowan Summers, D.O., and the State Medical Board of Ohio [Board], effective March 14, 2002, Dr. Summers' certificate

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[6] In *In re Eastway* (1994), 95 Ohio App.3d 516, 642 N.E.2d 1135, the Franklin County Court of Appeals held that the Board could not require psychiatric treatment as a condition of probation when it had not charged a physician with being mentally impaired. Therefore, a Board order which includes such sanctions is not supported by reliable, probative, and substantial evidence and is not in accordance with the law. See also *Lawrence S. Krain, M.D. v. State Medical Board of Ohio* (Oct. 29, 1998), Franklin App. No. 97APE08-981, unreported.

to practice osteopathic medicine and surgery in the State of Ohio was suspended for an indefinite period of time, but not less than one year, for violations of Ohio Revised Code Sections 4731.22(A); 4731.22(B)(26); 4731.22(B)(5); 4731.22(B)(10), to wit, Section 2925.22(A), Ohio Revised Code, Deception to obtain a Dangerous Drug; and 4731.22(B)(20), to wit, Rule 4731-11-08, Ohio Administrative Code, Utilizing Controlled Substances for Self and Family Members.

2. Pursuant to a Step II Consent Agreement between Dr. Summers and the Board, effective April 2, 2003, Dr. Summers' certificate was reinstated subject to the probationary terms, conditions and limitations contained therein. Dr. Summers' Step II Consent Agreement remains in effect.

3. Paragraph 8 of the Dr. Summers' Step II Consent Agreement contains the following provision:

> Dr. Summers 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. Summers' history of chemical dependency.

Sometime in early August 2007, Dr. Summers injured the fifth digit of his left hand by catching it on a doorframe at work. The following day, he consulted with an orthopedic surgeon who works in the same practice as Dr. Summers and asked that he examine the injured finger. Dr. Summers' colleague conducted a "curbside consult" in the hallway of his office, and noted that Dr. Summers exhibited symptoms including pain, swelling and limited motion in his injured finger. Given Dr. Summers' history of chemical dependency, which was known to Dr. Summers' colleague, Dr. Summers' colleague prescribed eight Ultram 50 mg and instructed Dr. Summers to take one every six to eight hours.

Despite the limitation set forth in Paragraph 8 of his Step II Consent Agreement, Dr. Summers took samples of Ultram ER from medical office stock rather than filling the aforementioned prescription. Dr. Summers took these samples from about August 10 through about August 21, 2007, and took as many as four tablets at a time.

4. On or about August 30, 2007, the Board was notified that a urine sample submitted by Dr. Summers on August 13, 2007, had tested positive and was GC/MS confirmed for tramadol, the generic name of Ultram. The toxicology results also indicated that the urine sample exhibited low specific gravity and creatinine levels, although not to a level that would indicate dilution of the sample.

5. On September 7, 2007, Dr. Summers was admitted to the Alcohol and Drug Recovery Center at the Cleveland Clinic, a Board-approved treatment provider, where he reported that he had relapsed on Ultram. After receiving treatment deemed appropriate by Gregory B. Collins, M.D., Medical Director of the Alcohol and Drug Recovery Center

at the Cleveland Clinic, Dr. Summers was discharged on or about September 20, 2007. Dr. Collins opined that Dr. Summers is capable of practicing medicine according to acceptable and prevailing standards of care only if Dr. Summers is monitored.

6. 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.

   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. The Rule further provides that an individual's relapse following treatment constitutes independent proof of impairment and shall support license suspension without the need for an examination.

   Finally, Dr. Summers' Step II Consent Agreement provides that, if the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that Dr. Summers has violated any term, condition or limitation of such consent agreement, Dr. Summers agreed that the violation, as alleged, 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.

## CONCLUSIONS OF LAW

1. The conduct of Robert Rowan Summers, D.O., as described in Findings of Fact 1 through 5, above, demonstrates "[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.

2. The conduct of Dr. Summers, as described in Findings of Fact 3 through 5, above, constitutes a "[v]iolation of the conditions of limitation placed by the board upon a certificate to practice," as that clause is used in Section 4731.22(B)(15), Ohio Revised Code.

* * * * *

The evidence is undisputed that Dr. Summers relapsed in August 2007. The evidence indicates that, at the time of his relapse, Dr. Summers had begun taking his recovery for granted and was not sufficiently focused on his recovery program. Dr. Summers and Dr. Collins testified that Dr. Summers' inpatient treatment at the Cleveland Clinic has helped to re-immerse Dr. Summers in his recovery program. It is important that Dr. Summers continue to take recovery seriously and maintain his sobriety, both for his own well-being and to maintain his privilege to practice osteopathic medicine in Ohio.

This represents the first relapse for Dr. Summers since he entered into his consent agreements with the Board. The Proposed Order suspends Dr. Summers' certificate for 90 days, the minimum required under Rule 4731-16-02(D), Ohio Administrative Code, followed by a period of probationary monitoring for at least five years to ensure that Dr. Summers re-establishes a record of recovery before being released from Board oversight.

## PROPOSED ORDER

It is hereby ORDERED that:

A. **SUSPENSION OF CERTIFICATE:** The certificate of Robert Rowan Summers, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than 90 days from October 15, 2007, the effective date of the summary suspension of Dr. Summers' certificate.

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

1. **Obey the Law**: Dr. Summers shall obey all federal, state, and local laws, and all rules governing the practice of osteopathic medicine and surgery in Ohio.

2. **Personal Appearances**: Dr. Summers shall appear in person for quarterly interviews before the Board or its designated representative. The first such appearance shall take place on the date his appearance would have been scheduled pursuant to his April 2, 2003, Step II Consent Agreement with the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

3. **Quarterly Declarations**: Dr. Summers shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Order. The first quarterly

declaration must be received in the Board's offices on the date his quarterly declaration would have been due pursuant to his April 2, 2003, Step II Consent Agreement with the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

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

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

6. **Comply with the Terms of the Aftercare Contract**: Dr. Summers 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.

7. **Continued Compliance with a Contract with an Impaired Physicians Committee**: Dr. Summers shall maintain continued compliance with the terms of the contract entered into with the Ohio Physicians Health Program [OPHP], or with another impaired physicians committee, approved by the Board, to assure continuous assistance in recovery and/or aftercare.

8. **Rehabilitation Program**: Dr. Summers 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. Summers 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. Summers' quarterly declarations.

9. **Drug & Alcohol Screens; Supervising Physician**: Dr. Summers shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Summers 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.

   Dr. Summers shall abstain from consumption of poppy seeds or any other food or liquid that may produce false results in a toxicology screen.

   The person or entity previously approved by the Board to serve as Dr. Summers' supervising physician pursuant to the April 2, 2003, Step II Consent Agreement is hereby

approved to continue as Dr. Summers' designated supervising physician under this Order, unless within thirty days of the effective date of this Order, Dr. Summers submits to the Board for its prior approval the name and curriculum vitae of an alternative supervising physician to whom Dr. Summers 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. Summers. Dr. Summers 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.

The Board expressly reserves the right to disapprove any person or entity proposed to serve as Dr. Summers' designated supervising physician, or to withdraw approval of any person or entity previously approved to serve as Dr. Summers' designated supervising physician, in the event that the Secretary and Supervising Member of the Board determine that any such supervising physician has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

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

In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Summers must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Summers 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. Summers' quarterly declaration. It is Dr. Summers' responsibility to ensure that reports are timely submitted.

10. **Submission of Blood or Urine Specimens upon Request**: Dr. Summers shall submit blood and urine specimens for analysis without prior notice at such times as the Board may request, at Dr. Summers' expense.

11. **Psychiatric Treatment**: Dr. Summers shall undergo and continue treatment for depression as directed by his current psychiatrist, Gregory B. Collins, M.D., or another psychiatrist approved in advance by the Board. Dr. Summers shall comply with his

psychiatric treatment plan, including taking medications as prescribed and/or ordered. Dr. Summers 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 Dr. Summers' current treatment plan and any changes that have been made to the treatment plan since the prior report, Dr. Summers' compliance with his treatment plan, Dr. Summers' mental status, Dr. Summers' progress in treatment, and results of any laboratory studies that have been conducted since the prior report. Dr. Summers shall ensure that his treating psychiatrist immediately notifies the Board of Dr. Summers' failure to comply with his psychiatric treatment plan and/or any determination that Dr. Summers is unable to practice. It is Dr. Summers' responsibility to ensure that quarterly reports are received in the Board's offices no later than the due date for Dr. Summers' quarterly declaration.

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

The Board expressly reserves the right to disapprove any psychiatrist proposed to serve as Dr. Summers' designated treating psychiatrist, or to withdraw approval of any psychiatrist previously approved to serve as Dr. Summers' designated treating psychiatrist, in the event that the Secretary and Supervising Member of the Board determine that any such psychiatrist has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

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

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

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

1. **Application for Reinstatement or Restoration**: Dr. Summers shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.

2. **Compliance with Interim Conditions**: Dr. Summers shall have maintained compliance with all the terms and conditions set forth in Subsection B of this Order.

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

   a. Certification from a treatment provider approved under Section 4731.25 of the Revised Code that Dr. Summers has successfully completed any required inpatient treatment.

   b. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.

   c. Evidence of continuing full compliance with this Order.

   d. Two written reports indicating that Dr. Summers' ability to practice has been evaluated for chemical dependency and/or impairment and that he has been found capable of practicing according to acceptable and prevailing standards of care. The evaluations shall have been performed by individuals or providers approved by the Board for making such evaluations. Moreover, the evaluations shall have been performed within sixty days prior to Dr. Summers' application for reinstatement or restoration. The reports of evaluation shall describe with particularity the bases for the determination that Dr. Summers has been found capable of practicing according to acceptable and prevailing standards of care and shall include any recommended limitations upon his practice.

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

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

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

2. **Monitoring Physician**: The person or entity previously approved by the Board to serve as Dr. Summers' monitoring physician pursuant to the April 2, 2003, Step II Consent Agreement is hereby approved to continue to as Dr. Summers' designated monitoring physician under this Order, unless within thirty days of the effective date of this Order, Dr. Summers submits to the Board for its prior approval the name and curriculum vitae of an alternative monitoring physician. In approving an individual to serve in this capacity, the Secretary and Supervising Member will give preference to a physician who practices in the same locale as Dr. Summers and who is engaged in the same or similar practice specialty.

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

   In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. Summers must immediately so notify the Board in writing. In addition, Dr. Summers 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. Summers shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

3. **Controlled Substances Log**: Dr. Summers shall keep a log of all controlled substances he prescribes. Such log shall be submitted in a format approved by the Board thirty days prior to Dr. Summers' personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further,

Dr. Summers shall make his patient records with regard to such controlled substance prescribing available for review by an agent of the Board upon request.

4. **Ban on Administering, Furnishing, or Possessing Controlled Substance; Log**: Dr. Summers shall not, without prior Board approval, administer, personally furnish, or possess (except as allowed under Paragraph B4) 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. Summers to administer or personally furnish controlled substances, Dr. Summers shall keep a log of all controlled substances administered or personally furnished. Such log shall be submitted in a format approved by the Board thirty days prior to Dr. Summers' personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Summers shall make his patient records with regard to such administering, or personally furnishing available for review by an agent of the Board upon request.

5. **Absence from Ohio**: Dr. Summers shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.

6. **Noncompliance Will Not Reduce Probationary Period**: In the event Dr. Summers 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 under this Order.

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

F. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS**: Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Summers 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. Summers 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. This requirement shall continue until Dr. Summers receives from the Board written notification of his successful completion of probation.

G. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES**: Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Summers 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. Summers shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration or restoration of any professional license. Further, Dr. Summers shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board. This requirement shall continue until Dr. Summers receives from the Board written notification of his successful completion of probation.

H. **SUPERSEDE PREVIOUS CONSENT AGREEMENT**: This Order shall supersede the terms and conditions set forth in the April 2, 2003, Step II Consent Agreement between Dr. Summers and the Board.

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

R. Gregory Porter
Hearing Examiner

# State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
Executive Director

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EXCERPT FROM THE DRAFT MINUTES OF DECEMBER 12, 2007

REPORTS AND RECOMMENDATIONS

Dr. Kumar announced that the Board would now consider the Reports and Recommendations appearing on its agenda. He asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings of fact, conclusions of law, and orders, and any objections filed in the matters of: Kimberli Jo Burback; Michael Shane Gainey, M.D.; Russell L. Gaudett; Cynthia Joan Johnson, P.A.; Kandhasamy Kannapiran, MD.; Ali Khan, M.D.; Robert M. Moore, M.T.; Kolli Mohan Prasad, M.D.; Willie Calvin Rabb, Jr., D.P.M.; Mary Ellen Ratcliff; and Robert Rowan Summers, D.O. A roll call was taken:

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| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Varyani | - aye |
| | Dr. Buchan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - aye |
| | Dr. Steinbergh | - aye |
| | Dr. Kumar | - aye |

Dr. Kumar 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:

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| ROLL CALL: | Mr. Albert | - aye |
| | Dr. Egner | - aye |
| | Dr. Talmage | - aye |
| | Dr. Varyani | - aye |
| | Dr. Buchan | - aye |
| | Dr. Madia | - aye |

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| Mr. Browning | - aye |
| Mr. Hairston | - aye |
| Dr. Steinbergh | - aye |
| Dr. Kumar | - aye |

Dr. Kumar 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.

The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.

.....

ROBERT ROWAN SUMMERS, D.O.

Dr. Kumar directed the Board's attention to the matter of Robert Rowan Summers, D.O. He advised that no objections were filed to Hearing Examiner Porter's Report and Recommendation.

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

Dr. Summers was accompanied by his attorney, Eric J. Plinke.

Mr. Plinke advised that he filed no objections in this case because they agree with Mr. Porter's Summary of the Evidence, Findings of Fact and Proposed Order.

Mr. Plinke stated that Dr. Summers has been under Board Step 1 and Step 2 consent agreements since March 2002, and had been compliant with those provisions until this past summer when he obtained a prescription for Ultram. Instead of having that prescription filled, he dispensed it to himself and used that medication. Mr. Plinke stated that the Board knows that the medication use was limited because the second urine test that was obtained was negative for Ultram.

Mr. Plinke advised that Dr. Summers went to Dr. Collins for evaluation and treatment, and Dr. Collins testified and opined that it was a depressive state that Dr. Summers was suffering that predisposed him to engaging in conduct that was a violation of his consent agreement. Dr. Collins did not find that there was impairment.

Mr. Plinke stated that Dr. Summers did testify about his divorce in 2006 and how he did not seek treatment as he probably should for the depression he was suffering. Mr. Plinke stated that, at hearing, Dr. Summers

consented to the inclusion of terms regarding the psychiatric and mental health issues. Mr. Plinke stated that they obviously do not contest that, even though it was not in the notice letter, as they think that that is an important issue as to Dr. Collins.

Mr. Plinke again stated that they have no objections or disagreement with the Report and Recommendation.

Dr. Summers thanked the Board for its time and consideration. He apologized to the Board for the actions that led to this situation. He stated that he is clearly not here to try to mitigate or say that what the record reflects did not happen. It did. He remarked that he's a drug-dependent person, and his record clearly states that. Dr. Summers stated that, if he had to summarize it, he would have to say that his actions were not consistent with someone in active recovery. Dr. Summers stated that he's here to say that the Board's monitoring system does work.

Dr. Summers stated that he would like to discuss what has happened since that phone call of August 30. He went to Cleveland, and Dr. Collins suggested that he was in a negative state of existence. He was having some difficulty dealing with the end of a 20-year marriage. His 12-year-old daughter and he now live six hours away. Instead of admitting that and finding help for it, he denied it. He stated that that is absolutely not an excuse for what he did. Things are improving. Dr. Collins placed him on an antidepressant, they did some counseling, he has an upcoming appointment in Toledo for ongoing counseling. Dr. Summers stated that he is willing to adhere to whatever the Board feels is appropriate as far as discipline in this matter. He added that, short of permanent revocation of his license, he will be back and he will be compliant, if the Board allows him the privilege.

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

Mr. Wilcox stated that one thing he wants to point out on this case is, if you look at the entire abuse history of Dr. Summers, the recommendation of a 90-day suspension may be a little light. Mr. Wilcox stated that Dr. Summers was first treated for alcohol and drug abuse at Greene Hall/Peachtree Recovery in Atlanta, Georgia for three to four months in 1988. Dr. Summers then had a long period of sobriety for about ten years. He suffered an elbow injury and began using Ultram samples taken from work. He apparently had two seizures related to this abuse and was confronted by his spouse and coworkers. Mr. Wilcox stated that this would have been his first relapse and occurred sometime around the year 2000. Dr. Summers then went to a 28-day residential treatment program in Brighton, Michigan as a result.

Mr. Wilcox stated that in 2001 Dr. Summers began drinking beer and using Vicoprofen by writing and calling in scripts in his own name and a coworker's wife's name, as well. Mr. Wilcox stated that this was the second relapse. Dr. Summers' use was discovered in February 2002, and his Ohio license was suspended when he entered into his first Step 1 agreement with the Board. Dr. Summers went to Shepherd Hill for three months of inpatient treatment in February 2002. In April 2003 Dr. Summers entered into a Step 2 agreement and remained clean and sober until August 2007 when, again, the pattern was repeated. He had an injury, he was prescribed Ultram by a colleague, and rather than using the Ultram that was

prescribed, he began self-medicating with samples at work and relapsed again.

Mr. Wilcox stated that he won't suggest a penalty to give Dr. Summers, but he feels that, given Dr. Summers' history, the guidelines for a second relapse recommend treatment followed by a one-year suspension.

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF ROBERT ROWAN SUMMERS, M.D. DR. VARYANI SECONDED THE MOTION.**

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

Dr. Steinbergh stated that she would like to discuss the proposed suspension time. She stated that she thinks that Mr. Wilcox makes an excellent point. There is one correction that she would like to make. She referred to page 16 of the Report and Recommendation, noting that the second paragraph under the five stars states, as follows:

> The Proposed Order suspends Dr. Summers' certificate for 90 days, the minimum required under Rule 4731-16-02(D), Ohio Administrative Code, followed by a period of probationary monitoring for at least five years to ensure that Dr. Summers re-establishes a record of recovery before being released from Board oversight.

Dr. Steinbergh stated that five years of probation is traditional for this Board in order to establish a record of recovery before being release. She noted, however, that the Proposed Order sets the period of probationary monitoring for two years, rather than five.

Dr. Steinbergh added that she thinks that the Board needs to discuss whether or not a three-month suspension is appropriate for this type of relapse. She stated that she's pleased that Dr. Summers is getting mental health care, and she hopes his depression will improve. Dr. Steinbergh noted that a dual diagnosis of depression and alcoholism is a very difficult diagnosis to overcome. She stated that Dr. Summers will be at this a long time.

Dr. Varyani stated that it seems like Dr. Summers jumps off the wagon every five years. He suggested that, instead of suspending Dr. Summers' license for more than 90 days, the probationary period should be increased to more than five years. Dr. Varyani stated that he was impressed by Dr. Summers' affect today.

Dr. Egner stated that she appreciates what Dr. Summers has to say, adding that he seems to take an honest look at himself; but she looks at this case and Dr. Summers' first treatment was 20 years ago. She doesn't know at what point the Board says "enough." Dr. Egner stated that she doesn't want to say that today, but Dr. Summers has a long, long history of impairment, and there will be some time when the Board says that you just won't recover. There may come a time when the Board says that it is, perhaps, medicine that is

causing him relapse and that he should find something else to do.

Dr. Egner stated that she agrees with Dr. Varyani that the probation rather than the suspension should be lengthened.

**DR. VARYANI MOVED TO AMEND THE PROPOSED ORDER TO INCREASE THE PROBATIONARY PERIOD TO SEVEN YEARS. DR. STEINBERGH SECONDED THE MOTION.** A vote was taken:

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| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Varyani | - aye |
| | Dr. Buchan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - abstain |
| | Dr. Amato | - aye |
| | Dr. Steinbergh | - aye |

The motion carried.

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MR. PORTER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF ROBERT ROWAN SUMMERS, D.O. DR. AMATO SECONDED THE MOTION.** A vote was taken:

| | | |
|---|---|---|
| ROLL CALL: | Mr. Albert | - abstain |
| | Dr. Egner | - aye |
| | Dr. Talmage | - abstain |
| | Dr. Varyani | - aye |
| | Dr. Buchan | - aye |
| | Dr. Madia | - aye |
| | Mr. Browning | - aye |
| | Mr. Hairston | - abstain |
| | Dr. Amato | - aye |
| | Dr. Steinbergh | - aye |

The motion carried.

# State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov


October 10, 2007

Robert Rowan Summers, D.O.
1450 Riverbend Drive
Defiance, Ohio 43512

Dear Doctor Summers:

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 October 10, 2007, 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/KHM/flb
Enclosures

Mailed 10-11-07

## 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 October 10, 2007, 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 Robert Rowan Summers, 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.

Lance A. Talmage, M.D., Secretary

(SEAL)

October 10, 2007
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

| | |
|---|---|
| IN THE MATTER OF | : |
| | : |
| ROBERT ROWAN SUMMERS, D.O. | : |

**ENTRY OF ORDER**

This matter came on for consideration before the State Medical Board of Ohio the 10th day of October, 2007.

Pursuant to the provisions of the Step II Consent Agreement Between Robert Rowan Summers, D.O., and the State Medical Board of Ohio, effective on or about April 2, 2003, and 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 Robert Rowan Summers, D.O., has violated Sections 4731.22(B)(26) and (B)(15), 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. Summers'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 10th day of October, 2007:

> It is hereby ORDERED that the certificate of Robert Rowan Summers, D.O., to practice osteopathic medicine or surgery in the State of Ohio be summarily suspended.
>
> It is hereby ORDERED that Robert Rowan Summers, 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.

Lance A. Talmage, M.D., Secretary

(SEAL)

October 10, 2007

# State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov


**NOTICE OF SUMMARY SUSPENSION**
**AND**
**OPPORTUNITY FOR HEARING**

October 10, 2007

Robert Rowan Summers, D.O.
1450 Riverbend Drive
Defiance, Ohio 43512

Dear Doctor Summers:

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)(26) and (B)(15), 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 (6), below.

Therefore, pursuant to the provisions of the Step II Consent Agreement Between Robert Rowan Summers, D.O., and the State Medical Board of Ohio, effective on or about April 2, 2003, and 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 Board intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery, or to reprimand you or place you on probation for one or more of the following reasons:

(1) Pursuant to the Step I Consent Agreement Between Robert Rowan Summers, D.O., and the State Medical Board of Ohio, effective on or about March 13, 2002 [March 2002 Step I Consent Agreement], your certificate to practice osteopathic medicine and surgery in the state of Ohio was suspended for an indefinite period of time, but not less than one year, for violations of Ohio Revised Code Sections 4731.22(A); 4731.22(B)(26); 4731.22(B)(5); 4731.22(B)(10), to wit, Section 2925.22(A), Ohio Revised Code, Deception to obtain a Dangerous Drug; and 4731.22(B)(20), to wit, Rule 4731-11-08, Ohio Administrative Code, Utilizing Controlled Substances for Self and Family Members. A copy of the March 2002 Step I Consent Agreement is attached hereto and fully incorporated herein.

(2) Pursuant to the Step II Consent Agreement Between Robert Rowan Summers, D.O., and the State Medical Board of Ohio, effective on or about April 2, 2003 [April 2003 Step II Consent Agreement], your certificate to practice osteopathic medicine and surgery in the state of Ohio was reinstated subject to the probationary terms, conditions and limitations contained therein. A copy of the April 2003 Step II Consent Agreement is attached hereto and fully incorporated herein.

(3) Paragraph 8 of the April 2003 Step II Consent Agreement contains the following provision:

> Dr. Summers 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. Summers' history of chemical dependency.

On or about August 6, 2007, you stopped by the orthopedic osteopathic medical office of one of your colleagues and asked that he exam the little finger of your left hand, which you had injured by catching it on a doorframe. Your colleague conducted a "curbside consult" in the hallway of his office, and noted that you exhibited symptoms including pain, swelling and limited motion in your injured finger. Given your chemical dependency history as generally known by your colleague, he prescribed Ultram 50 mg., with instructions that you take one every six to eight hours.

Despite the limitation set forth in Paragraph 8 of the April 2003 Step II Consent Agreement, you dispensed Ultram to yourself from medical office stock rather than filling the aforementioned prescription at a pharmacy. Further, you took Ultram samples from office stock from on or about August 10, 2007, through on or about August 21, 2007, at first taking one to two tablets, then escalating to four tablets at a time.

(4) On or about August 30, 2007, the Board was notified that your toxicology screen drawn on or about August 13, 2007, tested positive, and was GC/MS confirmed for, tramadol, the generic of Ultram. Such toxicology screen results also indicted that you exhibited low specific gravity and creatinine levels.

(5) On or about September 5, 2007, you were admitted to the Cleveland Clinic Alcohol and Drug Recovery Center, a Board-approved treatment provider, where you reported that you had relapsed on tramadol. After receiving treatment deemed appropriate by the Cleveland Clinic, you were discharged on or about September 20, 2007. Gregory B. Collins, M.D., Medical Director of the Cleveland Clinic, has opined that you are capable of practicing medicine according to acceptable and prevailing standards of care only if you are monitored.

(6) 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 4731-16-01(A), Ohio Administrative Code, provides that impairment means 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, and that impairment includes inability to practice in accordance with such standards, and inability to practice in accordance with such standards without appropriate treatment, monitoring or supervision.

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.

Additionally, Rule 4731-16-02(B)(3), Ohio Administrative Code, further provides that an individual's relapse following treatment constitutes independent proof of impairment and shall support license suspension without the need for an examination.

Further, the April 2003 Step II Consent Agreement provides that if the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that you have violated any term, condition or limitation of such consent agreement, you agreed that the violation, as alleged, constitutes clear and convincing evidence that your 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.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) through (6) above, individually and/or collectively, constitute "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

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

Pursuant to Chapter 119., Ohio Revised Code, and Chapter 4731., Ohio Revised Code, you are hereby advised that you are entitled to a hearing concerning these matters. 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.

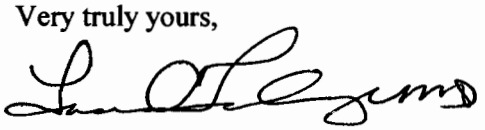
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at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

CERTIFIED MAIL #91 7108 2133 3931 8317 1425
RETURN RECEIPT REQUESTED

cc:
Eric J. Plinke, Esq.
Buckingham, Doolittle, & Burroughs, LPA
191 West Nationwide Boulevard
Columbus, Ohio 43215-3506

Attorney for Robert Rowan Summers, D.O.

CERTIFIED MAIL #91 7108 2133 3931 8317 1432
RETURN RECEIPT REQUESTED

**STEP II**
**CONSENT AGREEMENT**
**BETWEEN**
**ROBERT ROWAN SUMMERS, D.O.**
**AND**
**THE STATE MEDICAL BOARD OF OHIO**

This Consent Agreement is entered into by and between Robert Rowan Summers, D.O. [Dr. Summers], and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

Dr. Summers 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 Board 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 violation of Section 4731.22(B)(26), Ohio Revised Code, "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice;" or current and previous versions of Section 4731.22(B)(5), Ohio Revised Code, for "a false, fraudulent, deceptive, or misleading statement" in securing or attempting to secure any certificate to practice or certificate of registration issued by the Board; or Section 4731.22(B)(10), Ohio Revised Code, "commission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed;" or Section 4731.22(B)(20), Ohio Revised Code, "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board." The Board is further empowered by Section 4731.22(A), Ohio Revised Code, to revoke a certificate for violations of current and previous versions of Section 4731.22, Ohio Revised Code, for "fraud, misrepresentation, or deception" in applying for or securing a certificate issued by the Board.

B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violations of Ohio Revised Code Sections 4731.22(A) and 4731.22(B)(26);

(B)(5); (B)(10), to wit, Section 2925.22(A), Ohio Revised Code, Deception to Obtain a Dangerous Drug; and (B)(20), to wit, Rule 4731-11-08, Ohio Administrative Code, Utilizing Controlled Substances for Self and Family Members, as set forth in Paragraphs E and F of the March 14, 2002 Step I Consent Agreement between Robert Rowan Summers, D.O., and the State Medical Board of Ohio, a copy of which is attached hereto and incorporated herein. The Board expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Consent Agreement. Such express reservation includes, but is not limited to, the right to institute formal proceedings based upon any violations related to patient care, regardless of whether the acts underlying such additional violations are related to the violations of Section 4731.22(A) or Sections 4731.22(B)(26); (B)(5); (B)(20); or (B)(10), Ohio Revised Code, as are set forth in the above-referenced March 2002 Step I Consent Agreement, and/or the right to institute formal proceedings for violations, including those associated with criminal charges or proceedings related to any methods used by Dr. Summers to obtain controlled substances for self-use other than those specifically referenced in Paragraph E of the above-referenced March 2002 Step I Consent Agreement.

C. Dr. Summers is applying for reinstatement of his license to practice medicine and surgery in the State of Ohio, License #34-006606, which was suspended pursuant to the terms of the above-referenced March 2002 Step I Consent Agreement.

D. Dr. Summers states that he is not licensed to practice osteopathic medicine and surgery any other state.

E. Dr. Summers admits that after entering residential treatment for opiate dependence at Shepherd Hill Hospital, Newark, Ohio, a Board-approved treatment provider, on March 6, 2002, he was discharged on May 10, 2002, treatment complete.

F. Dr. Summers states, and the Board acknowledges receipt of information to support, that since being discharged from Shepherd Hill Hospital on May 10, 2002, he has remained compliant with his recovery plan/aftercare contract with his treatment provider, Shepherd Hill Hospital. In addition, Dr. Summers states, and the Board acknowledges receipt of information to support, that he has remained fully compliant with the terms of the advocacy contract into which he entered with the Ohio Physicians Effectiveness Program in May 2002. Dr. Summers further states that such recovery plan/aftercare contract and advocacy contract remain in effect to date.

G. Dr. Summers states, and the Board acknowledges, that Richard N. Whitney, M.D., of Shepherd Hill Hospital, a Board-approved treatment provider in Newark, Ohio, and Edna Jones, M.D., of Parkside Behavioral Healthcare, a Board-approved treatment provider in Columbus, Ohio, have provided written reports indicating that Dr.

Summers' ability to practice has been assessed and that he has been found capable of practicing osteopathic medicine and surgery according to acceptable and prevailing standards of care, so long as certain treatment and monitoring requirements are in place. Dr. Summers admits that such requirements include that he be treated and monitored for depression by his family practice physician.

H. Dr. Summers states, and the Board acknowledges receipt of information to support, that Dr. Summers has fulfilled the conditions for reinstatement of his certificate to practice osteopathic medicine and surgery in the state of Ohio, as established in the above-referenced March 2002 Step I Consent Agreement.

## 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 Dr. Summers to practice osteopathic medicine and surgery in the State of Ohio shall be reinstated and Dr. Summers knowingly and voluntarily agrees with the Board to the following PROBATIONARY terms, conditions and limitations:

1. Dr. Summers shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.

2. Dr. Summers shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the date his quarterly declaration would have been due pursuant to his March 2002 Step I Consent Agreement with the Board. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. Dr. Summers shall appear in person for an interview before the full Board or its designated representative. The first such appearance shall take place on the date his appearance would have been scheduled pursuant to his March 2002 Step I Consent Agreement with the Board. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

4. In the event that Dr. Summers should leave Ohio for three continuous months, or reside or practice outside the State, Dr. Summers 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 this 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 Dr. Summers 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 this Consent Agreement.

## MONITORING OF REHABILITATION AND TREATMENT

### Drug Associated Restrictions

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

7. Dr. Summers shall not, without prior Board approval, administer, personally furnish, 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 Dr. Summers to administer or personally furnish controlled substances, Dr. Summers shall keep a log of all controlled substances prescribed, administered or personally furnished. Such log shall be submitted in the format approved by the Board thirty days prior to Dr. Summers' personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. Summers shall make his patient records with regard to such prescribing, administering, or personally furnishing available for review by an agent of the Board upon request.

### Sobriety

8. Dr. Summers 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. Summers' history of chemical dependency.

9. Dr. Summers shall abstain completely from the use of alcohol.

### Drug and Alcohol Screens/Supervising Physician

10. Dr. Summers shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Summers shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug

testing panel utilized must be acceptable to the Secretary of the Board.

Within thirty days of the effective date of this Consent Agreement, Dr. Summers shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. Summers 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. Summers. Dr. Summers 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. Summers shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Summers must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Summers 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. Summers' quarterly declaration. It is Dr. Summers' responsibility to ensure that reports are timely submitted.

11. The Board retains the right to require, and Dr. Summers agrees to submit, blood or urine specimens for analysis at Dr. Summers' expense upon the Board's request and without prior notice. Dr. Summers' 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. Before engaging in any medical practice, Dr. Summers 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 and Supervising Member will give preference to a physician who practices in the same locale as Dr. Summers and who is engaged in the same or similar practice specialty.

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

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

**Treatment for Depression.**

13. Dr. Summers shall undergo and continue treatment for depression as directed by his current family practice physician, John Rooney, D.O., or another physician approved by the Board. Dr. Summers shall comply with his treatment plan, including taking medications as prescribed and/or ordered. Dr. Summers shall ensure that reports are forwarded by his family practice physician to the Board on a quarterly basis, or as otherwise directed by the Board. The reports shall contain information describing Dr. Summers' current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. Summers' compliance with his treatment plan; Dr. Summers' mental status; Dr. Summers' progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. Summers shall ensure that his family practice physician immediately notifies the Board of his failure to comply with his treatment plan and/or any determination that Dr. Summers is unable to practice. It is Dr. Summers' responsibility to ensure that quarterly reports are received in the Board's offices no later than the due date for Dr. Summers' quarterly declaration.

**Rehabilitation Program**

14. Within thirty days of the effective date of this Consent Agreement, Dr. Summers shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.

    Dr. Summers 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. Summers' quarterly declarations.

**Aftercare**

15. Dr. Summers shall maintain continued compliance with the terms of the recovery plan/aftercare contract entered into with his treatment provider and the advocacy contract entered into with the Ohio Physicians Effectiveness Program or, if approved in advance by the Board, another physician health program, provided that, where terms of the recovery plan/aftercare or advocacy contracts conflict with terms of this Consent Agreement, the terms of this Consent Agreement shall control.

**Releases**

16. Dr. Summers 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**

17. Within thirty days of the effective date of this Consent Agreement, Dr. Summers 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, Dr. Summers 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.

18. Within thirty days of the effective date of this Consent Agreement, Dr. Summers 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. Dr. Summers 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 for reinstatement of any professional license. Further, Dr. Summers shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

## FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Summers 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 Dr. Summers has violated any term, condition or limitation of this Consent Agreement, Dr. Summers 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

Dr. Summers shall not request termination of this Consent Agreement for a minimum of five years. In addition, Dr. Summers shall not request modification to the probationary terms, limitations, and conditions contained herein for at least one 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

Dr. Summers 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.

Dr. Summers hereby releases the Board, 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, and may be reported to appropriate organizations, data banks, and

governmental bodies. Dr. Summers agrees to provide his social security number to the Board and hereby authorizes the Board to utilize that number in conjunction with that reporting.

**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.

ROBERT ROWAN SUMMERS, D.O.

3-21-03
DATE

ERIC J. PLINKE
Attorney for Dr. Summers

3-24-03
DATE

ANAND G. GARG, M.D.
Secretary

04/02/03
DATE

RAYMOND J. ALBERT
Supervising Member

4/2/03
DATE

KAREN MORTLAND
Enforcement Coordinator

March 25, 2003
DATE

**STEP I**
**CONSENT AGREEMENT**
**BETWEEN**
**ROBERT ROWAN SUMMERS, D.O.**
**AND**
**THE STATE MEDICAL BOARD OF OHIO**

This Consent Agreement is entered into by and between Robert Rowan Summers, D.O., [Dr. Summers] and the State Medical Board of Ohio [the Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

Dr. Summers 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 Board is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violations of Section 4731.22(B)(26), Ohio Revised Code, "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice;" current and previous versions of Section 4731.22(B)(5), Ohio Revised Code, for "a false, fraudulent, deceptive, or misleading statement" in securing or attempting to secure any certificate to practice or certificate of registration issued by the Board; Section 4731.22(B)(10), Ohio Revised Code, "[c]ommission of an act that constitutes a felony in this state, regardless of the jurisdiction in which the act was committed;" and Section 4731.22(B)(20), Ohio Revised Code, "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board." Further, the Board is empowered by Section 4731.22(A), Ohio Revised Code, to revoke a certificate for violations of current and previous versions of Section 4731.22(A), Ohio Revised Code, for "fraud, misrepresentation, or deception" in applying for or securing a certificate issued by the Board.

B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon violations of Ohio Revised Code Sections 4731.22(A) and 4731.22(B)(26); (B)(5);

(B)(10), to wit: Section 2925.22(A), Ohio Revised Code, Deception to Obtain a Dangerous Drug; and (B)(20), to wit: Rule 4731-11-08, Ohio Administrative Code, Utilizing Controlled Substances for Self and Family Members, as these are set forth in Paragraphs E and F, 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. Such express reservation includes, but is not limited to, the right to institute formal proceedings based upon any violations related to patient care, regardless of whether the acts underlying such additional violations are related to the violations of Section 4731.22(A) or Section 4731.22(B)(26), (B)(5), (B)(20), or (B)(10), Ohio Revised Code, as are set forth in this Consent Agreement, and/or the right to institute formal proceedings for violations, including those associated with criminal charges or proceedings related to any methods used by Dr. Summers to obtain controlled substances for self-use other than those specifically referenced in Paragraph E below.

C. Dr. Summers is licensed to practice osteopathic medicine and surgery in the State of Ohio, License # 34-006606.

D. Dr. Summers states that he is not licensed to practice osteopathic medicine and surgery in any other state.

E. Dr. Summers admits that he initially received treatment for chemical dependence, including poly-substance abuse, at Greene Hall/Peachtree Recovery in Atlanta, Georgia, as an inpatient in 1988. Dr. Summers states that following this treatment he maintained sobriety until 1998.

Dr. Summers admits that in 1998, after receiving Ultram from his treating physician for treatment of an elbow injury, Dr. Summers relapsed and began self-prescribing Ultram and taking Ultram samples from stock. Dr. Summers states that in June 2000, he contacted the Ohio Physicians Effectiveness Program [OPEP] to self-report his relapse on Ultram and that he entered into an advocacy contract with OPEP on or about July 7, 2000. Dr. Summers admits that after contacting OPEP, he completed a twenty-eight-day inpatient treatment program for chemical dependency at Brighton Hospital, a Board-approved treatment provider, in Brighton, Michigan.

Dr. Summers admits that during or about the summer of 2001 he began drinking beer occasionally and that during or about the fall of 2001 he intermittently began using Vicoprofen, a Schedule III controlled substance. Dr. Summers admits that he obtained Vicoprofen by calling in and writing prescriptions in his name and in the name of another physician for Dr. Summers's wife, although the Vicoprofen was intended for Dr. Summers's own use. Dr. Summers states that he believes that neither his use of Vicoprofen or alcohol was detected through the random urine screening process because he used those substances immediately after submitting a urine sample for screening.

Dr. Summers states that he ceased using Vicoprofen on February 20, 2002. Dr. Summers states that he self-reported his substance abuse relapse to OPEP on February 25, 2002, and reported his relapse to the Board through his attorney on February 26, 2002. Dr. Summers states that he did not use alcohol or drugs while working and that he was not under the influence of alcohol or drugs while working.

Dr. Summers further admits that he maintains no patient records for himself or his wife reflecting his prescribing of Ultram or Vicoprofen as referenced above.

Dr. Summers states that he entered residential treatment at Shepherd Hill Hospital, Newark, Ohio, a Board-approved treatment provider, on March 6, 2002, and that he remains in residential treatment there to date.

F. Dr. Summers further admits that in completing his application cards in 1999 and 2001 for renewal of his certificate to practice medicine and surgery, he answered "No" to Question 3 which asks: "At any time since signing your last application for renewal of your certificate, have you been addicted to or dependent upon alcohol or any chemical substance; or been treated for, or been diagnosed as suffering from, drug or alcohol dependency or abuse?" Dr. Summers admits that he signed such application cards certifying that the information provided on the applications for renewal was true and correct in every respect. Dr. Summers further admits that at the time he submitted his renewal cards in 1999 and 2001, he was addicted to or dependent upon alcohol and/or chemical substances. Dr. Summers admits that at the time he signed such applications he had not successfully completed treatment at a program approved by this Board and had not subsequently adhered to all statutory requirements as contained in Sections 4731.224 and 4731.25, Ohio Revised Code, and related provisions, and was not currently enrolled in a Board-approved program.

## AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Dr. Summers knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

### SUSPENSION OF CERTIFICATE

1. The certificate of Dr. Summers to practice osteopathic medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time but not less than one year.

Sobriety

2. Dr. Summers 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. Summers's history of chemical dependency.

3. Dr. Summers shall abstain completely from the use of alcohol.

Releases; Quarterly Declarations and Appearances

4. Dr. Summers 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. Summers's chemical dependency or related conditions, or for purposes of complying with this 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. Dr. Summers 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. Dr. Summers shall submit quarterly declarations under penalty of Board disciplinary action and/or criminal prosecution, stating whether there has been compliance with all the conditions of this 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 this 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. Dr. Summers shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. 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.

Drug & Alcohol Screens; Supervising Physician

7. Dr. Summers shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. Summers shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

   Within thirty days of the effective date of this Consent Agreement, Dr. Summers shall submit to the Board for its prior approval the name of a supervising physician to whom Dr. Summers 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. Summers. Dr. Summers 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. Summers shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

   In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. Summers must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. Summers 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. Summers's quarterly declaration. It is Dr. Summers's responsibility to ensure that reports are timely submitted.

Rehabilitation Program

8. Within thirty days of the effective date of this Consent Agreement, Dr. Summers shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.

   Dr. Summers 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. Summers's quarterly declarations.

## CONDITIONS FOR REINSTATEMENT

9. The Board shall not consider reinstatement of Dr. Summers's certificate to practice medicine and surgery until all of the following conditions are met:

   a. Dr. Summers shall submit an application for reinstatement, accompanied by appropriate fees, if any.

   b. Dr. Summers 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 Dr. Summers has successfully completed any required inpatient treatment.

      ii. Evidence of continuing full compliance with a post-discharge aftercare contract with a treatment provider approved under Section 4731.25 of the Revised Code. Such evidence shall include, but not be limited to, a copy of the signed aftercare contract. The aftercare contract must comply with rule 4731-16-10 of the Administrative Code.

      iii. Evidence of continuing full compliance with this Consent Agreement.

      iv. Two written reports indicating that Dr. Summers'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.

   c. Dr. Summers shall enter into a written consent agreement including probationary terms, conditions and limitations as determined by the Board or, if the Board and Dr. Summers are unable to agree on the terms of a written Consent Agreement, then Dr. Summers 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 Dr. Summers'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. Moreover, upon termination of the consent agreement or Board Order, Dr. Summers shall submit to the Board for at least two years annual progress reports made under penalty of Board disciplinary action or criminal prosecution stating whether Dr. Summers has maintained sobriety.

10. In the event that Dr. Summers 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 Dr. Summers's fitness to resume practice.

**REQUIRED REPORTING BY LICENSEE**

11. Within thirty days of the effective date of this Consent Agreement, Dr. Summers 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. Dr. Summers 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, Dr. Summers shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

12. Within thirty days of the effective date of this Consent Agreement, Dr. Summers 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, Dr. Summers 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.

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, Dr. Summers 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

Dr. Summers 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.

Dr. Summers hereby releases the Board, 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, and may be reported to appropriate organizations, data banks, and governmental bodies. Dr. Summers agrees to provide his social security number to the Board and hereby authorizes the Board to utilize that number in conjunction with that reporting.

## 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.

Robert Rowan Summers D.O.

ROBERT ROWAN SUMMERS, D.O.

3.11.02

DATE

ANAND G. GARG, M.D.
Secretary

03/13/02

DATE

ERIC J. PLINKE
Attorney for Dr. Summers

3/11/02

DATE

RAYMOND J. ALBERT
Supervising Member

3/13/02

DATE

REBECCA J. ALBERS
Assistant Attorney General

3/14/02
DATE

Rev. 08/08/01