BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF	*	
	*	CASE NO. 09-CRF-003
JOHN MARK HATHEWAY, M.D.	*	

ENTRY OF ORDER
NUNC PRO TUNC

On June 9, 2010, the State Medical Board of Ohio considered a Report and Recommendation in the Matter of John Mark Hatheway, M.D., and issued a Final Order, which is attached hereto and incorporated herein by reference.

Upon further review, it has been determined that the order contained certain clerical errors concerning the effective date of the Order.

WHEREFORE, it is hereby ORDERED that the Final Order of the State Medical Board of Ohio in the matter of John Mark Hatheway, M.D. be and hereby is CORRECTED to read as follows:

It is hereby ORDERED that:

A. **SUSPENSION OF CERTIFICATE**: The certificate of John Mark Hatheway, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time.

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

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

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

3. **Personal Appearances**: Dr. Hatheway shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, or as otherwise directed by the Board. Subsequent personal appearances shall occur every three months thereafter, and/or as otherwise directed by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

4. **Sobriety**

   a. **Abstention from Drugs**: Dr. Hatheway shall abstain completely from the personal use or personal possession of drugs, except those prescribed, dispensed, or administered to him by another so authorized by law who has full knowledge of Dr. Hatheway's history of chemical dependency and/or abuse and who may lawfully prescribe for him (for example, a physician who is not a family member). Further, in the event that Dr. Hatheway is so prescribed, dispensed, or administered any controlled substance, carisoprodol, or tramadol, Dr. Hatheway shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber, the name of the drug Dr. Hatheway received, the medical purpose for which he received the drug, the date the drug was initially received, and the dosage, amount, number of refills, and directions for use. Further, within 30 days of the date said drug is so prescribed, dispensed, or administered to him, Dr. Hatheway shall provide the Board with either a copy of the written prescription or other written verification from the prescriber, including the dosage, amount, number of refills, and directions for use.

   b. **Abstention from Alcohol**: Dr. Hatheway shall abstain completely from the use of alcohol.

5. **Drug and Alcohol Screens; Drug Testing Facility and Collection Site**

   a. Dr. Hatheway shall submit to random urine screenings for drugs and alcohol at least two per month, or as otherwise directed by the Board. Dr. Hatheway 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, and shall include Dr. Hatheway's drug(s) of choice.

   b. Dr. Hatheway shall submit, at his expense and on the day selected, urine specimens for drug and/or alcohol analysis. (The term "toxicology screen" is also be used herein for "urine screen" and/or "drug screen.")

All specimens submitted by Dr. Hatheway shall be negative, except for those substances prescribed, administered, or dispensed to him in conformance with the terms, conditions and limitations set forth in this Order.

Refusal to submit such specimen, or failure to submit such specimen on the day he is selected or in such manner as the Board may request, shall constitute a violation of this Order.

c. Dr. Hatheway shall abstain from the use of any substance that may produce a positive result on a toxicology screen, including the consumption of poppy seeds or other food or liquid that may produce a positive result on a toxicology screen.

Dr. Hatheway shall be held to an understanding and knowledge that the consumption or use of various substances, including but not limited to mouthwashes, hand-cleaning gels, and cough syrups, may cause a positive toxicology screen, and that unintentional ingestion of a substance is not distinguishable from intentional ingestion on a toxicology screen, and that, therefore, consumption or use of substances that may produce a positive result on a toxicology screen is prohibited under this Order.

d. All urine screenings for drugs and alcohol shall be conducted through a Board-approved drug-testing facility and Board-approved collection site pursuant to the global contract between the approved facility and the Board, which provides for the Board to maintain ultimate control over the urine-screening process and to preserve the confidentiality of positive screening results in accordance with Section 4731.22(F)(5), Ohio Revised Code. The screening process for random testing shall require a daily call-in procedure. Further, in the event that the Board exercises its discretion, as provided in Paragraph 6, below, to approve urine screenings to be conducted at an alternative drug-testing facility, collection site, and/or supervising physician, such approval shall be expressly contingent upon the Board's retaining ultimate control over the urine-screening process in a manner that preserves the confidentiality of positive screening results.

e. Within 30 days of the effective date of this Order, Dr. Hatheway shall enter into the necessary financial and/or contractual arrangements with the Board-approved drug-testing facility and/or collection site ("DFCS") in order to facilitate the screening process in the manner required by this Order.

Further, within 30 days of making such arrangements, Dr. Hatheway shall provide to the Board written documentation of completion of

such arrangements, including a copy of any contract entered into between Dr. Hatheway and the Board-approved DFCS.
Dr. Hatheway's failure to timely complete such arrangements, or failure to timely provide written documentation to the Board of completion of such arrangements, shall constitute a violation of this Order.

f. Dr. Hatheway shall ensure that the urine-screening process performed through the Board-approved DFCS requires a daily call-in procedure, 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, Dr. Hatheway and the Board-approved DFCS shall ensure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening result.

g. Dr. Hatheway shall ensure that the Board-approved DFCS provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Order, and whether all urine screens have been negative.

h. In the event that the Board-approved DFCS becomes unable or unwilling to serve as required by this Order, Dr. Hatheway shall immediately notify the Board in writing, and make arrangements acceptable to the Board, pursuant to Paragraph 6, below, as soon as practicable. Dr. Hatheway shall further ensure that the Board-approved DFCS also notifies the Board directly of its inability to continue to serve and the reasons therefor.

i. The Board, in its sole discretion, may withdraw its approval of any DFCS in the event that the Secretary and Supervising Member of the Board determine that the DFCS has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

6. **Alternative Drug-testing Facility and/or Collection Site:** It is the intent of this Order that Dr. Hatheway shall submit urine specimens to the Board-approved DFCS chosen by the Board. However, in the event that using the Board-approved DFCS creates an extraordinary hardship on Dr. Hatheway, as determined in the sole discretion of the Board, then, subject to the following requirements, the Board may approve an alternative DFCS or a supervising physician to facilitate the urine-screening process for Dr. Hatheway.

a. Within 30 days of the date on which Dr. Hatheway is notified of the Board's determination that utilizing the Board-approved DFCS

constitutes an extraordinary hardship on Dr. Hatheway, he shall submit to the Board in writing for its prior approval the identity of either an alternative DFCS or the name of a proposed supervising physician to whom Dr. Hatheway shall submit the required urine specimens.

In approving a facility, entity, or an individual to serve in this capacity, the Board will give preference to a facility located near Dr. Hatheway's residence or employment location, or to a physician who practices in the same locale as Dr. Hatheway. Dr. Hatheway shall ensure that the urine-screening process performed through the alternative DFCS or through the supervising physician requires a daily call-in procedure, 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, Dr. Hatheway shall ensure that the alternative DFCS or the supervising physician maintains appropriate control over the specimen and immediately informs the Board of any positive screening result.

b. Dr. Hatheway shall ensure that the alternative DFCS or the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Order, and whether all urine screens have been negative.

c. In the event that the designated alternative DFCS or the supervising physician becomes unable or unwilling to so serve, Dr. Hatheway shall immediately notify the Board in writing. Dr. Hatheway shall further ensure that the previously designated alternative DFCS or the supervising physician also notifies the Board directly of the inability to continue to serve and the reasons therefor. Further, in the event that the approved alternative DFCS or supervising physician becomes unable to serve, Dr. Hatheway shall, in order to ensure that there will be no interruption in his urine-screening process, immediately commence urine screening at the Board-approved DFCS chosen by the Board, until such time, if any, that the Board approves a different DFCS or supervising physician, if requested by Dr. Hatheway.

d. The Board, in its sole discretion, may disapprove any entity or facility proposed to serve as Dr. Hatheway's designated alternative DFCS or any person proposed to serve as his supervising physician, or may withdraw its approval of any entity, facility or person previously approved to so serve in the event that the Secretary and Supervising Member of the Board determine that any such entity, facility or person has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

7. **Reports Regarding Drug and Alcohol Screens**: All screening reports required under this Order from the Board-approved DFCS, the alternative DFCS and/or supervising physician must be received in the Board's offices no later than the due date for Dr. Hatheway's declarations of compliance. It is Dr. Hatheway's responsibility to ensure that reports are timely submitted.

8. **Additional Screening Without Prior Notice**: Upon the Board's request and without prior notice, Dr. Hatheway shall provide a specimen of his blood, breath, saliva, urine, and/or hair for screening for drugs and alcohol, for analysis of therapeutic levels of medications that may be prescribed for Dr. Hatheway, or for any other purpose, at Dr. Hatheway's expense. Dr. Hatheway's refusal to submit a specimen upon the request of the Board shall result in a minimum of one year of actual license suspension. Further, the collection of such specimens shall be witnessed by a representative of the Board, or another person acceptable to the Secretary and Supervising Member of the Board.

9. **Rehabilitation Program**: Dr. Hatheway shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or C.A., no less than three times per week, or as otherwise ordered by the Board. Substitution of any other specific program must receive prior Board approval.

   Dr. Hatheway shall submit acceptable documentary evidence of continuing compliance with this program, including submission to the Board of meeting attendance logs, which must be received in the Board's offices no later than the due date for Dr. Hatheway's declarations of compliance.

10. **Comply with the Terms of Aftercare Contract**: Dr. Hatheway shall maintain continued compliance with the terms of his aftercare contract(s), if any, entered into with his treatment provider(s), provided that, where terms of an aftercare contract conflict with terms of this Order, the terms of this Order shall control.

11. **Releases**: Dr. Hatheway 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. Hatheway's chemical dependency/abuse and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluation occurred before or after the effective date of this Order. To the extent permitted by law, the above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43, Ohio Revised Code, and are confidential pursuant to statute.

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

12. **Absences from Ohio:** Dr. Hatheway shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the suspension/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. Further, the Secretary and Supervising Member of the Board shall have discretion to waive part or all of the monitoring terms set forth in this Order for occasional periods of absence of 14 days or less.

    In the event that Dr. Hatheway resides and/or is employed at a location that is within 50 miles of the geographic border of Ohio and a contiguous state, Dr. Hatheway may travel between Ohio and that contiguous state without seeking prior approval of the Secretary or Supervising Member provided that Dr. Hatheway is otherwise able to maintain full compliance with all other terms, conditions and limitations set forth in this Order.

13. **Required Reporting of Change of Address**: Dr. Hatheway shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.

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

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

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

3. **Report of Evaluation by the Center for Marital and Sexual Health, Inc.**: Dr. Hatheway shall submit to an evaluation by the Center for Marital & Sexual Health, Inc., to determine the prognosis and/or probability of future sexual misconduct by Dr. Hatheway. Moreover, Dr. Harris shall ensure that a report is sent to the Board that includes any recommendation(s) for monitoring and/or

other measures that should be implemented to minimize the probability of any future sexual misconduct.

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

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

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

2. **Modification of Terms**: Dr. Hatheway shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.

3. **Compliance with any Recommendation(s) from the Center for Marital and Sexual Health, Inc.**: Dr. Hatheway shall comply with any recommendation(s) from the Center for Marital & Sexual Health, Inc., as reported to the Board pursuant to paragraph C.3, above.

4. **Personal/Professional Ethics Course(s)**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Hatheway shall submit acceptable documentation of successful completion of a course or courses dealing with personal/professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

   In addition, at the time Dr. Hatheway submits the documentation of successful completion of the course(s) dealing with personal/professional ethics, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

5. **Tolling of Probationary Period While Out of Compliance**: In the event Dr. Hatheway 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. Hatheway's certificate will be fully restored.

F. **VIOLATION OF THE TERMS OF THIS ORDER**: If Dr. Hatheway violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

G. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER:**

1. **Required Reporting to Employers and Others**: Within 30 days of the effective date of this Order, Dr. Hatheway shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training, and the Chief of Staff at each hospital or healthcare center where he has privileges or appointments. Further, Dr. Hatheway shall promptly provide a copy of this Order to all employers or entities with which he contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or healthcare center where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Hatheway receives from the Board written notification of the successful completion of his probation.

   In the event that Dr. Hatheway provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services. This requirement shall continue until Dr. Hatheway receives from the Board written notification of the successful completion of his probation.

2. **Required Reporting to Other State Licensing Authorities**: Within 30 days of the effective date of this Order, Dr. Hatheway shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Also, Dr. Hatheway shall provide a copy of this Order at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional

license or reinstatement/restoration of any professional license. This requirement shall continue until Dr. Hatheway receives from the Board written notification of the successful completion of his probation.

3. **Required Reporting to Treatment Providers/Monitors**: Within 30 days of the effective date of this Order, Dr. Hatheway shall provide a copy of this Order to all persons and entities that provide chemical dependency/abuse treatment to or monitoring of Dr. Hatheway. This requirement shall continue until Dr. Hatheway receives from the Board written notification of the successful completion of his probation.

4. **Required Documentation of the Reporting Required by Paragraph G**: Dr. Hatheway shall provide this Board with **one** of the following documents as proof of each required notification within 30 days of the date of each such notification: (a) the return receipt of certified mail within 30 days of receiving that return receipt, (b) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (c) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (d) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of the notification of approval by the Board; however, the suspension shall become effective on the 31st day after the mailing of the notification of approval by the Board. In the 30 day interim, Dr. Barnes shall not undertake the care of any patient not already under her care.

Lance A. Talmage MD

Lance A. Talmage, M.D. RW
Secretary

(SEAL)

June 9, 2010
Date

CERTIFIED MAIL NO. 91 7108 2133 3936 3070 7078
RETURN RECEIPT REQUESTED

CC: Eric J. Plinke, Esq.
CERTIFIED MAIL NO. 91 7108 2133 3936 3070 7085
RETURN RECEIPT REQUESTED

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

June 9, 2010

John Mark Hatheway, M.D.
720 E. Broad Street
Columbus, OH 43215

RE: Case No. 09-CRF-003

Dear Doctor Hatheway:

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 June 9, 2010, 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, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3936 3114 1253
RETURN RECEIPT REQUESTED

Cc: Eric J. Plinke, Esq.
CERTIFIED MAIL NO. 91 7108 2133 3936 3114 1260
RETURN RECEIPT REQUESTED

Mailed 7-13-10

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 June 9, 2010, 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 John Mark Hatheway, M.D., Case No. 09-CRF-003, as it appears in the Journal of the State Medical Board of Ohio.

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

Lance A. Talmage, M.D.
Secretary

(SEAL)

June 9, 2010
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF	*	
	*	CASE NO. 09-CRF-003
JOHN MARK HATHEWAY, M.D.	*	

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on June 9, 2010.

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 John Mark Hatheway, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time.

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

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

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

3. **Personal Appearances**: Dr. Hatheway shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, or as otherwise directed by the Board. Subsequent personal appearances shall occur every three months thereafter, and/or as otherwise directed by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

4. **Sobriety**

   a. **Abstention from Drugs**: Dr. Hatheway shall abstain completely from the personal use or personal possession of drugs, except those prescribed, dispensed, or administered to him by another so authorized by law who has full knowledge of Dr. Hatheway's history of chemical dependency and/or abuse and who may lawfully prescribe for him (for example, a physician who is not a family member). Further, in the event that Dr. Hatheway is so prescribed, dispensed, or administered any controlled substance, carisoprodol, or tramadol, Dr. Hatheway shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber, the name of the drug Dr. Hatheway received, the medical purpose for which he received the drug, the date the drug was initially received, and the dosage, amount, number of refills, and directions for use. Further, within 30 days of the date said drug is so prescribed, dispensed, or administered to him, Dr. Hatheway shall provide the Board with either a copy of the written prescription or other written verification from the prescriber, including the dosage, amount, number of refills, and directions for use.

   b. **Abstention from Alcohol**: Dr. Hatheway shall abstain completely from the use of alcohol.

5. **Drug and Alcohol Screens; Drug Testing Facility and Collection Site**

   a. Dr. Hatheway shall submit to random urine screenings for drugs and alcohol at least two per month, or as otherwise directed by the Board. Dr. Hatheway 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, and shall include Dr. Hatheway's drug(s) of choice.

   b. Dr. Hatheway shall submit, at his expense and on the day selected, urine specimens for drug and/or alcohol analysis. (The term "toxicology screen" is also be used herein for "urine screen" and/or "drug screen.")

All specimens submitted by Dr. Hatheway shall be negative, except for those substances prescribed, administered, or dispensed to him in conformance with the terms, conditions and limitations set forth in this Order.

Refusal to submit such specimen, or failure to submit such specimen on the day he is selected or in such manner as the Board may request, shall constitute a violation of this Order.

c. Dr. Hatheway shall abstain from the use of any substance that may produce a positive result on a toxicology screen, including the consumption of poppy seeds or other food or liquid that may produce a positive result on a toxicology screen.

Dr. Hatheway shall be held to an understanding and knowledge that the consumption or use of various substances, including but not limited to mouthwashes, hand-cleaning gels, and cough syrups, may cause a positive toxicology screen, and that unintentional ingestion of a substance is not distinguishable from intentional ingestion on a toxicology screen, and that, therefore, consumption or use of substances that may produce a positive result on a toxicology screen is prohibited under this Order.

d. All urine screenings for drugs and alcohol shall be conducted through a Board-approved drug-testing facility and Board-approved collection site pursuant to the global contract between the approved facility and the Board, which provides for the Board to maintain ultimate control over the urine-screening process and to preserve the confidentiality of positive screening results in accordance with Section 4731.22(F)(5), Ohio Revised Code. The screening process for random testing shall require a daily call-in procedure. Further, in the event that the Board exercises its discretion, as provided in Paragraph 6, below, to approve urine screenings to be conducted at an alternative drug-testing facility, collection site, and/or supervising physician, such approval shall be expressly contingent upon the Board's retaining ultimate control over the urine-screening process in a manner that preserves the confidentiality of positive screening results.

e. Within 30 days of the effective date of this Order, Dr. Hatheway shall enter into the necessary financial and/or contractual arrangements with the Board-approved drug-testing facility and/or collection site ("DFCS") in order to facilitate the screening process in the manner required by this Order.

Further, within 30 days of making such arrangements, Dr. Hatheway shall provide to the Board written documentation of completion of

such arrangements, including a copy of any contract entered into between Dr. Hatheway and the Board-approved DFCS. Dr. Hatheway's failure to timely complete such arrangements, or failure to timely provide written documentation to the Board of completion of such arrangements, shall constitute a violation of this Order.

f. Dr. Hatheway shall ensure that the urine-screening process performed through the Board-approved DFCS requires a daily call-in procedure, 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, Dr. Hatheway and the Board-approved DFCS shall ensure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening result.

g. Dr. Hatheway shall ensure that the Board-approved DFCS provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Order, and whether all urine screens have been negative.

h. In the event that the Board-approved DFCS becomes unable or unwilling to serve as required by this Order, Dr. Hatheway shall immediately notify the Board in writing, and make arrangements acceptable to the Board, pursuant to Paragraph 6, below, as soon as practicable. Dr. Hatheway shall further ensure that the Board-approved DFCS also notifies the Board directly of its inability to continue to serve and the reasons therefor.

i. The Board, in its sole discretion, may withdraw its approval of any DFCS in the event that the Secretary and Supervising Member of the Board determine that the DFCS has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

6. **Alternative Drug-testing Facility and/or Collection Site:** It is the intent of this Order that Dr. Hatheway shall submit urine specimens to the Board-approved DFCS chosen by the Board. However, in the event that using the Board-approved DFCS creates an extraordinary hardship on Dr. Hatheway, as determined in the sole discretion of the Board, then, subject to the following requirements, the Board may approve an alternative DFCS or a supervising physician to facilitate the urine-screening process for Dr. Hatheway.

a. Within 30 days of the date on which Dr. Hatheway is notified of the Board's determination that utilizing the Board-approved DFCS

constitutes an extraordinary hardship on Dr. Hatheway, he shall submit to the Board in writing for its prior approval the identity of either an alternative DFCS or the name of a proposed supervising physician to whom Dr. Hatheway shall submit the required urine specimens.

In approving a facility, entity, or an individual to serve in this capacity, the Board will give preference to a facility located near Dr. Hatheway's residence or employment location, or to a physician who practices in the same locale as Dr. Hatheway. Dr. Hatheway shall ensure that the urine-screening process performed through the alternative DFCS or through the supervising physician requires a daily call-in procedure, 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, Dr. Hatheway shall ensure that the alternative DFCS or the supervising physician maintains appropriate control over the specimen and immediately informs the Board of any positive screening result.

b. Dr. Hatheway shall ensure that the alternative DFCS or the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Order, and whether all urine screens have been negative.

c. In the event that the designated alternative DFCS or the supervising physician becomes unable or unwilling to so serve, Dr. Hatheway shall immediately notify the Board in writing. Dr. Hatheway shall further ensure that the previously designated alternative DFCS or the supervising physician also notifies the Board directly of the inability to continue to serve and the reasons therefor. Further, in the event that the approved alternative DFCS or supervising physician becomes unable to serve, Dr. Hatheway shall, in order to ensure that there will be no interruption in his urine-screening process, immediately commence urine screening at the Board-approved DFCS chosen by the Board, until such time, if any, that the Board approves a different DFCS or supervising physician, if requested by Dr. Hatheway.

d. The Board, in its sole discretion, may disapprove any entity or facility proposed to serve as Dr. Hatheway's designated alternative DFCS or any person proposed to serve as his supervising physician, or may withdraw its approval of any entity, facility or person previously approved to so serve in the event that the Secretary and Supervising Member of the Board determine that any such entity, facility or person has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

7. **Reports Regarding Drug and Alcohol Screens**: All screening reports required under this Order from the Board-approved DFCS, the alternative DFCS and/or supervising physician must be received in the Board's offices no later than the due date for Dr. Hatheway's declarations of compliance. It is Dr. Hatheway's responsibility to ensure that reports are timely submitted.

8. **Additional Screening Without Prior Notice**: Upon the Board's request and without prior notice, Dr. Hatheway shall provide a specimen of his blood, breath, saliva, urine, and/or hair for screening for drugs and alcohol, for analysis of therapeutic levels of medications that may be prescribed for Dr. Hatheway, or for any other purpose, at Dr. Hatheway's expense. Dr. Hatheway's refusal to submit a specimen upon the request of the Board shall result in a minimum of one year of actual license suspension. Further, the collection of such specimens shall be witnessed by a representative of the Board, or another person acceptable to the Secretary and Supervising Member of the Board.

9. **Rehabilitation Program**: Dr. Hatheway shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or C.A., no less than three times per week, or as otherwise ordered by the Board. Substitution of any other specific program must receive prior Board approval.

   Dr. Hatheway shall submit acceptable documentary evidence of continuing compliance with this program, including submission to the Board of meeting attendance logs, which must be received in the Board's offices no later than the due date for Dr. Hatheway's declarations of compliance.

10. **Comply with the Terms of Aftercare Contract**: Dr. Hatheway shall maintain continued compliance with the terms of his aftercare contract(s), if any, entered into with his treatment provider(s), provided that, where terms of an aftercare contract conflict with terms of this Order, the terms of this Order shall control.

11. **Releases**: Dr. Hatheway 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. Hatheway's chemical dependency/abuse and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluation occurred before or after the effective date of this Order. To the extent permitted by law, the above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43, Ohio Revised Code, and are confidential pursuant to statute.

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

12. **Absences from Ohio**: Dr. Hatheway shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the suspension/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. Further, the Secretary and Supervising Member of the Board shall have discretion to waive part or all of the monitoring terms set forth in this Order for occasional periods of absence of 14 days or less.

    In the event that Dr. Hatheway resides and/or is employed at a location that is within 50 miles of the geographic border of Ohio and a contiguous state, Dr. Hatheway may travel between Ohio and that contiguous state without seeking prior approval of the Secretary or Supervising Member provided that Dr. Hatheway is otherwise able to maintain full compliance with all other terms, conditions and limitations set forth in this Order.

13. **Required Reporting of Change of Address**: Dr. Hatheway shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.

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

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

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

3. **Report of Evaluation by the Center for Marital and Sexual Health, Inc.**: Dr. Hatheway shall submit to an evaluation by the Center for Marital & Sexual Health, Inc., to determine the prognosis and/or probability of future sexual misconduct by Dr. Hatheway. Moreover, Dr. Harris shall ensure that a report is sent to the Board that includes any recommendation(s) for monitoring and/or

other measures that should be implemented to minimize the probability of any future sexual misconduct.

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

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

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

2. **Modification of Terms**: Dr. Hatheway shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.

3. **Compliance with any Recommendation(s) from the Center for Marital and Sexual Health, Inc.**: Dr. Hatheway shall comply with any recommendation(s) from the Center for Marital & Sexual Health, Inc., as reported to the Board pursuant to paragraph C.3, above.

4. **Personal/Professional Ethics Course(s)**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Hatheway shall submit acceptable documentation of successful completion of a course or courses dealing with personal/professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

   In addition, at the time Dr. Hatheway submits the documentation of successful completion of the course(s) dealing with personal/professional ethics, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

5. **Tolling of Probationary Period While Out of Compliance**: In the event Dr. Hatheway 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. Hatheway's certificate will be fully restored.

F. **VIOLATION OF THE TERMS OF THIS ORDER**: If Dr. Hatheway violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

G. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER:**

1. **Required Reporting to Employers and Others**: Within 30 days of the effective date of this Order, Dr. Hatheway shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training, and the Chief of Staff at each hospital or healthcare center where he has privileges or appointments. Further, Dr. Hatheway shall promptly provide a copy of this Order to all employers or entities with which he contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or healthcare center where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Hatheway receives from the Board written notification of the successful completion of his probation.

   In the event that Dr. Hatheway provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services. This requirement shall continue until Dr. Hatheway receives from the Board written notification of the successful completion of his probation.

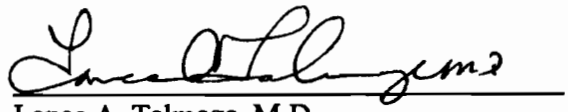
2. **Required Reporting to Other State Licensing Authorities**: Within 30 days of the effective date of this Order, Dr. Hatheway shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Also, Dr. Hatheway shall provide a copy of this Order at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional

license or reinstatement/restoration of any professional license. This requirement shall continue until Dr. Hatheway receives from the Board written notification of the successful completion of his probation.

3. **Required Reporting to Treatment Providers/Monitors**: Within 30 days of the effective date of this Order, Dr. Hatheway shall provide a copy of this Order to all persons and entities that provide chemical dependency/abuse treatment to or monitoring of Dr. Hatheway. This requirement shall continue until Dr. Hatheway receives from the Board written notification of the successful completion of his probation.

4. **Required Documentation of the Reporting Required by Paragraph G**: Dr. Hatheway shall provide this Board with **one** of the following documents as proof of each required notification within 30 days of the date of each such notification: (a) the return receipt of certified mail within 30 days of receiving that return receipt, (b) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (c) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (d) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

EFFECTIVE DATE OF ORDER: This Order shall become effective 30 days from the date of mailing of the notification of approval by the Board. In the 30 day interim, Dr. Hatheway shall not undertake the care of any patient not already under his care.



Lance A. Talmage, M.D.
Secretary

(SEAL)

June 9, 2010
Date

STATE MEDICAL BOARD
OF OHIO

2010 MAY 13 PM 2: 10

BEFORE THE STATE MEDICAL BOARD OF OHIO

In the Matter of	*	
		Case No. 09-CRF-003
John Mark Hatheway, M.D.,	*	
		Hearing Examiner Porter
Respondent.	*	

REPORT AND RECOMMENDATION

Basis for Hearing

By letter dated January 14, 2009, the State Medical Board of Ohio [Board] notified John Mark Hatheway, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action on allegations including that Dr. Hatheway had engaged in sexual contact with three patients despite ongoing physician/patient relations during the time of sexual contact; that he admitted under oath that he had had sexual contact with Patient 1 from 2002 through 2004 but denied sexual contact with any other patient; and that Dr. Hatheway subsequently provided information to the Board that he had also had sexual contact with Patients 2 and 3 during the 1980s. The Board further alleged that Dr. Hatheway's acts, conduct and/or omissions constitute:

- "departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code;
- "[v]iolation of any provision of a code of ethics of the American medical association," as that clause is used in Section 4731.22(B)(18), Ohio Revised Code, to wit: Principles I, II and IV of the American Medical Association's Principles of Medical Ethics;
- "[v]iolation of any provision of a code of ethics of the American medical association," as that clause is used in Section 4731.22(B)(18), Ohio Revised Code, as in effect prior to March 9, 1999, to wit: Principles I and IV of the American Medical Association's Principles of Medical Ethics; and/or
- "[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 * * *; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Accordingly, the Board advised Dr. Hatheway of his right to request a hearing in this matter, and received his written request on February 11, 2009. (State's Exhibit [St. Ex.] 1)

Appearances

Richard Cordray, Attorney General, and Karen A. Unver, Assistant Attorney General, for the State of Ohio. Eric J. Plinke, Esq., for Dr. Hatheway.

Hearing Dates: September 15 and November 16, 2009.

SUMMARY OF THE EVIDENCE

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

Background

1. John Mark Hatheway, M.D., received his medical degree in 1970 from the Ohio State University College of Medicine. From 1970 to 1971 he interned at the U.S. Naval Hospital in Philadelphia, Pennsylvania, followed by two years of active service at the U.S. Naval Hospital in Guam. In 1973, Dr. Hatheway entered an orthopedic surgery residency at the Medical College of Ohio in Toledo, Ohio, which he completed in 1976. Dr. Hatheway moved to Columbus, Ohio, in 1976, and has practiced orthopedic surgery in Columbus ever since, primarily at Grant Medical Center. Dr. Hatheway also holds active privileges at New Albany Surgical Hospital, and courtesy privileges at Children's Hospital and Riverside Hospital. (Hearing Transcript [Tr.] at 25-26)

2. Dr. Hatheway was board-certified by the American Board of Orthopedic Surgery in 1977, and became a fellow of the American Academy of Orthopedic Surgeons in 1978. (Tr. at 26)

Stipulations of the Parties

3. At the hearing on September 15, 2009, the parties entered into written Stipulations in which Dr. Hatheway admitted the truth of the factual and legal allegations set forth in the Board's January 14, 2009, notice of opportunity for hearing. Specifically, the parties stipulated:

   (1) From in or around 2002 through 2004, in the course of Dr. Hatheway's medical practice, Dr. Hatheway treated Patient 1[.] * * * Despite Dr. Hatheway's ongoing physician-patient relationship with Patient 1, Dr. Hatheway engaged in sexual contact with her.

   (2) While Dr. Hatheway admitted under oath that he had engaged in sexual contact with Patient 1, Dr. Hatheway denied under oath ever engaging in sexual contact with any other patients. In addition, during an interview with a Board investigator on or about December 6, 2004, concerning Patient 1, Dr. Hatheway stated that he had never been sexually involved with any other patients.

Dr. Hatheway subsequently stated under oath that he had, in fact, engaged in sexual contact with two other patients. Dr. Hatheway further indicated that he engaged in sexual contact with Patient 2 * * * on three occasions in or about 1988, and that Dr. Hatheway also engaged in sexual contact with Patient 3 * * * on two occasions from in or about 1983 to 1989, despite Dr. Hatheway's admission that his professional relationship with both patients did not end until 1990.

(3) Dr. Hatheway's acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Further, Dr. Hatheway's acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "[v]iolation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule," as that clause is used in Section 4731.22(B)(18), Ohio Revised Code, to wit: Principles I, II and IV of the American Medical Association's Principles of Medical Ethics.

Further, Dr. Hatheway's acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute "[v]iolation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations as are determined, by rule, by the state medical board," as that clause is used in Section 4731.22(B)(18), Ohio Revised Code, as in effect prior to March 9, 1999, to wit: Principles I and IV of the American Medical Association's Principles of Medical Ethics.

Further, Dr. Hatheway's acts, conduct, and/or omissions as alleged in paragraph (2) 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.

(Joint Exhibit A)

4. Dr. Hatheway testified that he had entered into the stipulations "because they're true and * * * there's no reason to deny or to fight the facts in this case." (Tr. at 32)

Evidence Concerning Patient 1

5. Dr. Hatheway's medical records for Patient 1 indicate that he first saw her on August 30, 2001, for an elbow injury. She next visited him in July 2002 following a workplace injury to her back. Following that, Dr. Hatheway saw her on a regular basis through April 2004. (St. Ex. 8 at 81-83)

6. Dr. Hatheway testified that Patient 1 had had a very large herniated disk at L4-L5 but that she tolerated the pain "very well." Dr. Hatheway testified that he recommended conservative treatment with physical therapy and steroidal and non-steroidal anti-inflammatory medications. (Tr. at 38-39) Dr. Hatheway further testified:

> About the third or fourth visit, she was describing to me the effects that the herniated disk had on her sexually and was fairly seductive. The visit after that, she said to me that, "I know you can't say anything, but I don't have a man in my life right now and could you be my lover?" And without even thinking, I said, "Yes." And it was several days after that, that we first met and had sex.

(Tr. at 39)

7. Dr. Hatheway testified that he had been aware at that time, in 2002, that having a sexual relationship with Patient 1 was unethical. When asked why he had done it, Dr. Hatheway replied that the primary reason had been his drinking:

> I'm not saying that I was falling down drunk or, you know, that sort of thing, but I would drink to avoid problems. I would drink to—for serenity; I would drink [to] escape problems. I was having some marital issues at the time, and rather than face them, I would—I would have a few drinks in the evening and it would be fine.

(Tr. at 40-41) Dr. Hatheway further testified that his drinking caused him to respond to stimuli without thinking through the consequences. (Tr. at 41)

Patients 2 and 3

8. Dr. Hatheway testified that the circumstances that gave rise to his relationships with Patients 2 and 3 in the 1980s were similar to Patient 1. Dr. Hatheway testified that he had had marital problems during his first marriage and rationalized that it was okay for him to have those affairs. (Tr. at 46-47)

9. At the time he had sexual relations with Patient 2 and Patient 3, Dr. Hatheway was aware that such conduct violated professional ethics. When asked why he did it, Dr. Hatheway responded:

> Well, as an alcoholic, the laws didn't—the rules didn't apply to me, and I didn't think of consequences, and I had poor impulse control, I had poor boundaries. I did not have a well-defined feeling or insight about myself, who I was, or what boundaries are.

(Tr. at 49-50)

The Board Investigation

10. Dr. Hatheway testified that he was first contacted by a Board investigator on December 6, 2004. He had been expecting contact from the Board because Patient 1 had previously submitted a copy of her complaint to Dr. Hatheway's group practice manager and Dr. Hatheway was aware that he would have to face that issue. When Dr. Hatheway spoke to the investigator, he acknowledged having had a sexual relationship with Patient 1, the patient who had filed the complaint, but denied any sexual contact with other patients. (Tr. at 33-34) When asked why he had not then acknowledged his relationships with Patients 2 or 3, Dr. Hatheway replied:

> Well, first of all, I thought they were far enough in the past that they would not become an issue. Frankly, I didn't think that anyone would—would be—that it would come to light.
>
> Secondly, I was basically trying to cover myself and trying to make things as—as small a problem as possible. And I was being untruthful. And I think part of the reason is that I was actively drinking at the time.

(Tr. at 35)

11. In January or February 2005, Dr. Hatheway received a set of interrogatories from the Board. Dr. Hatheway submitted his written responses to the Board on February 11, 2005. In his responses, he acknowledged his sexual relationship with Patient 1 but denied having had any other sexual relationships with patients. (St. Ex. 3)

Dr. Hatheway's Testimony Concerning his Use of Alcohol

12. Dr. Hatheway testified that he was first married in 1969, and that the marriage produced five children. Dr. Hatheway further testified that in the 1980s some issues arose in the marriage and his alcohol consumption increased, and "[t]hat's when the affairs with [Patients 2 and 3] occurred." Moreover, Dr. Hatheway testified:

> The consequences of those affairs led to my divorce in 1992. I was just thinking about that this morning, the sad thing about that is that I probably

> could have saved that marriage if I had stopped drinking. And I always thought that my drinking wasn't that big of a problem; but when I look at it, it—I chose drinking over saving my family.

(Tr. at 42)

13. Dr. Hatheway began dating his current wife in 1993 and they were married in 1994. Dr. Hatheway testified, "Initially, things were fine. And, again, because I liked to avoid conflict and avoid uncomfortable situations by escaping with alcohol, * * * we were starting to have problems in that marriage." (Tr. at 44)

14. Dr. Hatheway testified that, until early 2005, he had not even considered seeking treatment for his alcohol problem because "the one thing [he] had," other than drinking, was his job. He further testified:

> That was so important to me and to my narcissistic makeup at the time that I wouldn't want to admit having an alcohol problem because it would mean, obviously, a censure from my peers and * * * I was so worried about [my] status * * * in the medical community and so on that I—I couldn't even think of that as an alternative."

(Tr. at 43-44)

Dr. Hatheway's Treatment at the Woods at Parkside

15. Dr. Hatheway testified that he last drank alcohol on February 5, 2005. On that day, Dr. Hatheway had been driving under the influence of alcohol while his two-year-old son was with him in the car. Dr. Hatheway testified that his wife confronted him about it and he "realized at that point that this was a very serious problem." Dr. Hatheway contacted the Woods at Parkside to seek treatment. (Tr. at 43-44)

16. On February 21, 2005, Dr. Hatheway voluntarily entered treatment at the Woods at Parkside [Parkside] for alcohol abuse. He remained there for 29 days and was released on March 22, 2005. (Tr. at 36-37, 50; St. Ex. 4 at 5)

17. Dr. Hatheway testified that, upon entering treatment at Parkside:

> I felt like my life was over that first day there. I thought, you know, there goes everything. There goes another family, my child, my career, my—you know. But somehow, I was kind of freed. It was—I don't have to—I didn't have to live a lie anymore. Everything was out, you know.

(Tr. at 44)

18. Dr. Hatheway testified that, when he was released from inpatient treatment, he participated in intensive outpatient treatment for an additional two months. Moreover, he began seeing a clinical psychologist on a regular basis. Dr. Hatheway added that he does not take any psychiatric medication. (Tr. at 51-53)

19. Dr. Hatheway entered into a continuing care contract with Parkside on April 15, 2005. The contract requires, among other things, that Dr. Hatheway abstain from mood-altering substances, attend at least three 12-step meetings per week and one Caduceus meeting per week. Dr. Hatheway further agreed "to do saliva alcohol testing on surgery days" and as necessary. The contract remained in effect for two years. (Respondent's Exhibit [Resp. Ex.] A)

    Dr. Hatheway testified that he complied with all of the requirements of his continuing care contract. (Tr. at 54)

    Dr. Hatheway testified that Dr. Edna Jones, the medical director at Parkside, had suggested saliva testing not just as a deterrent but also as protection for Dr. Hatheway in the event of a malpractice lawsuit. (Tr. at 53)

20. In addition, in April 2005, Dr. Hatheway entered into an agreement with the Ohio Physicians Health Program [OPHP]. Dr. Hatheway's agreement with OPHP requires among other things that Dr. Hatheway abstain from mood-altering substances, attend at least three 12-step meetings per week and one Caduceus meeting per week, and participate in the OPHP urine-monitoring program on an observed, random, weekly basis. Dr. Hatheway's agreement with OPHP is to remain in effect for five years. (Resp. Ex. B)

    Dr. Hatheway testified that he has been compliant with his OPHP agreement. (Tr. at 54)

21. Dr. Hatheway testified that, during his treatment at Parkside, he had discussed his past with Dr. Jones, including issues other than alcohol. Dr. Hatheway testified:

    > [S]he and the counselors at the program encouraged me to be totally truthful about everything; that—that any lies or cover-ups are going to [cause] a problem with my sobriety in the future. My sponsor through AA also encouraged me to be truthful about everything and take the consequences as—as they may fall.

    (Tr. at 36-37)

22. Dr. Hatheway testified that, at the time he entered Parkside, his wife had not known of his relationship with Patient 1. While he was at Parkside, Dr. Hatheway confessed his affair with Patient 1 to his wife. She was angry and began divorce proceedings. (Tr. at 44-45)

    When Dr. Hatheway was released from Parkside, he moved out of the marital home and into an apartment. One of his sons from his previous marriage moved in with him and stayed with him for about one year. Dr. Hatheway remained in the apartment until

June 2008, when he moved back home with his wife and the divorce proceedings were discontinued. (Tr. at 45-46)

Dr. Hatheway's Amended Responses to the Board's Interrogatories

23. After his release from inpatient treatment at Parkside, Dr. Hatheway and his attorney requested a conference with the Board's Enforcement Attorney and prepared amended responses to the Board's interrogatories informing the Board of "the other issues." (Tr. at 37)

24. On April 6, 2005, Dr. Hatheway submitted amended written responses to some of the interrogatories he had answered previously. In his amended answers, Dr. Hatheway acknowledged among other things that he had had sexual contact with Patient 2 on three occasions in 1988, and with Patient 3 on two occasions between 1983 and 1989. He also disclosed his problem with alcohol and his treatment at Parkside. (St. Ex. 4)

Testimony of Mr. Lutz

25. Mark D. Lutz testified that he is a Lead Case Manager for OPHP. Mr. Lutz testified that his responsibilities include meeting face-to-face with OPHP participants and ensuring that they are abiding by their agreements. (Tr. at 93-94)

26. Mr. Lutz testified that he had first met Dr. Hatheway about one and one-half years ago when he took over Dr. Hatheway's case from another case manager. Dr. Hatheway is one of Mr. Lutz's active clients. Mr. Lutz testified that Dr. Hatheway has been totally compliant with his OPHP agreement. (Tr. at 94-95)

    Copies of Dr. Hatheway's OPHP quarterly status reports contain no negative information. (Resp. Ex. E)

Additional Information

27. Dr. Hatheway testified that, after his contract with OPHP expires around April 2010, he plans to enter into an ongoing monitoring program with OPHP to have one random urine screen per month. Dr. Hatheway further testified that he plans to continue with that for as long as he is in practice. He also intends to continue attending at least three Alcoholics Anonymous [AA] meetings per week. With respect to Caduceus meetings, Dr. Hatheway testified that, "frankly, some Caduceus meetings are just gripe sessions about the Board[,]" but that some are better than others. He testified that he will probably continue to attend some, but that he does not find them to be as relevant as AA meetings. In addition, Dr. Hatheway testified that he will continue to maintain a sponsor in AA. (Tr. at 84-85)

28. Mr. Lutz confirmed that OPHP offers its clients voluntary extensions of their agreements that allow them to continue to be monitored. Mr. Lutz further testified that OPHP does not charge a fee for this service, but the clients are responsible for the expense of the lab testing. (Tr. at 99-100, 106)

29. Dr. Hatheway testified that the primary thing that he needs to do to avoid repeating his past conduct is to maintain sobriety from alcohol. (Tr. at 86-87)

30. Dr. Hatheway testified that he volunteers at the Grace Free Clinic, which provides free medical care to poor and uninsured patients in Delaware County. (Tr. at 73-74)

31. Dr. Hatheway testified that he now uses chaperones when he sees female patients, which is something he did not do in the past. (Tr. at 75)

32. Dr. Hatheway testified that, since entering into recovery, he believes that he is a better physician. Dr. Hatheway further testified that he is clearer and feels better about his life in general and his medical and surgical practice specifically. (Tr. at 56) When asked about boundaries, Dr. Hatheway testified:

> I know who I am. I know where I stand. And I know what is right and what is wrong. And I know what is best for me and what is best for the patient. And there is no question about boundaries at this point.
>
> I also have much better impulse control than I ever used to. There's always a disconnect between the stimulus and the response. There's that intervening step that was never there before where I look at this and say, "What is—What's the right thing to do?" And I can look at things and I can see the consequences; I can see what is the best thing to do for the patient and for myself.
>
> And in the past, those things didn't seem to matter. It was sort of like there were no consequences. If there was something presented to me that I wanted, there was poor impulse control. It was just—In a lot of cases, it was stimulus and response, as opposed to that intervening step. Which I have since learned that alcohol takes out that intermediate step, that—that connection with the frontal lobe that alcohol knocks out.
>
> So, yes, I have boundaries. I have impulse control. And life in general is a heck of a lot better.

(Tr. at 56-57)

33. Dr. Hatheway further testified:

> Having been faced with the possibility of losing my ability to practice medicine made me appreciate what a great privilege it is for me to be able to treat patients as an orthopedic surgeon, and I'm very grateful for the years I've been able to do that, and I would like to continue doing that in the future.

(Tr. at 76)

34. Steven A. Santanello, M.D., testified that he is a trauma surgeon and that he has practiced at Grant Medical Center [Grant] for about 22 years. Dr. Santanello further testified that he has known Dr. Hatheway since Dr. Santanello began working at Grant; he testified that Dr. Hatheway is an orthopedic surgeon who at that time participated in trauma call. Dr. Santanello testified that Dr. Hatheway is a very good orthopedic surgeon and that he does high quality work. Moreover, Dr. Santanello testified that he believes Dr. Hatheway to have good moral and ethical character. (Tr. at 60-62)

FINDINGS OF FACT

1. From in or around 2002 through 2004, in the course of his medical practice, John Mark Hatheway, M.D., treated Patient 1.[1] Despite Dr. Hatheway's ongoing physician-patient relationship with Patient 1, Dr. Hatheway engaged in sexual contact with her.

2. While Dr. Hatheway admitted under oath that he had engaged in sexual contact with Patient 1, Dr. Hatheway denied under oath ever engaging in sexual contact with any other patients. In addition, during an interview with a Board investigator on or about December 6, 2004, concerning Patient 1, Dr. Hatheway stated that he had never been sexually involved with any other patients.

   Dr. Hatheway subsequently stated under oath that he had, in fact, engaged in sexual contact with two other patients. Dr. Hatheway further indicated that he engaged in sexual contact with Patient 2 on three occasions in or about 1988, and that Dr. Hatheway also engaged in sexual contact with Patient 3 on two occasions from in or about 1983 to 1989, despite Dr. Hatheway's admission that his professional relationship with both patients did not end until 1990.

CONCLUSION OF LAW

1. The acts, conduct, and/or omissions of John Mark Hatheway, M.D., as set forth in Findings of Fact 1 and 2, individually and/or collectively, constitute "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

2. Dr. Hatheway's acts, conduct, and/or omissions as set forth in Finding of Fact 1, individually and/or collectively, constitute "[v]iolation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule," as that clause is used in Section 4731.22(B)(18), Ohio Revised Code, to wit: Principles I, II and IV of the American Medical Association's Principles of Medical Ethics.

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[1] Patients 1, 2, and 3 were identified on a confidential Patient Key.

3. Dr. Hatheway's acts, conduct, and/or omissions as set forth in Finding of Fact 2, individually and/or collectively, constitute "[v]iolation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations as are determined, by rule, by the state medical board," as that clause is used in Section 4731.22(B)(18), Ohio Revised Code, as in effect prior to March 9, 1999, to wit: Principles I and IV of the American Medical Association's Principles of Medical Ethics.

4. Dr. Hatheway's acts, conduct, and/or omissions as set forth in Finding of Fact 2, 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.

RATIONALE FOR THE PROPOSED ORDER

Dr. Hatheway's violations are serious. Nevertheless, the evidence includes significant mitigating factors. First, many of the violations are remote, having occurred during the 1980s, and the last incident of sexual misconduct occurred in 2004. Second, Dr. Hatheway readily admitted to the Board his sexual contact with Patient 1. Third, although he initially denied having had sexual contact with any patient other than Patient 1, he took to heart the advice he received at Parkside and promptly admitted his sexual contact with Patients 2 and 3 following his release from inpatient treatment. Fourth, although the Hearing Examiner does not view Dr. Hatheway's prior abuse of alcohol as mitigating, Dr. Hatheway's voluntary, ongoing effort toward recovery is mitigating. Finally, and most significantly, Dr. Hatheway demonstrated remorse for his misconduct; future instances of such misconduct appear unlikely.

The Proposed Order would suspend Dr. Hatheway's certificate for 60 days, stay the suspension, and place him on probation for at least one year. During his probation, Dr. Hatheway must complete a course or courses on personal and professional ethics. The Proposed Order does *not* include any provisions related to substance-abuse recovery because the notice of opportunity for hearing did not include any allegations concerning that issue.

PROPOSED ORDER

It is hereby ORDERED that:

A. **SUSPENSION OF CERTIFICATE, STAYED; PROBATION**: The certificate of John Mark Hatheway, M.D., to practice medicine and surgery in the State of Ohio shall be

SUSPENDED for a period of 60 days. Such suspension is STAYED, subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least one year.

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

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

3. **Personal Appearances**: Dr. Hatheway shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, or as otherwise directed by the Board. Subsequent personal appearances shall occur every six months thereafter, and/or as otherwise directed by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

4. **Personal/Professional Ethics Course(s)**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Hatheway shall submit acceptable documentation of successful completion of a course or courses dealing with personal/professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

   In addition, at the time Dr. Hatheway submits the documentation of successful completion of the course(s) dealing with personal/professional ethics, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

5. **Tolling of Probationary Period While Out of Compliance**: In the event Dr. Hatheway 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.

6. **Required Reporting of Change of Address**: Dr. Hatheway shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.

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

C. **VIOLATION OF THE TERMS OF THIS ORDER**: If Dr. Hatheway violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

D. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER:**

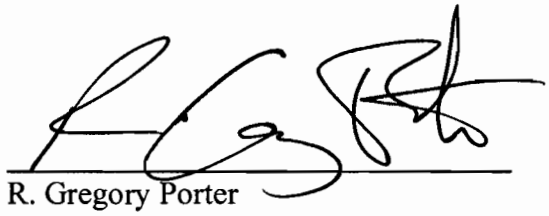
1. **Required Reporting to Employers and Others**: Within 30 days of the effective date of this Order, Dr. Hatheway shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training, and the Chief of Staff at each hospital or healthcare center where he has privileges or appointments. Further, Dr. Hatheway shall promptly provide a copy of this Order to all employers or entities with which he contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or healthcare center where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Hatheway receives from the Board written notification of the successful completion of his probation.

   In the event that Dr. Hatheway provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services. This requirement shall continue until Dr. Hatheway receives from the Board written notification of the successful completion of his probation.

2. **Required Reporting to Other State Licensing Authorities**: Within 30 days of the effective date of this Order, Dr. Hatheway shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Also, Dr. Hatheway shall provide a copy of this Order at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue until Dr. Hatheway receives from the Board written notification of the successful completion of his probation.

3. **Required Documentation of the Reporting Required by Paragraph D**: Dr. Hatheway shall provide this Board with **one** of the following documents as proof of each required notification within 30 days of the date of each such notification: (a) the return receipt of certified mail within 30 days of receiving that return receipt, (b) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (c) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (d) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

EFFECTIVE DATE OF ORDER: This Order shall become effective immediately upon the mailing of the 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

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EXCERPT FROM THE DRAFT MINUTES OF JUNE 9, 2010

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Amato announced that the Board would now consider the Reports and Recommendations, and the Proposed Findings and Proposed Order appearing on its agenda.

Dr. Amato asked whether each member of the Board had received, read and considered the hearing records, the Findings of Fact, Conclusions of Law, Proposed Orders, and any objections filed in the matters of: Sheila Annette Barnes, D.O.; Raquel Grant-Venable, P.A.; John Mark Hatheway, M.D.; and Tamyra Lee Mouginis, M.D. A roll call was taken:

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Amato	- aye
	Dr. Madia	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Ramprasad	- aye

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

ROLL CALL:	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Amato	- aye
	Dr. Madia	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Ramprasad	- aye

Dr. Amato 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. They may, however, participate in the matter of Ms. Grant-Venable, as that case is not disciplinary in nature and concerns only Ms. Grant-Venable's qualifications for licensure. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

Dr. Amato reminded all parties that no oral motions may be made during these proceedings.

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

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JOHN MARK HATHEWAY, M.D.

Dr. Amato directed the Board's attention to the matter of John Mark Hatheway, M.D. He advised that no objections were filed to Hearing Examiner Porter's Report and Recommendation.

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

Dr. Hatheway was accompanied by his attorney, Eric J. Plinke, Esq.

Mr. Plinke stated that he and Dr. Hatheway agreed with the Hearing Examiner's Proposed Order. Mr. Plinke and Dr. Hatheway agreed with the Hearing Examiner's conclusion that there were significant mitigating factors over the course of several years involved in this case.

Mr. Plinke noted that, because substance abuse was not included in the Notice of Opportunity for Hearing, the Hearing Examiner did not include any provisions for substance abuse and recovery in the Proposed Order. Mr. Plinke stated that Dr. Hatheway is willing to accept such probationary terms, if the Board desires, in order to demonstrate his continued recovery.

Dr. Hatheway thanked the Board for the opportunity to make an address. Dr. Hatheway stated that the six years since this complaint was filed with the Board have been painful, but were also a time of grace and reconciliation. Dr. Hatheway stated that when the complaint was filed, he did not inform his wife of the complaint. This resulted in a state of anxiety, which Dr. Hatheway relieved by escalated his drinking of alcohol.

Dr. Hatheway continued that, eventually, his drinking reached a point where he realized it had become a problem. Dr. Hatheway's wife informed him the she would pursue a divorce if he did not seek treatment. Dr. Hatheway stated that he has not had a drink of alcohol since February 5, 2005.

Dr. Hatheway stated that during his treatment at Parkside, he told his wife about his affair and the complaint that had been filed with the Medical Board. At this low point, Dr. Hatheway's wife threathened

to divorce him, and his partners threatened to fire him. Dr. Hatheway stated that at this time, he discovered a spiritual connection which had been missing from his life for many years and he found new freedom in the deep gratitude for the gifts of his life.

In April 2005, Dr. Hatheway was allowed to return to work by Edna Jones, M.D., of Parkside. Dr. Hatheway stated the he realized what a privilege it is to be allowed to practice orthopedic surgery. Dr. Hatheway's enthusiasm and change in attitude convinced his partners to keep him in their group. Dr. Hatheway stated that he has continued counseling with the AA program, and he and his wife have reconciled.

Dr. Hatheway stated that abstinence from alcohol for over five years has allowed him to act less impulsively, to have a clear idea of who he is, and to have firm boundaries. Dr. Hatheway is grateful to be actively involved in his son's life once again.

Dr. Hatheway stated that he enjoys the practice of orthopedics and believes that he can pay back something for all his blessings. Dr. Hatheway stated that he runs a practice that sees a disproportionate number of Medicaid and indigent patients. Dr. Hatheway stated that he would like to continue to volunteer at the Grace Free Clinic in Delaware, Ohio, as he has for the past three years. Dr. Hatheway opined that his medical and surgical skills remain excellent and he would appreciate the opportunity to continue to serve the people of Ohio for as long as his health and competence allow.

Dr. Amato asked if the Assistant Attorney General wished to respond. Ms. Unver replied that she did wish to respond.

Ms. Unver summarized that Dr. Hatheway treated Patient 1 between the years of 2002 and 2004. During that time, Dr. Hatheway engaged in an inappropriate sexual relationship with Patient 1. Dr. Hatheway had admitted the sexual relationship to a Board investigator and stated under oath that he had not engaged in sexual contact with any other patients. Later, Dr. Hatheway admitted to sexual conduct with Patient 2 and Patient 3 as well.

Ms. Unver stated that Dr. Hatheway is before the Board because his actions violated the standard of care and violated the AMA's Code of Ethics. Ms. Unver stated that she agreed with the Hearing Examiner's Proposed Order.

Mr. Hairston moved to approve and confirm Mr. Porter's Findings of Fact, Conclusions of Law, and Proposed Order in the matter of John Mark Hatheway, M.D. Dr. Mahajan seconded the motion.

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

Dr. Stephens stated that many physicians appear before the Board and say that they care for Medicaid and indigent patients, as if those things are mitigating factors. Dr. Stephens disapproved of this and stated that, in her experience, it is easier to care for Medicaid and indigent patients.

Dr. Stephens stated that being a physician is a solemn privilege that should not be abused in any way. Dr. Stephens stated that Dr. Hatheway had an affair with Patient 1, and thus crossed a boundary. Dr. Stephens stated that patients see physicians when they are in need of treatment and need to trust someone to care for them. Dr. Hatheway violated that trust by entering into a sexual relationship with the patient, which he knew was wrong. When he spoke with a Board investigator in 2004, Dr. Hatheway stated that he had had sexual contact with only one patient; however, Dr. Hatheway later admitted to two other inappropriate sexual relationships with patients in the 1980s.

Dr. Stephens speculated the Dr. Hatheway's alcoholism may be to blame for his behavior, but stated that alcoholism should not be a diversion from Dr. Hatheway's predatory behavior. Dr. Stephens noted that Dr. Hatheway went into an alcohol rehabilitation program and now states that he is no longer drinking.

Dr. Stephens opined that the Proposed Order did not reflect the seriousness of Dr. Hatheway's actions.

Dr. Stephens moved to amend the Proposed Order. She proposed that the conditions for reinstating Dr. Hatheway's license include an evaluation and report by the Center for Marital and Sexual Health, and that, upon reinstatement, Dr. Hatheway remain on probation for a five-year period during which the standard conditions for a Step II Consent Agreement would be required. Dr. Steinbergh seconded the motion.

Dr. Amato stated he would now entertain discussion on the proposed amendment.

Dr. Amato expressed concerns regarding the Board's consistency in addressing disciplinary cases. Specifically, Dr. Amato opined that Dr. Hatheway's case involved a boundary issue that potentially endangered three patients, while the previous case of Dr. Barnes involved improper prescribing of medications. Dr. Amato noted that improper use of prescription medications is the #1 preventable cause of death in people aged 16 to 40, and therefore Dr. Barnes represented a greater danger to the public than Dr. Hatheway. Dr. Amato stated that, despite this, the Board is now contemplating disciplinary terms for Dr. Hatheway that are more severe than those that the Board passed for Dr. Barnes. Dr. Amato commented that reverse sexism may be playing a role in the Board's decisions.

Mr. Hairston disagreed with Dr. Amato. Mr. Hairston stated that the three patients in Dr. Hatheway's case went to Dr. Hatheway for care, and Dr. Hatheway violated the rules in dealing with those patients. Mr. Hairston stated that he would have supported an amended order even harsher than the one offered by Dr. Stephens.

Dr. Strafford commented that he is more concerned about Dr. Hatheway's alcoholism and its potential for public endangerment. Dr. Strafford did not deny the sexual-boundary issue is significant, but stated that the issue of alcoholism had a greater potential to adversely affect all of Dr. Hatheway's patients.

Dr. Amato clarified that he did not agree or disagree with Dr. Stephen's proposed amendment, but

reiterated his concern that the Board was meting out a harsher penalty for Dr. Hatheway than it did for Dr. Barnes, whose actions had the potential to cause patient deaths.

Dr. Steinbergh respectfully disagreed with Dr. Amato. Dr. Steinbergh stated that in the case of Dr. Barnes, the Board deliberated between the permanent revocation and indefinite suspension. Ultimately, the Board chose to indefinitely suspend Dr. Barnes' license and place her in a situation where remediation and education will be consistent with the Board's mission of public protection, and hopefully saving the license of a physician. Dr. Steinbergh opined that Dr. Barnes could emerge from this process as a better physician. Regarding Dr. Hatheway, Dr. Steinbergh is very concerned about both issues of sexual boundaries and chemical dependency.

Dr. Stephens also disagreed with Dr. Amato. Dr. Stephens opined that the Board was harsh on Dr. Barnes, but revocation of her medical license was not indicated. Dr. Stephens stated that when her license is reinstated, Dr. Barnes will be on probation for five years and will be required to go through a program that does not guarantee a pass. Regarding Dr. Hatheway, Dr. Stephens opined that Dr. Hatheway appeared to be a predator. Dr. Stephens stated that Dr. Hatheway was having significant sexual contact with a captured population, his patients, regardless of how long ago the incidents took place.

Dr. Madia agreed with Dr. Stephens and stated that three of Dr. Hatheway's patients were violated. In addition, there are concerns for alcoholism involved. Dr. Madia opined that these issues should be addressed seriously. He supported the proposed amendment.

Ms. Debolt requested that the Board table the topic of Dr. Hatheway to give the staff an opportunity to draft an Alternative Order which would include the Step II conditions for monitoring.

Dr. Steinbergh moved to table the topic of Dr. Hatheway. Dr. Strafford seconded the motion. All members voted aye. The motion carried.

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Dr. Steinbergh moved to remove the topic of John Mark Hatheway, M.D., from the table for further consideration. Mr. Hairston seconded the motion. All members voted aye. The motion carried.

Dr. Stephens noted that the text of the Proposed Amended Order, as provided by the Medical Board staff, is as follows, including that the requirement for participation in an alcohol and drug rehabilitation program would be no less than three times per week:

It is hereby ORDERED that:

A. **SUSPENSION OF CERTIFICATE**: The certificate of John Mark Hatheway, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time.

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

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

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

3. **Personal Appearances**: Dr. Hatheway shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which this Order becomes effective, or as otherwise directed by the Board. Subsequent personal appearances shall occur every three months thereafter, and/or as otherwise directed by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

4. **Sobriety**

   a. **Abstention from Drugs**: Dr. Hatheway shall abstain completely from the personal use or personal possession of drugs, except those prescribed, dispensed, or administered to him by another so authorized by law who has full knowledge of Dr. Hatheway's history of chemical dependency and/or abuse and who may lawfully prescribe for him (for example, a physician who is not a family member). Further, in the event that Dr. Hatheway is so prescribed, dispensed, or administered any controlled substance, carisoprodol, or tramadol, Dr. Hatheway shall notify the Board in writing within seven days, providing the Board with the identity of the prescriber, the name of the drug Dr. Hatheway received, the medical purpose for which he received the drug, the date the drug was initially received, and the dosage, amount, number of refills, and directions for use. Further, within 30 days of the date said drug is so prescribed, dispensed, or administered to him, Dr. Hatheway shall provide the Board with either a copy of the written prescription or other written verification from the prescriber, including the dosage, amount, number of refills, and directions for use.

b. **Abstention from Alcohol**: Dr. Hatheway shall abstain completely from the use of alcohol.

5. **Drug and Alcohol Screens; Drug Testing Facility and Collection Site**

a. Dr. Hatheway shall submit to random urine screenings for drugs and alcohol at least ____ per month, or as otherwise directed by the Board. Dr. Hatheway 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, and shall include Dr. Hatheway's drug(s) of choice.

b. Dr. Hatheway shall submit, at his expense and on the day selected, urine specimens for drug and/or alcohol analysis. (The term "toxicology screen" is also be used herein for "urine screen" and/or "drug screen.")

All specimens submitted by Dr. Hatheway shall be negative, except for those substances prescribed, administered, or dispensed to him in conformance with the terms, conditions and limitations set forth in this Order.

Refusal to submit such specimen, or failure to submit such specimen on the day he is selected or in such manner as the Board may request, shall constitute a violation of this Order.

c. Dr. Hatheway shall abstain from the use of any substance that may produce a positive result on a toxicology screen, including the consumption of poppy seeds or other food or liquid that may produce a positive result on a toxicology screen.

Dr. Hatheway shall be held to an understanding and knowledge that the consumption or use of various substances, including but not limited to mouthwashes, hand-cleaning gels, and cough syrups, may cause a positive toxicology screen, and that unintentional ingestion of a substance is not distinguishable from intentional ingestion on a toxicology screen, and that, therefore, consumption or use of substances that may produce a positive result on a toxicology screen is prohibited under this Order.

d. All urine screenings for drugs and alcohol shall be conducted through a Board-approved drug-testing facility and Board-approved collection site pursuant to the global contract between the approved facility and the Board, which provides for the Board to maintain ultimate control over the urine-screening process and to preserve the confidentiality of positive screening

results in accordance with Section 4731.22(F)(5), Ohio Revised Code. The screening process for random testing shall require a daily call-in procedure. Further, in the event that the Board exercises its discretion, as provided in Paragraph 6, below, to approve urine screenings to be conducted at an alternative drug-testing facility, collection site, and/or supervising physician, such approval shall be expressly contingent upon the Board's retaining ultimate control over the urine-screening process in a manner that preserves the confidentiality of positive screening results.

e. Within 30 days of the effective date of this Order, Dr. Hatheway shall enter into the necessary financial and/or contractual arrangements with the Board-approved drug-testing facility and/or collection site ("DFCS") in order to facilitate the screening process in the manner required by this Order.

   Further, within 30 days of making such arrangements, Dr. Hatheway shall provide to the Board written documentation of completion of such arrangements, including a copy of any contract entered into between Dr. Hatheway and the Board-approved DFCS. Dr. Hatheway's failure to timely complete such arrangements, or failure to timely provide written documentation to the Board of completion of such arrangements, shall constitute a violation of this Order.

f. Dr. Hatheway shall ensure that the urine-screening process performed through the Board-approved DFCS requires a daily call-in procedure, 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, Dr. Hatheway and the Board-approved DFCS shall ensure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening result.

g. Dr. Hatheway shall ensure that the Board-approved DFCS provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Order, and whether all urine screens have been negative.

h. In the event that the Board-approved DFCS becomes unable or unwilling to serve as required by this Order, Dr. Hatheway shall immediately notify the Board in writing, and make arrangements acceptable to the Board, pursuant to Paragraph 6, below, as soon as practicable. Dr. Hatheway shall further ensure that the Board-approved DFCS also notifies the Board directly of its inability to continue to serve and the reasons therefor.

i. The Board, in its sole discretion, may withdraw its approval of any DFCS in the event that the Secretary and Supervising Member of the Board determine that the DFCS has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

6. **Alternative Drug-testing Facility and/or Collection Site:** It is the intent of this Order that Dr. Hatheway shall submit urine specimens to the Board-approved DFCS chosen by the Board. However, in the event that using the Board-approved DFCS creates an extraordinary hardship on Dr. Hatheway, as determined in the sole discretion of the Board, then, subject to the following requirements, the Board may approve an alternative DFCS or a supervising physician to facilitate the urine-screening process for Dr. Hatheway.

a. Within 30 days of the date on which Dr. Hatheway is notified of the Board's determination that utilizing the Board-approved DFCS constitutes an extraordinary hardship on Dr. Hatheway, he shall submit to the Board in writing for its prior approval the identity of either an alternative DFCS or the name of a proposed supervising physician to whom Dr. Hatheway shall submit the required urine specimens.

In approving a facility, entity, or an individual to serve in this capacity, the Board will give preference to a facility located near Dr. Hatheway's residence or employment location, or to a physician who practices in the same locale as Dr. Hatheway. Dr. Hatheway shall ensure that the urine-screening process performed through the alternative DFCS or through the supervising physician requires a daily call-in procedure, 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, Dr. Hatheway shall ensure that the alternative DFCS or the supervising physician maintains appropriate control over the specimen and immediately informs the Board of any positive screening result.

b. Dr. Hatheway shall ensure that the alternative DFCS or the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, verifying whether all urine screens have been conducted in compliance with this Order, and whether all urine screens have been negative.

c. In the event that the designated alternative DFCS or the supervising physician becomes unable or unwilling to so serve, Dr. Hatheway shall immediately notify the Board in writing. Dr. Hatheway shall further ensure that the previously designated alternative DFCS or the supervising physician also notifies the Board directly of the inability to continue to serve and the reasons

therefor. Further, in the event that the approved alternative DFCS or supervising physician becomes unable to serve, Dr. Hatheway shall, in order to ensure that there will be no interruption in his urine-screening process, immediately commence urine screening at the Board-approved DFCS chosen by the Board, until such time, if any, that the Board approves a different DFCS or supervising physician, if requested by Dr. Hatheway.

d. The Board, in its sole discretion, may disapprove any entity or facility proposed to serve as Dr. Hatheway's designated alternative DFCS or any person proposed to serve as his supervising physician, or may withdraw its approval of any entity, facility or person previously approved to so serve in the event that the Secretary and Supervising Member of the Board determine that any such entity, facility or person has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

7. **Reports Regarding Drug and Alcohol Screens**: All screening reports required under this Order from the Board-approved DFCS, the alternative DFCS and/or supervising physician must be received in the Board's offices no later than the due date for Dr. Hatheway's declarations of compliance. It is Dr. Hatheway's responsibility to ensure that reports are timely submitted.

8. **Additional Screening Without Prior Notice**: Upon the Board's request and without prior notice, Dr. Hatheway shall provide a specimen of his blood, breath, saliva, urine, and/or hair for screening for drugs and alcohol, for analysis of therapeutic levels of medications that may be prescribed for Dr. Hatheway, or for any other purpose, at Dr. Hatheway's expense. Dr. Hatheway's refusal to submit a specimen upon the request of the Board shall result in a minimum of one year of actual license suspension. Further, the collection of such specimens shall be witnessed by a representative of the Board, or another person acceptable to the Secretary and Supervising Member of the Board.

9. **Rehabilitation Program**: Dr. Hatheway shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or C.A., no less than _____ times per week, or as otherwise ordered by the Board. Substitution of any other specific program must receive prior Board approval.

   Dr. Hatheway shall submit acceptable documentary evidence of continuing compliance with this program, including submission to the Board of meeting attendance logs, which must be received in the Board's offices no later than the due date for Dr. Hatheway's declarations of compliance.

10. **Comply with the Terms of Aftercare Contract**: Dr. Hatheway shall maintain

continued compliance with the terms of his aftercare contract(s), if any, entered into with his treatment provider(s), provided that, where terms of an aftercare contract conflict with terms of this Order, the terms of this Order shall control.

11. **Releases**: Dr. Hatheway 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. Hatheway's chemical dependency/abuse and/or related conditions, or for purposes of complying with this Order, whether such treatment or evaluation occurred before or after the effective date of this Order. To the extent permitted by law, the above-mentioned evaluative reports, summaries, and records are considered medical records for purposes of Section 149.43, Ohio Revised Code, and are confidential pursuant to statute.

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

12. **Absences from Ohio:** Dr. Hatheway shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the suspension/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. Further, the Secretary and Supervising Member of the Board shall have discretion to waive part or all of the monitoring terms set forth in this Order for occasional periods of absence of 14 days or less.

    In the event that Dr. Hatheway resides and/or is employed at a location that is within 50 miles of the geographic border of Ohio and a contiguous state, Dr. Hatheway may travel between Ohio and that contiguous state without seeking prior approval of the Secretary or Supervising Member provided that Dr. Hatheway is otherwise able to maintain full compliance with all other terms, conditions and limitations set forth in this Order.

13. **Required Reporting of Change of Address**: Dr. Hatheway shall notify the Board in writing of any change of residence address and/or principal practice address within 30 days of the change.

C. **CONDITIONS FOR REINSTATEMENT OR RESTORATION**: The Board shall

not consider reinstatement or restoration of Dr. Hatheway's certificate to practice medicine and surgery until all of the following conditions have been met:

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

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

3. **Report of Evaluation by the Center for Marital and Sexual Health, Inc.**: Dr. Hatheway shall submit to an evaluation by the Center for Marital & Sexual Health, Inc., to determine the prognosis and/or probability of future sexual misconduct by Dr. Hatheway. Moreover, Dr. Hatheway shall ensure that a report is sent to the Board that includes any recommendation(s) for monitoring and/or other measures that should be implemented to minimize the probability of any future sexual misconduct.

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

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

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

2. **Modification of Terms**: Dr. Hatheway shall not request modification of the terms, conditions, or limitations of probation for at least one year after imposition of these probationary terms, conditions, and limitations.

3. **Compliance with any Recommendation(s) from the Center for Marital and Sexual Health, Inc.**: Dr. Hatheway shall comply with any recommendation(s) from the Center for Marital & Sexual Health, Inc., as reported to the Board pursuant to paragraph C.3, above.

4. **Personal/Professional Ethics Course(s)**: Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Hatheway shall submit acceptable documentation of successful completion of a course or courses dealing with personal/professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any course(s) taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

   In addition, at the time Dr. Hatheway submits the documentation of successful completion of the course(s) dealing with personal/professional ethics, he shall also submit to the Board a written report describing the course(s), setting forth what he learned from the course(s), and identifying with specificity how he will apply what he has learned to his practice of medicine in the future.

5. **Tolling of Probationary Period While Out of Compliance**: In the event Dr. Hatheway 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. Hatheway's certificate will be fully restored.

F. **VIOLATION OF THE TERMS OF THIS ORDER**: If Dr. Hatheway violates the terms of this Order in any respect, the Board, after giving him notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of his certificate.

G. **REQUIRED REPORTING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS ORDER:**

1. **Required Reporting to Employers and Others**: Within 30 days of the effective date of this Order, Dr. Hatheway shall provide a copy of this Order to all employers or entities with which he is under contract to provide healthcare services (including but not limited to third-party payors), or is receiving training, and the Chief of Staff at each hospital or healthcare center where he has privileges or appointments. Further, Dr. Hatheway shall promptly provide a copy of this Order to all employers or entities with which he contracts in the future to provide healthcare services (including but not limited to third-party payors), or applies for or receives training, and the Chief of Staff at each hospital or healthcare center

where he applies for or obtains privileges or appointments. This requirement shall continue until Dr. Hatheway receives from the Board written notification of the successful completion of his probation.

In the event that Dr. Hatheway provides any healthcare services or healthcare direction or medical oversight to any emergency medical services organization or emergency medical services provider in Ohio, within 30 days of the effective date of this Order, he shall provide a copy of this Order to the Ohio Department of Public Safety, Division of Emergency Medical Services. This requirement shall continue until Dr. Hatheway receives from the Board written notification of the successful completion of his probation.

2. **Required Reporting to Other State Licensing Authorities**: Within 30 days of the effective date of this Order, Dr. Hatheway shall provide a copy of this Order to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Also, Dr. Hatheway shall provide a copy of this Order at the time of application to the proper licensing authority of any state or jurisdiction in which he applies for any professional license or reinstatement/restoration of any professional license. This requirement shall continue until Dr. Hatheway receives from the Board written notification of the successful completion of his probation.

3. **Required Reporting to Treatment Providers/Monitors**: Within 30 days of the effective date of this Order, Dr. Hatheway shall provide a copy of this Order to all persons and entities that provide chemical dependency/abuse treatment to or monitoring of Dr. Hatheway. This requirement shall continue until Dr. Hatheway receives from the Board written notification of the successful completion of his probation.

4. **Required Documentation of the Reporting Required by Paragraph G**: Dr. Hatheway shall provide this Board with **one** of the following documents as proof of each required notification within 30 days of the date of each such notification: (a) the return receipt of certified mail within 30 days of receiving that return receipt, (b) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Order was hand delivered, (c) the original facsimile-generated report confirming successful transmission of a copy of the Order to the person or entity to whom a copy of the Order was faxed, or (d) an original computer-generated printout of electronic mail communication documenting the e-mail transmission of a copy of the Order to the person or entity to whom a copy of the Order was e-mailed.

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

Ms. Debolt recommended that the Proposed Amendment require Dr. Hatheway to undergo urine screenings for drugs and alcohol at least twice per month. Dr. Stephens agreed.

Dr. Amato noted that the language of the Proposed Amendment made the Order effective immediately. Dr. Amato suggested that there should be a thirty-day "wind down" period. Dr. Stephens agreed. Dr. Stephens also accepted Dr. Steinbergh's stipulation that Dr. Hatheway not take on any new patients during those 30 days.

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

Roll Call:		
	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Amato	- nay
	Dr. Madia	- aye
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Ramprasad	- aye

The amendment 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 John Mark Hatheway, M.D. Mr. Hairston seconded the motion. A vote was taken:

Roll Call:		
	Dr. Strafford	- aye
	Mr. Hairston	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Amato	- nay
	Dr. Madia	- aye
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Ramprasad	- 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

January 14, 2009

Case number: 09-CRF-003

John Mark Hatheway, M.D.
720 E. Broad St., Suite 100
Columbus, OH 43215

Dear Doctor Hatheway:

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

(1) From in or around 2002 through 2004, in the course of your medical practice, you treated Patient 1, identified in the attached Patient Key. (Key is confidential and shall be withheld from public disclosure.) Despite your ongoing physician-patient relationship with Patient 1, you engaged in sexual contact with her.

(2) While you admitted under oath that you had engaged in sexual contact with Patient 1, you denied under oath ever engaging in sexual contact with any other patients. In addition, during an interview with a Board investigator on or about December 6, 2004, concerning Patient 1, you stated that you had never been sexually involved with any other patients.

You subsequently stated under oath that you had, in fact, engaged in sexual contact with two other patients. You further indicated that you engaged in sexual contact with Patient 2, identified in the attached Patient Key, on three occasions in or about 1988, and that you also engaged in sexual contact with Patient 3, identified in the attached Patient Key, on two occasions from in or about 1983 to 1989, despite your admission that your professional relationship with both patients did not end until 1990.

Mailed 1-15-09

Your acts, conduct, and/or omissions as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute "[a] departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established," as that clause is used in Section 4731.22(B)(6), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "[v]iolation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations that the board specifies by rule," as that clause is used in Section 4731.22(B)(18), Ohio Revised Code, to wit: Principles I, II and IV of the American Medical Association's Principles of Medical Ethics.

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute "[v]iolation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations as are determined, by rule, by the state medical board," as that clause is used in Section 4731.22(B)(18), Ohio Revised Code, as in effect prior to March 9, 1999, to wit: Principles I and IV of the American Medical Association's Principles of Medical Ethics.

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) 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, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice.

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

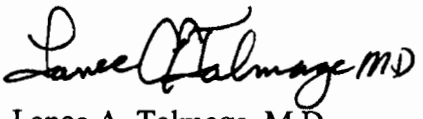
In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently

revoke, suspend, refuse to register or reinstate your certificate to practice 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/MRB/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3934 3487 0992
RETURN RECEIPT REQUESTED

cc: Eric J. Plinke, Esq.
Dinsmore & Shohl LLP
191 W. Nationwide Blvd.
Columbus, OH 43215

CERTIFIED MAIL #91 7108 2133 3934 3487 1005
RETURN RECEIPT REQUESTED